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REPORT TO THE MICHIGAN SUPREME COURT
TASK FORCE ON THE ROLE OF THE STATE BAR OF MICHIGAN

Summary of Recommendations

Recommendation 1. The State Bar of Michigan should remain a mandatory state bar.

Recommendation 2. To better protect State Bar members' First Amendment rights:

- All State Bar advocacy outside the judicial branch should be subject to a rigorous *Keller* process and the State Bar should emphasize a strict interpretation of *Keller*
- Funding of Justice Initiatives activities should be subject to a formal *Keller* review during the annual budget process
- State Bar Sections that engage in legislative advocacy should do so only through separate entities not identified with the State Bar.

Recommendation 3. The State Bar's regulatory services should be better integrated with the activities of the other attorney regulatory agencies.

Recommendation 4. Governance of the State Bar through the Representative Assembly and the Board of Commissioners should be modified.

Recommendation 5. Membership dues for inactive State Bar members should be reduced, inactive member reinstatement should be made more accessible and rational, and the Supreme Court should convene a special commission to review active and inactive licensing, *pro hac vice*, and recertification issues.

BACKGROUND

The State Bar of Michigan was created in 1935 as a mandatory bar association.[1] On January 23, 2014, Senate Bill 743 was introduced in the Michigan Senate to make membership in the State Bar of Michigan voluntary. On February 6, 2014, the State Bar requested the Supreme Court to initiate a review of how the State Bar operates within the framework of the United States Supreme Court's decision in *Keller v State Bar of California*, 496 US 1; 100 SCt 2228; 110 LEd 2d 1 (1990), (hereafter *Keller*).[2] On February 13, 2014, the Supreme Court entered Administrative Order 2014-5[3] establishing the Task Force on the Role of the State Bar of Michigan.

TASK FORCE WORK

Meetings

In the 74 working days between the issuance of the administrative order establishing the Task Force and the June 2 deadline for the submission of the report, the Task Force held one organizational teleconference and 10 in-person meetings.

Outreach

The Task Force solicited input from members of the State Bar through an email to each member of the State Bar who has an email address on file with the State Bar: 515 members responded with written comments. State Bar members were also advised by individual email of a public hearing on the issues, and notice to the public was posted. During an all-day hearing at the Hall of Justice on May 2, the Task Force heard testimony from 27 speakers. Of the written and public hearing comments, a clear majority supported the continuation of the mandatory state bar. The Task Force also received unsolicited comments from State Bar Sections and local and affinity bar associations, all supporting continuation of the mandatory State Bar.[4]

Materials Reviewed

First Amendment Jurisprudence. The Task Force reviewed the history of First Amendment challenges against the State Bar, with particular attention to *Falk v State Bar of Michigan*, 411 Mich 63; 305 NW2d 201 (1981) and 418 Mich 270; 342 NW2d 504 (1983) (hereafter *Falk*);

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[1] See Appendix I for enabling statute, accompanying court rules, and the current statute and court rules.
[2] See Appendix II for the State Bar letter.
[3] See Appendix III for AO 2014-5.
[4] Local and affinity bars: Calhoun County Bar Association, Grand Rapids Bar Association, Grand Traverse-Leelanau-Antrim Bar Association, Michigan Retired Judges Association, Oakland County Bar Association, Women Lawyers Association. Sections: Alternate Dispute Resolution Section, Criminal Law Section, Health Care Law Section, Masters Law Section, and Negligence Law Section.

Keller; the administrative orders issued by our Supreme Court in response to those cases;[5] and other pertinent U.S. Supreme Court and federal appellate opinions issued after *Keller.*[6]

State Bar Information. To understand the scope and detail of the State Bar's current operations, the Task Force reviewed: the 2012-13 Annual Report of the State Bar of Michigan; detailed descriptions on the State Bar's programs; the State Bar's interaction with the other Michigan attorney regulatory agencies; and the procedures for compliance with Supreme Court administrative order 2004-1 (the Michigan Supreme Court's current *Keller* order). The Task Force also reviewed historical documents, including the report of the Committee on State Bar Activities appointed in January to report to Michigan Supreme Court in 1984, included in Appendix IV.

Other Mandatory State Bars. The Task Force reviewed primary source material on the policies and procedures relevant to *Keller* of the 31 other mandatory state bars.[7]

Board of Commissioners' Proposed Changes to Supreme Court Rules. The Task Force received rule changes proposed by the State Bar Board of Commissioners at the Board's April 25 meeting.[8]

Comments from the Representative Assembly of the State Bar. The Task Force received comments on the role of the State Bar and of the Representative Assembly compiled from the meeting of the Representative Assembly on April 26, 2014.[9]

State Bar Programs. The Task Force reviewed all of the State Bar programs, identified below in 15 categories. Some categories include activities that are wholly supported by non-mandatory dues revenue.

1. State Bar Governance. Operate and support the 31 member Board of Commissioners and the 150-member Representative Assembly.
2. Governmental Relations. Analyze and support the development of public policies concerning the legal profession, the provision of legal services, and the courts, including non-lobbying public policy support for State Bar Sections. Provide State Bar member education and advocacy on court rules and legislation within the constraints of AO 2004-1 (*Keller*).
3. Outreach, Committees, Sections and Local and Affinity Bars. Operate and support the State Bar committee infrastructure; develop and coordinate services to Sections; and build relations with, develop resources for, and support the work of local and affinity

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[5] See Appendix IV for the relevant orders.
[6] See Appendix V for the relevant case law.
[7] A compendium of the material from the other mandatory state bars has been provided to the Court along with this Report.
[8] See Appendix VII for the rule changes submitted by the Board of Commissioners.
[9] See Appendix VIII for the comments from the Representative Assembly.

bars. Provide direct subsidy to assist programs and projects of Young Lawyers, Master Lawyers, and Judicial Sections.

4. Justice Initiatives Programs. Develop proposals for effective delivery of high quality legal services and programs to benefit underserved populations; encourage and coordinate free or discounted civil legal services (*pro bono*); promote increased resources for civil legal aid programs; examine issues concerning adequate legal representation in the criminal justice system; promote improved diversity and inclusion in the legal profession; and review and make recommendations concerning proposed court rules and legislation affecting these matters.
5. Ethics and Ethics Helpline. Operate and support ethics programs, including call-in helpline, and attorney and judicial ethics committees; develop and analyze ethics content and ethics programming; and coordinate with the discipline system.
6. Unauthorized Practice of Law. Investigate complaints about the unauthorized practice of law and support the work of the Unauthorized Practice of Law Committee which makes recommendations on litigating unauthorized practice matters, and engages in public education about the risks of hiring a non-lawyer to do legal work.
7. Character and Fitness. Provide staff support and resources to process character and fitness issues for state bar applications, including investigation where appropriate; and support the work of the district and standing committees and the Board of Law Examiners.
8. Judicial Qualifications. Provide confidential evaluations of judicial candidates to the Governor.
9. Client Protection Fund. Administer the Client Protection Fund and investigate claims and make recommendations on Client Protection Fund payments to claimants.
10. Lawyer Referral Service. Administer the voluntary lawyer-subscriber program that provides callers with contact information about attorneys based on the subject matter and geographic location.
11. Lawyers and Judges Assistance Program. Provide referral information, assessments, and monitoring services to attorneys, judges, and law students who face issues with substance abuse, mental health or stress management.
12. Member and Endorsed Services and Events. Operate the member center and member affinity programs and events such as the Annual Meeting, Upper Michigan Legal Institute, 50 Year Golden Celebration, and Bar Leadership Forum.
13. Practice Management Resource Center. Provide practice management resources and assistance to attorneys, including basic skills and technology training; when appropriate, partner with the attorney discipline system.
14. Publications and Website. Produce the Bar Journal, Member Directory, e-Journal, and other publications on topics of interest and value to attorneys; and manage the State Bar website.
15. Media Relations, Civic Education and Public Outreach. Provide news releases, media training, and information to State Bar members and the public.

RECOMMENDATIONS

MANDATORY VERSUS VOLUNTARY

The Task Force was charged with examining "existing State Bar programs and activities that are germane to the compelling state interests recognized in *Falk* and *Keller* to justify a mandatory bar."[10]

RECOMMENDATION 1: CONTINUE THE STATE BAR AS A MANDATORY BAR.
RATIONALE: The traditional emphasis of a bar association is on the professionalism and competence of its members and service to the public. The theory of a mandatory bar is that combining the emphasis on professionalism and competence with the governmental regulation of attorneys can be a more efficient and effective way to serve the public purpose of regulating attorneys than the regulation used for other professions and trades. An examination of the State Bar's programs and cost to members compared to other state bars, mandatory and voluntary, shows that the State Bar supports compelling state interests ("regulating the legal profession and improving the quality of legal services"[11]) cost-effectively. In Michigan, the cost of regulating the legal profession is borne entirely by attorneys licensed to practice law, at a cost below the national average. Through a long-established infrastructure of volunteer-attorney driven programs, the State Bar delivers a variety of services to the public at no cost to taxpayers[12] and provides benefits to its members that would not be available on the same scale or quality, if at all, through a voluntary bar.[13]

State Bar member input suggests that the most valued intangible benefit to the members is a voice in their own professional regulation. This is a privilege justified by attorneys' unique governmental responsibilities as officers of the court. But this benefit comes with unique

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[10] AO 2014-5. Of the 15 State Bar programs described on pages 3 and 4, the Task Force's principal focus was the State Bar's Governmental Relations Program (Program 2), with a secondary focus on the activity of State Bar Sections and on the State Bar's Justice Initiatives Program (Program 4). The programs on Ethics and Ethics Helpline, Unauthorized Practice of Law, Character and Fitness, Judicial Qualifications, Client Protection Fund, Lawyer Referral Service, Lawyers and Judges Assistance Program, Practice Management Resource Center, and Publications and Website programs carry out duties and functions that are germane to the most restrictive interpretations of compelling state interests recognized in *Falk* and *Keller*, have no ideological content, and thus are not intrusive on State Bar members' First Amendment rights. The Member and Endorsed Services and Events program offers benefits to members, does not involve ideological activity, and thus is not intrusive on members' First Amendment rights. In addition, member affinity programs are not funded by State Bar member dues.
[11] *Keller*, 496 US 13-14, quoted in AO 2014-5.
[12] Examples include programming to enhance ethics and professionalism, civic education, pro bono services, assistance to lawyers and judges dealing with alcohol and drug problems, administration of the client protection fund, investigation of the unauthorized practice of law, and promotion of improvements in the justice system and the practice of law.
[13] Examples include free or low-cost practice aids and practice management resources such as the e-Journal, Casemaker, the Practice Management Resource Center, and the ethics helpline. The inclusive nature of a mandatory bar also provides the benefit of leadership opportunities for all lawyers, and a forum for the exchange of all points of view.

restrictions. At times, the State Bar is precluded from taking actions favored by a majority of its members that it would be free to take but for its mandatory status. The member input received by the Task Force indicates that this distinction is not fully appreciated by the membership. As a mandatory bar, the State Bar is neither a trade association nor a union, and it is not free to act solely, or even primarily, in the self-interest of its members.

We urge the Court to use this moment of heightened attention to clarify the role of the State Bar by emphasizing that its primary role is to serve the public good. To underscore this role, we recommend that the Supreme Court amend Rule 1 of the Supreme Court Rules for the State Bar to remove language that could be construed to authorize a broader role for the State Bar than is compatible with *Keller*:

> "The State Bar of Michigan is the association of the members of the bar of this state, organized and existing as a public body corporate pursuant to powers of the Supreme Court over the bar of the state. Under these rules <u>and administrative orders of the Supreme Court</u>, the State Bar of Michigan shall aid in promoting improvements in the administration of justice and advancements in jurisprudence, within constitutional limitations on a mandatory bar, and in improving relations between the legal profession and the public ~~and in promoting the interests of the legal profession in this state~~."

This change, accompanied by a new *Keller* administrative order explaining the State Bar's duties and constraints, will send a clear signal to Michigan attorneys that the State Bar cannot advocate for issues primarily devoted to attorneys' own economic self-interest. Instead, on those specific issues, attorneys must use existing voluntary entities, including the voluntary Sections of the State Bar, or create new ones.

FIRST AMENDMENT ISSUES

The Task Force was charged with determining whether the State Bar's duties and functions "can be accomplished by means less intrusive upon the First Amendment rights of objecting individual attorneys."[14]

After some twelve weeks of research and debate, three things became clear: (1) how mandatory state bars should apply the constitutional standard of *Keller* is unsettled throughout the country, (2) the only way to be absolutely certain that a mandatory state bar will never violate members' First Amendment rights is to have no advocacy program whatsoever, and (3) if the State Bar of Michigan is to continue to engage in advocacy, the Supreme Court must provide clearer and more rigorous standards under which it may do so.

Although the Supreme Court's procedure for challenging the State Bar's activities as a violation of members' First Amendment rights under *Keller* has been invoked by only two members since *Keller* was decided in 1990, the Task Force unanimously believes that ***any*** infringement on

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[14] *Id*; brackets omitted.

constitutional rights, even unasserted, is a concern. Three Task Force members[15] believe, based on the State Bar's inconsistent, and increasingly expansive reading of *Keller*, that a total ban on State Bar advocacy within the executive and legislative branches should be implemented. Nine members of the Task Force reject this option, believing that the State Bar's advocacy within the executive and legislative branch is essential to its core mission. If the Supreme Court decides to allow some public policy advocacy, all 12 Task Force members support the following recommendation, and support the First Amendment recommendations as a necessary precondition of the continuation of the State Bar's public policy advocacy program:

RECOMMENDATION 2. PROVIDE BETTER PROTECTION OF THE FIRST AMENDMENT RIGHTS OF STATE BAR MEMBERS THROUGH MORE RIGOROUS PROCESSES AND A NEW SUPREME COURT ADMINISTRATIVE ORDER.

Specifically,

1. All State Bar advocacy outside the judicial branch should be subject to a new, rigorous *Keller* process and the State Bar should emphasize a strict interpretation of *Keller*. (The full *Keller* process and clarification recommendations are on pages 7-9.)
2. State Bar Sections that engage in external advocacy should do so only through separate entities not identified with the State Bar. (The full Section recommendation is on pages 13-14.)
3. Funding of Justice Initiatives activities should be subject to a formal *Keller* review. (The full Justice Initiatives recommendation is on page 14.)

GOVERNMENTAL RELATIONS PROGRAM RECOMMENDATIONS

A substantial percentage of the work of the Governmental Relations Program does not implicate State Bar members' First Amendment rights, and we make no recommendations for change as to that work. Specifically, the Governmental Relations program should continue to 1) review, analyze, and disseminate content-neutral information about pending legislation and court rules, and 2) advocate within the judicial branch on court rules and other issues affecting the legal profession.

Recommendations:
The following *Keller* requirements should apply to non-judicial branch advocacy by the State Bar:

1. An independent *Keller* review panel should be created. The panel should be composed of seven members – two appointed by the Board of Commissioners, two appointed by the Representative Assembly, two appointed by the Supreme Court, and one appointed jointly by the Supreme Court and the Board of Commissioners. The *Keller* analysis will

[15] Peter H. Ellsworth, Colleen A. Pero and Hon. Michael J. Riordan.

be written by legal counsel, who will be selected by the State Bar and who shall be approved by the Supreme Court. The panel should have exclusive responsibility for determining the *Keller*-permissibility of issues on which State Bar advocacy is proposed. Their decision must be based on a formal, thorough *Keller* legal analysis made available to the panel in advance of their consideration. The operation of the panel, including the written *Keller* analysis, should be transparent. Five of the seven panel members must vote in favor for an issue to be considered *Keller*-permissible and eligible for further consideration. The vote must be on the record and forwarded to the Board of Commissioners along with the written *Keller* analysis.

2. Michigan should adopt a narrow interpretation of *Keller*, bounded within the two purposes endorsed by *Keller*—regulating the legal profession and improving the quality of legal services.

3. The State Bar should not be permitted to advocate a public policy position outside the judicial branch unless:
    a) the independent *Keller* panel has approved the position for consideration
    b) a formal *Keller* analysis has been published on the State Bar website
    c) the State Bar has provided notice of the published *Keller* analysis to any member who requests notice on that issue or specific legislation
    d) the State Bar publishes the dissent of any member who so requests as soon as practicable after receiving the dissent.

4. The standard for State Bar advocacy should be set out in a new *Keller* administrative order signaling a "reboot" of the rules of State Bar advocacy.

    a) The order should specifically provide that the following are *Keller*-permissible:
        i. positions on legislation, policies, or initiatives that regulate or directly affect the regulation of the legal profession
        ii. positions on legislation, policies, or initiatives that improve or diminish the quality of legal services, such as by providing or impeding legal services for the poor or disadvantaged, or by affecting the delivery of legal services by lawyers, other legal service providers, or the courts
        iii. the provision of technical expertise at the joint request of the Speaker and Minority Leader, the Senate Majority and Minority Leaders, or a Committee Chair and Minority Vice Chair of the Committee to which the legislation has been referred.[16]

[16] By requiring a request to come from bipartisan leadership, the State Bar is assured that the assistance is not being requested for partisan purposes.

b) The order should specifically identify the following as impermissible areas for State Bar advocacy:[17]

i. Ballot issues
ii. Election law
iii. Judicial selection
iv. Issues that are perceived to be associated with one party or candidate, and endorsements of candidates
v. Matters that are primarily intended to personally benefit lawyers, law firms, or judges
vi. Issues that are perceived to be divisive within the bar membership

5. The Supreme Court Rules Concerning the State Bar should be amended to eliminate provisions that might be construed to convey authority separate from the new administrative order.

*Rationale**:*** *Keller* makes clear that advocacy by a mandatory state bar is constitutional but does not clearly define the boundaries and procedures required to regulate a mandatory bar's legislative advocacy. As did the Michigan Supreme Court in grappling with these issues in *Falk*, the *Keller* Court recognized that determining precisely what is and is not an appropriate use of mandatory dues can be difficult. "Compulsory dues may not be expended to endorse or advance a gun control or nuclear freeze initiative; at the other end of the spectrum petitioners have no valid constitutional object to their compulsory dues being spent for activities connected with disciplining members of the bar or proposing ethical codes for the profession."[18] In the face of that ambiguity, the Michigan Supreme Court issued AO 1993-5, the basic framework of which was reaffirmed eleven years later in AO 2004-1,[19] and which remains in effect today.

Michigan's current *Keller* boundaries and procedures are similar to those established in a plurality of other mandatory bar states, but the Task Force recommends a more rigorous standard and greatly strengthened procedural safeguards that would go beyond the safeguards imposed on any of the mandatory state bars that engage in legislative advocacy.

In arriving at our recommendation, the Task Force reviewed four decades of State Bar legislative activity. Although a definitive assessment was hindered by the lack of written *Keller* analyses, it appeared that most legislative positions have been based on the impact to court operations, judicial independence, court funding, or on a conflict (or need for) coordination with court rules. In many cases the State Bar's advocacy has been an effective complement to the Supreme Court's own advocacy on administrative issues affecting the court system. However, even

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[17] Members Butzbaugh, Reed, Rombach, Welch, and Williams recommend that the Supreme Court's order explicitly state that these restrictions apply unless State Bar advocacy is authorized by the Supreme Court.

[18] *Keller v State Bar of California*, 496 US 1, 16 (1990).

[19] AO 1993-5 and 2004-1 are at Appendix IV.

though the scope of the State Bar's advocacy overall appears to have narrowed since *Keller*, our review demonstrates why more rigorous procedures, further clarification, and a narrower interpretation are essential.

The State Bar has a robust public policy website that promotes transparency and broad-based involvement. At the same time, however, its decision-making processes are imprecise and informal. Rather than a rigorous *Keller* analysis as a starting point, the decision-making process sometimes has evolved into a more casual last-minute approach. If there is a consensus among some in State Bar leadership that it is important for the State Bar to take a position on some issue, matters can move through the process in a variety of ways, at times with only a quick indication that a staff member has determined that an issue is *Keller*-permissible. A formal, written *Keller* analysis is not required and is rarely done, and there is no separate consideration or vote required on the question of the *Keller*-permissibility of a proposed position.

As a result, there have been instances of the State Bar promoting or opposing legislation that falls outside a strict reading of *Keller*. Representative examples include: opposing legislation allowing a trial court to award costs and actual attorney fees to a party who prevails in an action against the Department of Environmental Quality (2007); supporting a bill to provide compensation of up to $60,000 per year for each year a person wrongfully convicted of a crime is imprisoned (2013); opposing in principle that the circuit court family divisions notify the secretary of state about truancy dispositions (2005); and opposing a constitutional amendment that would prohibit a trial court's granting of bail to a person charged with a felony who is in the United States illegally (2008). In some instances, the State Bar has promoted legislation based on an "historic" position rather than on a reasoned *Keller* analysis, while in others, it took positions based on attenuated, speculative reasoning. The reasoning that a position is permissible because it would increase or diminish public confidence in the court system appears to be the rationale for the most dubiously *Keller*-permissible positions.

In 2006, the State Bar opposed the Michigan Civil Rights Initiative, but specifically refrained from any advocacy, concluding that it was not allowed to spend resources to promote its position. The Board of Commissioners found that the substance of the initiative was reasonably related to the regulation of the legal profession, including the education, ethics, competency, and integrity of the profession. Under a more restrictive reading of *Keller*, the State Bar would have declined to take a position regardless of the spending of resources.

The following year, the State Bar waged a campaign in opposition to a proposed sales tax on services on the basis that imposing a sales tax on legal services would reduce the availability of legal services to society. Mandatory state bars have been divided on whether *Keller* permits advocacy on the issue of a sales tax on legal services. A revised *Keller* order directing a more restrictive application of *Keller's* boundaries would put Michigan in the camp that does not allow advocacy on matters primarily based upon lawyers' economic self-interest.

The processes we recommend will go a long way toward preventing "mission creep" in State Bar advocacy, but to be fully effective they must be accompanied by clearer direction from the Supreme Court about *Keller* boundaries.

As directed by the Court, the Task Force considered whether the state interests advanced by the State Bar's non-judicial branch advocacy could be carried out in a less intrusive manner. Specifically, the Task Force considered whether voluntary associations of attorneys would be able to replicate the State Bar's limited, but unique, role in public policy advocacy if the State Bar is prohibited from legislative advocacy. The Task Force concludes that other associations might become more prominent in their lobbying on such issues, but individually or collectively, they would not perform the same function served by the State Bar's advocacy.

The current voluntary bar entities in Michigan – local, affinity, and special purpose bar associations, judges' associations, and Sections funded by voluntary dues – all play an important role in providing the views of subsets of the legal community on proposed legislation and court rules. But none of these entities offers a broad-based, apolitical forum for the consideration of all viewpoints of the legal profession in determining their public policy positions.

Two recent examples of the State Bar's role as a conduit for innovation and consensus are instructive.

Custodial Interrogation

In the spring of 2005, the State Bar's Criminal Jurisprudence and Practice Committee identified concerns about wrongful convictions and the amount of time spent at trial and on appeal litigating what was said and done during an interrogation. The committee drafted a resolution for consideration by the Representative Assembly based on research into other states' practices. The Assembly unanimously supported the appointment of a State Bar custodial interrogation recording task force to develop and promote legislative, court rule, and funding changes to advance the use statewide of audio and video electronic recording of custodial interrogations. The Custodial Interrogation Recording Task Force created in response to the resolution was comprised of defense attorneys, prosecutors, members of the judiciary, and law enforcement officials from around the state. The task force met for over two years, forging consensus and securing funding for a pilot project from the Michigan State Bar Foundation and Criminal Law Section. The task force wrote a model policy for recording audio/visual interrogations that became the basis for legislation adopted unanimously by the Legislature more than seven years after the task force was first conceived.

Judicial Crossroads Task Force

Recognizing that a sustained and ongoing economic crisis and an antiquated court system threatened the system of justice in Michigan, in 2009 the State Bar convened a task force consisting of 28 prominent lawyers and judges to address how Michigan's justice system should respond to the changes underway in the state's economy. Ultimately, the task force and its four subcommittees involved over 150 lawyers, judges and stakeholders meeting over the course of

10 months to develop recommendations in four areas: judicial resources and structure; use of technology; access to justice; and business impact. The consensus that developed during the work of the task force was a crucial factor in the task force's report becoming an influential blueprint for change. The Report's recommendations, many building upon reports and ongoing work of the State Court Administrative Office, were influential in several significant legislative changes, most notably on downsizing courts, court consolidation, problem-solving courts, and business courts. Nationally, the task force report and the advocacy that followed are pointed to as one of the most effective responses to the court funding crisis in any state.

Against the potential loss of successes like these, the Task Force weighed the burden that the State Bar's advocacy imposes on dissenting members. The reality is that even a State Bar public policy position falling squarely within the subject matter allowed by *Keller*, and widely supported by the State Bar members, is likely to be opposed by at least one member. Some State Bar members told the Task Force that they think this is a negligible concern. We do not. Our concern for the rights of dissenting State Bar members drives our recommendation that the State Bar provide advance notice by email or text message to any member who requests it about an impending State Bar position on a particular issue, and post the dissenting statement of any member who so requests on the State Bar's public policy webpage.

Current technology permits the State Bar to implement these innovative changes without undue expense or unduly burdening the State Bar's deliberations. The adoption of this recommendation would put Michigan at the forefront of First Amendment protections by mandatory state bars without silencing the State Bar altogether. Coupled with a requirement that the State Bar base all advocacy positions outside the judicial branch on a written explanation available to members of why the position falls within *Keller* boundaries, this change would increase members' understanding of why the State Bar can and cannot take positions on issues of interest to lawyers and decrease pressure from members for the Bar to take inappropriate positions.

Other States

As invited to do by the order creating the Task Force, we examined the approaches taken by each of the other 31 mandatory state bars to conforming their activities to the constitutional standard defined by *Keller*.

No Advocacy Program. A few mandatory state bars do not have any governmental relations program. In those states, it is typical for a voluntary bar association, representing only one type of practice, to become the voice of the state's legal profession. Although the no-advocacy approach is the ultimate safeguard of First Amendment rights, it deprives the state's policymakers of the only broad-based, statewide voice on legal issues that does not also have an ideological or partisan agenda.

No Advocacy Restraints, but Strict Accounting. A few mandatory bar associations do not attempt to confine their activities exclusively to subject-matter falling within *Keller* boundaries. Instead, they have adopted elaborate procedures to measure the cost of non-*Keller* compliant

activities to ensure that non-*Keller*-based activities are not financed by member dues. Those procedures comply with *Keller*'s requirements and so far have withstood constitutional challenge. The Task Force does not favor this approach or the resumption of the opt-out and diversion for legislative advocacy activities that were in place between 1985 and 1993.

Nebraska. The Task Force also looked closely at a third option—the recent decision of the Nebraska Supreme Court to reduce the mandatory dues of Nebraska's attorneys to the costs of regulatory functions. Attorneys are still required to belong to the Nebraska State Bar Association in order to be eligible to practice law in the state, but the bar's annual dues are voluntary and the bar association is no longer subject to *Keller* restrictions in its activities, including advocacy. The Nebraska approach has the attraction of structural simplicity (once the transitional problems are worked out) and the assurance that members' dues are not used to support any ideological activity with which the members might disagree. In the Task Force's view, however, the Nebraska model compounds First Amendment concerns rather than alleviates them, because Nebraska attorneys are forced to belong to an association that can take divisive, politically-based positions—but with no recourse for dissenting members.[20]

We believe that the State Bar's public policy advocacy provides a resource for the state's decision-makers that cannot be accomplished by a less intrusive means. We also believe that our recommendations are superior to any other states' *Keller* accommodation requirements. Concern for members' First Amendment rights should be at the forefront of the State Bar's decision-making even when the use of mandatory dues are not at issue. This is a moment to make clear to State Bar members, to legislators, and to the public that there are boundaries to the State Bar's advocacy, and that the State Bar does not have, nor can it have, a political agenda.

SECTION ADVOCACY RECOMMENDATIONS

As voluntarily-funded entities, Sections of the State Bar are not subject to the same constraints as the State Bar itself, but the Task Force nevertheless makes several recommendations concerning Section advocacy.

Recommendations:

1. Sections should be allowed to engage in ideological, but not partisan, activities using voluntary dues money.
2. Sections should be free to engage in legislative or executive branch advocacy, but must do so by creating a separate entity not identified in any way with State Bar.

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[20] We note that both the Nebraska approach and the strict accounting approach may require adjustment in response to the U.S. Supreme Court's pending decision in *Harris v. Quinn*, 656 F.3d 692, 191 LRRM 2545 (7th Cir. 2011), cert. granted Oct. 1, 2013. The case was argued January 21, 2014.

3. Legislative advocacy done by the Section's separate entity should not be subject to the current elaborate reporting requirements of AO 2004-1, but the separate entity must still report its positions to the State Bar, to ensure compliance with the requirements of the Supreme Court rules and orders and the State Bar bylaws.
4. The State Bar should not subsidize any non-*Keller*-permissible activities of Sections.
5. The State Bar may collect voluntary dues for Sections' legislative or executive branch activities as long as the Sections pay the cost of collection activities.
6. Section advocacy information hosted on Section webpages on the State Bar website should be accessible only to Section members.
7. Sections should be allowed to use the State Bar building and facilities on the same terms as all other lawyer groups, but should reimburse the State Bar for special services that may support non-*Keller*-permissible activities provided by the State Bar.
8. The State Bar should conduct annual mandatory training for Section officers on compliance with these requirements.

Rationale: Sections of the State Bar enhance the quality of legal services in Michigan by providing members with educational and networking opportunities in specific practice areas. The State Bar provides the administrative infrastructure for all Sections – collecting dues and maintaining membership databases – and offers other support services at cost. Three sections – the Young Lawyers Section, the Judicial Section, and the Master Lawyers Section – are supported by mandatory State Bar dues. The operations of all other Sections are funded through voluntary member dues. There are approximately 35,000 voluntary paid Section memberships. If their membership is voluntary, Sections are not subject to the restrictions of *Keller* in the use of their members' dues. But because of the risk that Sections' advocacy will be mistaken for the advocacy of the State Bar itself, Michigan and other mandatory bar states subject sections to requirements intended to distinguish the Sections' activities from those of the State Bar itself. These requirements have not been sufficiently successful in eliminating confusion or preventing the misidentification of Section advocacy with the advocacy of the State Bar. We believe the approach we recommend can overcome the problem of misidentification.

JUSTICE INITIATIVES PROGRAM RECOMMENDATION

Recommendation: For the Justice Initiatives program, there should be heightened *Keller* scrutiny and review during the annual budget process.

Rationale: The Justice Initiatives program is grounded in the ethical obligation of attorneys to promote improvement of the law, the administration of justice, and the quality of legal services, and to render public interest legal service. Accordingly, this program is germane to the compelling state interests recognized in *Falk* and *Keller*. The subject matter of the Justice Initiatives program, however, can involve ideological content. To ensure that the Justice Initiative activities fall within *Keller* boundaries, during the annual budget process a formal *Keller* analysis of the Justice Initiatives programs to be funded in the upcoming fiscal year should be prepared, and funding for the Justice Initiatives program should be approved by a three-fourths supermajority of the Board of Commissioners.

REGULATORY ROLE OF THE STATE BAR

The Supreme Court invited the Task Force to examine what other programs the State Bar of Michigan ought to undertake to enhance its constitutionally-compelled mission. This inquiry led the Task Force to make recommendations concerning the State Bar's integration with the other attorney regulatory agencies.

RECOMMENDATION 3. PROVIDE BETTER STATE BAR INTEGRATION WITH THE ACTIVITIES OF THE OTHER ATTORNEY REGULATORY AGENCIES.

1. The intake for grievances and inquiries about the discipline system should be either centered exclusively in the State Bar or coordinated so that the public's needs are addressed more efficiently, consistently, and effectively.
2. The status of attorney discipline employees as State Bar employees should be clarified, and the State Bar should be the central provider of personnel services. The terms and conditions of employment, however, should continue to be controlled by the Attorney Grievance Commission and the Attorney Discipline Board.
3. The State Bar should have a formal consultation role in the selection process for appointments to the Attorney Grievance Commission and the Attorney Discipline Board.
4. The State Bar should have a formal consultation role in the selection process for the grievance administrator and deputy, and for the executive director of the Attorney Discipline Board.
5. The State Bar should have a formal role in the budgeting process for both the Attorney Grievance Commission and the Attorney Discipline Board, and should assist both agencies in preparation of their budgets. The budgets should be presented for approval to the Supreme Court as a single attorney discipline system budget, noting ancillary State Bar functions.
6. The State Bar's communications, financial and facilities management, insurance, printing, reception, and legal counsel resources should be available to the Attorney Grievance Commission and the Attorney Discipline Board.
7. The State Bar should establish a discipline system advisory committee as a standing Committee.
8. The State Bar should undertake an examination of services offered in other states to determine whether they would enhance the effectiveness of the Michigan discipline system: mandatory arbitration of fee disputes, voluntary arbitration of attorney malpractice claims and other grievance-related disputes, and mediation of disputes.
9. Intake services (questions and complaints) for admission to practice and *pro hac vice* should be coordinated by the State Bar and the Board of Law Examiners.
10. The selection, evaluation, and retention of the Executive Director of the State Bar should continue to be under the authority of the Board of Commissioners, but the appointment of

the Executive Director should be subject to confidential review and approval of the Supreme Court.

RATIONALE. The suggested changes will reduce confusion, create greater efficiencies by eliminating duplicate services, and will reinforce the State Bar's primary identity as a regulatory agency. Better coordination between the State Bar and the disciplinary system is especially desirable for programs involving *pro hac vice* motions; lawyers and judges assistance programs and monitoring; ethics helpline and related ethics seminars; IOLTA trust account issues; issuance of certificates of good standing; disposition of attorney files in the event of death, disappearance or incapacity; and the State Bar's practice management resource center consultations.

The change concerning the selection of the State Bar Executive Director would also underscore the regulatory and governmental identity of the State Bar. The Supreme Court has a role in the selection of the heads of the other attorney regulatory entities – the Grievance Administrator and the executive directors of the Attorney Discipline Board and the Board of Law Examiners – but currently has no formal role concerning the Executive Director of the State Bar.

GOVERNANCE

The Supreme Court order invited the Task Force to include proposed revisions of administrative orders and court rules governing the State Bar of Michigan in order to improve the governance and operation of the State Bar.

RECOMMENDATION 4. MODIFY STATE BAR GOVERNANCE FOR GREATER CLARITY AND EFFICIENCY.

The policy-making functions and relationship of the Board of Commissioners and Representative Assembly should be clarified by:

1. Eliminating the ambiguous designation of the Representative Assembly as the "final policy-making body of the State Bar."
2. Designating the Board of Commissioners the exclusive decision-maker on management issues of the State Bar, and the Representative Assembly the exclusive decision-maker on dues recommendations to the Supreme Court.
3. Requiring the agendas and schedule of meetings of the Board of Commissioners and the Representative Assembly to be established by a majority of the State Bar officers and a majority of the officers of the Representative Assembly, meeting jointly.
4. Providing that although the Board of Commissioners is exclusively responsible for adopting positions on proposed court rules published for comment and on pending proposed legislation, both the Board of Commissioners and the Representative Assembly must approve all other policy positions.

RATIONALE: Michigan is one of only a few states to maintain two governing bodies of its state bar association. The dual governing structure broadens the diversity of voices contributing to the State Bar's decision-making, but at a cost. The Task Force's recommendations are intended to

reduce the cost in confusion and efficiency by establishing clearer coordination between the two bodies.

OTHER

RECOMMENDATION 5. REDUCE INACTIVE DUES AND CONVENE A SPECIAL COMMISSION TO EXAMINE ACTIVE AND INACTIVE LICENSING, PRO HAC VICE, *AND RECERTIFICATION ISSUES*.

RATIONALE: Among the State Bar members whose comments to the Task Force supported a voluntary bar, a disproportionate number are inactive, retired, or out-of-state members. Although Michigan's active dues are below the national average, Michigan's inactive dues are among the highest in the nation. The issues of admissions, certification, and the costs of licensing are outside the charge of this Task Force, but we observe that the increasingly cross-border nature of the practice of law, particularly in certain types of practice, warrants a closer examination of attorney licensure. A special commission consisting of representatives of the State Bar, the Board of Law Examiners, the discipline system, and Michigan's law schools holds the potential for placing Michigan at the forefront in adapting its regulatory system to best meet the needs of the public in a changing legal marketplace.

SUBMITTAL

June 2, 2014

The members* of the Task Force thank the Justices of the Supreme Court for the opportunity to address the important issues with which we were charged.

Respectfully submitted,

_____

Alfred M. Butzbaugh, Chair
Danielle Michelle Brown
Thomas W. Cranmer
Peter H. Ellsworth
John E. McSorley
Colleen A. Pero
John W. Reed
Hon. Michael J. Riordan
Thomas C. Rombach
Hon. John J. Walsh
Janet K. Welch
Vanessa Peterson Williams

* Each member served in their individual capacities and not as a representative of any organization or entity with which they may be associated.

APPENDICES

APPENDIX I ENABLING STATUTE AND COURT RULES

APPENDIX II STATE BAR OF MICHIGAN LETTER TO THE MICHIGAN SUPREME COURT

APPENDIX III ADMINISTRATIVE ORDER 2014-5

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APPENDIX V RELEVANT CASE LAW

APPENDIX VI SUMMARY OF OTHER MANDATORY STATE BAR KELLER RESPONSES

APPENDIX VII PROPOSED CHANGES TO STATE BAR RULES SUBMITTED BY THE BOARD OF COMMISSIONERS

APPENDIX VIII COMMENTS SUBMITTED BY THE REPRESENTATIVE ASSEMBLY

APPENDIX I ENABLING STATUTE AND COURT RULES

In 1935, the Michigan Legislature enacted public act 1935-58, which "created an association to be known as the state bar of Michigan, the membership of which shall consist of all persons in the state now or hereafter regularly licensed to practice law in this state." On November 12, 1935, the Michigan Supreme Court adopted the Supreme Court Rules concerning the State Bar of Michigan, which provided:

> "Those persons who on December 2, 1935, are licensed to practice law in this State, and those who shall thereafter become licensed to practice law in this State, shall, subject to the provisions of these rules, constitute the membership of the State bar of Michigan."

The statute has been amended and today provides in part:

> "The state bar of Michigan is a public body corporate, the membership of which consists of all persons who are now and hereafter licensed to practice law in this state. The members of the state bar of Michigan are officers of the courts of this state, and have the exclusive right to designate themselves as 'attorneys and counselors,' or 'attorneys at law,' or 'lawyers.' No person is authorized to practice law in this state unless he complies with the requirements of the supreme court with regard thereto."

The current Supreme Court Rules for the State Bar include the following:

> "<u>Rule 1 State Bar of Michigan</u>
> "The State Bar of Michigan is the association of the members of the bar of this state, organized and existing as a public body corporate pursuant to powers of the Supreme Court over the bar of the state. The State Bar of Michigan shall, under these rules, aid in promoting improvements in the administration of justice and advancements in jurisprudence, in improving relations between the legal profession and the public, and in promoting the interests of the legal profession in this state.
>
> "<u>Rule 2 Membership</u>
> "A person engaged in the practice of law in Michigan must be an active member of the State Bar. . . . A person not an active member who engages in the practice of law is subject to discipline or prosecution for unauthorized practice."

ACT CREATING STATE BAR OF MICHIGAN

ACT NO. 58 OF THE PUBLIC ACTS 1935

AN ACT to create the State Bar of Michigan; and to authorize the Supreme Court to provide for the organization, regulation and rules of government thereof.

The People of the State of Michigan enact:

STATE BAR OF MICHIGAN; CREATION

Section 1. There is hereby created an association to be known as the State Bar of Michigan, the membership of which shall consist of all persons in the state now or hereafter regularly licensed to practice law in this state.

SAME; SUPREME COURT, POWERS; MEMBERSHIP DUES; DISCIPLINE; PUBLISHING OF RULES AND PROCEEDINGS.

Sec. 2. The Supreme Court is hereby authorized to provide for the organization and regulation of the State Bar of Michigan; to provide rules and regulations concerning the conduct and activities of the association and its members; the schedule of membership dues therein, which dues shall not exceed five dollars per annum, non-payment of which shall be ground for suspension, the ethical standards to be observed in the practice of law, and the discipline, suspension or disbarment of association members. Under such regulations and restrictions as the Supreme Court may prescribe, the power of subpœna may be conferred upon the association or its officers and committees for the purpose of aiding in the cases of discipline, suspension or disbarment; the rules promulgated by the Supreme Court and the proceedings and records of the State Bar association to be published by the judicial council of Michigan and in the Michigan reports and advanced sheets thereof.

Approved May 15, 1935.

SUPREME COURT RULES CONCERNING THE STATE BAR OF MICHIGAN

(Adopted by the Supreme Court, Michigan, November 12, 1935 in accordance with Act 58, Public Acts 1935)

SUPREME COURT

CHIEF JUSTICE:
HON. WILLIAM W. POTTER

ASSOCIATE JUSTICES:

HON. WALTER H. NORTH,
HON. LOUIS H. FEAD,
HON. HOWARD WIEST,
HON. HENRY M. BUTZEL,
HON. GEORGE E. BUSHNELL,
HON. EDWARD M. SHARPE,
HON. HARRY S. TOY.

SECTION 1.—STATE BAR OF MICHIGAN.

The State Bar of Michigan is the Association of the members of the Bar of this State, organized pursuant to powers of the Supreme Court over the Bar of the State. The Association shall, under these rules aid in the promotion of improvements in the administration of justice and the advancement of the science of jurisprudence, in the improvement of the relations between the profession and the public, and in the promotion of the interests of the legal profession in this State.

SECTION 2.—MEMBERSHIP.

Those persons who on December 2, 1935, are licensed to practice law in this State, and those who shall thereafter become licensed to practice law in this State, shall, subject to the provisions of these rules, constitute the membership of the State Bar of Michigan. Each member shall promptly file with the Secretary of the State Bar a statement setting forth his business and residence addresses and the judicial circuit within which his principal office is located. He shall notify the Secretary in writing of any subsequent change of address.

SECTION 3.—CLASSES OF MEMBERSHIP.

Members of the State Bar shall be divided into two classes, namely, active members and inactive members. The class of active members shall include all members who have not specifically requested to be enrolled as inactive members. Any member who is not engaged actively in the practice of law in this State may, if he so elects and files written application with the Secretary, be classified as an inactive member. Any

inactive member may, on filing written application with the Secretary and payment of the required dues, become an active member. No inactive member shall practice law, vote or hold office in the State Bar. Judges of Courts of Record shall register as active members. Any person not an active member who practices law shall be subject to discipline.

SECTION 4.—MEMBERSHIP DUES.

The annual dues for active members shall be Five Dollars ($5.00) payable on or before January 1st of each year. Persons admitted to the bar during the year shall not become liable for dues until the first of the year following admission. All dues shall be paid into the treasury of the State Bar and shall constitute a fund for the payment of the expenses thereof. Any member who is in arrears for more than three months shall be sent a written notice of his delinquency by registered mail to his last recorded business address. If the arrears in dues are not paid within thirty days after the sending of such notice, he shall thereupon be deemed suspended from active membership in the State Bar.

SECTION 5.—BOARD OF COMMISSIONERS.

There is hereby constituted a Board of Commissioners of the State Bar of Michigan which shall consist of seventeen congressional district members and four members from the state at large. The district commissioners shall hold office for three years and until their successors take office. The commissioners at large shall hold office for four years and until their successors take office. The members of the first Board of Commissioners shall be appointed by the Supreme Court. The Court shall designate the commissioners appointed at large and those appointed from congressional districts, and shall fix a time and place for the first meeting of the board. At such first meeting the commissioners appointed at large shall so classify themselves by lot that one of such commissioners shall hold office for one year, one for two years, one for three years and one for four years beginning on November 1, 1935. At the expiration of the several terms of the commissioners at large successors shall be appointed by the Supreme Court from the state at large. The district commissioners shall so classify themselves by lot that five shall hold office for one year, six for two years and six for three years, from November 1, 1935. At the expiration of the several terms of the district commissioners successors shall be elected in the several congressional districts as hereinafter provided.

SECTION 6.—NOMINATIONS AND ELECTIONS.

District commissioners shall be elected from the active membership in the several congressional districts by the members having their principal offices therein, except that where two or more congressional districts are contained wholly within a county such districts shall constitute a single voting precinct and the active members maintaining their principal offices for the practice of law within such county, shall be entitled to elect as many commissioners as there are congressional districts within such county. Nominations for commissioner shall be by petition signed by at least five persons entitled to vote for such nominees, and such petitions shall be filed with the secretary during the month of June prior to an election. The ballots shall be mailed by the secretary to those entitled to vote by July 20, and shall be marked and returned to the secretary not later than September 1. Ballots shall be forthwith canvassed by a board of three tellers, to be appointed by the president, and the count shall be certified by the Secretary to the Clerk of the Supreme Court. No member of the Board of Commissioners or candidate therefor shall be a teller. The candidates receiving the highest number of votes for their respective offices shall be declared elected. In case of a tie vote the tellers shall determine the successful candidate by lot. The terms of the commissioners shall commence on November 1 following the election in each year. The Board of Commissioners is authorized and empowered to make rules and regulations governing nominations and elections, not inconsistent with these rules and subject to the approval of the Supreme Court.

SECTION 7.—VACANCIES AND REMOVALS.

Vacancies in the office of district commissioner shall be filled by the board for the unexpired term. Vacancies in the office of commissioners at large shall be filled by the Supreme Court for the unexpired term. Any commissioner may be removed by the Supreme Court in its discretion.

SECTION 8.—DUTIES OF THE BOARD OF COMMISSIONERS.

The Board of Commissioners shall have general charge of the administration of the affairs of the State Bar and may adopt suitable by-laws for the regulation thereof. Each newly elected board shall hold its first meeting not later than November 10 in each year. The board may employ such assistants as it deems necessary or proper and

may prescribe their functions and duties. The board shall cause to be appointed standing committees as follows:

Legislation and Law Reform
Legal Education and Admission to the Bar
Unauthorized Practice of Law
Professional Ethics
Local Bar Association Activities
Criminal Jurisprudence
Civil Procedure
Grievance Committees as provided in Section 15.

It may also cause to be appointed such other committees as it shall from time to time deem desirable. It shall prescribe the functions and duties of committees, the members of which shall hold office at the pleasure of the board. It shall fix and pay salaries and provide for the payment of all necessary expenses of the State Bar. It shall arrange for the publication of a journal to be issued not less than four times a year, and sent to the active members of the State Bar without charge.

Upon request of the Governor, the Supreme Court, the Legislature or the Judicial Council of the State, the Board of Commissioners may conduct an investigation of any matter relating to courts of the state, practice and procedure therein, or the administration of justice, and report to the officer or body making the request.

The board shall cooperate with the State Board of Law Examiners in connection with character examinations of applicants for admission to the Bar and in such other respects as may be deemed desirable.

In the conduct of its business a majority of the members of the board shall constitute a quorum.

SECTION 9.—OFFICERS.

The officers of the State Bar shall be a president, a first and a second vice-president, a secretary and a treasurer, all of whom shall be elected by the Board of Commissioners at its first meeting. The president and vice-presidents shall be commissioners but the secretary and treasurer need not be. Each of the officers shall hold office for one year and until his successor takes office. Vacancies shall be filled by the board.

The president and vice-presidents shall receive no compensation for their services. The salaries of the secretary and treasurer shall be fixed by the board.

SECTION 10.—DUTIES OF OFFICERS.

It shall be the duty of the president to preside at all meetings of the State Bar and at all meetings of the Board of Commissioners. In the event of his absence or inability to act, a vice-president shall preside.

The secretary shall act as secretary of the board, shall prepare an annual report and perform the duties usually incident to the office.

The treasurer shall prepare an annual report and perform the duties usually incident to the office. He shall furnish bond as the board shall direct.

Other duties of the president, vice-presidents, secretary and treasurer shall be such as the Board of Commissioners shall from time to time prescribe.

SECTION 11.—DISBURSEMENTS.

The Board of Commissioners shall make the necessary appropriations for disbursements from the funds in the treasury to pay all necessary expenses of the State Bar, its officers and committees. It shall be the duty of the board to cause proper books of account to be kept and to have them audited annually by a certified public accountant. At each annual meeting the board shall cause to be presented a financial statement showing the receipts and expenditures of the State Bar. Such statement shall also be filed with the Clerk of the Supreme Court and shall be published in the official publication of the State Bar preceding the date of the annual meeting of the State Bar.

No member of the board shall receive compensation for services rendered in connection with the performance of his duties as a member of the board or as a member of any committee of the State Bar to which he may be appointed, or in connection with the investigation or trial of disciplinary matters. Members of the board shall, however, be reimbursed for their necessary expenses incurred in connection with the performance of their duties.

SECTION 12.—ANNUAL MEETINGS.

An annual meeting of the State Bar shall be held in 1936 and each year thereafter at such time and place as may be designated by the Board of Commissioners, except that such annual meeting shall be held not later than November 1st of each year. At the annual meetings reports of the proceedings of the Board of Commissioners since the last meeting, reports of officers and committees, and recommendations submitted in connection with such reports shall be made.

SECTION 13.—SPECIAL MEETINGS.

Special meetings of the State Bar may be held at such times and places as shall be determined by the Board of Commissioners. The Secretary shall call a special meeting of the members upon petition signed by not less than twenty percent of the active members. Such meeting shall be held within thirty days after the petition is filed. Such business shall be transacted at special meetings as is specified in the call thereof, which shall include the purposes set forth in the petition and such other purposes as may be specified by the board.

SECTION 14.—RULES OF PROFESSIONAL CONDUCT.

The ethical standards relating to the practice of law in this state shall be the present Canons of Professional Ethics of the American Bar Association,* and those which may from time to time be announced or recognized by the Supreme Court of this State.

SECTION 15.—COMPLAINTS.

The Board of Commissioners at its first meeting each year shall appoint four active members in each judicial circuit or in each congressional district, together with one other active member of the State Bar who may be a member of the Board of Commissioners who shall act as chairman, which committee of five shall constitute a standing grievance committee for the investigation of all complaints against the members of the State Bar in such circuit or district. In any circuit having more than one commissioner, the board may appoint two or more grievance committees, in which event the board shall designate one of the commissioners in such circuit as general chairman over said committees, and such general chairman, together with the other commissioners in said circuit, shall constitute a supervisory committee subject to the call of the general chairman and charged with the duty of coordinating the work of the several grievance committees in said circuit. Each grievance committee shall meet at such times and places as may be designated by the chairman, and at all such meetings a majority of the members shall constitute a quorum. The action of a majority of the quorum shall be the action of the committee.

Each grievance committee shall have the power, with or without formal complaint, to investigate in a summary and informal manner, any matter of professional misconduct alleged to have been committed

*The Canons of Professional Ethics will be found on page 41 of this Journal.

within its judicial circuit or congressional district, or by a member of the bar having his office or residence therein. If, upon such investigation, the committee finds that there is reasonable cause to believe that such member is guilty of professional misconduct, it shall cause the complaint to be reduced to writing and filed with such committee, and a formal hearing shall be held. The committee shall give reasonable notice to such member, either by personal service or by sending the same by registered mail addressed to his last known address, of the time and place of such hearing, and shall accompany the notice with a copy of the complaint. The committee may issue subpœnas and cause testimony to be taken under oath.

If the committee finds that the charges in any complaint do not merit the taking of disciplinary action, it shall dismiss the complaint; if it decides that private reprimand shall be adminstered, it shall administer such reprimand. If it decides that disbarment, suspension or other disciplinary action is merited, it shall make a verified report of the proceedings before the committee, including its findings of facts and recommendations, and shall file the same, together with the transcript of the testimony taken, in the office of the clerk of the Circuit Court of such judicial circuit; whereupon said court, as a matter of course, shall issue to said member an order to show cause before the court, at a time to be specified, why the report of said committee should not be confirmed, and a disciplinary order entered. The order to show cause together with a copy of the findings of facts and recommendations shall be served upon said member either by personal service or by sending the same by registered mail addressed to his last known address. The clerk of said court shall forthwith notify the State Presiding Circuit Judge of the issuance of said order to show cause, and he shall forthwith designate three (3) Circuit Judges to preside over and conduct the proceedings on the order to show cause. Unless cause is shown to the contrary said report shall be confirmed by the Judges, who shall thereupon enter and appropriate order for discipline. Any final order entered shall be subject to review by the Supreme Court in its discretion on the law and the facts.

The Board of Commissioners may, subject to the approval of the Supreme Court, prescribe rules and regulations governing the procedure before the committees. It may appoint counsel or request the Attorney General to represent it and to prosecute the proceedings before the Circuit Court, and before the Supreme Court in case of appeal.

The powers herein conferred shall be in addition to and not as a

substitute for the powers now held by the Atttorney General and the courts of this State in regard to disciplinary proceedings. Nothing herein contained shall be construed to prohibit the disbarment or suspension of or imposition of disciplinary measures upon members of the State Bar under existing laws for causes arising prior to the date these rules take effect.

SECTION 16.

The foregoing rules are promulgated pursuant to the powers of the Court over the Bar of the State and the members thereof. They shall take effect on December 2, 1935, and remain in effect until altered or abrogated.

SBM STATE BAR OF MICHIGAN

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48933-2012

February 6, 2014

Hon. Robert P. Young, Jr., Chief Justice
Michigan Supreme Court
3034 West Grand Boulevard, Suite 8-500
Detroit, MI 48202

Dear Chief Justice Young,

Today the State Bar's Board of Commissioners voted unanimously to oppose SB 743, a bill to make membership in the State Bar of Michigan voluntary. The bill raises questions about the operation of the State Bar as a mandatory organization that are most appropriately addressed within the judicial branch pursuant to the Supreme Court's exclusive constitutional authority to establish practice and procedure, Const Art VI, Sec 5. For that reason, we write to request that the Supreme Court initiate a review of how the State Bar operates within the framework of *Keller v State Bar of California*, 496 US 1 (1990).

The rules of the Supreme Court direct the State Bar to aid in promoting improvements in the administration of justice and advancements in jurisprudence, in improving relations between the legal profession and the public, and in promoting the interests of the legal profession in Michigan. We value the reputation the State Bar has established as a national leader in pursuing these purposes for nearly eight decades. We know that our continued effectiveness depends on the confidence of this Court and our membership in our adherence to our core mission and to the constitutional boundaries defined by *Keller* and this Court. Our decision making in carrying out our duties to our members and the public is grounded in such adherence, and we believe that a structured conversation on this subject undertaken under the auspices of the Supreme Court will fully address the questions raised by SB 743. At the same time, such a review has the potential to strengthen and clarify the capacity of the State Bar to fulfill its mission in the coming decades.

We offer the State Bar's full resources and cooperation toward a meaningful review, and thank you for your consideration of our request.

Sincerely,

Brian Einhorn, President

Janet Welch, Executive Director

cc: Justice Michael F. Cavanagh
Justice Stephen J. Markman
Justice Mary Beth Kelly
Justice Brian K. Zahra
Justice Bridget Mary McCormack
Justice David F. Viviano

Order

Michigan Supreme Court
Lansing, Michigan

Robert P. Young, Jr.,
Chief Justice

Michael F. Cavanagh
Stephen J. Markman
Mary Beth Kelly
Brian K. Zahra
Bridget M. McCormack
David F. Viviano,
Justices

February 13, 2014

ADM File No. 2014-07

Administrative Order No. 2014-5

Order Creating the Task Force on the
Role of the State Bar of Michigan
_____/

> [T]he regulation of the practice of law, the maintenance of high standards in the legal profession, and the discharge of the profession's duty to protect and inform the public are, in the context of the present challenge, purposes in which the State of Michigan has a compelling interest. . . . [*Falk v State Bar of Michigan*, 411 Mich 63, 114; 305 NW2d 201 (1981) (opinion of RYAN, J.).]

> [T]he compelled association and integrated bar are justified by the State's interest in regulating the legal profession and improving the quality of legal services. The State Bar may therefore constitutionally fund activities germane to those goals out of the mandatory dues of all members. It may not, however, in such manner fund activities of an ideological nature which fall outside of those areas of activity. [*Keller v State Bar of California*, 496 US 1, 13-14; 110 S Ct 2228; 110 L Ed 2d 1 (1990).]

The question having been raised about the appropriateness of the mandatory nature of the State Bar of Michigan, and the State Bar having requested that the Michigan Supreme Court facilitate this important discussion, pursuant to its exclusive constitutional authority to establish "practice and procedure," Const 1963, art 6, § 5, the Court establishes the Task Force on the Role of the State Bar of Michigan to address whether the State Bar's current programs and activities support its status as a mandatory bar.

The task force is charged with determining whether the State Bar's duties and functions "can[] be accomplished by means less intrusive upon the First Amendment rights of objecting individual attorneys" (*Falk*, 411 Mich at 112 [opinion of RYAN, J.]) under the First Amendment principles articulated in *Keller* and *Falk*. At the same time, the task force should keep in mind the importance of protecting the public through

regulating the legal profession, and how this goal can be balanced with attorneys' First Amendment rights.

The task force shall examine existing State Bar programs and activities that are germane to the compelling state interests recognized in *Falk* and *Keller* to justify a mandatory bar. In addition, the task force shall examine what other programs the State Bar of Michigan ought to undertake to enhance its constitutionally-compelled mission. The task force is invited to examine how other mandatory bars satisfy their constitutionally-permitted mission and shall make its report and recommendations to the Court by June 2, 2014. The task force's report may also include proposed revisions of administrative orders and court rules governing the State Bar of Michigan in order to improve the governance and operation of the State Bar.

The members appointed to the task force are as follows:

Danielle Michelle Brown
Hon. Alfred M. Butzbaugh (Ret.)
Thomas W. Cranmer
Peter H. Ellsworth
John E. McSorley
Colleen A. Pero
John W. Reed
Hon. Michael J. Riordan
Thomas C. Rombach
Hon. John J. Walsh
Janet K. Welch
Vanessa Peterson Williams

Hon. Alfred M. Butzbaugh is appointed as chairperson of the task force.

Nelson Leavitt shall serve as the reporter of the task force.

Justice McCormack shall serve as the Court's liaison to the task force.

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

February 13, 2014

Clerk

ADMINISTRATIVE ORDER
No. 1985-1

Entered on December 28, 1984.—Reporter.

State Bar of Michigan Activities

Directed to the State Bar of Michigan.

Activities Intended to Influence Legislation.

The Court having reviewed the report of the Committee on State Bar Activities submitted on September 17, 1984, it is ordered that, effective October 1, 1985, the State Bar of Michigan shall not, except as provided in this order, use any portion of the mandatory dues of objecting members for activities intended to influence legislation.

(1) The State Bar of Michigan may use the mandatory dues of all members to review and analyze pending legislation.

(2) The State Bar of Michigan may use the mandatory dues of all members to provide content-neutral technical assistance to legislators, provided that:

(A) a legislator requests the assistance;

(B) the president of the State Bar of Michigan approves the request in a letter to the legislator stating that providing technical assistance does not imply either support for or opposition to the legislation; and

(C) the president of the State Bar of Michigan annually prepares and publishes in the Michigan Bar Journal a report summarizing all technical assistance provided during the preceding year.

(3) All other activities intended to influence legislation shall be subject to the restrictions set forth below.

(A) At the beginning of each fiscal year, the State Bar of Michigan shall offer its members an opportunity to divert a pro rata portion of their mandatory dues from the restricted legislative activities to the Michigan State Bar Foundation. The established budget for the restricted legislative activities shall be reduced by the amount that is diverted. In calculating the pro rata amount, only variable expenses attributable to the restricted legislative activities shall be considered. Appropriate adjustments shall be made for those members who pay reduced dues. Members over age 70, who pay no mandatory dues, shall be offered a comparable opportunity to indicate whether or not they approve of the restricted legislative activities.

(B) When a representative of the State Bar of Michigan presents the organization's position on proposed or pending legislation, the representative shall qualify the position by stating the percentage of members who have diverted dues or otherwise indicated their disapproval of the restricted legislative activities.

(C) Neither the State Bar of Michigan nor any person acting as its representative shall take any action to support or oppose legislation unless the position has been approved by a two-thirds vote of the Board of Commissioners or Representative Assembly taken after all members were advised, by notice published in the Michigan Bar Journal

at least 2 weeks prior to the Board or Assembly meeting, that the proposed legislation would be discussed at the meeting.

The published notice shall include a brief summary of the legislation and a statement that members may express their opinion at the meeting, or by written or telephonic communication to the State Bar of Michigan.

When time constraints prevent timely publication of a notice in the Michigan Bar Journal, the notice may be provided by any alternative method that will deliver individual written notices to all members at least 7 days before the meeting.

The results of all board and assembly votes on proposals to support or oppose legislation shall be published in the next Michigan Bar Journal. When either body adopts a position by a less-than-unanimous vote, a roll call vote shall be taken, and each commissioner's or assemblyperson's vote shall be included in the published notice.

Other State Bar Activities.

Pursuant to its stipulations in *Falk v State Bar of Michigan,* 418 Mich 270 (1983), the State Bar of Michigan shall:

(1) annually publish in the Michigan Bar Journal a notice informing members that, upon request, their names will be removed from the mailing list that is used for commercial mailings;

(2) annually publish in the Michigan Bar Journal a notice informing members of the Young Lawyers Section that, upon request, their membership in that section will be terminated;

(3) limit its funding of the Lawyers' Wives of Michigan to $5000 per year with adjustments for

inflation after 1981, the funding to continue for as long as Lawyers' Wives of Michigan continues its Law Day activities, specifically including the Law Day essay contest.

ADMINISTRATIVE ORDER
No. 1990-5

STATE BAR OF MICHIGAN ACTIVITIES

Entered September 18, 1990—REPORTER.

It is ordered that Administrative Order No. 1985-1 is rescinded effective October 1, 1990.

It is further ordered that

I. IDEOLOGICAL ACTIVITIES GENERALLY

Effective October 1, 1990, the State Bar of Michigan shall not, except as provided in this order, use any portion of the dues of its members to fund activities of an ideological nature that are not necessarily or reasonably related to the purposes of regulating the legal profession or improving the quality of the legal services available to the people of Michigan. To the extent that dues paid to the State Bar of Michigan fund other ideological activities, and any activities described in section II(C), members must be afforded the opportunity to retain the appropriate pro-rata portion of their dues or divert that amount to the Michigan State Bar Foundation. The State Bar of Michigan shall implement procedures for determining the cost of its activities and resolving disputes regarding the propriety or cost of each activity. See *Keller v State Bar of California,* 495 US —; 110 S Ct 2228; 110 L Ed 2d 1 (1990).

Rule 4 of the Rules Concerning the State Bar of Michigan shall remain in effect. However, the dues notices sent to all members before September 20 of each year shall state that anyone who wishes to challenge the calculation of the amount available for retention or diversion must give written notice to the State Bar of Michigan by first-class or certified mail postmarked not later than October 20. The State Bar of Michigan shall not be required to acknowledge a challenge that is postmarked after October 20.

The Court determined that this order should be issued immediately because of the limited time available between the release of *Keller* and the beginning of the 1990-91 fiscal year of the State Bar of Michigan. The Court and the State Bar of Michigan are continuing to review the activities and dues structure of the State Bar of Michigan. All interested persons are invited to comment on any aspect of this matter, including the question how *Keller* should be interpreted. Comments should be sent to the Supreme Court Clerk before January 15, 1991.

II. ACTIVITIES INTENDED TO INFLUENCE LEGISLATION

(A) The State Bar of Michigan may use the mandatory dues of all members to review and analyze pending legislation.

(B) The State Bar of Michigan may use the mandatory dues of all members to provide content-neutral technical assistance to legislators, provided that

(1) a legislator requests the assistance;

(2) the president of the State Bar of Michigan approves the request in a letter to the legislator stating that providing technical assistance does

not imply either support for or opposition to the legislation; and

(3) the president of the State Bar of Michigan annually prepares and publishes in the Michigan Bar Journal a report summarizing all technical assistance provided during the preceding year.

(C) All other activities intended to influence legislation shall be subject to the requirements in section I, and subparts (1)-(3) of this subsection.

(1) Members over age 70, who pay no mandatory dues, shall be offered an opportunity to indicate whether or not they approve of the activities intended to influence legislation.

(2) When a representative of the State Bar of Michigan presents the organization's position on proposed or pending legislation, the representative shall qualify the position by stating the percentage of members who have retained or diverted their dues or otherwise indicated their disapproval.

(3) Neither the State Bar of Michigan nor any person acting as its representative shall take any action to support or oppose legislation unless the position has been approved by a two-thirds vote of the Board of Commissioners or Representative Assembly taken after all members were advised, by notice published in the Michigan Bar Journal at least 2 weeks prior to the Board or Assembly meeting, that the proposed legislation would be discussed at the meeting.

The published notice shall include a brief summary of the legislation and a statement that members may express their opinion at the meeting, or by written or telephonic communication to the State Bar of Michigan.

When time constraints prevent timely publication of a notice in the Michigan Bar Journal, the notice may be provided by any alternative method

that will deliver individual written notices to all members at least 7 days before the meeting.

The results of all Board and Assembly votes on proposals to support or oppose legislation shall be published in the next Michigan Bar Journal. When either body adopts a position by a less-than-unanimous vote, a roll call vote shall be taken, and each commissioner's or assembly person's vote shall be included in the published notice.

III. OTHER STATE BAR ACTIVITIES

The State Bar of Michigan shall:

(A) annually publish in the Michigan Bar Journal a notice informing members that, upon request, their names will be removed from the mailing list that is used for commercial mailings;

(B) annually publish in the Michigan Bar Journal a notice informing members of the Young Lawyers Section that, upon request, their membership in that section will be terminated;

(C) limit its funding of the Michigan Lawyers Auxiliary to $5000 per year with adjustments for inflation after 1981, the funding to continue for as long as the Michigan Lawyers Auxiliary continues its Law Day activities, specifically including the Law Day essay contest.

LEVIN, J., dissents and states as follows:

I dissent because it would be sufficient and more appropriate for the Court to simply advise the State Bar to comply with the United States Supreme Court's decision in *Keller v State Bar of California,* 495 US —; 110 S Ct 2228; 110 L Ed 2d 1 (1990).

I

There are at least two interpretations of the extent to which the United States Supreme

Court's decision in *Keller* limits the authority of an integrated bar to spend compulsory dues:

1) An integrated bar may use compulsory dues only for expenditures that are *necessarily or reasonably related to regulating the legal profession or improving the quality of legal service.*[1]

2) An integrated bar may use compulsory dues to fund any activity *except* those activities that are *both ideological in nature and unrelated to regulating the legal profession or improving the quality of legal service.*[2]

Both interpretations find support in the language of *Keller.* It is thus likely that members of the State Bar will disagree regarding the correct reading of *Keller,* and the extent to which the State Bar may, if at all, use compulsory dues to finance activities that are not necessarily or reasonably related to regulating the legal profession or improving the quality of legal service.

II

In a letter to the Chief Justice dated July 20, 1990, the State Bar advocated one approach to compliance with *Keller,* an approach that reflected the narrower reading of *Keller,* namely, that the State Bar was barred only from using compulsory dues to fund activities that are both ideological

[1] [T]he guiding standard must be whether the challenged expenditures are necessarily or reasonably incurred for the purpose of regulating the legal profession or "improving the quality of the legal service available to the people of the State." [*Keller,* 110 L Ed 2d 14 (quoting *Lathrop v Donohue,* 367 US 820, 843 [1961] [plurality opinion]).]

[2] The State Bar may therefore constitutionally fund activities germane to those goals [regulating the legal profession and improving the quality of legal service] out of the mandatory dues of all members. It may not, however, in such manner fund activities of an ideological nature which fall outside of those areas of activity. [*Id.*]

and unrelated to regulating the legal profession or improving the quality of legal service.

Representatives of the State Bar requested "approval of the approach sufficient to permit us to contract for the printing of the dues form,"[3] and expressed the belief that any necessary amendments to the court rules or administrative orders could await further discussion.

The Court gave informal approval to the State Bar's proposed approach to compliance with *Keller.* Further discussions between representatives of the State Bar and this Court resulted in the administrative order promulgated today.

III

It would be sufficient for the Court to simply advise the State Bar to comply with *Keller.* In the final analysis, the State Bar is obliged to follow the decision in *Keller*—as it may be interpreted by the United States Supreme Court, United States Courts of Appeals, or by this Court *in a judicial proceeding*—not the "decision," however tentative, that is reflected in today's administrative order.

Advice to comply with *Keller* would provide sufficient guidance to the State Bar. The State Bar has consistently advocated the reading of *Keller* set forth in today's order, and on several occasions has communicated this position to the Court. If the Court were to advise the State Bar to comply with *Keller,* the State Bar could proceed on the basis of its reading of *Keller.*

It would be more appropriate for the Court to simply advise the State Bar to comply with *Keller.* It is one thing for the Court to acquiesce where

[3] The State Bar indicated that dues notices were to be mailed by September 20, 1990, and that the printer needed approximately six weeks to prepare the forms.

the State Bar is operating on the basis of a reasonable interpretation of *Keller* and there has not yet been a definitive interpretation. It is quite another to even appear to endorse a particular interpretation of *Keller*.

In either a judicial proceeding or in the exercise of its supervisory responsibility, this Court is likely to be called upon to decide the correct interpretation of *Keller*. The Court may also be called upon to address related issues such as the continued validity of the restrictions on State Bar activity initially set forth in Administrative Order No. 1985-1,[4] and whether, in the exercise of this Court's supervisory responsibility, the State Bar's activities should be limited along the lines suggested by the broader reading of *Keller*.

The Court should not appear to lean toward the narrow reading of *Keller*, especially where the Court has engaged, however unavoidably, in ex parte communications with a potential litigant regarding an issue likely to be litigated in this Court.

Today's order states that "[t]he Court and the State Bar of Michigan are continuing to review the activities and dues structure of the State Bar of Michigan. All interested persons are invited to comment on any aspect of this matter, including the question how *Keller* should be interpreted."

An explicit one-year sunset provision should have been included in the Court's order. An invitation to comment is insufficient to overcome the appearance created by the Court's action. This Court has been known to invite comment and then close its administrative file without taking any action in response to the comments received.

[4] 420 Mich lviii (1984).

GRIFFIN, J., dissents and states as follows:

I share concerns expressed by Justice LEVIN. At this stage, when there is no case before us and we are without the benefit of briefing or advocacy, I question the appropriateness, as well as the need, for this Court to adopt the interpretation of *Keller v State Bar of California*, 495 US —; 110 S Ct 2228; 110 L Ed 2d 1 (1990), set forth in the order.

ADMINISTRATIVE ORDER
No. 1991-3

STATE BAR OF MICHIGAN ACTIVITIES

Entered June 11, 1991—REPORTER.

It is ordered that Administrative Order No. 1990-5 is rescinded effective June 11, 1991.

It is further ordered that

I. IDEOLOGICAL ACTIVITIES GENERALLY.

The State Bar of Michigan shall not, except as provided in this order, use the dues of its members to fund activities of an ideological nature that are not reasonably related to the purposes of regulating the legal profession or improving the quality of the legal services available to the people of Michigan. To the extent that dues paid to the State Bar of Michigan fund other ideological activities, including all activities that are subject to the requirements in section II(C), members must be afforded the opportunity to deduct the appropriate pro-rata share from their dues or divert that amount to the Michigan State Bar Foundation. The State Bar of Michigan shall develop and implement procedures for determining the cost of its activities and resolving disputes regarding the propriety or cost of each activity.

On or about July 15, 1991, the State Bar of Michigan shall publish in the Michigan Bar Jour-

nal the organization's budget for the next fiscal year, its detailed calculations of the pro-rata share of the members' dues that will be eligible for the diversion and deduction options based on audited expenditures for the last completed fiscal year, and a form to be used to exercise those options or challenge the underlying calculations. Also on or about July 15, 1991, each member shall be sent a letter containing any necessary additional information. A member who wishes to exercise either option, or challenge the calculations involved, must return the completed form or an appropriate substitute document to the State Bar of Michigan in a first-class or certified mailing postmarked not later than August 31, 1991. The State Bar of Michigan shall not be required to acknowledge a challenge that is postmarked after that date.

A challenge to the calculation of the amount that is eligible for the diversion and deduction options shall be resolved by submitting the matter to an arbitrator appointed by the American Arbitration Association. The State Bar of Michigan must pay the necessary expenses of the arbitration and shall bear the burden of proving the accuracy of its calculations.

These requirements supplement Rule 4 of the Rules Concerning the State Bar of Michigan, which shall remain in effect. See also *Keller v State Bar of California,* 496 US 1; 110 S Ct 2228; 110 L Ed 2d 1 (1990).

The requirements of section I of this order shall remain in effect until further order of the Court.

II. ACTIVITIES INTENDED TO INFLUENCE LEGISLATION.

(A) The State Bar of Michigan may use the mandatory dues of all members to review and analyze pending legislation.

(B) The State Bar of Michigan may use the mandatory dues of all members to provide content-neutral technical assistance to legislators, provided that:

(1) a legislator requests the assistance;

(2) the president of the State Bar of Michigan approves the request in a letter to the legislator stating that providing technical assistance does not imply either support for or opposition to the legislation; and

(3) the president of the State Bar of Michigan annually prepares and publishes in the Michigan Bar Journal a report summarizing all technical assistance provided during the preceding year.

(C) All other activities intended to influence legislation shall be subject to the requirements in section I, and subparts (1)-(3) of this subsection.

(1) Members over age 70, who pay no mandatory dues, shall be offered an opportunity to indicate whether or not they approve of the activities intended to influence legislation.

(2) When a representative of the State Bar of Michigan presents the organization's position on proposed or pending legislation, the representative shall qualify the position by stating the percentage of members who have retained or diverted their dues or otherwise indicated their disapproval.

(3) Neither the State Bar of Michigan nor any person acting as its representative shall take any action to support or oppose legislation unless the position has been approved by a two-thirds vote of the Board of Commissioners or Representative Assembly taken after all members were advised, by notice published in the Michigan Bar Journal at least 2 weeks prior to the Board or Assembly meeting, that the proposed legislation would be discussed at the meeting.

The published notice shall include a brief summary of the legislation and a statement that members may express their opinion at the meeting, or by written or telephonic communication to the State Bar of Michigan.

When time constraints prevent timely publication of a notice in the Michigan Bar Journal, the notice may be provided by any alternative method that will deliver individual written notices to all members at least 7 days before the meeting.

The results of all Board and Assembly votes on proposals to support or oppose legislation shall be published in the next Michigan Bar Journal. When either body adopts a position by a less-than-unanimous vote, a roll call vote shall be taken, and each commissioner's or assembly-person's vote shall be included in the published notice.

III. OTHER STATE BAR ACTIVITIES.

The State Bar of Michigan shall:

(A) annually publish in the Michigan Bar Journal a notice informing members that, upon request, their names will be removed from the mailing list that is used for commercial mailings;

(B) annually publish in the Michigan Bar Journal a notice informing members of the Young Lawyers Section that, upon request, their membership in that section will be terminated;

(C) limit its funding of the Michigan Lawyers Auxiliary to $5000 per year with adjustments for inflation after 1981, the funding to continue for as long as Michigan Lawyers Auxiliary continues its Law Day activities, specifically including the Law Day essay contest.

LEVIN and GRIFFIN, JJ., dissent for the reasons stated in dissent to Administrative Order No. 1990-5, 436 Mich lxxix, lxxxiii (1990).

ADMINISTRATIVE ORDER
No. 1992-4

STATE BAR OF MICHIGAN ACTIVITIES

Entered June 10, 1992—REPORTER.

IT IS ORDERED that Administrative Order No. 1991-3 is RESCINDED effective June 10, 1992.

IT IS FURTHER ORDERED that

I. IDEOLOGICAL ACTIVITIES GENERALLY

The State Bar of Michigan shall not, except as provided in this order, use the dues of its members to fund activities of an ideological nature that are not reasonably related to the purposes of regulating the legal profession or improving the quality of the legal services available to the people of Michigan. To the extent that dues paid to the State Bar of Michigan fund ideological activities not reasonably related to regulating the profession or improving the quality of legal services available to the people of Michigan, and those activities that are subject to the requirements in section II(C), members must be afforded the opportunity to deduct the appropriate pro-rata share from their dues or divert that amount to the Michigan State Bar Foundation. The State Bar of Michigan shall develop and implement procedures for determining the cost of its activities and resolving disputes regarding the propriety or cost of each activity.

On or about August 15 of each year, the State Bar of Michigan shall publish in the *Michigan Bar Journal* the organization's budget for the next fiscal year and its detailed calculations of the pro-rata share of the members' dues that will be eligible for the diversion and deduction options based on audited expenditures for the last completed fiscal year. The dues notice sent to all members shall advise them of the dues diversion and deduction options and shall state that a member who wishes to challenge the calculations involved must give written notice to the State Bar of Michigan postmarked not later than October 20. The State Bar of Michigan shall not be required to acknowledge a challenge that is postmarked after that date.

A challenge to the calculation of the amount that is eligible for the diversion and deduction options shall be resolved by submitting the matter to an arbitrator appointed by the American Arbitration Association. The State Bar of Michigan must pay the necessary expenses of the arbitration and shall bear the burden of proving the accuracy of its calculations.

These requirements supplement Rule 4 of the Rules Concerning the State Bar of Michigan, which shall remain in effect. See also *Keller v State Bar of California,* 496 US 1; 110 S Ct 2228; 110 L Ed 2d 1 (1990).

The requirements of section I of this order shall remain in effect until further order of the Court.

II. ACTIVITIES INTENDED TO INFLUENCE LEGISLATION

(A) The State Bar of Michigan may use the mandatory dues of all members to review and analyze pending legislation.

(B) The State Bar of Michigan may use the mandatory dues of all members to provide content-neutral technical assistance to legislators, provided that

(1) a legislator requests the assistance;

(2) the president of the State Bar of Michigan approves the request in a letter to the legislator stating that providing technical assistance does not imply either support for or opposition to the legislation; and

(3) the president of the State Bar of Michigan annually prepares and publishes in the *Michigan Bar Journal* a report summarizing all technical assistance provided during the preceding year.

(C) All other activities intended to influence legislation shall be subject to the requirements in section I, and subparts (1)-(3) of this subsection.

(1) Members over age 70, who pay no mandatory dues, shall be offered an opportunity to indicate whether or not they approve of the activities intended to influence legislation.

(2) When a representative of the State Bar of Michigan presents the organization's position on proposed or pending legislation, the representative shall qualify the position by stating the percentage of members who have retained or diverted their dues or otherwise indicated their disapproval.

(3) Neither the State Bar of Michigan nor any person acting as its representative shall take any action to support or oppose legislation unless the position has been approved by a two-thirds vote of the Board of Commissioners or Representative Assembly taken after all members were advised, by notice published in the *Michigan Bar Journal* at least 2 weeks prior to the board or assembly meeting, that the proposed legislation would be discussed at the meeting.

The published notice shall include a brief summary of the legislation and a statement that members may express their opinion at the meeting, or by written or telephonic communication to the State Bar of Michigan.

When time constraints prevent timely publication of a notice in the *Michigan Bar Journal,* the notice may be provided by any alternative method that will deliver individual written notices to all members at least 7 days before the meeting.

The results of all board and assembly votes on proposals to support or oppose legislation shall be published in the next *Michigan Bar Journal.* When either body adopts a position by a less-than-unanimous vote, a roll call vote shall be taken, and each commissioner's or assembly-person's vote shall be included in the published notice.

III. OTHER STATE BAR ACTIVITIES

The State Bar of Michigan shall:

(A) annually publish in the *Michigan Bar Journal* a notice informing members that, upon request, their names will be removed from the mailing list that is used for commercial mailings;

(B) annually publish in the *Michigan Bar Journal* a notice informing members of the Young Lawyers Section that, upon request, their membership in that section will be terminated;

(C) limit its funding of the Michigan Lawyers Auxiliary to $5000 per year with adjustments for inflation after 1981, the funding to continue for as long as Michigan Lawyers Auxiliary continues its Law Day activities, specifically including the Law Day essay contest.

ADMINISTRATIVE ORDER
No. 1993-5

STATE BAR OF MICHIGAN ACTIVITIES

Entered July 30, 1993—REPORTER.

IT IS ORDERED that Administrative Order No. 1992-4 is RESCINDED effective October 1, 1993; however, as to its 1993-94 fiscal year budget, the State Bar of Michigan need not publish a calculation of the pro-rata share of a member's dues that are eligible for diversion and deduction as required by Administrative Order No. 1992-4.

IT IS FURTHER ORDERED that:

I. IDEOLOGICAL ACTIVITIES GENERALLY.

The State Bar of Michigan shall not, except as provided in this order, use the dues of its members to fund activities of an ideological nature that are not reasonably related to:

(a) the regulation and discipline of attorneys;

(b) matters relating to the improvement of the functioning of the courts, judicial efficacy and efficiency;

(c) increasing the availability of legal services to society;

(d) regulation of attorney trust accounts; and

(e) the education, ethics, competence, integrity and regulation of the legal profession.

On or about August 15 of each year, the State Bar of Michigan shall publish in the Michigan Bar Journal a notice advising members of these limitations on the use of dues and the State Bar budget for the next fiscal year.

II. ACTIVITIES INTENDED TO INFLUENCE LEGISLATION.

(A) The State Bar of Michigan may use the mandatory dues of all members to review and analyze pending legislation.

(B) The State Bar of Michigan may use the mandatory dues of all members to provide content-neutral technical assistance to legislators, provided that:

(1) a legislator requests the assistance;

(2) the president of the State Bar of Michigan approves the request in a letter to the legislator stating that providing technical assistance does not imply either support for or opposition to the legislation; and

(3) the president of the State Bar of Michigan annually prepares and publishes in the Michigan Bar Journal a report summarizing all technical assistance provided during the preceding year.

(C) No other activities intended to influence legislation may be funded with members' mandatory dues, unless the legislation in question is limited to matters within the scope of ideological activities requirements in section I.

(D) Neither the State Bar of Michigan nor any person acting as its representative shall take any action to support or oppose legislation unless the position has been approved by a two-thirds vote of the Board of Commissioners or Representative Assembly taken after all members were advised, by notice published in the Michigan Bar Journal at least 2 weeks prior to the Board or Assembly meeting, that the proposed legislation would be discussed at the meeting. The published notice shall include a brief summary of the legislation and a statement that members may express their opinion at the meeting, or by written or telephonic communication to the State Bar of Michigan. When time constraints prevent timely publication of a notice in the Michigan Bar Journal, the notice may be provided by any alternative method that will deliver individual written notices to all members at least 7 days before the meeting.

(E) The results of all Board and Assembly votes on proposals to support or oppose legislation shall be published in the next Michigan Bar Journal. When either body adopts a position by a less-than-unanimous vote, a roll call vote shall be taken, and each commissioner's or assembly-person's vote shall be included in the published notice.

(F) Those sections of the State Bar of Michigan that are funded by the voluntary dues of their members are not subject to this order, and may engage in ideological activities on their own behalf.

III. CHALLENGES REGARDING STATE BAR ACTIVITIES.

(A) A member who claims that the State Bar of Michigan is funding ideological activity in violation of this order may file a challenge by giving written notice to the executive director.

(a) A challenge involving legislative advocacy must be postmarked on or before the last day of the month following the month in which notice of adoption of that legislative position is published in the Michigan Bar Journal pursuant to section II(E).

(b) A challenge involving ideological activity appearing in the annual budget of the State Bar of Michigan must be postmarked on or before Octo-

ber 20 following the publication of the budget funding the challenged activity.

(c) A challenge involving any other ideological activity must be postmarked on or before the last day of the month following the month in which disclosure of that ideological activity is published in the Michigan Bar Journal.

Failure to challenge within the time allotted shall constitute a waiver.

(B) After a written challenge has been received, the executive director shall promptly determine the pro-rata amount of the member's dues used to fund the challenged activity and shall place that amount in an escrow account pending determination of the merits of the challenge.

(C) Upon the expiration of the deadline for receipt of written challenges to the same activity, the Board of Commissioners shall decide whether to give a pro-rata refund to the challengers or to refer the challenge to arbitration.

(D) A challenge that is not resolved between the parties shall be submitted to an arbitrator appointed by the American Arbitration Association, who shall determine whether the funding of the activity complies with the limitations of this order. If not, the arbitrator shall determine the pro-rata share of dues, plus statutory judgment interest from the date of payment of those dues to the State Bar of Michigan, that is to be refunded. The State Bar of Michigan has the burden of proving by a preponderance of the evidence that the activity is permitted by this order. The necessary costs of the arbitration shall be paid by the State Bar of Michigan.

(E) A challenger or the State Bar of Michigan may seek review by this Court of the arbitrator's decisions as to whether the challenged activity violates the limitations on State Bar ideological

activities set forth in this order, and any pro-rata share of dues to be refunded.

IV. OTHER STATE BAR ACTIVITIES.

The State Bar of Michigan shall:

(A) annually publish in the Michigan Bar Journal a notice informing members that, upon request, their names will be removed from the mailing list that is used for commercial mailings;

(B) annually publish in the Michigan Bar Journal a notice informing members of the Young Lawyers Section that, upon request, their membership in that section will be terminated;

(C) limit its funding of the Michigan Lawyers Auxiliary to $5000 per year with adjustments for inflation after 1981, the funding to continue for as long as Michigan Lawyers Auxiliary continues its Law Day activities, specifically including the Law Day essay contest.

Staff Comment: Administrative Order No. 1993-5 limits State Bar use of members' mandatory dues for ideological purposes and legislative advocacy. This change had been recommended by the State Bar Representative Assembly.

AMENDMENTS OF MICHIGAN COURT RULES OF 1985

Entered September 15, 1993—REPORTER.

On order of the Court, the effective date of this Court's July 11, 1991, amendment of MCR 7.214, 437 Mich cxcii, is extended until December 31, 1993.

Adopted July 30, 1993, effective October 1, 1993—REPORTER.

RULE 9.105. PURPOSE AND FUNDING OF DISCIPLINARY PROCEEDINGS.

Discipline for misconduct is not intended as punishment for wrongdoing, but for the protection of the public, the courts, and the legal profession. The fact that certain misconduct has remained unchallenged when done by others or when done at other times or has not been earlier made the subject of disciplinary proceedings is not an excuse. The legal profession, through the State Bar of Michigan, is responsible for the reasonable and necessary expenses of the board, the commission, and the administrator, as determined by the Supreme Court. Commissioners of the State Bar of Michigan and other attorneys who are associated with a commissioner in the practice of law may not represent respondents in proceedings before the board, including preliminary discussions with

commission employees prior to the filing of a request for investigation.

RULE 9.108. ATTORNEY GRIEVANCE COMMISSION.

(A)-(D) [Unchanged.]

(E) Powers and Duties. The Commission has the power and duty to

(1)-(4) [Unchanged.]

(5) annually write a budget for the commission and the administrator's office (including compensation) and submit it to the Supreme Court for approval;

(6)-(8) [Unchanged.]

Adopted July 30, 1993, and August 26, 1993, effective October 1, 1993—REPORTER.

RULE 9.110. ATTORNEY DISCIPLINE BOARD.

(A) [Unchanged.]

(B) Composition. The board consists of 6 attorneys and 3 laypersons appointed by the Supreme Court. The members serve 3-year terms. A member may not serve more than 2 full terms.

(C) [Unchanged.]

(D) Powers and Duties. The board has the power and duty to

(1)-(6) [Unchanged.]

(7) annually write a budget for the board and submit it to the Supreme Court for approval;

(8)-(9) [Unchanged.]

Staff Comment: The July 30, 1993, amendments of MCR 9.105, 9.108, and 9.110 provide that the Supreme Court, rather than the State Bar Board of Commissioners will approve the budgets of the Attorney Grievance Commission and the Attorney Discipline Board. This change had been recommended by the State Bar Representative Assembly.

Staff Comment: The August 26, 1993, amendment of MCR 9.110(B) increases the composition of the Attorney Discipline Board. Per the amendment, the board now consists of 6 attorneys and 3 laypersons.

ADMINISTRATIVE ORDER No. 2004-1

STATE BAR OF MICHIGAN ACTIVITIES

Entered February 3, 2004, effective immediately (File No. 2003-15)—REPORTER.

Administrative Order No. 1993-5 is rescinded, effective immediately.

I. IDEOLOGICAL ACTIVITIES GENERALLY.

The State Bar of Michigan shall not, except as provided in this order, use the dues of its members to fund activities of an ideological nature that are not reasonably related to:

(A) the regulation and discipline of attorneys;

(B) the improvement of the functioning of the courts;

(C) the availability of legal services to society;

(D) the regulation of attorney trust accounts; and

(E) the regulation of the legal profession, including the education, the ethics, the competency, and the integrity of the profession.

The State Bar of Michigan shall permanently post on its website, and annually publish in the Michigan Bar Journal, a notice advising members of these limitations on the use of dues and the State Bar budget.

II. ACTIVITIES INTENDED TO INFLUENCE LEGISLATION.

(A) The State Bar of Michigan may use the mandatory dues of all members to review and analyze pending legislation.

(B) The State Bar of Michigan may use the mandatory dues of all members to provide content-neutral technical assistance to legislators, provided that:

(1) a legislator requests the assistance;

(2) the executive director, in consultation with the president of the State Bar of Michigan, approves the request in a letter to the legislator stating that providing technical assistance does not imply either support for or opposition to the legislation; and

(3) the executive director of the State Bar of Michigan annually prepares and publishes in the Michigan Bar Journal a report summarizing all technical assistance provided during the preceding year.

(C) No other activities intended to influence legislation may be funded with members' mandatory dues, unless the legislation in question is limited to matters within the scope of the ideological-activities requirements in Section I.

(D) Neither the State Bar of Michigan nor any person acting as its representative shall take any action to support or oppose legislation unless the position has been approved by a two-thirds vote of the Board of Commissioners or Representative Assembly taken after all members were advised, by notice posted on the State Bar website at least 2 weeks prior to the Board or Assembly meeting, that the proposed legislation might be discussed at the meeting. The posted notice shall include a brief summary of the legisla-

tion, a link to the text and status of the pending legislation on the Michigan Legislature website, and a statement that members may express their opinion to the State Bar of Michigan at the meeting, electronically, or by written or telephonic communication. The webpage on which the notice is posted shall provide an opportunity for members to respond electronically, and the comments of members who wish to have their comments made public shall be accessible on the same webpage.

(E) The results of all Board and Assembly votes on proposals to support or oppose legislation shall be posted on the State Bar website as soon as possible after the vote, and published in the next Michigan Bar Journal. When either body adopts a position on proposed legislation by a less-than-unanimous vote, a roll call vote shall be taken, and each commissioner's or assembly-person's vote shall be included in the published notice.

(F) Those sections of the State Bar of Michigan that are funded by the voluntary dues of their members are not subject to this order, and may engage in ideological activities on their own behalf. Whenever a section engages in ideological activities, it must include on the first page of each submission, before the text begins and in print larger than the statement's text, a disclosure indicating

(1) that the section is not the State Bar of Michigan but rather a section whose membership is voluntary,

(2) that the position expressed is that of the section only, and that the State Bar has no position on the matter, or, if the State Bar has a position on the matter, what that position is,

(3) the total membership of the section,

(4) the process used by the section to take an ideological position,

(5) the number of members in the decision-making body, and

(6) the number who voted in favor and opposed to the position.

If an ideological communication is made orally, the same information must be effectively communicated to the audience receiving the communication.

Although the bylaws of the State Bar of Michigan may not generally prohibit sections from engaging in ideological activity, for a violation of this Administrative Order or the State Bar of Michigan's bylaws, the State Bar of Michigan may revoke the authority of a section to engage in ideological activities, or to use State Bar facilities or personnel in any fashion, by a majority vote of the Board of Commissioners. If the Board determines a violation occurred, the section shall, at a minimum, withdraw its submission and communicate the withdrawal in the same manner as the original communication occurred to the extent possible. The communication shall be at the section's own cost and shall acknowledge that the position was unauthorized.

III. CHALLENGES REGARDING STATE BAR ACTIVITIES.

(A) A member who claims that the State Bar of Michigan is funding ideological activity in violation of this order may file a challenge by giving written notice, by e-mail or regular mail, to the executive director.

(1) A challenge involving legislative advocacy must be filed with the State Bar by e-mail or regular mail within 60 days of the posting of notice of adoption of

the challenged position on the State Bar of Michigan website; a challenge sent by regular mail must be postmarked on or before the last day of the month following the month in which notice of adoption of that legislative position is published in the Michigan Bar Journal pursuant to section II(E).

(2) A challenge involving ideological activity appearing in the annual budget of the State Bar of Michigan must be postmarked or e-mailed on or before October 20 following the publication of the budget funding the challenged activity.

(3) A challenge involving any other ideological activity must be postmarked or e-mailed on or before the last day of the month following the month in which disclosure of that ideological activity is published in the Michigan Bar Journal.

Failure to challenge within the time allotted shall constitute a waiver.

(B) After a written challenge has been received, the executive director shall place the item on the agenda of the next meeting of the Board of Commissioners, and shall make a report and recommendation to the Board concerning disposition of the challenge. In considering the challenge, the Board shall direct the executive director to take one or more of the following actions:

(1) dismiss the challenge, with explanation;

(2) discontinue the challenged activity;

(3) revoke the challenged position, and publicize the revocation in the same manner and to the same extent as the position was communicated;

(4) arrange for reimbursement to the challenger of a pro rata share of the cost of the challenged activity; and

(5) arrange for reimbursement of all members requesting a pro rata share of the cost of the challenged activity in the next dues billing.

(C) A challenger or the State Bar of Michigan may seek review by this Court as to whether the challenged activity violates the limitations on State Bar ideological activities set forth in this order, and as to the appropriate remedy for a violation.

(D) A summary of the challenges filed under this section during a legislative term and their disposition shall be posted on the State Bar's website.

IV. OTHER STATE BAR ACTIVITIES.

The State Bar of Michigan shall:

(A) annually publish in the Michigan Bar Journal a notice informing members that, upon request, their names will be removed from the mailing list that is used for commercial mailings, and

(B) annually publish in the Michigan Bar Journal a notice informing members of the Young Lawyers Section that, upon request, their membership in that section will be terminated.

Staff Comment: The February 3, 2004, amendment of Section I and the related changes in Section II are designed to ensure a higher degree of confidence that State Bar positions reflect consensus among the membership and to ensure the vitality of the Bar's mechanisms for soliciting, understanding, and representing the views of its members.

The changes in Section II(B)(2) and (3) are housekeeping measures that transfer the authority for approval of legislators' requests for technical assistance from the president of the State Bar to the executive director, in consultation with the president, and that gives the executive director sole authority over the publication responsibility.

The changes to Section II are designed to make the procedures for member challenges to State Bar advocacy more practical and effective. The State Bar has identified two problems with the current exception for the ideological activities of State Bar sections: a section viewpoint may not be reflective of the views of a segment of the profession, and the section may be communicating its views in such a way that they are mistakenly perceived to be the views of the Bar as a whole. Subsection (F) is

intended to reinforce the requirements of the current bylaws and to pave the way toward correction of these problems.

The amendment of Section IV is a housekeeping measure that eliminates the funding provision for the Lawyers Auxiliary Law Day program, which does not fit with the other issues in the order. Law Day activities are not of an ideological nature, but are educational and designed to introduce students to the court system and to encourage greater public understanding of the legal system.

The staff comment is not an authoritative construction by the Court.

REPORT

OF THE

MICHIGAN SUPREME COURT COMMITTEE

ON

STATE BAR ACTIVITIES

September 17, 1984

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Supreme Court

LANSING, MICHIGAN
48909

September 17, 1984

TO THE JUSTICES OF THE MICHIGAN SUPREME COURT:

The Committee on State Bar Activities, appointed by the Court on January 31, 1984, is pleased to submit its report. We hope that our recommendations, and the record of our deliberations, will be of assistance to the Court.

Otis M. Smith, Chairperson

Committee Members

Dennis W. Archer
Joel M. Boyden
Sen. Basil W. Brown
Rep. Perry Bullard
Sen. Alan L. Cropsey
Michael Brennan Farrell
Elaine Fieldman
J. Michael Fordney
Mary M. Fowlie
Angus G. Goetz
Hon. John H. Hausner
Sylvia A. James
Hon. James Lincoln
Martha L. Seaman
George T. Sinas
Rep. John G. Strand

Report to the Michigan Supreme Court
by the
Committee on State Bar Activities

I. Committee Appointment, Composition and Procedure.

In Falk v State Bar of Michigan, 418 Mich 270 (1983), the Court issued three separate opinions but unanimously approved a per curiam opinion that denied the relief requested by Mr. Falk while simultaneously acknowledging that "certain activities of the State Bar may warrant closer scrutiny pursuant to our duty to superintend its activities." 418 Mich at 277. The opinion also stated that the Court would appoint a committee to review those activities and make recommendations to the Court.

This committee was created by the Court's order entered on January 31, 1984. The order appointed 17 committee members with diverse professional backgrounds in private and government practice, the judiciary, and the legislature.

Hon. Otis M. Smith
Dennis W. Archer
Joel M. Boyden
Sen. Basil W. Brown*
Rep. Perry Bullard
Sen. Alan L. Cropsey
Michael Brennan Farrell
Elaine Fieldman
J. Michael Fordney
Mary M. Fowlie
Angus G. Goetz
Hon. John H. Hausner
Sylvia A. James
Hon. James Lincoln
Martha L. Seaman
George T. Sinas
Rep. John G. Strand

Former Justice Otis M. Smith was named as chairperson of the committee, and the Court assigned Glen B. Gronseth, a Supreme Court commissioner, to serve as liaison between the committee and the Court. Michael J. Karwoski, Assistant to the Executive

*Did not attend committee meetings.

Director of the State Bar, was asked to serve as a resource person and attend committee meetings so that he could answer committee questions about State Bar operations.

The Court's order defined the committee's assignment.

"Specifically, this committee is charged with the duty of examining and making recommendations concerning the following activities of the State Bar:

"1) the provision of information and assistance with regard to programs relating to prepaid legal services;

"2) the maintenance of lawyer placement services;

"3) taking of positions before the Legislature on subjects which could form the basis for legislative action; and

"4) such other activities as the committee deems appropriate for examination."

The committee began its work with an in-depth review of the Falk I[1] and Falk II[2] opinions, selected decisions from other state and federal courts, and the reports submitted to the Court by Judge Maurice E. Schoenberger and Judge James H. Lincoln. The committee understood that it was not appointed to rehear the Falk case. Nor did it feel compelled to include in this report a legal memorandum supporting its recommendations. However, all the committee members felt that they would be better equipped for the assigned task if they began with a thorough understanding of the Falk litigation, the underlying legal issues, and the individual justices' opinions. Written analyses of the leading cases were prepared and reviewed.

The committee also considered responses to a request for comments published in the August 1984 Michigan Bar Journal.

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[1] Falk v State Bar of Michigan, 411 Mich 63 (1981).

[2] 418 Mich 270 (1983).

Five comment letters were received. Copies of the letters appear in Appendixes 7-10.

Section III of this report contains four subsections corresponding to the four areas designated by the Court for committee examination. Though the initial committee discussions were informal, they very quickly produced unanimous agreement on three of the four assignments. The committee's discussions then focused on the remaining activity: "the taking of positions before the Legislature on subjects which could form the basis for legislative action". That general heading encompassed a wide range of activities, and some proved to be highly controversial.

The committee's recommendations appear in Section III. The recommendations on all subjects are stated in resolution form. These are followed by summaries of the committee discussions. Those summaries include the full range of views held by the committee members, not just the arguments supporting the recommendations.

II. Narrowing the Issues by Reference to the Falk Litigation.

On November 30, 1977, Allan S. Falk, a member of the State Bar of Michigan, filed an original action in the Michigan Supreme Court. He styled his pleading as a Petition for Special Relief. The petition asked the Court to prohibit the State Bar's use of mandatory dues for a number of activities that petitioner Falk found objectionable.

"The complained-of activities specified are the following: (1) lobbying and other political activity, (2) compulsory membership in Young Lawyers Section, (3) promoting prepaid legal services, (4) lawyer referral, (5) lawyer placement, (6) Client Security Fund, (7) public education about legal services, (8) funding of Lawyers' Wives of Michigan and Children's Charter of Michigan activities, (9) giving and paying for social functions, including those where Supreme Court Justices are guests of honor, (10) appearing before the State Officers Compensation Commission in support of higher Supreme Court and other judicial salaries, and (11) sale and use of the State Bar mailing roster." Falk v State Bar of Michigan, 411 Mich 63, 120 (1981) (opinion of Williams, J.).

Since the case originated in the Supreme Court, the Court did not have a lower court record to review. Therefore, on March 2, 1978, it appointed Judge Schoenberger, a former district judge, to hear testimony and make findings. The order appointing Judge Schoenberger appears at 402 Mich 960 (1978).

Judge Schoenberger held hearings on June 5 and 6, 1978. He subsequently submitted his report, and the Court then ordered oral arguments. 406 Mich 1117 (1979).

Two years later, the Court released three separate opinions and a unanimous per curiam opinion. Falk v State Bar of Michigan, 411 Mich 63 (1981), reh den 411 Mich 1157 (1981).

The three separate opinions collectively approved some State Bar activities, including "* * * (4) lawyer referral, * * * (6) Client Security Fund, (7) public education about legal services, (8) funding * * * [some activities of] Lawyers' Wives of Michigan * * * and Children's Charter of Michigan activities * * *." Id.

As to the remaining issues, there was "no majority of the Court at this time for a decision which would determine this matter". 411 Mich at 83. There was no majority because two (and on some issues five) justices felt that the hearing record was

not adequate. Thereupon the Court issued the unanimous per curiam opinion appointing James H. Lincoln, a retired probate judge, to conduct a second evidentiary hearing. The opinion specifically instructed him to:

> "* * * develop the record with regard to the following bar activities. The Young Lawyers Section and Lawyers' Wives [footnote omitted], the Lawyer Placement Service, the commercial sale of the bar's mailing list, and bar activities addressed to influencing legislation." 411 Mich at 83.

Judge Lincoln conducted hearings over twelve days between August 24 and December 18, 1981. He exercised his discretion in favor of admitting all testimony that was even arguably relevant to the issues specified by the Court. He also heard testimony about new issues that emerged during the hearings. Eighty-three witnesses testified. The transcript alone exceeds 2300 pages. The record also includes extensive exhibits.

Judge Lincoln submitted his report and recommendations to the Court on March 27, 1982. Both parties then filed supplemental briefs, and the case was reargued during the March 1983 term.

The State Bar's brief stated that it had complied with Judge Lincoln's recommendations regarding: "* * * (2) compulsory membership in Young Lawyers Section, * * * [and] (8) funding of Lawyers' Wives of Michigan". Id. That action served to eliminate most objections previously raised by Mr. Falk. However, the Young Lawyers Section (YLS) still remained an issue to the extent that its activities paralleled disputed activities of the senior bar. The committee's recommendations on State Bar activities also apply to comparable YLS activities.

The hearing testimony showed that there never had been a "commercial sale" of the State Bar's mailing list. The list is made available at cost only to bar members and companies that sponsor bar-approved programs, e.g., insurance, travel, and automobile purchase programs. The State Bar now periodically offers members an opportunity to have their names removed from the list that is used for even those limited commercial mailings. This action and the additional information brought out at the hearings resolved the dispute about " * * * (11) sale and use of State Bar mailing roster". Id.

Following the second round of oral arguments, the Court again issued three separate opinions and a unanimous per curiam opinion. Falk v State Bar of Michigan, 418 Mich 270 (1983), reh den 418 Mich 1203 (1984). Once again there was no majority vote either to approve or disapprove the activities that remained in dispute. However, by this time, the Court's decisions and the State Bar's actions had resolved most of the issues raised by the petition. Again referrring to Chief Justice Williams's Falk I opinion, it appeared to the committee that the only remaining disputed activities were:

> "(1) lobbying and other political activity,
> " * * *
> "(3) promotiong prepaid legal sevices,
> "* * *
> "(5) lawyer placement,
> "* * *
> "(9) giving and paying for social functions, including those where Supreme Court Justices are guests of honor, [and]
> "(10) appearing before the State Officers Compensation Commission in support of higher Supreme Court and other other judicial salaries * * *." 411 Mich at 120.

The committee also noted a potentially separate category defined by Justice Ryan's Falk I opinion: "the broad category of State Bar activities designed to further the commercial and economic interests of the members". 411 Mich at 118.

The separate opinions in Falk II left those issues unresolved. However, all seven justices agreed to dismiss Mr. Falk's petition and create this committee. The implementing order of January 31, 1984, specified four areas for the committee's inquiry:

"1) the provision of information and assistance with regard to programs relating to prepaid legal services;
"2) the maintenance of lawyer placement services;
"3) the taking of positions before the Legislature on subjects which could form the basis for legislative action; and
"4) such other activities as the committee deems appropriate for examination."

Items 1 and 2 appear to be simple to define. The third item is more complex, and the committee thought it best to approach the problem by dividing "taking positions before the Legislature" into the multiple components listed on page 14 of this report.

Reference to that list will show that the committee looked at some activities that do not involve contact with the legislature. For example, the State Bar regularly appears before the State Officers Compensation Commission. It also sometimes takes positions on ballot proposals and matters being considered by the courts, administrative agencies, and the executive branch. This report discusses all such matters under the heading of "taking positions before the Legislature". The committee found that the analytical task was easier if it looked simultaneously

at all the State Bar's efforts to influence governmental actions. While some of those activities do not involve the legislature, the committee felt that its treatment was appropriate in light of Item 4, which authorized the committee to look at "such other activities as the committee deems appropriate for examination".

III. Committee Recommendations.

A. Prepaid Legal Services.

Resolution

The committee recommends that the Court permit the State Bar to complete its present plan to phase out financial support for prepaid legal service programs by September 30, 1986.

Discussion:

The term "prepaid legal services" encompasses a variety of programs. It most often refers to an employee benefit program that allows employees to obtain free or low cost legal services from outside attorneys (open panel) or attorneys employed by the company or union (closed panel). Thus prepaid legal service programs are comparable to group health insurance. Typical programs are subject to usage ceilings or have substantial co-payment requirements.

The State Bar's committee began studying prepaid legal services in 1972. As between the open and closed panel formats, the State Bar preferred open panels and advocated their use.

The first financial commitment was made in 1975. The money was spent for consultant, promotion, and administrative expenses. The State Bar retained Group Fifty Corporation to provide consulting services and administer pilot programs such as the one offered by the Michigan Education Association.

A review of past State Bar budget shows that the allocation grew from $50,000 in 1975 to a high of $92,140 for the fiscal year ending September 30, 1983.

These expenditures were viewed as seed money that might help employers and employees view prepaid legal service as a useful fringe benefit. Such programs would benefit both the participating attorneys and middle-income employees who might not otherwise be able to afford needed legal services even though their incomes were too high to qualify for subsidized legal aid programs.

By 1983, the Board of Commissioners had decided that the continuing expenditures could no longer be justified as seed money; it decided to phase out the State Bar's financial support. The fiscal 1983 budget included $92,140 for prepaid legal services. The new contract with the present program administrator reduced that figure to $39,000 (1984), $20,004 (1985), $10,896 (1986), and $0 (1987 and thereafter). The State Bar's fiscal years end on September 30. Consequently, no dues money will be expended for prepaid legal services after September 30, 1986.

The committee recommends that the Court allow the State Bar to complete the scheduled phase out of its financial support. The issue is not completely moot since the State Bar will spend

almost $31,000 for prepaid legal services after the Court receives this report. But the amounts tentatively budgeted for fiscal years 1985 and 1986 are drastically lower than the amounts expended in previous years. The State Bar's efforts have benefited both attorneys and the public. Thus the committee concluded that the expenditures for fiscal 1985 and 1986 should be permitted. Blocking those expenditures at this point would cause contractual problems and might adversely affect the programs that have been created, a result the committee viewed as counterproductive.

B. Lawyer Placement Service.

Resolution

The committee recommends that the Court permit the State Bar to continue operating its lawyer placement service as long as the revenue derived from user fees equals or exceeds the cost of operating the service.

Discussion: The State Bar operates the Lawyer Placement Service to assist both attorneys seeking employment and law firms seeking qualified employees. Employers fill out one form and applicants another. All users pay a fee for the service.

State Bar staff personnel review the forms and send the resumes of possibly qualified applicants to the participating employers. If the employer wants to interview the applicant, further arrangements can be made through the State Bar.

At the time of the Lincoln hearings in 1981, employer participants paid a $10 fee for using the service and applicants paid $5. Those fees produced total revenues of approximately $1500 per year. The revenues covered the cash expenses, but they fell short of covering total expenses when proportionate shares of personnel and building overhead costs were added to the cash expenses.

Judge Lincoln's report recommended that fees be raised to a point at which they would cover all costs of operating the service. The State Bar's brief filed prior to the second round of oral arguments stated that it concurred in the recommendation and would reorganize the service accordingly.

The State Bar subsequently doubled the user fees for all participants. It also revised its procedures for allocating the fixed overhead costs. The current year's budget anticipates $3000 income from the service. Actual expenses probably will not exceed $200. The surplus will be used to cover other central office expenses.

The committee recommends that the State Bar be allowed to continue operating the service as it currently does. The members recognized that even doubling the user fees did not cover the service's allocated share of overhead costs. From the committee's perspective, the important point was that the service was not in fact utilizing any dues money that could be used for other identified needs.

The revenue from user fees more than covers the service's minimal cash expenses, and the true allocated overhead expenses

are insignificant in comparison to the State Bar's total annual budget. The relative insignificance of the allocated overhead costs means that neither building nor personnel costs would actually be reduced if the service was eliminated; those costs would simply be reallocated to other services. The Lawyer Placement Service provides a very real service to the employers (36 in 1983) and attorneys (183 in 1983) who utilize the service, and it is available to all members of the bar whether or not they have used it in the past or have present plans to do so.

Those considerations prompted the committee's recommendation that the service be continued provided that it produces revenues that equal or exceed its cash expenses.

C. State Bar Activities That Influence Government.

Resolution

The committee recommends that, beginning with the 1985-86 fiscal year, the Court prohibit the State Bar from using the mandatory dues of objecting members for lobbying purposes as defined in this report. State Bar members who object to lobbying should be allowed to divert a pro rata portion of their dues from the lobbying budget to the general fund budget. The State Bar should determine the pro rata amount by dividing the next fiscal year's lobbying budget by the number of dues-paying members, with an adjustment for those who pay reduced dues. The dues notice materials sent to members should offer them the option of diverting that pro

rata amount. After the deadline for paying dues, the State Bar should reduce its lobbying budget by the total amount diverted. The committee further recommends that the State Bar be required to qualify its positions on legislation and other public issues by indicating that it speaks only for those who have not objected to its lobbying activities. A decision to divert money from lobbying would indicate a dues-paying member's objection to State Bar lobbying activities. Members over age 70, who pay no mandatory dues, should also be offered a comparable opportunity to indicate whether they may be counted as members for whom the State Bar speaks in its lobbying activities.

Discussion:

The Court's order instructed the committee to examine and make recommendations concerning the State Bar's "taking of positions before the Legislature on subjects which could form the basis for legislative action". The committee devoted more time to this assignment than to all the others combined, and the discussions demonstrated considerable divergence of thought.

The State Bar influences the governmental process in many ways. The committee soon recognized the possibility that it might ultimately recommend that the State Bar abandon some activities but continue others. For study purposes, the activities were separated into thirteen categories. The first eight involve interaction between the State Bar and the legislature:

(A) reviewing pending legislation;

(B) providing technical assistance (i.e., drafting legislation) at the request of legislators;

(C) initiating legislation by drafting bills and then seeking legislative sponsors;

(D) taking formal public positions on pending legislation;

(E) retaining an outside lobbyist to review pending legislation and report on matters potentially of interest to the State Bar;

(F) retaining an outside lobbyist to advocate the State Bar's positions;

(G) permitting or encouraging direct lobbying by State Bar employees or attorneys speaking as representatives of the State Bar, its committees, or its sections;

(H) hosting social functions attended by legislators and other state officials.

Other State Bar activities influence the governmental process but do not directly involve the legislature:

(I) appearing before the State Officers Compensation Commission;

(J) taking positions on matters pending before the executive branch and its administrative agencies;

(K) taking positions on ballot proposals or issues that may become ballot proposals;

(L) initiating or commenting on proposed court rule changes; and

(M) filing amicus curiae briefs in pending cases.

Many of the Lincoln hearing witnesses testified about the State Bar's legislative program. The witnesses included the State Bar's retained lobbyist, present and former officers, staff personnel, and representatives of all the standing committees.

Historically, the State Bar has always been involved to some extent in the legislative process. The extent of its involvement has increased over the years. The increase roughly parallels the evolution of Michigan's full-time legislature, the decline in the number of lawyers serving in the legislature, and the dramatic change in the lobbyist's role in the legislative process. The State Bar believes that its lobbying activities are required in the observance of its responsibilities under State Bar Rule 1:

> "* * * The State Bar of Michigan shall, under these rules, aid in promoting improvements in the administration of justice and advancements in jurisprudence, in improving relations between the legal profession and the public, and in promoting the interests of the legal profession in this state."

Twenty years ago, the State Bar was most likely to be involved in issues that, by any definition, directly affected "the administration of justice". For example, the State Bar worked for the inclusion in Michigan's 1963 Constitution of provisions creating the Court of Appeals, authorizing the legislature to create courts of limited jurisdiction, and requiring probate judges to be licensed attorneys. After the voters adopted the Constitution, the State Bar lobbied for the creation of our present district court system.

In more recent years, the State Bar has expanded its interest in legislation to reflect a broader interpretation of its responsibility for "aid[ing] in promoting improvements in the administration of justice and advancements in jurisprudence".

In the early 1970's, the State Bar was actively involved in the debate over no-fault automobile insurance legislation. Its present legislative agent, Public Affairs Associates, first began working for the State Bar at that time. This was the first time that the State Bar had retained a lobbyist who is required to advocate the State Bar's position even when it conflicts with the position of another client. The current year's budget allocates $54,060 for fees and expenses paid to Public Affairs Associates. Most of that firm's responsibilities fall within one of three categories:

(1) monitoring the legislature and alerting the State Bar to proposals that may be of interest;

(2) advising the State Bar on the progress of legislation on which the State Bar has taken a formal position or otherwise expressed continuing interest;

(3) lobbying directly and facilitating contacts between legislators and State Bar representatives;

All bills introduced during a legislative session also undergo review by State Bar staff attorneys. Approximately 5000 bills are introduced during each two-year legislative session. The screening attorney selects those that may be of interest to the State Bar and refers them to appropriate committees and sections. This referral is for informational purposes, i.e., the committees and sections are permitted but not required to take any action. Approximately 2000 bills per session are referred in this manner.

Some high priority bills--a very small percentage--are referred directly to the Board of Commissioners' legislative committee. That committee reviews those bills and sometimes makes its own referrals to committees and sections with requests for recommendations. The committees and sections are obligated to respond to those requests. In addition, they may make unsolicited recommendations to the legislative committee on bills that were referred to them directly by the staff attorney.

The legislative committee, assisted by the executive director, reviews the recommendations and formulates proposals for action by the Board of Commissioners. The board then assigns each bill to one of five legislative priority categories:

(1) active support;

(2) support in principle;

(3) active opposition;

(4) opposition in principle; or

(5) no position.

The State Bar initiates lobbying contacts regarding those bills that it actively supports and actively opposes. For those bills that it supports or opposes in principle, it responds to requests for position statements and analyses but does not initiate contacts. The Board of Commissioners' decisions to support or oppose legislation are guided by a goals-and-priorities document drafted by the Scope and Correlation Committee and adopted by the Board of Commissioners in 1978. That document lists twelve criteria.

The monthly editions of the Michigan Bar Journal contain a list and summary of all bills on which the Board of Commissioners has taken a position of active support or opposition. The list is updated monthly to reflect additions, deletions, and the bills' current status in the legislature.

The Representative Assembly, as the ultimate policy-making body of the State Bar seldom takes positions on individual bills. That task is usually left to the Board of Commissioners, which meets more frequently. The Representative Assembly does occasionally support broad legislative initiatives such as adoption of comprehensive codes.

Committees and sections occasionally lobby for or against particular bills but may do so only if the action is not inconsistent with a policy adopted by the Board of Commissioners or Representative Assembly. When the committees and sections lobby in this manner, they must make it clear that they speak for themselves and not for the State Bar.

In most cases, the State Bar's final positions reflect compromises made during the internal review process. Membership in most of the specialized committees and sections includes two or more identifiable factions of attorneys who specialize in the same legal field but typically represent clients with opposing interests. If the legislation is likely to provoke conflict between competing special interests, there will be a similar debate within the committee or section. Recommendations to the Board of Commissioners sometimes include minority reports, but

the committees and sections usually are able to make internal compromises and produce consensus recommendations. Also, before that recommendation becomes the State Bar's formal position, it must be approved by the Board of Commissioners. The State Bar's witnesses at the Lincoln hearings expressed their belief that the internal review process gives the State Bar's views a special credibility that cannot be claimed by typical voluntary associations and special interest groups.

In addition to working for the passage or defeat of selected bills, the State Bar also offers and responds to legislators' requests for technical assistance. The assistance takes many forms, most often bill-drafting assistance and opinions about how legislation should work in practice.

Looking beyond the traditional legislative process, the State Bar may also attempt to influence positions taken by the executive and judicial branches, other governmental bodies and the electorate. It maintains contacts with the governor's office and administrative agencies. Its representatives also appear before the State Officers Compensation Commission to advocate higher salaries for Supreme Court justices, the attorney general and other officials. It also files amicus curiae briefs in the Supreme Court and other courts.

If an expanded definition of "legislation" would include the court rules promulgated by the Supreme Court, then under that definition, the State Bar is also engaged in lobbying when it proposes or comments on those rules.

Judge Lincoln's report concluded that the State Bar should be permitted to continue its legislative activities subject to some procedural reforms that would provide stronger guarantees that the State Bar's positions reflected the views of its membership and the public interest. He concluded that the State Bar's involvement did serve the public interest and that the types of services provided by the State Bar could not be provided by other organizations or agencies.

The Lincoln report recommended three new procedural requirements.

(1) That the State Bar not take a formal position on legislation unless three-fourths of the Board of Commissioners approves that position.

(2) That all bar members be given advance notice by mail of the legislative agenda for commissioners meetings. The notice would include an invitation to attend and participate in the debate. Also, results of roll call votes from the previous board meeting would be included in the next agenda notice.

(3) That no technical assistance be provided without written permission from the State Bar president and a written disclaimer stating that providing the assistance did not imply State Bar support for the legislation.

The State Bar responded to all three recommendations in the brief that it filed prior to the second round of Falk oral arguments. It questioned the need for any super-majority requirement and suggested that, if one was necessary, a two-thirds vote would be more appropriate.

Second, it argued that the cost of providing individual notices by mail would be prohibitively expensive. It suggested as an alternative that, whenever possible, advance notice be published in the preceding month's edition of the Michigan Bar Journal. That procedure has now been implemented.

Finally, the State Bar raised no objection to the report's technical assistance recommendations.

The Court's Falk II opinions did not comment on the recommendations in Judge Lincoln's report. This committee has considered both the report and subsequent actions taken by the State Bar.

Most of the preceding summary has been drawn from the records of the Lincoln and Schoenberger hearings. When the need arose for information on post-1981 activities, the committee requested written responses from Michael Franck, the State Bar's executive director.* The committee also reviewed both Falk opinions and many decisions from other courts.

For discussion purposes, the committee considered four broadly defined options.

FIRST: That the State Bar continue most or all of its present activities with or without additional restrictions such as those recommended by Judge Lincoln in his earlier report to the Court.

* Joel M. Boyden, the 1983-84 State Bar president, Dennis W. Archer, the president-elect, and Angus G. Goetz, Jr., chairperson of the Representative Assembly, are members of the committee. They also provided background information.

SECOND: That the State Bar abandon its present advocacy role but continue providing technical assistance to the legislature.

THIRD: That the State Bar continue its present activities but be prohibited from using the mandatory dues of objecting members for those activities. The committee recognized at the outset that adopting this recommendation would also require designing a procedure for accommodating objecting members.

FOURTH: That the State Bar abandon some or all of its present legislative activities and let them be undertaken by LAWPAC or some organization like LAWPAC funded entirely by voluntary contributions.

The first, second, and fourth options were rejected by a substantial majority of the committee.

Several factors contributed to the rejection of the first option. Some committee members believe that the State Bar should not use the mandatory dues of objecting members for lobbying activities. Others were concerned about the present system's potential vulnerability to attack on First Amendment grounds; neither a super-majority requirement nor improved notice procedures would appear to avoid the problem. The minority who favored "business as usual" were soon convinced that their position would not be supported by a majority of the committee.

The fourth option was rejected as unworkable. LAWPAC has been notably unsuccessful in soliciting voluntary contributions for highly visible political contests. The committee saw no real possibility that a comparable and separate voluntary organization

could command adequate financial and volunteered time resources for non-partisan lobbying. Adopting the fourth option would be tantamount to recommending that there be no lobbying whatsoever from a broadly based attorney organization. Even those committee members who oppose lobbying with the mandatory dues of objecting members still believe that the State Bar should continue to review pending legislation and offer technical assistance to the Legislature.

The committee also considered recommending that only the separate sections within the State Bar be permitted to lobby or provide technical assistance. That would avoid all First Amendment problems since the sections are entirely funded by voluntary dues. This proposal was rejected because members with experience in section activities reported that the sections frequently divide along client-interest lines. The present system, under which the Board of Commissioners has the final word, either forces compromises within the sections or adopts the position of one of the competing factions. Left on their own to take formal positions, the sections are likely to deadlock on most controversial issues.

Other committee members expressed doubt that the voluntary section dues could adequately fund a legislative program. Furthermore, only few legal specialties have enough practitioners to form viable sections. Anyway much of the State Bar's expertise is found in its standing committees. Those committees are funded by allocations from mandatory dues.

The second option, technical assistance only, was somewhat like the lowest common denominator in a mathematical problem. All members felt that the State Bar should be allowed to continue providing technical assistance. However, most also believed that it should be permitted to do more, and other committee members differed over whether it was possible for the State Bar to provide technical assistance without influencing the substantive content.

After rejecting the first, second, and fourth options, the committee focused on the third option, which would permit continued lobbying by the State Bar but prevent it from using the dues money of objecting members. This option attracted early support from a clear majority of the committee. However, as discussed below, there was considerable disagreement over how the objectors should be treated. It is also worth noting that individual committee members had varying reasons for favoring this option.

(1) Some members believed that the First Amendment prohibited using the mandatory dues of objecting members for lobbying activities. Alternatively, they would recommend that the Court prohibit it even if the First Amendment does not.

(2) Others doubted that the First Amendment constraints applied to state bar organizations; however, they wanted to produce a committee recommendation that would be secure from First Amendment attack.

(3) A third group, which would have preferred to have the State Bar continue its present activities without change

recognized that some fair method of dealing with objecting members had a far better chance of winning majority approval from the committee and the Court than did the status quo.

Implementing the committee consensus required a definition of "lobbying" that could be applied in practice. The committee considered using the definition that appears in the lobbying act. 1978 PA 472; MCL 4.411 et seq.; MSA 14.1704(1) et seq. However, it was felt that the statutory definition might not be broad enough to effectuate the commttee's intent. Also, since the committee was dealing with a specific organization, it could tailor its definition to specifically include or exclude known State Bar activities.

The State Bar's legislative and governmental activities are listed at page 14 of this report. The committee excluded the following four activities from its definition of lobbying, and therefore recommends that the State Bar be permitted to use all mandatory dues including those received from objecting members, for:

"(A) reviewing pending legislation; [and]
"(B) providing technical assistance [without advocacy] (i.e., drafting legislation) at the request of legislators".
* * *
"(L) initiating or commenting on proposed court rule changes
"(M) filing amicus curiae briefs in pending cases."

The committee concluded that the State Bar should be permitted to continue its internal review process because that activity would be appropriate even for a bar organization that made no institutional effort to support or oppose legislation. Attorneys throughout the state need to be informed about legislative developments.

The committee also thought that providing technical assistance without advocacy was an appropriate activity. Here it was felt that the public interest being served easily outweighed any constitutional or policy objections. Similar considerations led the committee to conclude that no restrictions should be placed on the filing of amicus curiae briefs or commenting on proposed court rules.

All other activities on the list constitute "lobbying" as defined by this report and should not be funded with the mandatory dues of objecting members. The committee reached that conclusion even though all committee members felt that the State Bar's lobbying activities may serve a public interest. Most felt that the State Bar should do more lobbying, not less. But the committee ultimately agreed that attorneys who do not share that opinion should not be required to support the lobbying or be identified with the State Bar's position.

The committee's next task--as it turned out the most difficult one--was deciding how objecting bar members should be accommodated.

The committee discussed the possibility of allocating lobbying costs to each issue on which the State Bar took a position. However, the committee concluded that the amount per member spent for lobbying was so small that the only practical system would be one in which members paid all or none of their pro rata share of the total lobbying cost.

The mandatory dues are now $150 per year for those who have been members for more than three years. Of that figure, approxi-

mately* $4.26 represents variable expenditures for lobbying during the 1983-84 fiscal year. Another $.96 would be added if certain fixed costs were allocated. The fixed costs would be incurred even if the bar abandoned all lobbying activities. These figures were calculated by dividing costs by the number of State Bar members (22,740). Note, however, that recently admitted attorneys (3,288) pay only $90 dues. Members over age seventy (1,500) pay no mandatory dues, but they still receive dues notices since they might join sections or notify the State Bar of address changes.

At this point, the committee was divided over how to handle the dues money of members who might object to lobbying. Several ideas were discussed at length, but only two attracted substantial support. They came to be known as "opt-out" and "refund".

An opt-out procedure would have allowed bar members to reduce their dues payment in advance by the pro rata amount that otherwise would have been spent on lobbying.

The refund approach would have allowed the State Bar to collect full dues at the beginning of the fiscal year and then permit objectors to obtain refunds with interest at the end of the year. Refunds would be paid from a separate interest-bearing account. Proponents of the procedure pointed out that it would permit the use of known expense figures, whereas the opt-out system would necessarily rely on estimates.

*See Appendix 2, August 31, 1984, memorandum from the State Bar executive director.

The committee debated at length the relative merits of the opt-out and refund procedures. A majority favored the refund approach, but neither approach could attract unanimous support.

The committee members who favored the refund approach were concerned that the opt-out procedure as proposed would result in a revenue decrease that did not accurately reflect the percentage of bar members who oppose lobbying. They predicted that, when faced with the choice between writing a check for $150 or $145, a significant number of bar members would choose the lower figure whether or not they opposed lobbying by the State Bar or disagreed with its position on a particular issue.

On the other hand, committee members who favored the opt-out approach were convinced as a matter of constitutional principle that the State Bar should not have even temporary possession of dues money paid by objecting members. They felt that paying interest on the refund was not a sufficient answer because bar members would still be compelled to make a loan to the State Bar for lobbying.

This deadlock continued until a member of the minority group proposed the formula that the committee ultimately adopted as its recommendation to the Court. Under this formula, the amount of dues paid by bar members will not be affected by their opinions about lobbying. However, those who oppose lobbying will be able to prevent the State Bar from using any portion of their mandatory dues for that purpose. This proposal immediately won unanimous*

*Martha L. Seaman was in Europe at the time of the last two meetings. Her vote on this issue could not be recorded.

support because it effectively answered the concerns expressed by both factions. Accordingly, the committee unanimously recommends that, beginning with the 1985-86 fiscal year, the Court instruct the State Bar to take the following steps:

(1) Determine in advance of each fiscal year the amount that will be expended for lobbying during that fiscal year. Referring to the Executive Director's August 31, 1984, memorandum, the committee intends that only the variable lobbying expenses should be included in this calculation.

(2) Divide the total expense figure by the number of dues-paying members. This calculation would include an appropriate adjustment for those members who pay reduced dues. Members over age 70, who pay no mandatory dues, should not be counted. The resulting quotient--with adjustments--will be the amount per member that is spent for lobbying.

(3) Include with the dues notice sent to dues-paying members a statement that those members may divert the specified pro rata amount from lobbying to the State Bar's general fund.

(4) Reduce the amount budgeted for lobbying expenses by the amount diverted.

(5) Offer members over age 70 a comparable opportunity to indicate whether they may be counted as members for whom the State Bar speaks in its lobbying activities.

(6) Qualify all lobbying statements by indicating that the State Bar only speaks for those members who have not indicated their disapproval pursuant to (3) or (5) above.

Experience may show that some additional refinements are needed. Those changes should be permitted as long as they do not require direct or indirect financial contributions from objecting members or make it appear that those members support the State Bar's lobbying positions.

To summarize, all committee members believe that the State Bar's lobbying activities serve an important public interest and should be continued. They further agree that, as a matter of policy, the State Bar should not be permitted to fund its lobbying activities with the mandatory dues of objecting members. The recommendation outlined above will protect those objecting members but still allow the State Bar to speak on behalf of those members who support its efforts.

D. Other Activities.

Discussion: The Court's order creating the committee specified three areas for inquiry and then invited the committee to look at "such other activities as the committee deems appropriate for examination".

The activities of the Michigan State Bar have been under intense scrutiny for more than seven years. They have been scrutinized by friends, foes, and impartial observers. Many activities that were once controversial have been modified in response to the criticism. This report includes recommendations in the three areas where neither a binding decision nor an acceptable compromise has yet been made. In short, the committee searched diligently, but did not discover any other activities that it deemed appropriate for examination.

Although it makes no additional recommendations, the committee did want to take the opportunity provided by this report to comment on a matter that is of great concern to the State Bar leadership.

The Falk case started in November of 1977. That means that the State Bar has continuously been before the Court as a party litigant for more than seven years. The ongoing litigation may have forced the Court and the State Bar to distance themselves from each other to extent that is not in the best interests of either.

The State Bar leaders who served on the committee indicated their awareness of the Court's desire to be kept informed about State Bar activities, including the allocation of its financial resources. The State Bar seems not only ready, but eager to discuss its activities with the Court. What seems to be missing is an adequate forum for those discussions. The committee considered, but ultimately decided not to recommend, a proposal that the Court appoint a standing committee composed of three justices and three State Bar appointees. As proposed, that committee would meet regularly to review State Bar activities and concerns. That proposal was viewed favorably, but the committee decided not to make a formal recommendation because it concluded that its proper role was to note the concern but leave remedial action to the Court.

Both the State Bar and the Court seek, in the langauge of State Bar Rule 1, to promote "improvements in the administration of justice and advancements in jurisprudence". They can never be

full partners in that endeavor because the Court is charged with supervising the State Bar and, on occasion, with judging it. However, the committee saw much to be gained by taking steps to improve communication. It commends to the Court the State Bar's offer to discuss any activities that are of interest to the Court or individual justices.

IV. Appendixes.

(1) May 29, 1984, letter from the Executive Director re prepaid legal services and the lawyer placement service;

(2) August 31, 1984, letter from the Executive Director re lobbying costs;

(3) September 5, 1984, letter from the Executive Director re other states' refund experience;

(4) State Bar budget for 1983-84;

(5) State Bar budget for 1984-85;

(6) Notice published in August 1984 Michigan Bar Journal;

(7-10) Comments received in response to notice.

APPENDIX V RELEVANT CASE LAW

Lathrop v Donohue, 367 US 820, 81 S. Ct. 1826, 6 L. Ed. 2d 1191 (1961)

Abood v Detroit Board of Education, 60 Mich App 92; 230 NW2d 322 (1975)

Matter of Discontinuation of Wis. State Bar, 286 NW 2d 601, 93 Wis. 2d 385, Wis: Supreme Court (1980)

Falk v State Bar of Michigan, 411 Mich 63 (1981) [Falk I]

Falk v State Bar of Michigan, 418 Mich 270 (1983) [Falk II]

Gibson v Florida Bar, 502 US 104, 112 S. Ct. 633, 116 L. Ed. 2d 432 (1991)

Levine v Heffernan 864 F. 2d 457 Court of Appeals, 7th Circuit (1988)

Keller v. State Bar of Cal., 496 U.S. 1; 110 S Ct 2228; 110 L Ed 2d 1 (1990)

Lehnert v. Ferris Faculty Assn., 500 U.S. 507, 114 L. Ed. 2d 572 (1991)

Florida Bar re Frankel, *581 SO. 2D 1294*, Fla: Supreme Court, (1991)

In Matter of State Bar of Wisconsin, 485 NW 2d 225, 169 Wis. 2d 21, Wis. Supreme Court (1992)

Romero v. Colegio de Abogados de Puerto Rico, 204 F. 3d 291 - Court of Appeals, 1st Circuit (2000)

Gardner v. State Bar of Nevada, 284 F.3d 1040, 1043 (9th Cir. 2002)

Kingstad v State Bar of Wis., 622 F. 3d 708 - Court of Appeals, 7th Circuit, 2010

Knox v. Service Employees Intern. Union, 132 S. Ct. 2277, 567 US __, 183 L. Ed. 2d 281 (2012)

In Re Petition For Rule Change To Create Voluntary State Bar Of Nebraska, 286 Neb. 1018 (2013)

Harris v. Quinn, US S Ct No. 11-681

Mandatory Bar State	"Keller-Pure" State	Criteria	Formal Keller Determination	"Review and Refund" State ("Chargeable")	Other	Dues Opt-out	Dues Opt-in	Challenge Procedure	Appeal
Alabama	X	No formal criteria							
Alaska	X			NA				Letter to E.D.	Arbitration
Arizona	X	Michigan's +1	X					Letter to E.D.	Arbitration
California					X	X		Challenge to Fees Form; Escrow	Arbitration
Florida	X	Michigan's	X					Letter to E.D.	Arbitration
Georgia	X		2-step					Letter to E.D.	Arbitration
Hawaii	X	Uses Keller language						Letter to E.D.	Arbitration
Kentucky	X	Per Ky Sup. Ct. rules*						Dues Claim Form	Special Conflicts Committee
Louisiana	X	Similar to Michigan						Letter to E.D.	Arbitration
Michigan	X	5-point criteria						Letter to E.D.	Appeal to BOC, then MSC
Mississippi	X	See below						Letter to E.D.	None specified
Missouri	X	See below	2-step					Letter to E.D.; Escrow	Mediation
Montana		Michigan's + 4						Letter to E.D.	Arbitration
Nebraska					X				
Nevada	X	Michigan's + 3						Letter to E.D.	Arbitration
New Hampshire	X	Limited						Letter to E.D.	Arbitration
New Mexico				X				Letter to Board	Appeal to Board, Sup. Ct.
North Carolina					X				
North Dakota					X			Letter to E.D.	unclear
Oklahoma	X	Limited						Claim Form to E.D.	Appeal to Board
Oregon	X	Enhanced Michigan						Letter to E.D.	Arbitration
Rhode Island	X	NA						Letter to E.D.	Arbitration
South Carolina	X	Not defined						Letter to E.D.	Escrow; arbitration
South Dakota	NA								
Texas	X	Keller language	2-step					Letter to E.D.	None provided
Utah					X			Letter to E.D.	
Virginia					X				
Washington					X		X		Arbitration
West Virginia					X				
Wisconsin				X					Arbitration
Wyoming					X				

Alabama Reportedly does not engage in any policy activity other than supporting the judicial budget

Alaska Costs may be assessed against member for frivolous objection

Arizona 6th criterion - "any other activity authorized by law"

California Dues check-off $5 legislative affairs; $5 elimination of bias; $30 legal services, non-regulatory activities

Florida Standards are the same as Michigan's, plus "[W]hen a matter appears to fall outside the five specifically identified areas, the following criteria is used to determine whether the bar could become actively involved in its advocacy: (1) that the issue be recognized as being of great public interest; (2) that lawyers are especially suited by their training and experience to evaluate and explain the issue; and (3) the subject matter affects the rights of those likely to come into contact with the judicial system." "The Bar may prevent a section from advocating a particular position if… the issue presents the potential of deep philosophical or emotional division among a substantial segment of the bar's member." "The Florida Bar's political and ideological activities are primarily influenced by the Rules Regulating The Florida Bar as promulgated by the Supreme Court of Florida, by operational policies of the bar's governing board, and by court decisions that have focused on the First Amendment rights of individual members of unified state bars or other mandatory membership organizations. Within those confines, The Florida Bar works to assist and to advise the legislative branch on a variety of law related matters. And, through its officers, volunteer members, professional staff and retained counsel, The Florida Bar presents a visible and respected presence within the state legislature and other governmental bodies.

Georgia 2-stop process to take a position -- by majority vote whether issue is germane to the legitimate purposes of the bar, and 2) by majority vote whether to support or oppose legislation. Sections prohibited from hiring lobbyist to advocate their own or the State Bar's positions. 56-member Advisory Committee on Legislation prepares for legislative action matters requiring legislation as may have received the approval of the Board of Governors. It shall keep itself informed as to all proposed legislation affecting members of the Bar and the practice of law.

Kentucky The Kentucky Bar Association is an independent agency of the Supreme Court of Kentucky. Its authority to regulate the legal profession in Kentucky, delegated by the Kentucky Supreme Court through rules, is derived from the Kentucky Constitution. The mission and purpose of the Association is to maintain a proper discipline of the members of the bar in accordance with these Rules and with the principles of the legal profession as a public calling, to initiate and supervise, with the approval of the Court, appropriate means to insure a continuing high standard of professional competence on the part of the members of the Bar, and to bear a substantial and continuing responsibility for promoting the efficiency and improvement of the judicial system. SCR 3.025

Louisiana Legislative Activity Criteria: issues affecting the legal profession; the regulation of attorneys and the practice of law; the administration of justice; the availability and delivery of legal services to society; the improvement of the courts and the legal profession; and such other matters consistent with the mission and purposes of the Association. The Legislation Committee should consider: *Importance* to the bar, the legal profession the administration of justice and to society as a whole; *Expectations* of the public, legislators, and members of the profession regarding the Bar's role in the particular issue involved; Level of support within the profession; Likelihood of success; Expertise of lawyers as lawyers; currency of issue; Image of the profession; Importance to the practice of law; Opportunity for impact.

Mississippi "The Mississippi Bar's objective to involve itself only in those activities related to the regulation of the profession, improving the administration of justice and the quality of legal services, and in recognition that it will not always be easy to discern which activities completely meet this criteria, [a protest procedure is offered]."

Missouri "The Missouri Bar limits its legislative activities to proposed legislation that affects the administration of justice, the integrity of the judiciary, or the dignity of the profession of law. In addition, the Missouri Bar may participate in legislative activities to improve the law through legislation which is drafted by Missouri Bar committees and endorsed by the Board of Governors and may respond to legislation which affects previously enacted bar-drafted legislation." 2-step process (one vote on Keller-permissibility, one vote on merit; 2/3rds majority needed on both votes.

Montana Similar 5-point Keller criteria, plus a 6th – "Issues relating to law reform, adoption of uniform laws and statutory improvement AND "If an issue(s) falls outside of the preceding list, the State Bar may take a position if: 1) the issue is of great public interest; 2) lawyers are especially suited to evaluate and explain the issue to the public, and; 3) the subject matter affects the rights of those likely to come into contact with the legal system." In addition, the Bar "should avoid, to the extent possible, those issues which carry the potential for deep philosophical or emotional division among the membership. The bar will not take a position in, nor make a contribution of any kind to any campaign for political office, but may do so with regard to initiatives and referenda." "The State Bar of Montana may not engage in political or ideological activities involving the expenditure of compulsory membership dues unless the Board of Directors or the Executive Committee determines that the activity is reasonably related to the Bar's stated purposes.

Nebraska The Bar's activities are not currently restricted because all but the basic regulatory functions of the State Bar are funded by voluntary dues.

Nevada Criteria: Bar legislative or policy activities must be reasonably related to any of the following subjects: Regulating and disciplining lawyers; improving the functioning of the courts including issues of judicial independence, fairness, efficacy and efficiency; making legal services available to society; the education, ethics, competence, integrity and regulation of the legal profession; issues involving the structure and organization of federal, state and local courts in or affecting Nevada; issues involving the rules of practice, procedure and evidence in federal, state or local courts in or affecting Nevada; or issues involving the duties and functions of judges and lawyers in federal, state and local courts in or affecting Nevada.

New Hampshire Criteria for legislative position: legislation pertains to 1) the practice of law and the legal profession; 2) the operation or composition of the courts; or 3) the administration of justice.

New Mexico The purposes of the state bar are: To aid in improving the administration of justice; To promote the interests of the legal profession in the State of New Mexico; To promote and support the needs of all members, including the full and equal participation by minorities and women in the State Bar and the legal profession at large; To improve the relationships between the legal profession and the

public; To encourage and assist in the delivery of legal services to all in need of such services; To foster and maintain high ideals of integrity, learning, competence and public service; To provide a forum for the discussion of subjects pertaining to the practice of law and law reform; To promote and provide continuing legal education in technical fields of substantive law and practice; To participate in the legislative, executive and judicial processes by informing its membership about issues affecting the legal system and relating to the purposes of the State Bar, and upon approval by the Board of Bar Commissioners (hereinafter referred to as the "BBC"), to take such further action as may be necessary to present the views of the BBC to the appropriate court, executive office or legislative body for consideration. The criteria for activities pertaining to governmental affairs activities, "without further authority from the Board of Bar Commissioners: 1) the regulation and discipline of attorneys and the practice of law; 2) the competency and professional responsibility of lawyers including education and ethics; 3) the regulation of lawyer trust accounts; 4) increasing the availability and the provision of legal services; 5) improving the functioning of the courts and justice system; 6) improving access to the courts; 7) judicial independence; 8) improving the fairness, efficacy and efficiency of the courts; 9) the jurisdiction of the courts; 10) the provision of content neutral technical assistance and expertise regarding the drafting of rules and statutes pertaining to practice, procedures and evidence; 11) the governance and business activities of the State Bar of New Mexico; 12) defending legal and administrative actions and claims brought against the State Bar of New Mexico.

North Carolina The North Carolina State Bar is the state agency responsible for regulating the practice of law in North Carolina. Its purposes are: (1) to cultivate and advance the science of jurisprudence; (2) to promote reform in the law and in judicial procedure; (3) to facilitate the administration of justice; (4) to uphold and elevate the standards of honor, integrity and courtesy in the legal profession; (5) to encourage higher and better education for membership in the profession; (6) to promote a spirit of cordiality and unity among the members of the Bar; (7) to perform all duties imposed by law. A separate, voluntary state bar, the State Bar of North Carolina, Its functions include: Admissions, Client Security Fund, Continuing Legal Education (CLE), Cy Pres/Class Action Residuals, Court Awards and Settlements, Ethics, Fee Dispute Resolution, Grievance, IOLTA, Lawyer Assistance Program, Legal Malpractice Insurance, Membership, Professional Organizations, Pro Hac Vice, Publications, Retirement, Specialization, Trust Accounting Unauthorized Practice of Law. There is a separate voluntary state bar, the North Carolina Bar Association, that carries out typical professional association functions on behalf of its members.

North Dakota The nation's first unified bar, the State Bar Association of North Dakota appears to have the most informal approach to determining the Keller-permissibility of its activities and positions. Its online legislative policy says "As an integrated bar, the State Bar Association of North Dakota endeavors to speak for the Association as a whole, while fully recognizing that it is a practical impossibility to gain unanimity of opinion on almost any issue. The most controversial issues are almost always the most divisive and they are also invariably the ones that the Association is asked to comment on. While it is gratifying to note that the Association's judgment is welcomed and sought after in many of these difficult issues, this policy is intended to set parameters for Association legislative activities and make the work of the Legislative Committee and the professional staff manageable. … The Legislative Committee and the Board of Governors are empowered to consider any and all legislation that is considered by interim committees or is introduced during a legislative session and may seek the introduction of legislation the Association favors. The Association ought not however, become actively involved in every issue that remotely may

affect lawyers and it must be especially circumspect regarding measures that are likely to be regarded by the legislature as having significant political importance—those on which other pressure groups are expected to have strong views. It is necessarily a balancing process in which clear guidelines are hard to articulate. In deciding to press a point of view the Association shall consider (1) how and to what degree the matter really affects the vital concerns of lawyers (2) whether the Association, in any contact with the legislature, is likely to be regarded as merely an interest group or as a more impartial (and, therefore, more credible) expert and (3) what the likelihood is that the Association's efforts will be successful. Any member of the Association who dissents from a position on any legislative or ballot measure matter and records that opposition in writing to the Executive Director may receive a refund of that portion of his or her dues which would otherwise have been used in the Association legislative or ballot measure activity complained of.

Oklahoma Legislative program confined to measures relating to the administration of justice; to court organization, selection, tenure, salary and other incidents of the judicial office; to rues ad laws affecting practice and procedure in the courts and in administrative bodies exercising adjudicatory functions; and to the practice of law.

Oregon Bar legislative or policy activities must be reasonably related to any of the following subjects: Regulating and disciplining lawyers; improving the functioning of the courts including issues of judicial independence, fairness, efficacy and efficiency; making legal services available to society; regulating lawyer trust accounts; the education, ethics, competence, integrity and regulation of the legal profession; providing law improvement assistance to elected and appointed government officials; issues involving the structure and organization of federal, state and local courts in or affecting Oregon; issues involving the rules of practice, procedure and evidence in federal, state or local courts in or affecting Oregon; or issues involving the duties and functions of judges and lawyers in federal, state and local courts in or affecting Oregon.

South Carolina The purposes of the Bar are defined by Supreme Court of South Carolina rule as: to uphold and defend the Constitution of the United States and the Constitution of the State of South Carolina; to protect, and maintain respect for, representative government; to continually improve the administration of justice throughout the State; to require the highest standards of ethical and professional conduct, and uphold the integrity and honor of the legal profession; to advance the science of jurisprudence; to promote consistent high quality of legal education and legal services to the public; to apply the knowledge, experience and ability of the legal profession to the promotion of the public good; to encourage goodwill and respect for integrity and excellence in public service among the members of the legal profession and the public; to perform any additional purposes and duties assigned to it by the Supreme Court of South Carolina; and to promote and correlate such policies and activities of the Bar as fall within these purposes in the interest of the legal profession and the public. The Executive Director reports “the Bar does not take ideological positions on issues which are political in nature or on which there is an expectation that a significant portion of Bar members would not agree with the proposed position. The Board always gives a full lobbying refund. It does not apportion the lobbying effort per policy. It does not go to arbitration. The amount has always been less than $2.00 per member, and the highest number of refunds requested in a single year was $5. Funding for policy making efforts and lobbying comes from general revenues, which includes license fees.”

Texas Mandatory fees "and other funds received by the state bar may not be used for influencing the passage or defeat of any legislative measure unless the measure relates to the regulation of the legal profession, improving the quality of legal services, or the administration of justice and the amount of the expenditure is reasonable and necessary. This subsection does not prohibit a member of the board of directors or an officer or employee of the state bar from furnishing information in the person's possession that is not confidential information to a member or committee of the legislature on request of the member or committee." "No legislative action shall be authorized in the name of the State Bar that cannot be properly and effectively managed. Among the criteria to be considered, the proposed legislation or legislative activity is "not designed to promote or impede the political candidacy of any person or party or to promote a partisan political purpose." [or would have the incidental effect of, or be widely construed as"] "cannot be construed to advocate political or ideological positions"

Utah The Supreme Court rules for Utah provides (emphasis added) that the purposes of the Bar are to: (a) advance the administration of justice according to law;(b) aid the courts in carrying on the administration of justice; (c) regulate the admission of persons seeking to practice law; (d) provide for the regulation and discipline of persons practicing law; (e) foster and maintain integrity, learning, competence, public service and high standards of conduct among those practicing law; (f) *represent the Bar before the legislative, administrative and judicial bodies*; (g) prevent the unauthorized practice of law; (h) promote professionalism, competence and excellence in those practicing law through continuing legal education and by other means; (i) provide service to the public, to the judicial system and to members of the Bar; (j) educate the public about the rule of law and their responsibilities under the law; (k) assist members of the Bar in improving the quality and efficiency of their practice; (l) to engage freely in all lawful activities and efforts, including the solicitation of grants and contributions that may reasonably be intended or expected to promote and advance these purposes; and (m) carry on any other business connected with or incidental to the foregoing objectives and purposes, and to have and exercise all the powers conferred under law of Utah upon corporations formed under the Utah Revised Nonprofit Corporation Act.

Virginia The Virginia State Bar is an agency of the Virginia Supreme Court and is responsible for regulating the practice of law in North Carolina. Its programs are: Office of Bar Counsel / Professional Regulation Department / Clerk of the Disciplinary System; Disciplinary Board; District Disciplinary Committees; Standing Committee on Lawyer Discipline; Standing Committee on Legal Ethics; Standing Committee on Unauthorized Practice of Law; Mandatory Continuing Legal Education Board / Staff; Publications/Public Information Department and Communications Committee; Membership Department; Standing Committee on Professionalism / Professionalism Course; Committee on Access to Legal Services; Alternative Dispute Resolution Joint Committee; Lawyer Referral; Publications/Public Information Department; Clients' Protection Fund; Access to Justice Director; Professionalism; Judicial Nominations Committee; Sections and Conferences; Lawyer Assistance Program; Local and Specialty Bar Relations Coordinator; Bench Bar Relations Committee. If it lobbies, it lobbies as a state agency. There is also a separate voluntary state bar association, the Virginia Bar Association.

Washington The Washington State Bar Association only in activities that it considers within the boundaries of Keller, but nevertheless allows its members annually to "opt-out" of paying for lobbying. Among the activities that the Washington Supreme Court rules specifically authorize the Bar to carry out is "maintain a legislative presence to inform members of new and proposed laws and to in form public officials about bar positions and concerns." (Others are: 1) Sponsor and maintain committees, sections, and divisions whose activities further these purposes; 2) Support the judiciary in maintaining the integrity

and fiscal stability of an independent and effective judicial system; 3) Provide periodic reviews and recommendations concerning court rules and procedures; 4) Administer examinations and review applicants' character and fitness to practice law; 5) Inform and advise lawyers regarding their ethical obligations; 6) Administer an effective system of discipline of its members, including receiving and investigating complaints of lawyer misconduct, taking and recommending appropriate punitive and remedial measures, and diverting less serious misconduct to alternatives outside the formal discipline system; 7) Maintain a program, pursuant to court rule, requiring members to submit fee dispute to arbitration; 8) Maintain a program for mediation of disputes between members and their clients and others; 9) Maintain a program for lawyer practice assistance; 10) Sponsor, conduct, and assist in producing programs and products of continuing legal education; 11) Maintain a system for accrediting programs of continuing legal education; 12) Conduct audits of lawyers' trust accounts; 13) Maintain a lawyers' fund for client protection in accordance with the Admission to Practice Rules; 14) Maintain a program for the aid and rehabilitation of impaired members; 15) Disseminate information about bar activities, interests, and positions; 16) Monitor, report on, and advise public officials about matters of interest to the bar; 17) Maintain a legislative presence to inform members of new and proposed laws and to inform public officials about bar positions and concerns; 18) Encourage public service by members and support programs providing legal services to those in need; 19) Maintain and foster programs of public information and education about the law and the legal system; 20) Provide, sponsor and participate in services to its members; 21) Hire and retain employees to facilitate and support its mission, purposes, and activities, including in the bar's discretion, authorizing collective bargaining; 22) Collect, allocate, invest, and disburse funds so that its mission, purposes and activities may be effectively and efficiently discharged.

West Virginia Like North Carolina and Virginia, West Virginia has both a state agency regulatory bar and a voluntary bar. Only the voluntary bar engages in public advocacy.

Wisconsin All Wisconsin State Bar employees record their time in 15-minute increments, and all activity is categorized as either "reasonably intended for the purpose of regulating the legal profession or improving the quality of legal services and thus "chargeable" to all members, or is otherwise "non-chargeable" and appears as a dues opt-out. The following challenged activities are examples of activities that were determined through court challenges or arbitration to be "chargeable": Equal Justice Fund, lawyers and judges assistance, attorney image campaign, position on understaffing of the public defender system, Bill of Rights pamphlet, Economics of Law Practice survey, Gavel Awards, local bar grants, mock trial, public defender and court funding. Legislative activity on these issues was determined to be not chargeable: sealing of court records, sales tax on legal services, access to public records for incarcerated persons, tort reform, and court filing fees.

Wyoming The Wyoming State Bar is an administrative arm of the Wyoming Supreme Court. Its primary functions are to discharge regulatory functions related to admission, attorney grievance, and CLE compliance. The Wyoming State Bar does not take positions on bills or engage in lobbying.

APPENDIX VII PROPOSED CHANGES TO STATE BAR RULES SUBMITTED BY THE BOARD OF COMMISSIONERS

Rule 1. State Bar of Michigan

The State Bar of Michigan is the association of the members of the bar of this state, organized and existing as a public body corporate pursuant to powers of the Supreme Court over the bar of the state. The State Bar of Michigan shall, under these rules, aid in promoting improvements in the administration of justice and advancements in jurisprudence, in improving relations between the legal profession and the public, and in promoting the interests of the legal profession in this state.

Rule 2. Membership

Those persons who are licensed to practice law in this state shall constitute the membership of the State Bar of Michigan, subject to the provisions of these rules. ~~None other than a member's correct name shall be entered upon the official register of attorneys of this state. Each member, upon admission to the State Bar and in the annual dues statement, must provide the State Bar with the member's correct name and address, and such additional information as may be required.~~ Each member shall provide the State Bar with the member's legal name, professional name if it differs from his/her legal name because of marriage, divorce or otherwise, mailing address, business telephone number and business e-mail address, if the member has one. If the address provided is a mailing address only, the member also must provide a street or building address for the member's business or residence. The choice of a member to use only a post office box address on the bar membership records shall constitute an election to waive personal service in any proceedings between the Bar and the member. No member shall practice law in this state until such information has been provided. Members shall notify the State Bar promptly in writing of any change of name or address. ~~The State Bar shall be entitled to due notice of, and to intervene and be heard in, any proceeding by a member to alter or change the member's name. The name and address on file with the State Bar at the time shall control in any matter arising under these rules involving the sufficiency of notice to a member or the propriety of the name used by the member in the practice of law or in a judicial election or in an election for any other public office.~~ Every active member shall annually provide a certification as to whether the member or the member's law firm has a policy to maintain interest-bearing trust accounts for deposit of client and third-party funds. The certification shall be placed on the face of the annual dues notice and shall require the member's signature or electronic signature.

Comment [O1]: The purpose of this change is to allow a married woman to choose to practice law while continuing to use her maiden name.

Rule 3. Membership Classes

(A) Active. A person engaged in the practice of law in Michigan must be an active member of the State Bar. In addition to its traditional meaning, the term "person engaged in the practice of law" in this rule includes a person licensed to practice law in Michigan or another jurisdiction and employed in Michigan in the administration of justice or in a position which requires that the person be a law

APPENDIX VII PROPOSED CHANGES TO STATE BAR RULES SUBMITTED BY THE BOARD OF COMMISSIONERS

school graduate, but does not include (1) a judicial law clerk who is a member or is seeking to become a member of the bar of another jurisdiction and who does not intend to practice in Michigan after the clerkship ends, or (2) an instructor in law. Only an active member may vote in a State Bar election or hold a State Bar office. A person not an active member who engages in the practice of law is subject to discipline or prosecution for unauthorized practice.

(B) Inactive. An active member may request an inactive classification.

(1) If the period of inactivity is less than 3 years, the member may be reclassified as active by

(a) applying to the State Bar ~~secretary~~

Comment [NJ2]: Deleted "secretary"

(b) paying the full amount of the annual dues for the current fiscal year; and

(c) demonstrating that no disciplinary action has been taken or is currently pending in another jurisdiction.

(2) If the period of inactivity is 3 years or more, the member must, in addition to fulfilling the requirements of subrule (B)(1)(a)-(c), obtain a certificate from the Board of Law Examiners that the member possesses sufficient ability and learning in the law to enable the member to properly practice as an attorney and counselor in Michigan.

If the inactive member has been or is currently subject to disciplinary action in another jurisdiction, the application must be referred to the Attorney Discipline Board and action on the application delayed until the board makes a decision.

~~(C) Law Student~~

~~A student in good standing at a law school approved by the Board of Law Examiners or the American Bar Association may be a member of the law student section.~~

Comment [O3]: Law students cannot be members of the bar. Decided to remove and add new rule 3A to allow "affiliates" (students and affiliates) to participate in sections.

~~(D) Affiliate~~

~~A legal assistant as defined in the State Bar bylaws may become an affiliate member of the State Bar of Michigan and shall thereupon be a member of the legal assistants section. A legal administrator as defined in the State Bar bylaws may become an affiliate member of the State Bar of Michigan and shall thereupon be a member of the legal administrators section.~~

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(C) Resignation. An active or inactive member who is not subject to pending disciplinary action in this state or any other jurisdiction may resign from membership by notifying the secretary of the State Bar in writing. The secretary shall notify the member when the request is accepted, whereupon the member no longer will be qualified to practice law in Michigan and no longer will be eligible to receive any other member benefits. The secretary of the State Bar also shall notify the clerk of the Supreme Court of the resignation. To be readmitted as a member of the State Bar, a person who has resigned must reapply for admission, satisfy the Board of Law Examiners that the person possesses the requisite character and fitness to practice law, obtain a passing score on the Michigan Bar Examination, and pay applicable fees and dues. Resignation does not deprive the Attorney Grievance Commission or the Attorney Discipline Board of jurisdiction over the resignee with respect to misconduct that occurred before the effective date of resignation.

Comment [NJ5]: Changed to (C) after Law Student and Affiliate were deleted.

(D) Emeritus Membership. Effective October 1, 2004, an active or inactive member who is 70 years of age or older or has been a member of the State Bar for at least 30 years, and who is not subject to pending disciplinary action in this state or any other jurisdiction, may elect emeritus status by notifying the secretary of the State Bar in writing. The secretary shall notify the member when the request is accepted, whereupon the member no longer will be qualified to practice law in Michigan, but will be eligible to receive other member benefits as directed by the Board of Commissioners of the State Bar. The secretary of the State Bar also shall notify the clerk of the Supreme Court when a member is given emeritus status. Members who were age 70 or older as of October 1, 2003, who resigned or were suspended from membership after October 1, 2003, but before September 30, 2004, for nonpayment of dues are to be automatically reinstated as emeritus members, effective October 1, 2004, unless they notify the secretary of the State Bar that they do not wish to be reinstated.

Comment [NJ6]: Changed to (D) after earlier deletions

(1) *Grievances and Discipline.* Emeritus status does not deprive the Attorney Grievance Commission or the Attorney Discipline Board of jurisdiction over the emeritus member.

(2) *Readmission.* To be readmitted as an active member of the State Bar, an emeritus member must reapply for admission, satisfy the Board of Law Examiners that the person possesses the requisite character and fitness to practice law, obtain a passing score on the Michigan Bar Examination, and pay applicable fees and dues.

Rule 3A. State Bar of Michigan Affiliates

Comment [O7]: New Rule to allow for participation in sections by non-members such as law students and other affiliates

The State Bar of Michigan may offer affiliation with the State Bar and

membership in appropriate sections to law students and to other groups whose affiliation with the State Bar will promote the purpose and objectives of the association. Dues for affiliation status shall be established by the Board of Commissioners of the State Bar.

Rule 4. Membership Dues

(A) An active member's dues for each fiscal year (October 1 through September 30) are payable to the State Bar~~'s principal office~~ by October 1 of each year. The dues consist of three separate amounts to be set by the Supreme Court to fund: (1) the Attorney Grievance Commission and the Attorney Discipline Board, (2) the client security fund administered by the State Bar, and (3) other State Bar expenses. Each amount shall be listed separately in the dues notice. An inactive member shall be assessed one-half the amounts assessed an active member for the client security fund and general expenses, but the full amount designated for the discipline agencies.

Comment [O8]: Delete "principal office"

(B) A member who is admitted to the State Bar between April 1 and September 30 shall be assessed ~~one-half the full amount of~~ dues on a pro-rated monthly basis for the remainder of that fiscal year.

Comment [O9]: Pro-rated basis to encourage earlier requests for membership.

(C) Dues notices must be sent to all active and inactive members before September 20. A $50 late charge will be added to a dues payment postmarked after November 30. The State Bar must send a written notice of delinquency to the last recorded address provided as required by Rule 2 to an active or inactive member who fails to pay dues by November 30. Active members must be notified by registered or certified mail. Inactive members must be notified by first class mail. If the dues and the late charge are not paid within 30 days after the notice is sent, the individual is suspended from membership in the State Bar. If an individual is not subject to a disciplinary order and the suspension is for less than 3 years, the member will be reinstated on the payment of dues, a $100 reinstatement fee, and late charges owing from the date of the suspension to the date of the reinstatement. If the suspension is for 3 years or more, the individual must also apply for recertification under Rule 8 for the Board of Law Examiners.

(D) A person who has been a member of the State Bar for at least 50 years shall not be assessed general expenses, but shall pay the full amount assessed other members for the client security fund and the discipline agencies. A member who elects emeritus status pursuant to Rule 3(D) is exempt from paying dues.

Comment [NW10]: Changed by NJW from 3(F) to (3D) since emeritus membership is now 3(D).

(E) Annual dues for affiliate members and law student section members are established annually by the Board of Commissioners in an amount not to exceed one-third of the portion of dues for active members which fund State Bar activities other than the attorney discipline system and are payable at the State Bar~~'s principal office~~ by October 1 of each year.

Comment [O11]: Delete

(F) All dues are paid into the State Bar treasury and maintained in segregated accounts to pay State Bar expenses authorized by the Board of Commissioners and the expenses of the attorney discipline system within the budget approved by the Supreme Court, respectively.

Rule 5. Board of Commissioners

Sec. 1. Powers, Functions, and Duties.
(a) The Board of Commissioners shall
(1) implement policy adopted by the assembly;

(2) establish policy for the State Bar between assembly meetings not inconsistent with prior action of the assembly;
(3) manage the State Bar, adopt a budget for it, and supervise receipt and disbursements of State Bar funds;
(4) prescribe the function and duties of committees;
(5) provide for the organization of sections (including a law student section) of the State Bar, membership in which is voluntary, and determine the amount and regulate the collection and disbursement of section dues;
(6) receive and review committee and section reports and recommendations proposing action by the board and take interim or final action that the board finds feasible, in the public interest, and germane to the functions and purposes of the State Bar; and
(7) ~~arrange for the publication of a journal to be issued at least 4 times a year and sent to the active members without charge~~ advise and communicate with members on matters affecting the State Bar.

Comment [O12]: New language has more flexibility

(b) The Board of Commissioners may
(1) adopt bylaws;
(2) appoint standing and special committees as the Board of Commissioners may deem appropriate; ~~including~~

~~(A) character and fitness,~~

~~(B) civil procedure,~~

~~(C) court administration,~~

~~(D) criminal jurisprudence,~~

~~(E) fiscal,~~

~~(F) grievance,~~

~~(G) judicial qualifications,~~

~~(H) legal education,~~

~~(I) legislation,~~

~~(J) professional and judicial ethics,~~

~~(K) scope and correlation, and~~

~~(L) unauthorized practice of law;~~

(3) at the request of the ~~governor, the legislature, or~~ supreme court, or on its own initiative, conduct an investigation of any matter relating to the state's courts or tribunals, to the practice and procedure in them, or to the administration of justice; ~~and report to the officer or body making the request;~~

(4) acquire and hold real and personal estate by lease, purchase, gift, devise, or bequest, and sell, convey, mortgage, pledge, or release property;

(5) borrow money and pledge for repayment in annual installments, in anticipation of future revenues from annual membership dues, and issue notes, but the total indebtedness outstanding may not at any time exceed 40 percent and the principal installment due in one year may not exceed 8 percent of the revenues from required annual membership dues for the 5 preceding fiscal years;

(6) accept and hold real and personal estate in trust for any use or purpose germane to the general functions and purposes of the State Bar;

(7) bring or participate in an action or proceeding at law or in equity in a state or federal court or tribunal and intervene and be heard on an issue involving the membership or affairs of the State Bar in an action or proceeding pending in a state or federal court or tribunal.

~~(c) The board may assign these powers, functions, and duties to another State Bar agency but the board may reverse or modify the exercise of a power, function, or duty by a delegated agency~~.

Sec. 2. Membership; Terms. The board consists of:

(1) 20 elected members, each serving a 3-year term commencing upon the adjournment of the meeting of the outgoing Board of Commissioners held at the annual meeting following the member's election.

(2) 5 members appointed by the Supreme Court, each serving a 3-year term commencing upon the adjournment of the meeting of the outgoing Board of Commissioners held at the annual meeting following the member's appointment. In the event that a commissioner appointed by the Supreme Court is not appointed before the adjournment of the annual meeting at which time he or she would ordinarily take office, that member shall begin to serve immediately upon appointment. Except where appointment is made under Section 5, such appointed commissioner shall be considered to have been in office at the beginning of the term for which the appointment is made.

(3) The chairperson-elect, the chairperson and the immediate past chairperson of the State Bar young lawyers section, each serving for the years during which they hold those positions.

Comment [O13]: More flexibility to allow changes to committees without limitations of required committees

Comment [O14]: There are political and constitutional questions if original language were to be exercised

Comment [O15]: More discretion to BOC

Comment [O16]: Disciplinary agencies are under MSC control and operations of SBM are under the direction of a full-time executive director who serves at the will of the BOC.

(4) The chairperson, vice-chairperson, and clerk of the assembly, each serving for the years during which they hold those positions.

Sec. 3. Election Districts; Apportionment. The board shall establish commissioner election districts consisting of contiguous judicial circuits and containing, as nearly as practicable, an equal lawyer population. The largest geographic area may have the highest deviation from population equality.

The board shall review and revise election districts every 6 years. If, as the result of a revision in election districts, no elected commissioner maintains his or her principal office in a district or a district has fewer elected commissioners than it is entitled to, the board may designate an elected commissioner or commissioner at large for the district until the next annual election when the vacancy will be filled.

To provide for an orderly transition and to preserve the requirement that approximately one-third of the elected board members are elected each year, the board may extend the term of an elected commissioner for a period not exceeding one year and the authorized membership of the board will be enlarged for the period affected.

An elected commissioner whose district is merged with another district as the result of a revision of commissioner election districts may nevertheless serve the full term for which the commissioner was elected and the authorized membership of the board will be temporarily enlarged for that purpose.

Sec. 4. Nomination and Election of Commissioners. A commissioner is elected by the active members having their principal offices in the election district. To be nominated, a member must have his or her principal office in the election district and file a petition signed by at least 5 persons entitled to vote for the nominee with the secretary at the principal office of the State Bar between April 1 and April 30. Voting eligibility is determined annually on May 1. Before June 2, the secretary shall mail or electronically deliver a ballot to everyone entitled to vote. A ballot will not be counted unless marked and returned to the secretary at the principal office of the State Bar in a sealed envelope bearing a postmark date not later than June 15, or returned electronically or telephonically in conformity with State Bar election procedure not later than June 15. A board of 3 tellers appointed by the president shall canvass the ballots, and the secretary shall certify the count to the supreme court clerk. A member of or a candidate for the board may not be a teller. The candidate receiving the highest number of votes will be declared elected. In the case of a tie vote, the tellers shall determine the

APPENDIX VII PROPOSED CHANGES TO STATE BAR RULES SUBMITTED BY THE BOARD OF COMMISSIONERS

successful candidate by lot. In an election in which terms of differing length are to be filled, the successful candidate with the lowest vote shall serve the shortest term to be filled.

Sec. 5. Vacancy. The board shall fill a vacancy among the elected commissioners and the Supreme Court shall fill a vacancy among the appointed commissioners, to serve the remainder of an unexpired term. If an elected commissioner moves his or her principal office out of his or her election district, the board shall declare that a vacancy exists. If an elected or appointed commissioner does not attend two consecutive meetings of the board without being excused by the president because of a personal or professional emergency, the president shall declare that a vacancy exists.

Sec. 6. Meetings. The board shall meet during the annual meeting of the State Bar and before the convening of the assembly and shall hold not less than 4 meetings each year. The interval between board meetings may not be greater than 3 months. A special meeting may be held at the president's call and must be held at the secretary's call at the request of three or more board members. At a meeting, a majority of the board constitutes a quorum.

Comment [O17]: Committee considered increasing number but decided to stay at three

Sec. 7. Voting. Each member of the board may cast only one vote. Voting by proxy is not permitted.

Rule 6. Representative Assembly

Comment [O18]: The Representative Assembly's leadership is reviewing these rules for possible changes.

The Rules Committee felt that a continuation of the role of the Representative Assembly was to be embraced

Sec. 1. Powers, Functions and Duties. The Representative Assembly is the final policy-making body of the State Bar. No petition may be made for an increase in State Bar dues except as authorized by the Representative Assembly.

Sec. 2. Membership. The assembly consists of:

(1) 142 elected representatives.

(2) 8 commissioner representatives who are the members of the executive committee of the Board of Commissioners. No other member of the board may serve in the assembly.

Notwithstanding the provisions of this section, all representatives previously appointed by the Supreme Court shall serve until the end of their terms. The provisions of Section 6 with regard to the declaration of a vacancy shall also apply, where applicable, to the remaining appointed representatives. Vacancies in appointed positions shall not be filled. In order to achieve the increase in the number of elected representatives from 130 to 142, the assembly shall allocate additional seats each year as necessary to replace former appointed representatives whose terms expire or whose seats have become vacant.

Sec. 3. Election Districts; Apportionment. The assembly shall apportion the representatives every 6 years. The judicial circuits are the election districts. Each judicial circuit is entitled to one representative. The remaining seats are to be apportioned among the circuits on the basis of lawyer population, determined on February 1 of the reapportionment year. If as a result of the reapportionment any circuit becomes entitled to fewer representatives than are currently elected therefrom, the assembly representatives from that circuit may nevertheless serve the full terms for which they were elected and the authorized membership of the assembly will be temporarily enlarged for that purpose.

Sec. 4. Nomination and Election of Representatives. A representative is elected by the active members having their principal offices in a judicial circuit. To be nominated, a member must have his or her principal office in the judicial circuit and file a petition signed by at least 5 persons entitled to vote for the nominee with the secretary at the principal office of the State Bar between April 1 and April 30. Voting eligibility is determined annually on May 1. Before June 2, the secretary shall mail or electronically deliver a ballot to everyone entitled to vote. When an assembly member seeks reelection, the election notification must disclose his or her incumbency and the number of meetings of the assembly that the incumbent has attended in the following form: "has attended of meetings during the period of [his or her] incumbency." A ballot may not be counted unless marked and returned to the secretary at the principal office of the State Bar in a sealed envelope bearing a postmark date not later than June 15, or returned electronically or telephonically in conformity with State Bar election procedure not later than June 15. A board of tellers appointed by the president shall canvass the ballots and the secretary shall certify the count to the supreme court clerk. A member of or candidate for the assembly may not be a teller. The candidate receiving the highest number of votes will be declared elected. In the case of a tie vote, the tellers shall determine the successful candidate by lot. An election will occur in each judicial circuit every 3 years, except that in a judicial circuit entitled to 3 or more representatives, one-third will be elected each year. If a short-term representative is to be elected at the same election as a full-term one, the member with the higher vote total is elected to the longer term.

Sec. 5. Terms. An elected representative shall serve a three-year term beginning with the adjournment of the annual meeting following the representative's election and until his or her successor is elected. A representative may not continue to serve after completing two successive three-year terms unless service is extended under the provisions of Rule 7, Section 2.

Sec. 6. Vacancy. If an elected representative ceases to be a member of the State

Bar of Michigan, dies during his or her term of office, moves his or her principal office out of the judicial circuit he or she represents, or submits a written resignation acceptable to the chairperson, the chairperson shall declare that a vacancy exists. If an elected representative does not attend two consecutive meetings of the assembly without being excused by the chairperson because of a personal or professional emergency, or does not attend three consecutive meetings of the assembly for any reason or reasons, the chairperson shall declare that a vacancy exists.

When a vacancy exists, the remaining representatives from the affected judicial circuit or, if there are none, the State Bar-recognized local bar associations in the affected judicial circuit, shall nominate a successor prior to the next meeting of the assembly. The assembly may appoint such nominee or, in the event of failure to receive such nomination, any lawyer from the affected judicial circuit, to fill the vacancy, effective immediately upon such appointment and continuing until the position is filled by the election process.

In the event that at the time a vacancy arises under this rule more than eighteen months remain in the term of an elected representative, there will be an election for the unexpired term at the next annual election of representatives. If there are less than eighteen months remaining in the term of an elected representative when a vacancy arises, no interim election will be held. The interim appointment ends when the secretary certifies the election count, and the person elected shall take his or her seat immediately.

Sec. 7. Meetings. The assembly shall meet:

(1) during the annual meeting of the State Bar;

(2) annually in March or April; and

(3) at any other time and place it determines.

A special meeting may be called by the Board of Commissioners, or by the chairperson and clerk, who shall determine the time and place of such meeting. A special meeting must be called by the chairperson on the written request of a quorum of the Representative Assembly. Fifty members constitute a quorum. The chairperson of the assembly presides at all of its meetings. The assembly may adopt rules and procedures for the transaction of its business not inconsistent with these rules or the bylaws of the State Bar. A section chairperson is entitled to floor privileges without a vote when the assembly considers a matter falling within the section's jurisdiction.

Sec. 8. Voting. Each member of the assembly may cast only one vote. Voting by proxy is not permitted.

Rule 7. Officers

Sec. 1. President, President-elect, Vice-president, Secretary, and Treasurer. The officers of the Board of Commissioners of the State Bar of Michigan are the president, the president-elect, the vice-president, the secretary, and the treasurer. The officers serve for the year beginning with the adjournment of the annual meeting following their election and ending with the adjournment of the next annual meeting. A person may serve as president only once.

After the election of board members but before the annual meeting each year, the Board of Commissioners shall elect from among its members, by majority vote of those present and voting, if a quorum is present:

(1) a vice-president who, after serving a one-year term, automatically succeeds to the office of president-elect for a one-year term, and then to the office of president, for a one-year term;

(2) a secretary; and

(3) a treasurer.

If a vice-president is not able to assume the duties of president-elect, the Board of Commissioners also shall elect from among its members, by majority vote of those present and voting, if a quorum is present, a president-elect who becomes president on the adjournment of the next succeeding annual meeting.

A commissioner whose term expires at the next annual meeting is not eligible for election as an officer unless the commissioner has been reelected or reappointed for another term as a commissioner. If the remaining term of a commissioner elected vice-president or president-elect will expire before the commissioner completes a term as president, the term shall be extended to allow the commissioner to complete the term as president. If the term of an elected commissioner is so extended, the authorized membership of the board is increased by one for that period; a vacancy in the district the vice-president or president-elect represents exists when the term as a commissioner would normally expire, and an election to choose a successor is to be held in the usual manner.

No person holding judicial office may be elected or appointed an officer of the Board of Commissioners. A judge presently serving as an officer may complete that term but may not thereafter, while holding judicial office, be elected or appointed an officer. A person serving as an officer who, after the effective date of this amendment, is elected or appointed to a judicial office, must resign as an officer of the board on or before the date that person assumes judicial office.

Comment [NW19]: This sentence was retained consistent with the RA language in Section 2 below.

Sec. 2. Chairperson, Vice-Chairperson, and Clerk of the Assembly. A clerk of the Representative Assembly chosen from the elected or appointed membership of

the assembly must be elected by the assembly at each annual meeting by majority vote of those present and voting, if there is a quorum present. The clerk serves a 1-year term beginning with the adjournment of the annual meeting at which he or she is elected and ending with the adjournment of the next annual meeting at which he or she becomes vice-chairperson for a one-year term concluding with the next annual meeting, at which time he or she becomes chairperson for a one-year term concluding with the next annual meeting. If a representative is elected clerk of the assembly with only one or two years of his or her term remaining, the term of the representative is extended for an additional year or years to permit him or her to serve consecutive terms as vice-chairperson, and chairperson. If the term of an elected representative is so extended, the authorized membership of the assembly is increased by one for the appropriate period; a vacancy in the judicial circuit the chairperson-elect or chairperson represents exists when his or her term would normally expire and an election conducted to choose a successor having the vote to which the representative for that judicial circuit is entitled is to be held in the usual manner. Assembly officers may not concurrently hold another State Bar office and may not be reelected as assembly officers.

No person holding judicial office may be elected or appointed an officer of the Representative Assembly. A judge presently serving as an officer may complete that term but may not thereafter, while holding judicial office, be elected or appointed an officer. A person serving as an officer who, after the effective date of this amendment, is elected or appointed to a judicial office must resign as an officer of the assembly on or before the date that person assumes judicial office.

Sec. 3. Duties of Officers. The president shall preside at all State Bar meetings and at all meetings of the Board of Commissioners and an Executive Committee established according to bylaw. He or she shall make appointments to and designate all chairpersons of standing and special committees, and be an *ex officio* member of such committees.

Comment [O20]: Clarifies the BOC committee appointments

The president-elect shall be a member of the Executive Committee, and shall perform the duties assigned by the president. If the president is unable to perform his or her duties or is absent from a meeting of the ~~b~~Board or the State Bar, the president-elect shall perform the duties of the president while the disability or absence continues.

Comment [O21]: Clarifies that the officers are part of the executive committee

The vice-president shall be a member of the Executive Committee, and shall perform the duties assigned by the president and if the president and president-elect are unable to perform their duties or are absent from a meeting of the board

or the State Bar, the vice-president shall perform the duties of the president while the disability or absence continues.

The secretary shall be a member of the Executive Committee, and shall act as secretary of the Board of Commissioners, prepare an annual report, and perform the duties usually incident to that office.

The treasurer shall be a member of the Executive Committee, and shall prepare an annual report, and perform the duties usually incident to that office. The treasurer will furnish bond that the Board of Commissioners directs.

The Board of Commissioners may assign other duties to the president, president-elect, vice-president, secretary, and treasurer.

Comment [O22]: This is the "catch-all" provision where more specific officer duties can be assigned.

The chairperson of the Representative Assembly shall preside at all of its meetings and perform the other duties usually incident to that office, together with additional duties the assembly may assign. The vice-chairperson shall perform duties assigned by the chairperson or as the assembly may assign. The clerk of the assembly shall act as secretary of the assembly and perform the other duties the assembly assigns. If the chairperson is unable to perform his or her duties or is absent from a meeting of the assembly, the vice-chairperson shall perform the chairperson's duties while the disability or absence continues.

Sec. 4. Vacancies. If any office other than that of president or chairperson or vice-chairperson or clerk of the Representative Assembly becomes vacant, the Board of Commissioners shall fill the office for the unexpired term. If the office of president becomes vacant, the president-elect becomes president for the unexpired term, and may continue as president at the adjournment of the next annual meeting. If the office of president becomes vacant when the office of president- elect is also vacant, the Board of Commissioners shall fill both vacancies for the unexpired term. If the office of chairperson of the Representative Assembly becomes vacant, the vice-chairperson becomes chairperson for the unexpired term, and may continue as chairperson at the adjournment of the next annual meeting. If the office of chairperson becomes vacant when the office of vice-chairperson or clerk is also vacant, the assembly shall fill all vacancies for the unexpired term at its next meeting; the secretary shall convene and preside at the meeting until successors are elected.

Rule 8. Executive Director

The Board of Commissioners may appoint an Executive Director, and such assistants, who shall serve on a full-time or part-time basis during such period and for such compensation as the Board of Commissioners may

determine, but shall at all times be subject to removal by the board with or without cause. The Executive Director shall perform such duties as the Board of Commissioners may from time to time prescribe. The Executive Director shall have the privilege of the floor at all meetings of the Board of Commissioners, Representative Assembly, sections, section councils, committees, or subcommittees, without vote.

Rule 9. Disbursements

The Board of Commissioners shall make the necessary appropriations for disbursements from the funds of the treasury to pay the necessary expenses of the State Bar of Michigan, its officers, and committees. It shall be the duty of the board to cause proper books of account to be kept and to have them audited annually by a certified public accountant. On or before December 31 each year the board shall cause to be presented an audited financial statement of the receipts and expenditures of the State Bar of Michigan for the fiscal year ending the preceding September 30. Such a statement shall also be filed with the Clerk of the Supreme Court and shall be published in the January issue of the official publication of the State Bar of Michigan.

No officer, member of the Board of Commissioners, member of the Representative Assembly, or member of a committee or section of the State Bar of Michigan shall receive compensation for services rendered in connection with the performance of his or her duties. They may, however, be reimbursed for the necessary expenses incurred in connection with the performance of their duties.

Rule 10. Annual Meeting

~~There shall be an annual meeting of~~ The State Bar shall hold an annual meeting, which shall include a meeting of the Board of Commissioners and the Representative Assembly and~~, the annual congress, as well~~ as meetings of sections and committees that the Board of Commissioners may set. The Board of Commissioners shall designate the time (no later than November 1) and place of the annual meeting.

Comment [O23]: No need for annual congress

Rule 11. Committees

Sec. 1. Appointment. Committees of the State Bar of Michigan may be established for the promotion of the objects of the State Bar of Michigan, and shall consist of Committee ~~limited numbers of~~ members appointed by the president with their number, jurisdiction, method of selection and tenure determined in accordance with the bylaws and the resolution establishing the committee. In the event of the resignation, death or disqualification of any member of a committee, the president ~~shall~~ may appoint a successor to serve for the unexpired term.

Sec. 2. Classes. The classes of committees of the State Bar of Michigan shall

be:

(a) Standing committees, for the investigation and study of matters relating to the accomplishment of the general purposes, business and objects of the State Bar of Michigan of a continuous and recurring character, within the limitation of the powers conferred.

(b) Special committees, created by resolution of the Board of Commissioners defining the powers and duties of such committees, to investigate and study matters relating to the specific purposes, business and objects of the State Bar of Michigan of an immediate or non-recurring character. The life of any special committee shall expire at the end of the next annual meeting following its creation unless continued by action of the board.

~~*Section 3. Powers.* The Committee on Arbitration of Disputes Among Lawyers, which has the authority to arbitrate disputes voluntarily submitted by lawyers, has the power to issue subpoenas (including subpoenas dukes talcum), to take testimony under oath, and to rule on the admissibility of evidence according to the rules of evidence applicable to civil cases.~~

Comment [O24]: Committee decided to delete this provision

Rule 12. Sections

Sec. 1. Establishment and Discontinuance. New sections may be established and existing sections may be combined or discontinued or their names changed by the Board of Commissioners in a manner provided by the bylaws.

Sec. 2. Bylaws. Each section shall have bylaws not inconsistent with these Rules or the bylaws of the State Bar of Michigan. Section bylaws or amendments thereof shall become effective when approved by the Board of Commissioners.

Sec. 3. Existing Sections. Sections in existence at the time of the adoption of these Rules shall continue unless changed by action of the Board of Commissioners.

Rule 13. Initiative

~~Three percent~~ Twenty-five or more active members of the State Bar may submit a written petition to require consideration by the Representative Assembly of any question of public policy germane to the function and purposes of the State Bar; the assembly may take action on the petition that it finds proper pursuant to its procedures. The petition must be filed with the clerk at least ~~90~~ 45 days before any meeting of the Representative Assembly at which the subject matter is to be considered.

Comment [O25]: Committee felt that this new language will liberalize the opportunity to undertake an "initiative", to motivate a recalcitrant leadership

~~**Rule 14. Congress**~~

~~*Section 1. Membership and Meeting.* Twenty-five or more active members~~

~~of the State Bar may file a written petition with the secretary at the principal office of the State Bar no later than 90 days before the annual meeting of the State Bar, to require the convening of a congress of the active members of the State Bar in conjunction with the annual meeting to consider the subject matter raised in the petition. One hundred active members constitute a quorum. The president is the presiding officer of the congress and the secretary is the secretary of the congress.~~

~~*Section 2. Agenda.* The congress shall consider all matters proposed for inclusion on its agenda in the petition requesting it's convening. The congress may take action on the matters arising on its agenda that it deems warranted. The action is advisory only and must be communicated to the Board of Commissioners and to the Representative Assembly, but the congress may by a two-thirds vote place an issue on the agenda of the board or assembly. If an issue so initiated is first considered by the board, the board shall notify the assembly of its action, and the assembly shall concur with, modify, or reverse the board's action.~~

Comment [O26]: Committee recommends removing this entire provision

Rule 15. Admission to the Bar

Comment [O27]: The changes recommended in Rule 15 are minor and are at the advice of Dawn Evans. Dawn was quite adamant that this rule has worked quite well for the bar over the years and there is no reason to fix something that is not broken.

Section 1. Character and Fitness Committees.

(1) A standing committee on character and fitness consisting of ~~18~~ 24 active members of the bar shall be appointed annually by the president of the State Bar of Michigan, who shall designate its chairperson. District character and fitness committees consisting of active members of the bar in each commissioner election district shall be appointed, and their chairpersons designated, by the State Bar commissioners within the respective districts, subject to approval by the State Bar Board of Commissioners.

(2) The standing committee and the district committees under its supervision shall investigate and make recommendations with respect to the character and fitness of every applicant for admission to the bar by bar examination and, upon request of the Board of Law Examiners, the character and fitness of any other applicant for admission.

(3) The State Bar of Michigan shall assign staff to assist the standing and district committees in the discharge of their duties.

(4) The standing committee and each district committee shall meet at the times and places designated by their respective chairpersons. ~~Five~~ Three members of the standing committee or 3 members of a district committee shall constitute a quorum. The action of a majority of those present constitutes the action of a committee.

(5) State Bar recommendations concerning the character and fitness of an applicant for admission to the bar shall be transmitted to the Board of Law Examiners in accordance with the following procedure:

(a) An applicant shall be recommended favorably by State Bar staff

without referral to committee when investigation of all past conduct discloses no significant adverse factual information.

(b) In all other instances, applicants shall be referred to the appropriate district committee for personal interview unless the chairperson or other member of the standing committee designated by the chairperson determines that any adverse information reflected in the file would under no circumstance justify a committee determination that the applicant does not possess the character and fitness requisite for admission, in which event the application shall be transmitted to the Board of Law Examiners with a favorable recommendation.

(c) District committees shall, under the supervision and direction of the standing committee, investigate the character and fitness (other than scholastic) of every applicant referred to them. They shall do so by informal interview and any additional investigation which to them seems appropriate. District committees shall make a written report and recommendation to the standing committee concerning each applicant referred to them.

(d) Upon receiving a district committee report and recommendation, the standing committee shall endorse the recommendation, take the recommendation under advisement pending the receipt of additional information that it deems necessary, remand the recommendation to the district committee with instructions for further proceedings, or reject the recommendation and conduct a hearing de novo.

(e) If the standing committee endorses a report and recommendation of a district committee that an applicant has the requisite character and fitness for admission to the bar, it shall transmit that recommendation to the Board of Law Examiners.

(f) If the standing committee endorses a report and recommendation of a district committee that an applicant does not have the requisite character and fitness for admission to the bar, it shall furnish the applicant with a copy of the report and recommendation and advise the applicant of the right to a formal hearing before the standing committee provided request therefor is made in writing within 20 days. If the applicant requests a formal hearing within the time permitted, a hearing shall be scheduled before the standing committee. If the applicant does not request a formal hearing before the standing committee within the time permitted, the standing committee shall thereupon transmit the report and recommendation of the district committee to the Board of Law Examiners.

(g) At the conclusion of any hearing conducted by the standing committee it shall transmit its report and recommendation to the Board of Law Examiners.

(6) Each applicant is entitled to be represented by counsel at the applicant's own expense at any stage of character and fitness processing.

(7) Information obtained in the course of processing an application for admission to the bar may not be used for any other purpose or otherwise disclosed without

the consent of the applicant, by order of the Supreme Court, or in response to a subpoena issued by the Attorney Grievance Commission pursuant to MCR 9.112(D).

(8) Notwithstanding any prohibition against disclosure in this rule or elsewhere, the standing committee shall disclose information concerning a bar application to the Attorney Grievance Commission: (a) during the course of the commission's investigation of a disciplined lawyer's request for reinstatement to the practice of law; or (b) if the standing committee learns that a lawyer, while an applicant in the course of the character and fitness process, made material misrepresentations, fabricated evidence, or otherwise engaged in acts of substantial dishonesty that demonstrate a lack of good moral character and general fitness to warrant admission to the bar. Upon receiving a request for character and fitness information and proof that a disciplined lawyer is seeking reinstatement to the practice of law, the standing committee shall notify the lawyer that the commission has requested the lawyer's confidential file. The standing committee then shall disclose to the commission all information relating to the lawyer's bar application. In circumstances governed by (b), the standing committee shall disclose to the commission all information relating to the lawyer's bar application, including any information obtained or received subsequent to the application process that has led to the standing committee's reasonable belief that the lawyer, while an applicant, engaged in the type of conduct described in (b). The commission and the grievance administrator shall protect such information, as provided in MCR 9.126(D). The administrator shall submit to a hearing panel, under seal, any information obtained under this rule that the administrator intends to use in a reinstatement proceeding. The hearing panel shall determine whether the information is relevant to the reinstatement proceeding, and only upon such a determination may the administrator use the information in a public pleading or proceeding.

(9) Any information pertaining to an application for admission to the bar submitted to a district committee, the standing committee, the Board of Law Examiners or the Supreme Court must also be disclosed to the applicant.

(10) A person is absolutely immune from suit for statements and communications transmitted solely to the State Bar staff, the district committee, the standing committee or the Board of Law Examiners, or given in the course of an investigation or proceeding concerning the character and fitness of an applicant for admission to the bar. The State Bar staff, the members of the district and standing committees and the members and staff of the Board of Law Examiners are absolutely immune from suit for conduct arising out of the performance of their duties.

(11) The standing committee has the power to issue subpoenas (including subpoenas duces tecum), to take testimony under oath, and to rule on the admissibility of evidence guided, but not strictly bound, by the rules of evidence applicable to civil cases. An applicant is entitled to use the committee's subpoena power to obtain relevant evidence by request submitted to the chairperson of the standing committee.

(12) Formal hearings conducted by the standing committee shall be

suitably recorded for the later production of transcripts, if necessary.

(13) An applicant is entitled to a copy of the entire record of proceedings before the standing committee at the applicant's expense.

(14) An applicant is entitled to at least 20 days notice of the first scheduled district committee interview and standing committee hearing. For any subsequent calendaring of a district committee interview or standing committee hearing, the applicant is entitled to at least 10 days notice. The initial notice shall contain the following information:

(a) The time and place of the interview or hearing;

(b) A statement of the conduct which is to be the subject of the interview or hearing;

(c) The applicant's right to be represented by counsel; and

(d) A description of the procedures to be followed at the interview or hearing, together with copies of any applicable rules.

(15) An applicant has the burden of proving by clear and convincing evidence that he or she has the current good moral character and general fitness to warrant admission to the bar.

(16) Upon request made no later than 10 days prior to the first scheduled interview or hearing, the applicant and State Bar staff may demand of the other that they be furnished with the identity of any witnesses to be produced at the interview or hearing as well as an opportunity for inspecting or copying any documentary evidence to be offered or introduced.

(17) If an application is withdrawn following an adverse recommendation by a district committee or the standing committee, or, if following such an adverse recommendation the applicant fails to appear for further proceedings or takes no further action, the standing committee shall notify the applicant that the application for admission to the bar may not be renewed until the expiration of two years from the date of the adverse recommendation by the district committee or by the standing committee, or such greater period as the standing committee specifies, up to a maximum period of five years. The notification shall specify the reasons for the imposition of a waiting period that is longer than two years.

(18) An applicant who has been denied character and fitness certification for admission to the bar by the Board of Law Examiners may not reapply for character and fitness certification for a period of two years following the denial or such greater period specified in the decision denying certification, up to a maximum period of five years. The decision shall specify the reasons for the imposition of a waiting period that is longer than two years.

(19) The standing committee may adopt rules of procedure governing the processing and investigation of applications for admission to the bar and proceedings before district committees and the standing committee not inconsistent with these rules.

(20) An applicant is entitled to review by the Board of Law Examiners of any

report and recommendation filed with the board concluding that the applicant does not have the character and fitness requisite for admission.

(21) Every applicant for admission by examination and any other applicant whose application is submitted to the standing committee on character and fitness for evaluation and recommendation shall pay to the State Bar of Michigan a fee of $225 for the character and fitness investigation authorized by this rule. An additional fee of $100 shall be required for character and fitness evaluations related to applications for the February examination that are postmarked after November 1, and applications for the July examination that are postmarked after March 1.

Sec. 2. Foreign Attorney; Temporary Permission. Any person who is duly licensed to practice law in another state or territory, or in the District of Columbia, of the United States of America, or in any foreign country, may be temporarily admitted under MCR 8.126. The State Bar of Michigan shall inform the Attorney Grievance Commission when an applicant for temporary admission pays the required fee pursuant to MCR 8.126.

Sec. 3. Procedure for Admission; Oath of Office.

(1) Each applicant to whom a certificate of qualification has been issued by the board of law examiners is required to appear personally and present such certificate to the Supreme Court or one of the circuit courts of this state. Upon motion made in open court by an active member of the State Bar of Michigan, the court may enter an order admitting such applicant to the bar of this state. The clerk of such court is required to forthwith administer to such applicant in open court the following oath of office:

I do solemnly swear (or affirm):

I will support the Constitution of the United States and the Constitution of the State of Michigan;

I will maintain the respect due to courts of justice and judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with my client's business except with my client's knowledge and approval;

I will abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will never reject, from any consideration personal to myself, the cause of

the defenseless or oppressed, or delay any cause for lucre or malice;

I will in all other respects conduct myself personally and professionally in conformity with the high standards of conduct imposed on members of the bar as conditions for the privilege to practice law in this state.

(2) The applicant is required to subscribe to such oath of office by signing a copy and to register membership in the State Bar of Michigan in the manner prescribed in Rule 2 of these rules and to pay the required dues before practicing law in this state. The clerk shall record such admission, in the journal of such court, and shall preserve such oath of office in the records of the court. A roll of all persons admitted to the bar shall be kept in the office of the clerk of the Supreme Court.

(3) Admission to the bar of this State is an authorization to practice as an attorney and counselor in every court in this State.

Rule 16. Unauthorized Practice of the Law

The State Bar of Michigan is hereby authorized and empowered to investigate matters pertaining to the unauthorized practice of law and, with the authority of its Board of Commissioners, to file and prosecute actions and proceedings with regard to such matters.

Rule 19. Confidentiality of State Bar Records

Sec. 1. Except as provided below, in Rule 15, or as otherwise provided by law, records maintained by the state bar are open to the public pursuant to the State Bar of Michigan Access to Information Policy.

Sec. 2. Records and information of the Client Protection Fund, Ethics Program, Lawyers and Judges Assistance Program, Practice Management Resource Center Program, and Unauthorized Practice of Law Program that contain identifying information about a person who uses, is a participant in, is subject to, or who inquires about participation in, any of these programs, are confidential and are not subject to disclosure, discovery, or production, except as provided in section (3) and (4).

Sec. 3. Records and information made confidential under section (1) or (2) shall be disclosed:

(a) pursuant to a court order;

(b) to a law enforcement agency in response to a lawfully issued subpoena or search warrant, or;

(c) to the attorney grievance commission or attorney discipline board in connection with an investigation or hearing conducted by the commission or board, or sanction imposed by the board. Sec. 4. Records and information

made confidential under section (1) or (2) may be disclosed:

(a) upon request of the state bar and approval by the Michigan Supreme Court where the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance, or

(b) At the discretion of the state bar, upon written permission of all persons who would be identified by the requested information.

APPENDIX VIII COMMENTS SUBMITTED BY THE REPRESENTATIVE ASSEMBLY

SBM. STATE BAR OF MICHIGAN

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306 Townsend Street
Michael Franck Building
Lansing, MI
48933-2012

May 16, 2014

Hon. Alfred M. Butzbaugh
189 Wayne St
Saint Joseph, MI 49085-1133

Dear Hon. Alfred M. Butzbaugh, Chair of the Task Force, Administrative Order 2014-5:

On April 26, 2014, the Representative Assembly met and adopted the following Proposal (the "Proposal"):

> Should the Representative Assembly make recommendations and/or provide comments to the Task Force created by Administrative Order 2014-5 or directly to the Supreme Court (*i*) on whether the role and functions of the Assembly support the State Bar's status as a mandatory bar; and (*ii*) on any proposed revisions of the administrative orders and court rules governing the State Bar as they relate to the Assembly in order to improve the governance and operation of the State Bar, through the following two steps:
>
> a. Commission the Special Committee, recently established by the Assembly Chairperson, with the responsibility to summarize the comments and recommendations made at this April 26th meeting and incorporate them as part of an Assembly report responsive to Administrative Order 2014-5, and submit such report to the Task Force or the Supreme Court directly, or after a future review by the Assembly, as soon as practicable, and
>
> b. Open the floor of the April 26th Assembly Meeting for member comments on the two matters as provided in (i)-(ii) above.

The Special Committee of the Representative Assembly, as directed by the Proposal, met and summarized comments and recommendations expressed on the floor during the April 26, 2014 Assembly Meeting. Enclosed for the Task Force's review and consideration is the Special Committee report that was prepared consistent with and as directed by the Proposal. Also enclosed is an excerpt of the April 26, 2014 Assembly Meeting transcript that includes the transcript's record of floor-discussion that occurred during the April 26, 2014, Assembly Meeting consistent with part (b) of Proposal.

Very truly yours,

Kathleen M. Allen, Chair
Representative Assembly 2013-2014

cc: Brian D. Einhorn, President, State Bar of Michigan
Janet Welch, Executive Director, State Bar of Michigan
Vanessa P. Williams, Vice-Chair, Representative Assembly
Daniel D. Quick, Clerk, Representative Assembly
Representative Assembly Special Committee: Krista Licata- Haroutunian, Robert W. LaBre, Carl E. Chioini, Richard M. Barron, Eilisia G. Schwarz, Michael J. Blau, Lee Hornberger Kimberly A. Breitmeyer

May 16, 2014

Task Force on Administrative Order No. 2014-05

RE: Representative Assembly's Position on Administrative Order 2014-05

To the Supreme Court Members of the Task Force,

The Representative Assembly (RA), the final policy making body of the State Bar of Michigan (Bar), met in late April and discussed the topics that you have been assigned to investigate in Administrative Order No. 2014-5.

The consensus of the RA membership was that a mandatory bar with its current representative structure of Board of Commissioners (BOC) and RA (with its final policy making body status) was better suited to represent the Bar membership as a whole, as opposed to a voluntary Bar; and that the RA was a necessary component of our profession regardless of whether the Bar was mandatory or voluntary. Members who also belong to other state's voluntary Bar associations stated that the diversity of geography, practice areas, political viewpoints, and firm size are limited in voluntary bars, and that Michigan Bar members' First Amendment rights are much better served by having a mandatory bar and the continued existence of the RA. There was also consensus by the RA that the Bar has been functioning well as a mandatory Bar for the past 80 years.

While the main issue being reviewed by the Task Force may be whether the State Bar should continue as a mandatory bar or shift to a voluntary bar - the Task Force should take into account the role the representative bodies play in the life of the Bar and how that would change if the Bar were no longer mandatory, as was discussed at our April meeting:

1. The Board of Commissioners, the original representative body of the Bar, created with Supreme Court agreement, the second and larger representative body of the Bar - the Representative Assembly. While the BOC meets more frequently and has members from around the state, including the Executive Board, the officers of the RA, with elected and appointed members, its number is only 32 and has 9 districts.
2. The Representative Assembly has 150 elected members – a uniquely diverse cross-section of the over 44,000 members of the Bar across all 57 Circuits and is best suited to make final policy decisions most representative of the Bar's members and the clients they serve. The often vigorous debates at meetings illustrate how much a representative body like the RA is necessary to express attorneys' viewpoints and opinions as protected by the First Amendment. Votes that take place at the end of these discussions are sometimes unanimous and at other times very close.

3. Without the Bar being mandatory – the RA feels that these representative bodies would only speak for a portion of the Bar's attorneys, and not be an integral part of the debate and deliberative process on issues. If it is not part of that process, how would the viewpoints of attorneys from smaller circuits ever come in contact with the viewpoints of the larger circuits and vice versa?
4. Without a body like the RA how would volunteer leaders ever get a sense of what was going on outside of their own practice and learn of other perspectives, best practices, and professional problems facing attorneys and the public? Voluntary bars generally focus on limited practice or geographic areas - the State Bar and its representative bodies allow for voices to be heard not only from a geographical standpoint but also from a broad spectrum of perspectives.
5. Additionally, if the Bar were voluntary, the likelihood would be great that "dues" of some kind would still be paid just to the State or some other new or existing agency that would take over the tasks that the State Bar currently handles without the benefits.

Our concern is that ultimately we, as a representative body of attorneys of Michigan statewide, would lose the ability for our voice to be heard if the State Bar of Michigan no longer existed as a mandatory bar, only to become a voluntary bar where the likelihood is great one geographic region or perspective would overwhelm all of the others.

In the April RA meeting certain suggestions were brought up to improve the Bar in relation to the RA and the membership as a whole.

A. One point was to increase communication via the Bar website to the membership in a more informative and user-friendly way as to issues and points of discussion, as well as meeting more frequently than our usual two times a year and possibly conducting some RA business electronically.

B. There was also discussion with regard to the concept that we believe *Keller* and AO 2004-01 (which restrains the Bar from taking ideological positions on legislative action) have been followed, but that there needs to be continuing vigilance by both representative bodies to continue to follow the *Keller* decision and AO 2004-01, with possible procedural changes to assist in that ongoing oversight, namely having Bar counsel submit an opinion to the RA/BOC as to *Keller* permissibility with analysis, and then the RA/BOC votes on *Keller* admissibility (super majority) and upon a positive vote, move on to a substantive vote (majority).

Other internal matters were also discussed relating to the interplay between the Executive, BOC, and RA and how that interplay might be improved, including better interactions with the RA Section and Committee liaisons; better communication by the RA with general membership and each other; being more responsive to the speed with which issues arise with today's technology, including

possibly lessening the amount of time for notice of action items; and also maintaining the personal aspect of the group that in person meetings foster.

Overwhelmingly the RA's response was that a mandatory bar was the best way to accomplish everyone's goals for the legal profession as well as allowing our voice in the representative bodies to be heard. Overwhelmingly the RA felt that the RA was needed when created in the 70s and is even more needed now that the population of attorneys has increased many fold since then and provides a forum for attorney to express First Amendment speech from every Circuit of our state.

We thank you for this opportunity, have attached the relevant portion of our April 2014 transcript, and are open to any further questions you may have.

> "...This body is composed of, we just heard, 150 members from across the state, across all political lines. It's not a political body. Young members, old members, etc. In the years I have been on the Representative Assembly ... I have heard many issues that have been brought up that have been contentious, and those in the larger circuits, the circuits with the largest members, tend not to necessarily carry the day on any given issue. The smaller voices, the smaller circuits, the smaller opinions, they get heard here, and they often have fantastic ideas that are then debated and change the outcome of the policy decision of the State Bar.
>
> And that is the point. If you eliminate a body like this or eliminate the forced nature of the State Bar as mandatory, I think you lose the voice of the smaller voice to come and get heard. ..."
>
> Jeff Linden, RA, 6th Circuit
> April 26, 2014 meeting

Committee Report
Special Committee, Representative Assembly

Richard Baron – 7th Circuit
Michael J. Blau – 6th Circuit
Kimberly A. Breitmeyer – 30th Circuit
Carl E. Chioini - 16th Circuit
Krista Licata Haroutunian – 6th Circuit
Lee Hornberger – 13th Circuit
Robert W. LaBre – 43rd Circuit

STATE OF MICHIGAN

STATE BAR OF MICHIGAN

MEETING of the REPRESENTATIVE ASSEMBLY of the STATE BAR OF MICHIGAN
_____/

EXCERPT

Proceedings had by the Representative Assembly of the State Bar of Michigan at Lansing Community College MTEC Center, West Campus, 5708 Cornerstone, Seminar Rooms 1-4, Lansing, Michigan, on Saturday, April 26, 2014, at the hour of 9:30 a.m.

AT HEADTABLE:

KATHLEEN ALLEN, Chairperson
VANESSA WILLIAMS, Vice-Chairperson
Daniel Quick, Clerk
JANET WELCH, Executive Director
HON. JOHN CHMURA, Parliamentarian
ANNE SMITH, Staff Member

1 Lansing, Michigan
2 Saturday, April 26, 2014
3 9:34 a.m.
4 R E C O R D
5 *
6 *
7 EXCERPT OF PROCEEDINGS
8 *
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10 CHAIRPERSON ALLEN: We are now moving towards
11 the proposals, and our first proposal is consideration
12 of recommendations and/or comments to Michigan
13 Supreme Court Administrative Order No. 2014-5, and the
14 proponent is Carl Chioini. Carl, would you please
15 come to the podium.
16 MR. CHIOINI: Good morning, everybody. I
17 hope you all had an opportunity to review the
18 materials, because I am sort of counting on that. If
19 not, it will be on the screen.
20 We are here this morning to talk about the
21 consideration and the comments of the Supreme Court on
22 Administrative Order 2014-5. When I first heard about
23 this, I really didn't know a lot about it, and
24 Kathleen informed me about it, and since that time did
25 my homework. But we have got to back up a little bit.

1 There is a bill out there by the Senate,
2 Senate Bill 743, that was introduced January 23rd of
3 this year that's a proposal to eliminate the mandatory
4 bar status of the State Bar of Michigan. This is a
5 very hot button topic, I am sure you are all aware of
6 it, whether we are going to continue as a mandatory
7 bar or not.
8 The Board of Commissioners took immediate
9 action on this in February, on February 6, 2014, and
10 they took the position to oppose the bill. They
11 immediately contacted the Supreme Court, and they
12 offered the Supreme Court their full resources and
13 cooperation for a meaningful review of the issue. So
14 it's on a fast track. It's moving very quickly from
15 January when the senate bill was introduced and then
16 to January 23rd when the bill was there, and then to
17 the Board of Commissioners responding to the
18 Supreme Court that they would be cooperating.
19 Ultimately it got down to us, and that's one of the
20 reasons we are here this morning.
21 In February of 2014 the Michigan
22 Supreme Court created the administrative order that we
23 are talking about, this 2014-5, and created a
24 task force to address whether the State Bar, with
25 their current programs and their activities, supports

1 the status as a mandatory bar. The Supreme Court took
2 that step forward. They created a task force. The
3 Task Force was charged with determining whether or not
4 the State Bar dues and its activities can be
5 accomplished by means less intrusive on individual's
6 First Amendment rights in view of the Falk decision.
7 At the same time the order also provided that the
8 Task Force would report and include proposed revisions
9 of the Administrative Orders of the Court Rules and
10 the governance of the State Bar of Michigan.
11 In your materials the Task Force is listed,
12 the members of the Task Force who are going to report,
13 and one of the things we have to consider this morning
14 is our involvement in that. If you look at the
15 proposed motion that's in your materials, that
16 specifically says -- is that on the board? It's not.
17 Just missing my one piece of information.
18 The motion before the body this morning is
19 should the Representative Assembly make
20 recommendations and/or provide comments to this
21 Task Force created by this Administrative Order 2014-5
22 or directly to the Supreme Court on whether the role
23 and functions of the Assembly support the State Bar's
24 status as a mandatory bar; and, number two, on any
25 proposed revisions of the administrative orders and

1 court rules governing the State Bar as they relate to
2 the Assembly in order to improve the governance and
3 operation of the State Bar through the following two
4 steps, and it's a two-step approach.
5 We are asking to create a special commission,
6 recently established by the Chairperson, with the
7 responsibility to summarize and make recommendations
8 at this meeting on April 26 and incorporate them as
9 part of an Assembly report responsive to
10 Administrative Order 2014-5 and submit the reports to
11 the Task Force or the Supreme Court or directly after
12 review by this Assembly as a practical and
13 recommendation to them.
14 If that's the case, then we would have a
15 discussion this morning, if you approve that, of the
16 April 26 meeting for members to comment to provide
17 paragraphs one and two above.
18 That is the motion that's before you this
19 morning to generate something to the Supreme Court or
20 to the State Bar to give them our thought, so to
21 speak, on whether or not this bill should pass or not.
22 Any support?
23 UNIDENTIFIED SPEAKER: Second.
24 CHAIRPERSON ALLEN: Any discussion? No
25 discussion being heard --

1 MR. CHIOINI: We get to use our clickers?
2 CHAIRPERSON ALLEN: Get to use your clickers
3 now.
4 All in favor. Use your clickers.
5 UNIDENTIFIED SPEAKER: Which one do we click?
6 CLERK QUICK: One for yes, two for no, three
7 for abstain.
8 UNIDENTIFIED SPEAKER: How do you know it
9 works?
10 MR. CHIOINI: We will find out in a minute.
11 CLERK QUICK: It's working.
12 Motion passes.
13 CHAIRPERSON ALLEN: Motion passes.
14 For the discussion, I thought rather than
15 have just a group of people come down and talk various
16 ideas and thoughts, I chunked the concepts down. We
17 are going to have 25 minutes for each concept, three
18 minutes per person to talk. You can come up three
19 different times, because the concepts are going to be
20 different. They may interrelate, but I am allowing
21 for you to come back, because I think this is
22 important.
23 Now, when we discuss it to begin with, it's
24 going to be, I have entitled it the governance, okay.
25 How the role and the function of the RA supports the

1 State Bar status as a mandatory Bar. Is this the
2 least intrusive upon the First Amendment rights? I
3 would like you to think about that, and there are
4 other options if you haven't already thought about it
5 and want to talk. We are changing this rule, and we
6 have the rule in front of you.
7 Everybody see this yellow piece of paper.
8 The Rule 6, the Rule 6, Powers, one, The
9 Representative Assembly, the final policy-making body
10 of the State Bar. No petition may be made for an
11 increase in the State Bar dues except as authorized by
12 the Representative Assembly.
13 Would we change this rule to change the
14 governance of this policy and make final policy-making
15 body authority to go with the Board of Commissioners,
16 because, as you know, we have a Board of Commissioners
17 and the RA, so the Board of Commissioners would make
18 the final policy, they implement it, and we become an
19 advisory board to the Board of Commissioners. And we
20 would look at items that are assigned to it, the RA,
21 by the Board of Commissioners and/or the
22 Supreme Court. Would this make the Bar, State Bar,
23 less intrusive upon the First Amendment rights of
24 individuals?
25 Another concept, define the type of policy

1 the Board of Commissioners decides and the type of
2 policies the RA wants to decide.
3 Another concept, the Board of Commissioners
4 makes policy but is ratified by the RA.
5 Another concept, what types of policy does
6 the RA want to ratify with total control.
7 Now, those are some questions that, to be
8 able to hear what your thoughts are with regard to the
9 change of this policy and this rule, of Rule A within
10 our policy, our body of what we do, I would like to
11 have our thoughts, because if we don't have our
12 thoughts right now of what we really want, either
13 remain the way we are or other options, we won't have
14 the time in the future to be able to discuss this or
15 present these ideas to the Task Force.
16 The next 25 minutes would be about the inside
17 of the RA. How do we function more effectively?
18 There has been some criticisms that we are not that
19 effective, we are irrelevant. People don't like
20 coming here because we don't do a lot. Members really
21 don't like it, okay. So we need to look at this. If
22 this is true, this is the time and place to look at
23 it.
24 How do we function more effectively? Loosen
25 the rules to be able to come to the floor to bring

1 subject matters to the floor for discussion? Is the
2 membership too large? Do we want it larger, do we
3 want it smaller? Do we want 25 people, do we want
4 five, do we want 200? We are right now at 150. We
5 began in 1972. Forty-two years later we have moved to
6 150 people. Our membership as of March is 43,000
7 members. Do we fairly and accurately represent, based
8 upon the diversity and the size, these members?
9 Maybe, maybe not.
10 UNIDENTIFIED SPEAKER: Point of order. Do we
11 know how many members are in attendance today out of
12 150?
13 CHAIRPERSON ALLEN: Anne, can you find that
14 out for us. We have a quorum, but we will find out
15 how many are here.
16 How often should we meet. Right now the
17 Court Rules, as stated here, we meet two times a year.
18 We are required by two times a year. We can meet
19 often, we can meet more often if we want to, because
20 our rules of procedure don't limit us to amount of
21 times you want to meet, but it limits us to a minimum
22 amount of time to meet, which is two years by Court
23 Rule, or two times by Court Rules. Do we want to meet
24 more? Do we want to meet less? How do we want to
25 meet?

1 Technology, do we want to improve the RA
2 function with technology? Do we want to do virtual
3 meetings? Do we want to meet twice a year and have
4 virtual meetings at other times? Do we want to be
5 able to use our sources throughout the state of
6 Michigan so that we have people in the U.P., so they
7 don't have to travel. Do we want to be able to by
8 teleconference and webinars? Everybody is doing that
9 now. I have been to a number of webinars. Maybe
10 that's something we also want to incorporate. It is
11 not going to be one or the other. It could be a mix.
12 We will have this discussion as well.
13 131 attending, and we have 150 members.
14 That's better than any party I ever had.
15 Email proposals. We email the proposals, it
16 goes directly to the entire membership, and then we
17 have a link from your membership to you so there can
18 be discussion and there can be ongoing communication.
19 Maybe that would be helpful.
20 Electronic voting. So we have electronic
21 voting, but because some people don't like electronic
22 voting, an option with electronic voting is pass a
23 proposal by a super majority. Maybe that's something
24 we want to take a look at.
25 We also use the internet. Maybe we can,

1 rather than have wordsmithing here, change of numbers,
2 letters, paragraphs, maybe what we want to do is do a
3 noncontent language amendment at committee, and then
4 it comes here, we vote up or we vote down. And the
5 discussion with regard to the proposals or the Court
6 Rules could be online and then go directly to the
7 committees for their input and come back.
8 Right now we have to have proposals here 45
9 days beforehand. Maybe you want to shorten that.
10 Then the last 25 minutes are going to be
11 anything your thoughts are, okay. Not anything. No,
12 not anything, but your thoughts with regard to the RA
13 and how it functions and its role as Rule 6, okay.
14 Because some of these areas that we just talked about
15 may not fit in what you think is good, and that's what
16 the beauty of this room is about, are ideas that other
17 people don't think of. And so I want at least 20
18 minutes to discuss that.
19 I have spoken to quite a few people in the
20 last two weeks here at the RA. I called them directly
21 to tell them how important this is and to be here and
22 discuss, because today is make it or break it day so
23 that we can have your thoughts, and I have had a
24 couple people have some really good ideas, and they
25 don't fit with these categories, sort of, but I would

1 like them to come to the floor too to discuss and see
2 what you have to say.
3 And what we are going to do is we are going
4 to take this information and we are going to compile
5 it and we also have two other committees working. We
6 have the Assembly Review Committee, which is Carl's
7 committee, and Special Issues Committee to look at the
8 rules. And we are going to take that information you
9 have and bring it to the Special Committee so they can
10 decipher and break it down to see what's the most
11 helpful and important for the RA, and we are going to
12 get the transcript and we can expedite that so we can
13 discuss it and review it.
14 The Special Issues Committee, the Special
15 Committee, is going to be diversified by people who
16 have years of experience with the RA and some younger
17 people, because of the role of technology I thought
18 was important, and if anybody has been looking at the
19 demographics of the practice, we are having more
20 younger people here also. So I wanted to open this up
21 so we have more diversity so we can use those roles of
22 technology that some people have lived with and go
23 forward. So I think I have said enough, and -- oh,
24 there is one more thing.
25 As of yesterday we have had, there was the

president of the State Bar put together a work group, and they evaluated the Court Rules, and yesterday they presented their findings to the Board of Commissioners, and the Rules Committee recommended no changes to the current structure of the RA or its function. And that again is this, so they recommended no changes to the current RA structure or function. The BOC, it had decided to defer any changes to this committee to us, to this body, and the Board of Commissioners conferred that and agreed that if any changes were to be made, substantively or procedurally, it was going to be in our court.

So we are here to discuss it, and you can come down to your microphones, and let's begin. Again, we are going to begin with the governance issue, twenty-five minutes for that. Please state your name and your circuit when you begin.

MR. LINDEN: Jeff Linden, 6th circuit. Good morning. Thank you, Madam Chair and distinguished members of the Representative Assembly and any guests who haven't been announced yet who are in the room.

I had sat as a member/participant of the Special Issues Committee who met a couple of weeks ago to discuss the matter, and we had thoughts addressing this, the first topic, and the issue of the

Supreme Court's request on is there a lesser role or a lesser governance that would be less intrusive on First Amendment rights of our members, and we attacked that fairly substantively. And that's the issue, the fundamental issue for us is the State Bar and the way the proposed bill came up was whether or not those people who don't agree with the positions taken by the Bar and the expenditure of their dues or whether there really is for First Amendment or actually under the Keller Supreme Court analysis ideological purposes as opposed to the functional purposes of the performance of the legal system in the state of Michigan. And my personal view, and the committee, I think, consensus was that this body is one of the best ways to mitigate against imposition of First Amendment constriction on individual members.

This body is composed of, we just heard, 150 members from across the state, across all political lines. It's not a political body. Young members, old members, et cetera. In the years I have been on the Representative Assembly, which I didn't count, but it's, I think, middle of the road for those here, I have heard many issues that have been brought up that have been contentious, and those in the larger circuits, the circuits with the largest members, tend

not to necessarily carry the day on any given issue. The smaller voices, the smaller circuits, the smaller opinions, they get heard here, and they often have fantastic ideas that are then debated and change the outcome of the policy decision of the State Bar.

And that is the point. If you eliminate a body like this or eliminate the forced nature of the State Bar as a mandatory, I think you lose the voice of the smaller voice to come and get heard. Anybody can come to a meeting, anybody can raise a proposal. It gets debated. They all get taken seriously. The only limitation may be somewhat in the functioning, in that we only meet twice a year and we meet for a limited number of hours, some issues may not get the discussion that everybody wishes they get, and perhaps in the way we function with maybe pre-meeting vetting or pre-discussion, you know, it might facilitate that, but I think it's one the best bodies.

The other issue that we had thought of was the complaint that people are being forced to pay money for ideological or political speech that the Bar then takes that they don't agree with.

I don't know about you, but I did a survey of one and myself, and the last time I was paid by State Bar funds to be here, I can't remember. I think

we are all volunteers. So the State Bar spends money for these meetings on administration and coordination, photocopying, services, food to facilitate, but it doesn't spend money on the policy decisions or any ideological decisions that are presented here, and I think the issue is largely communication.

I think despite the work we do and the years that we have been here, the Bar at large doesn't really have a good concept of what we do and how we protect their free speech rights and how we don't make policy against the minority. There is no way to factor in -- I am running out of time. There is no way to factor in every small opinion, but every opinion gets a voice here, and I think that should not be lost and I think it should be elevated to a point where it's obvious and broadcast to the community.

CHAIRPERSON ALLEN: Thank you.

MR. POULSON: Barry Poulson, 1st circuit. Our esteemed chair asked me to speak today, and I was shocked. Anyway, as to governance, I think if the governance becomes the decision making through the central committee, then we will become a rubber stamp. We can simply buy one that says, Yeah, we agree. I don't think that's the point.

There is an engineering concept -- I have 40

1 years as a software engineer -- called group mind.
2 This is a group mind. We call each other, we talk, we
3 think, we puzzle out things, we come here on the floor
4 and debate, and I think the decision-making process
5 that flows out of this is phenomenal. I don't know
6 that anyone has not been heard. I think that we have
7 a full spectrum of strange political thought, all the
8 way from mine, who revers Attila the Hun as an
9 agrarian reformer, to other folks that look at things
10 quite a bit differently.
11 Wherever there should be a time I do oppose
12 use of State Bar money on what I consider the
13 political initiatives, because they are so far to the
14 left wing I can't see them from Hillsdale, but I think
15 this has been a phenomenal State Bar. They are
16 efficient, they are effective, they are dedicated, and
17 even if the dues become free, I will pay for it, but I
18 don't like to see the commissioners become the
19 decision maker. I think this group does it quite
20 well.
21 Now, later when we get to the technological
22 phase, I will speak again briefly on efficiency.
23 Thank you.
24 MR. PAVLIK: Adam Pavlik of the 26th circuit.
25 I think that, first of all, I would like to point out

1 that I am strenuously opposed to the effort to make
2 this a voluntary as opposed to mandatory bar. I think
3 that the Bar provides a variety of services that have
4 to be provided by someone. Unauthorized practice of
5 law investigations, character and fitness evaluations,
6 so on and so forth, and so I think it's important for
7 those services to be uniquely responsive to lawyers as
8 a group, and a mandatory bar facilitates that.
9 I would say, however, that the proposals to
10 move toward a voluntary bar are, in my opinion,
11 attempting to capitalize on the fact that our
12 membership tends not always to understand where their
13 Bar dues go. They pay the money in, and I certainly
14 know that when I speak to my constituents about this,
15 I got over and over and over again people saying,
16 Sure, why not go to a voluntary bar. If it saves us
17 5, 10 bucks a year on dues, that's fine. I think that
18 reflects a degree of resentment of the typical member
19 of the State Bar in not understanding where their Bar
20 dues go.
21 The solution to that that I see is to
22 strengthen the governance role that this body has in
23 actually running the State Bar. Right now in some
24 respects we are a bit of an adjunct to the Board of
25 Commissioners, because it's the Board of Commissioners

1 that actually run this organization. I think that as
2 we are demonstrating here today with the 150-ish
3 people who are members of this body, we are much
4 closer to our membership than the Board of
5 Commissioners is. I know that my members know who
6 their representative in the Assembly is. They don't
7 know who their commissioner is on the Board of
8 Commissioners.
9 If we had a stronger governance role in
10 approving the budget, in approving the way money gets
11 spent in the State Bar, I am convinced that that would
12 deflect much of the pressure to move toward a
13 voluntary bar, because I think it would reduce some of
14 the concerns that the median member of our
15 organization has. They see it in dollars and cents
16 terms. They don't always understand the decisions
17 that are made from a budgetary standpoint by the Board
18 of Commissioners. I am not sure that there is always
19 as much transparency there as there could be, and if
20 this body was more responsible for those kinds of
21 decisions, I think that would improve the legitimacy
22 of a mandatory bar in the eyes of our membership, and
23 if that happens, I am skeptical that the effort to
24 move toward a voluntary bar would keep streaming
25 forward.

1 Now, obviously that raises challenges. Would
2 we have to meet more often if we had more extensive
3 governance role? Possibly. We would also have to
4 work out what our relationship would be with the Board
5 of Commissioners. Would we be a bicameral
6 organization where something has to pass the Board of
7 Commissioners and this body, like in Washington where
8 it has to get through the House and the Senate. I
9 mean, those are things that could be debated, but my
10 baseline is that we should have a stronger governance
11 role in the State Bar.
12 CHAIRPERSON ALLEN: Thank you very much.
13 MR. ENGELHARDT: Chad Engelhardt from 22nd
14 circuit, Ann Arbor.
15 First of all, I imagine, like most people, or
16 everyone in this room, I am strongly in favor of a
17 mandatory, united State Bar, but the issue that I want
18 to talk to you about is, when it comes to legislation
19 and informing the Legislature of the impact of its
20 actions on our profession, on the role of lawyers and
21 on our civil justice system and criminal justice
22 system, lawyers have a significant obligation to
23 inform the Legislature, many of whom are not lawyers,
24 about what impact their actions may have on our
25 society. What are the impacts of the laws that they

1 are empowered to pass, should they pass them, and what
2 will be the impact?
3 Oftentimes these are just decisions that have
4 to be made and positions that have to be taken on a
5 very short-term basis, sometimes a matter of days or
6 weeks. This is a body that meets twice a year, and
7 one of the things that I would strongly urge is
8 restraint by this body that we not put our pride in
9 front of the effectiveness of the State Bar to act.
10 One of the things that I would encourage is not to
11 undermine in any way the role of the Board of
12 Commissioners and our leadership. We have
13 professionals, such as Peter Cunningham, who do a
14 wonderful job in advocating us in Lansing and
15 assisting us in educating the Legislature.
16 If you were to compare tools, we are a
17 powerful tool. We are over 150 people. We represent
18 a very wide swath of the entire State Bar, but in many
19 ways we are like an ax, and in some situations we are
20 not the right tool for the job. In some situations we
21 need a more nimble, a more responsive, a more precise
22 tool, and in that situation, such as in pending
23 legislation in Lansing, the Board of Commissioners and
24 our professionals, our officers, are in a better
25 position to do that.

1 With our size and with our power does come a
2 bit of unwieldiness, and we have to respect the
3 professionalism and the wonderful job that our leaders
4 have done. When you look at what Bruce Courtade did
5 as president or Brian Einhorn have done as president,
6 what I have no doubt Tom Rombach will do as president,
7 what Janet Welch has done as executive director. They
8 have provided significant leadership, and we should
9 not take any action which undermines our position or
10 effectiveness as a State Bar, and I am concerned that
11 in the way that these things are being presented today
12 and decisions that are being asked to be made today
13 that we truly don't have enough information in front
14 of us, that we have not discussed this information,
15 debated the positions or proposals that are in front
16 us, and that we take more time to study them before
17 making any action. Thank you.
18 MS. KAKISH: Thank you. Kathy Kakish, 3rd
19 circuit. I now speak as a current member of the
20 Assembly, but also as a former chair of the Assembly,
21 2008-2009.
22 The meeting today, I understand quite well,
23 is not to discuss the question whether the State Bar
24 should remain mandatory. What we are discussing is
25 the future of the Assembly itself, the Representative

1 Assembly. It seems to me that we are discussing the
2 future of the Assembly because there is a possibility
3 that the Assembly will somehow become a scapegoat in
4 exchange for keeping the State Bar mandatory. Those
5 are my beliefs.
6 My thoughts are this: A representative
7 assembly that is representative of all walks of the
8 professional life, the legal profession, and this
9 Assembly is indeed that, is an essential element for a
10 mandatory bar. Mandatory bar, we do need a
11 Representative Assembly.
12 Now, I know there was discussion as to the
13 creation of the Task Force that is bringing this issue
14 today here before us, but the very underlying incident
15 that was used to start all this is a position actually
16 that the Representative Assembly took at the September
17 meeting back in 2010. I went back to the transcript
18 of that meeting. On page 36 of that transcript it
19 shows that a question was raised from the floor about
20 whether the proposal on the Michigan Campaign Finance
21 Act was Keller permissible. The response was that the
22 attorney for the State Bar had reviewed the proposal
23 and found that it was, indeed, Keller permissible, and
24 I believe there is a strong argument that it is.
25 Now, I raise this point about the underlying

1 incident not to discuss the Keller merits of that
2 particular proposal or to place any blame on anyone or
3 to point fingers or to raise the question why the
4 State Bar leadership at the time sent our resolution
5 to a state agency rather than exclusively directly to
6 the Supreme Court. However, I do raise this because
7 it shows two important things.
8 First, it shows that the Assembly itself
9 understands its responsibilities and understands the
10 limits to its responsibilities.
11 Second, if, indeed, this particular proposal
12 that was debated by the Assembly back in 2010, if,
13 indeed, it were precluded by Keller, it was not a
14 deliberate act on the part of the Assembly to overstep
15 its boundaries, and the solution to this thing or
16 mistake, if it is, is not to scrap the Assembly at the
17 expense of maintaining a mandatory bar, by no means,
18 and this one mistake should not be used by those who
19 disagree with the Assembly and would like to see it
20 gone.
21 Now, having said that, today represents a
22 remarkable opportunity for the Assembly and its
23 future, and I welcome it. There is, as was mentioned
24 before, there is no other body within the State Bar
25 that represents all 57 counties and their circuit

1 courts. No other body that has lawyers from all walks
2 of the profession, sparsely populated areas to densely
3 populated areas, solo practitioners, midsize, and
4 large law firms, private and public attorneys,
5 et cetera, et cetera, and the list goes on.
6 Coupled with this is the fact that it is
7 always amazing to see, and we will see this afternoon
8 as we discuss the four afternoon proposals, how
9 viewpoints and concerns with all its accompanying
10 wisdom and expertise that this body brings to the
11 State Bar. And I repeat, wisdom and expertise. It is
12 tremendous. I have been a chair of the Representative
13 Assembly. I am a member, and every single meeting
14 amazes me at the depth of knowledge, expertise,
15 dedication that this body brings.
16 I must disagree with the gentleman who spoke
17 before me as related to --
18 CHAIRPERSON ALLEN: Time.
19 MS. KAKISH: Time. Okay, it will be in the
20 next round. Thank you very much.
21 MR. SMITH: Please, at the three-minute mark,
22 throw something at me or get one of those giant keys
23 to just pull me aside. I will try to be quick.
24 Joshua Smith, 30th circuit, two points.
25 First of all, as nearly everybody has pointed

1 out, the Representative Assembly is the closest to the
2 Bar membership, period. It's not difficult to get
3 elected to the Representative Assembly, and that's a
4 good thing. It means that younger, different types of
5 people can get in here who haven't necessarily been
6 practicing for a long time or at a large firm. That's
7 a huge plus, because most of our membership hasn't
8 necessarily been doing either of those things. We
9 have a diverse membership. This body reflects it
10 better than any other. And that leads into the second
11 point.
12 In terms of a mandatory bar, by requiring bar
13 membership, it means that in terms of this body, this
14 body is going to be much more representative of a much
15 more diverse group of people. If you take away that
16 mandatory bar membership, you are going to get a much
17 more selective group, mainly people whose, A,
18 employers will pay for it and, B, who can much more
19 easily afford it, and you are going to really lose
20 that bottom, you know, the tier of lawyers who maybe
21 are working for legal aid or maybe the State of
22 Michigan and don't make quite as much money, or
23 younger. That would be a tragedy. Thank you.
24 JUDGE NELLIS: Jeff Nellis, 51st circuit. I
25 am going to keep this short and sweet, but I think,

1 and it's a very it complicated topic, but I can
2 summarize it in one word. The concept is diversity,
3 and that's what this body has. Diversity in a lot of
4 ways, but especially geographic diversity, which I
5 think is very important. Like other people have
6 indicated, we have at least one representative from
7 each circuit, and if we want our Bar to be responsive
8 to the needs of its members, I can think of no better
9 way than to have a body that has this kind of access
10 and has a member in every single circuit. So to me
11 this provides diversity, it provides access, and I
12 just think that that's why we are an important body
13 and we need to keep that in mind.
14 MR. HILLARD: Martin Hillard, 17th circuit.
15 I agree with the earlier speaker that the mandatory
16 bar is a separate issue from the role of the
17 Representative Assembly, but briefly on that first
18 part, the mandatory versus voluntary bar as it relates
19 to First Amendment concerns. The concern is greater
20 actually with a voluntary bar because that's more
21 prone to adopting one political viewpoint or another
22 or advocating that, yet in the eyes of the public the
23 Bar is going to represent all lawyers. So although
24 your money may not be going towards those advocacies,
25 the perception that you support those ideas as a

1 lawyer because the Bar does would persist.
2 But with respect to the role of the
3 Representative Assembly -- a couple of the pieces of
4 paper out here -- the Rule, as it relates, the
5 Representative Assembly is the final policy-making
6 body of the State Bar. We are the Representative
7 Assembly. As earlier speakers have said, we have the
8 larger membership, we have the greater membership base
9 coming from each circuit versus the commission
10 districts.
11 The larger the body, the more likely it is
12 responsive and reflective of the views of membership.
13 The greater danger, and not to cast aspersions on our
14 fine Board of Commissioners, but whenever you have a
15 smaller body, it's easier for that smaller body to
16 divert in one direction or another.
17 I have been on this body several years. We
18 have had many different proposals come up, some that
19 have passed overwhelmingly, some that have passed or
20 failed closely, some that have failed overwhelmingly,
21 but we have had thoughtful reflection on each of those
22 ideas. We are a greater reflection of the body as a
23 whole, and in terms of the First Amendment
24 opportunities of our membership, the other piece of
25 paper is the list of appointments to vacancies that

1 Judge Nellis and his group brought before us, and this
2 is reflective of every meeting I have been at.
3 As the earlier speaker said, it's not
4 difficult if you want to serve on this body to be
5 here. As Judge Nellis said in his presentation on
6 this report, you have to go scraping the last week or
7 two as these vacancies become known to get people to
8 serve. That's how I started on this body was to fill
9 a vacancy that I was asked three days before the April
10 meeting if I would serve, and I am glad I said yes.
11 But the point, is if you are a member of the
12 State Bar and you want your voice heard, you want to
13 take on a leadership role, this is the body you have
14 the opportunity to do it in, not on the Board of
15 Commissioners. So I think keeping the large role of
16 this body will serve those First Amendment interests,
17 not defeat them. Thank you.
18 MR. FLESSLAND: Dennis Flessland from the 6th
19 circuit. Just three quick points.
20 I think the State Bar does a pretty good job
21 of drawing the line with political versus legal
22 issues. I really don't have any complaints with how
23 the State Bar has done that. I don't feel that they
24 have overstepped the line, really handled it pretty
25 well.

1 Secondly, if we are going to keep a mandatory
2 bar in the state, I think the Representative Assembly
3 is an essential component of having a mandatory bar
4 for all the reasons that have been stated here today,
5 and I echo those.
6 The other point I want to make or mention is
7 that when I hear complaints from members of the Bar,
8 our colleagues about the State Bar of Michigan, they
9 don't talk about political activities. They talk
10 about bloated bureaucracy and the palatial office
11 building in Lansing. I hear chuckles. Other people
12 have heard the same thing. I don't want to comment on
13 the merits of that, and, you know, it may be a
14 communication problem, but I just wanted to bring that
15 to your attention so that you could keep that in mind
16 and the commissioners could keep it in mind, because
17 that's the complaint I hear, not political issues.
18 Thanks.
19 CHAIRPERSON ALLEN: Thank you.
20 MR. LABRE: Rob LaBre from 43rd circuit.
21 I think everybody in this room probably
22 agrees that regardless of whether we are a voluntary
23 or mandatory bar, we should still be here. We should
24 not disband this, meaning we become voluntary, there
25 is still going to be a bar. We should be part of

1 that. We should still gather and help out with that
2 process. If we are mandatory, we should not be
3 disbanded. We should still be here.
4 One of the questions that I had is this
5 Task Force that's being created appears to have broad
6 discretion in making recommendations to the
7 Supreme Court about what they want to do with us.
8 That leaves us to decide to leave recommendations to
9 them what they should do. If we remain silent, they
10 won't know. Maybe there will be assumptions that we
11 are irrelevant and that we don't care enough. This
12 proposal that we be present and that we voice our
13 opinion, be it to make us more relevant so that we can
14 balance out perhaps the Board of Commissioners and
15 their decisions, considering the issues the 22nd
16 circuit brought up, or merely to prevent us from being
17 disbanded. We should be there for that. We should be
18 there for that, and that's why I would recommend we
19 adopt this proposal.
20 CHAIRPERSON ALLEN: We are down at 25
21 minutes, but since these two individuals have been
22 standing there, let's take them too.
23 MS. KRISTA HAROUTUNIAN: Krista Licata
24 Haroutunian, 6th circuit.
25 I stand in favor of the mandatory bar, as

1 well as keeping the RA and Board of Commissioners
2 structure the way it is. I also bring up the idea
3 from a governance perspective. This body started a
4 long time ago when there were only 12,000 lawyers.
5 Now we have 43,000 lawyers. It would seem that we
6 still need to exist and we still need to have the
7 diversity of every circuit and every practice area
8 still be here and talk and represent them, and so that
9 seems even more critical than it was in '72.
10 The other point I bring up very quickly would
11 be that if there is an issue as to governance and to
12 maybe correcting things that weren't necessarily as
13 closely focused on or as energetically looked at,
14 which is to have the RA and the BOC have a Keller vote
15 and also have a Keller analysis done by counsel. So
16 you first have a counsel opinion as to Keller
17 permissibility and then have a Keller vote by the
18 respective body, and then, assuming it passes, have a
19 vote on the issue. And that would seem to me to make
20 it clear to everyone who is watching that we are
21 taking it real seriously as to the topic matters that
22 we are addressing. And if anyone is worried about the
23 Keller part, we could also say that there would be a
24 super majority for the vote after we heard the opinion
25 of the counsel and then have a simple majority as to

1 the topic once it came past the Keller test.
2 So I think that that would certainly address
3 issues of, well, maybe we are not focusing closely
4 enough on certain things or keeping the restraint that
5 the Keller decision and the administrative order from
6 the Supreme Court mandate us as a mandatory bar to do.
7 Thank you.
8 MR. PHILO: John Philo from 3rd circuit.
9 I somewhat view -- I don't think the context
10 can be ignored. I view the free speech issue as very
11 much a red hearing. I respectfully disagree with
12 Barry, who I have learned a lot from listening to him
13 come to this microphone. I come from a body of
14 attorneys that is liberal, that is avowedly so. There
15 is about two of us in the room.
16 UNIDENTIFIED SPEAKER: Sitting next to each
17 other.
18 MR. PHILO: We view this as, the community of
19 the attorneys I come, a very conservative institution,
20 and I think the differing viewpoints here is a good
21 thing and reflects well on this body in that there
22 needs to be an institutional voice and a voice that is
23 exchanged and moderated. I do not see this body as
24 out front on issues, and that's fine, because the role
25 of this body is to speak for everyone in the body. I

1 don't think we should be tepid about the areas where
2 we have spoken, and I think that's important.
3 I practiced in Illinois, which has a
4 voluntary bar, and the voices in the voluntary bar
5 there are not a reflection of the bar of the state.
6 You are a member if your firm pays for it, and that's
7 about it, and the other folks are members of their
8 individual practice bars. That's what we will be
9 losing.
10 I would just like to echo, I think if there
11 is a mandatory bar, it is essential that there be this
12 body. It is a unique body among bar associations, and
13 it does represent the voices moderated through all the
14 membership that speak for our practice and our
15 profession. That's all.
16 CHAIRPERSON ALLEN: Thank you.
17 The next is how do we function more
18 effectively? And let's talk also, you know, about the
19 rules of what we want to hear. How can we be more
20 effective in terms of maybe the concepts of the
21 policies. Maybe we are more effective is if that
22 policy is actually given to us to review rather than
23 we create it on our own or we are a body that just
24 receives that policy from either the Supreme Court,
25 the Board of Commissioners. Does that make us

1 effective? Let's talk about that as well.
2 Let's talk about the membership. We spoke
3 about that in the last concept being too large or too
4 small.
5 How often should be meet, let's talk about
6 that, and the role of technology, how does that play
7 for each and every person?
8 MR. POULSON: Barry Poulson, 1st circuit. I
9 will speak only to technology, because that's my
10 field, 40 years of computing. I know there are only
11 two liberals in the room, but it's no coincidence they
12 are seated right behind me. That worries me.
13 I learned to program computers in 1964. I
14 had the first online system, so I worked on interstate
15 networks in '68. I ran the largest computer network
16 in the U.S. at one point, four time zones, and now my
17 children are in the same field, so what I see is, my
18 son's job for his new start-up is cyber medicine. He
19 is working on a system where the doctors and the
20 technology and instrumentation serve the rural people
21 through electronics. I celebrated my grandson's
22 birthday with a family meeting on Skype, as I am sure
23 many people do.
24 I love this book. This is a beautiful book,
25 but the content is really what I need, and that can

1 come to me electronically, so one of the steps is
2 electronic book. But the other steps are to begin to
3 look into technology.
4 Today we voted in less than a minute. We had
5 votes that went on forever, people standing up and
6 sitting down and raising the wrong hand and whatever.
7 That's a step, and I think those steps can come down
8 the road. We can meet effectively electronically and
9 share our things.
10 We already do electronic emails back and
11 forth. I know that's part of our group mind is we
12 share our opinions and stuff back and forth. So I am
13 all for the methodical approach to technology, and
14 where methodical comes in is because not everybody is
15 comfortable with it, and that's understandable. Some
16 people are just not as young as I am and haven't seen,
17 you know, what technology can do.
18 So I am all for the technology. I would like
19 to be on the committee. I will serve and work well
20 apolitically, because what's technology got to do with
21 politics, except for like Al Gore. He didn't invent
22 it. I am sorry.
23 So I am very much in favor of the continued
24 use of technology to make this group effective and
25 efficient but not necessarily with so many road miles.

1 Thank you.
2 MS. PARKER: Hello. I am Alisa Parker from
3 the 37th circuit. I have just two quick points about
4 more efficiency in the body. My first point is I have
5 been a part of the Representative Assembly for a few
6 years now, and one of the things that I found when I
7 first got here was really trying to find my footing
8 and how do I know what the Representative Assembly
9 does, just how do I fit in here, and so as people are
10 coming into the Assembly I think it's not echoed that
11 we feel it is an important body.
12 One of the ways that technology could be
13 helpful is really bringing in the newer members and
14 informing them about what the Assembly does and then
15 staying connected. I know that we are all very busy
16 and meetings can be hard to get to, but even using
17 technology for that connectivity to members of the
18 body so that we are more connected, we are more cued
19 into what's going on more than just twice a year I
20 think would be very vital, and it would help more
21 members to connect to the body sooner rather than
22 having to be here a couple times before they feel like
23 they have a footing here.
24 MS. MCNAMARA: Anne McNamara, 47th circuit.
25 With regards to improvements that we could

1 make as a body in terms of more technological types of
2 things, I think that would be great, but not at the
3 expense of our participation.
4 I have been a member of this Assembly a
5 couple different times now. Back in the olden days,
6 maybe 15, 25 years ago, us Uppers attended by a
7 teleconference several times. It did not work well.
8 It's not the same participation. You know, you can
9 attend, for example, a court hearing by phone. It's
10 not the same as being there. It's very similar to
11 that.
12 I think where technology could really help is
13 transmitting information to us ahead of time. For
14 example, rather than sending packets in the mail, if
15 we were to receive some of those things and arguments
16 with regards to them ahead of time by emails, it would
17 be also easier for us to share with other members of
18 the Bar in our areas, but I strongly urge not to take
19 away the presence of us being here at least twice a
20 year. It's very important. Thank you.
21 MS. GLASS: Good morning. My name is
22 Alana Glass from the 6th circuit.
23 I am speaking today regarding the Assembly's
24 role in technology. I would disagree with many of the
25 comments that have already been stated. As someone

1 who has started blogging and developing websites,
2 albeit not as long as my colleague here in the
3 1st circuit, I do see that there is this tremendous
4 value and how technology can connect us and can
5 connect our profession.
6 I also agree with the previous speaker that
7 what we should not do is allow technology to prevent
8 us from coming together as a body. I think there is a
9 healthy balance in having technology but also personal
10 one-on-one interaction, which you cannot necessarily
11 achieve by just videoconferencing and
12 teleconferencing.
13 So at the end of the day my recommendation
14 would be that we do explore ways that technology can
15 be efficient in terms of being green. How many pieces
16 of paper did we, you know, print today, whereas I
17 notice a number of colleagues have their iPads and
18 Smartphones up and running. But then also too, our
19 Assembly coming together, and so meeting and engaging
20 with each other. Thank you.
21 MR. GILBERT: David Gilbert, 37th circuit. I
22 agree with most of my colleagues on what we are
23 talking about as far as trying to stay relevant to
24 what we have going on here. I believe we should have
25 two mandatory meetings, but we should take advantage

1 of technology or videoconferencing and things of that
2 nature.
3 I note that the Criminal Law Section, we meet
4 once a month to go over pending legislation. In this
5 particular case we are dealing with legislation that
6 came out in January. We are lucky we have a meeting
7 in April to deal with it. Many times legislation is
8 done by the time we actually have a meeting. So if we
9 want to be relevant, we need to actually be responsive
10 enough to be there when legislation is still pending.
11 This time, like I said, we got lucky.
12 We have got the ability to videoconference,
13 we have the ability to meet online. We also have the
14 ability to meet in groups smaller than 150 people. We
15 only need a quorum of 50. That kind of bothers me in
16 a way that we just need a quorum of 50 to actually
17 hold a meeting, a special meeting, but we could hold
18 those special meetings at different places throughout
19 the state.
20 MR. PAVLIK: Hi, Adam Pavlik. When I spoke
21 earlier, I misidentified my circuit. I said the 26th,
22 but I represent the 54th. My friend from the 26th
23 waved at me before I started speaking. I lived there
24 for three-and-a-half years. So I wanted to help out
25 our poor reporter up there to get that right.

1 A couple of things. I think that the number
2 of times we meet in the year depends a lot on the
3 nature and quantity of work we have to do. So I am
4 not sure you can bifurcate the two. I just wanted to
5 point that out.
6 Second, just as a kind of related to the
7 prior remarks, I kind of like getting the packet in
8 the mail. If there is one person making the plug for
9 getting the packet in the mail, that will be me.
10 And then the last thing is I just wanted to
11 point out, I think that people, in my opinion, people
12 have a tendency, not necessarily this group but people
13 overall, have a tendency to be too confident in the
14 ability to have an effective electronic or video
15 meeting. I would point out that Roberts Rules of
16 Order, which is our parliamentary manual, requires
17 that for it to be a proper meeting there has to be the
18 opportunity for simultaneous aural communication among
19 all participating members equivalent to those of
20 meetings held in one room or area. That's in
21 Section 9 of Roberts Rules of Order. I am, frankly,
22 skeptical that we will be able to pull that off in a
23 group of 150 people all somehow Skyping in or
24 teleconferencing in and meet that standard. I think
25 that, as a prior speaker observed, when you try to

1 teleconference in, it's likely to produce an
2 unsatisfying result.
3 So, frankly, I think that what we are doing
4 here is fine. The key is making sure that the work
5 that we have to do is relevant, and if it is, I don't
6 think anyone will have a problem with us getting
7 together two or three or four times a year to do that
8 relevant work. Thank you.
9 MS. KAKISH: Kathy Kakish, 3rd circuit. To
10 follow up on what was just discussed, to present the
11 relevant work before the Representative Assembly, and
12 that is to bring the proposals that the Assembly works
13 best on. There are three points that I would like to
14 make with respect to bringing in the proposals.
15 One, how closely are we actually working with
16 the Bar sections and the committees to help them raise
17 their issues with respect to concerns that they have
18 so that we can help them bring these proposals before
19 us? Many of the Assembly members are appointed to the
20 committees and sections as liaisons. How effective
21 are we in bringing all of this together?
22 Second, here we are a group of 150 members.
23 Each of us knows how things work well in our circuits,
24 and each of us know how things work well in our
25 professions, but we also know what does not work well.

1 What is the mechanism whereby even the members here
2 can bring up proposals and be helped in drafting them?
3 That's where perhaps review of the rules concerning
4 drafting, special issues should be looked at so that
5 individuals will have access to and help to submit
6 their own proposals.
7 Now, another point is that it's not only the
8 Assembly that should change in how it does its
9 business. There must be a change to how the State Bar
10 and the Assembly work together.
11 Look to item 1D in your Assembly materials.
12 It's the item titled Summary of the Board of
13 Commissioners Minutes. Look at page number three
14 there. There is a list of proposed amendments to
15 rules and legislation that the Board of Commissioners
16 or its committees had to resolve on behalf of the
17 Assembly. They took positions on these, in part
18 because of the time deadlines that have been mentioned
19 earlier by a couple of the members.
20 There are time deadlines for responses to
21 these proposals that are set forth by the
22 Supreme Court or the Legislature, and there has to be
23 a solution to this. There has to be had a solution to
24 what's happening whereby our work is being presented
25 to the Board of Commissioners only because we don't

1 meet the time deadlines, and that's where the number
2 of the meetings of the Assembly can come in.
3 Also, the rules concerning the Representative
4 Assembly should be changed to lessen the time and the
5 nature of serving the material to the members before
6 the meeting.
7 And there is another item. I don't believe
8 that this was ever done before, but the Supreme Court
9 could be easily approached. Perhaps we should work
10 with the Supreme Court to set the public deadlines in
11 a way that would allow us to work with these
12 proposals, and so there is a lot to look at. How do
13 we work within the State Bar itself?
14 And the third point is that we are not the
15 only state bar representative assembly in the
16 United States. The State Bar of Michigan has excelled
17 in looking at other mandatory bars, examining how they
18 do business, and we went beyond them. We are one of
19 the best state bars in the United States.
20 Did we actually look to any representative
21 assembly within the state bar throughout the
22 United States and see how they are operating, how they
23 gather their proposals, and perhaps we can similarly
24 adopt them, enhance them, and become the best
25 representative assembly of a mandatory bar in the

1 United States. Thank you very much.
2 MR. LINDEN: Jeff Linden, again 6th circuit.
3 Briefly just on some of the things I noted
4 about our effectiveness. When we were discussing the
5 issues in the Special Issues Committee, we did this
6 simple thing of looking on the State Bar web page in
7 the sections that define the role of Representative
8 Assembly. And we were all surprised to find that
9 there is very little information there. There is a
10 small two-line segment on the Representative Assembly
11 page about what we do, and there is a link that links
12 you to more information, which pretty much only goes
13 into the historical background of the Keller decision
14 and things like that, but there is no discussion
15 that's easily accessible to the membership at large
16 about what the Representative Assembly is, how we
17 represent the larger body of the Bar, and what we do
18 here, and that seems to me a profoundly simple thing
19 to fix from a communications standpoint in the larger
20 scope of thing.
21 There are other things. For those of us who
22 aren't well known by our constituencies, there are
23 things the Bar could do in sending out its
24 publications of the Bar Journals or the newsletters to
25 list on a circuit-by-circuit basis, these are your

1 Representative Assembly members. If you want to bring
2 a proposal before the Bar, these are your people to
3 contact.
4 I don't think that's out there for people who
5 maybe don't know how to look for it or aren't
6 necessary motivated to go out there. Just to make it
7 very easy and user friendly for people would help the
8 impression, which seems to be one of the issues that
9 the State Bar doesn't adequately represent the voice
10 of all political and all personal views of its
11 membership. Little things like that I think can go a
12 long way to improving the function of the
13 Representative Assembly and the efficiency with
14 regards to the issues that brought us here. Thank
15 you.
16 MR. HILLARD: Martin Hillard, 17th circuit.
17 I think we need to look at how we do
18 business, particularly the point that Ms. Kakish had
19 raised about the issues that come before us, and
20 perhaps a lot of it is because we only meet twice a
21 year, but it seems to be rather hit or miss. Some
22 issues come to us, some don't. Some sections advocate
23 their own issues that don't go through us. The Board
24 of Commissioners take up a number of issues that we
25 never see, and, again, maybe part of it is that we

1 only meet two times a year and the deadlines come and
2 go between meetings. And that brings me to the issue
3 of technology.
4 I am a great believer in the use of
5 technology where it will work in our favor. There are
6 a lot of things that we do that we can do
7 technologically. The officer reports. Even some of
8 these somewhat perfunctory matters we vote on, like
9 filling of vacancies. I don't remember there every
10 being a heated debate over whether one of the
11 committee's nominees to fill vacancies should be
12 approved or not, and that certainly could be handled
13 even more perfunctory than what it already is and save
14 a bit of time, opening up these meetings to taking on
15 a longer list of issues.
16 But, as some of the earlier speakers have
17 talked about, we have got to be careful with use of
18 technology, because if we stop meeting in person, we
19 lose a great deal of value. There is something about
20 meeting here in person and building the relationship,
21 sort of get to know each other, and there has been
22 more than once that my opinion on something has
23 changed, not from what was in the proposal, not from
24 what was said by the microphone, but, you know,
25 sitting next to Tom TerMaat and knowing that that

1 affects his practice area and what do you think of
2 this, and he'd point out the practical problems or the
3 practical positives of a proposal, and that, you know,
4 has affected my view, and we lose that if we do it all
5 electronically.
6 I teach part time at our local community
7 college. I am ground classes, as we call it these
8 days, as well as online classes. There is positives
9 to both, but you lose something in the online classes.
10 You can gain something too, but losing that contact,
11 losing that ability for the back and forth, in person,
12 the more asynchronous it becomes, you lose something
13 of value.
14 So let's use technology. Let's improve our
15 efficiencies with it, but don't turn everything over
16 to it. Thank you.
17 MR. SMITH: Joshua Smith, 30th circuit. Two
18 quick points.
19 One, seems like it might be a good idea to
20 increase the membership of the Representative
21 Assembly, given that the membership of the State Bar
22 itself has increased over the years. Obviously with
23 an increased membership of the RA you are going to
24 have better representation of the membership.
25 And a second point is that at the meetings

1 themselves, and when I was on the Rules and Calendar
2 Committee, I was like a broken record on this, but the
3 focus should be more on the substantive work that we
4 are doing in the discussion rather than what can often
5 seem like an endless round of speeches. I remember
6 one of the meetings, I got back to my office the
7 following day. My constituents and workmates asked,
8 What happened at the State Bar meeting? I said, Well,
9 I heard a lot of speeches, and that's essentially what
10 happened. Today is great, because we have a lot of
11 substantive stuff that we are discussing and going
12 over, but a lot of times it just seems like here is
13 another speech, here is another speech, and I think
14 the focus shouldn't be on that, nor should it be on
15 things that we could get done at the committee level.
16 Great case in point is the newly appointed members.
17 Thank you.
18 CHAIRPERSON ALLEN: Thank you. Why don't we
19 take a break. We have another 20 minutes, and this is
20 going to be the more open area of anything. If you
21 want to talk about the type of policies you want and
22 if there is a location where policy should come from,
23 what people want to hear. We are going to do that 20
24 minutes after our break. We were supposed to leave at
25 11:00 for our break, so let's take that now because we

1 have got 10 minutes. We can take a 10-minute break
2 and come back for the next part.
3 (Break taken 10:51 a.m. - 11:07 a.m.)
4 CHAIRPERSON ALLEN: We are back in session,
5 and my goal again is to make sure everybody gets out
6 on time, if not earlier.
7 Okay. So we are in the last 20 minutes of
8 discussion, and I want to throw another idea out
9 there, and this discussion is going to be things that
10 we didn't talk about yet. So how about this idea.
11 Say the Task Force, or that is to say the Task Force,
12 the Supreme Court or some type of decision, that we do
13 remain as a mandatory bar, what is going to be the
14 role of our policy making decision, and if it has to
15 be changed, how do you view it? This is just going to
16 be an idea, okay, and then any other ideas that you
17 are thinking of outside what we have discussed.
18 MR. BARRON: Richard Barron from the
19 7th circuit.
20 Madam chair, I have been on this body off and
21 on since probably the 1980s, so I have had an
22 opportunity to see a lot of people come and go and
23 have an opportunity to observe this part of the Bar.
24 I am very encouraged by the remarks that have
25 been made by most of the people in the body. I think

1 they review a sense of seriousness and purpose and
2 commitment to this institution. Everybody here, as
3 somebody pointed out, isn't getting paid, and it is a
4 nice day outside. But we need to stand up and speak
5 for the Bar and for the Representative Assembly,
6 because there are people out there who would like to
7 neuter both organizations in my opinion.
8 I think that Senate Bill 743 was wrong. I
9 think that's why the Board of Commissioners
10 unanimously rejected it, and I think that it
11 represents the worst of partisan political effort to
12 attack, in my judgment, one of the best state bars in
13 the United States as far as I can tell.
14 I think that the Representative Assembly has
15 been responsible for many of the improvements in the
16 Bar and in our justice system over the years, albeit
17 not perfectly, and I have served on the Assembly
18 Review Committee and made specific suggestions for
19 improving it.
20 The State Bar has done well over the years,
21 precisely because it is a unified bar, and it has been
22 since 1935. We understand that it's only by working
23 together that we can accomplish our goals and
24 represent ourselves and our clients. The State Bar of
25 Michigan staff is, in my judgment, extremely

1 competent, extremely dedicated, hard-working people,
2 and that certainly goes for the volunteer attorneys,
3 such as the members of this body who are here this
4 afternoon.
5 I don't, like other speakers, I don't view
6 that the Representative Assembly has violated the
7 Keller decision in any way. As pointed out, this was
8 done thoughtfully and with advice of counsel on the
9 specific issue, as on every other issue. This is a
10 nonpartisan body made of people with widely divergent
11 political views, and I don't believe standing up or
12 standing against the introduction of dark money into
13 judicial races is an inappropriate thing for the
14 State Bar of Michigan to opine on.
15 I think it's important that we focus on the
16 big picture and we continue to do what we are doing
17 this morning, which is to begin to discuss ways to
18 improve what we do, whether that's through technology
19 or more frequent meetings.
20 The reasons why this body is necessary to the
21 Bar have been discussed by other people, and I won't
22 repeat those here today.
23 I would conclude by saying I think we need to
24 strongly affirm the importance of a mandatory state
25 bar. Number two, I think we need to emphasize the

1 integral importance of the continuation of the
2 State Bar of Michigan on this point, and, number
3 three, we need to internally come up with improvements
4 and ways to make ourselves more meaningful, more
5 efficient and more representative and not to wait for
6 outside parties to try to do it for us. Thank you.
7 MR. GILBERT: David Gilbert, 37th circuit.
8 I agree with everything he just said. I
9 don't think we did anything wrong in 2010. I think we
10 should just do our jobs. I think we are doing exactly
11 what we are supposed to be doing. I don't think there
12 are any changes necessary.
13 CHAIRPERSON ALLEN: Thank you. Sir.
14 MR. FLESSLAND: Dennis Flessland, 6th
15 circuit.
16 One of the problems that we have sometimes is
17 the role of the Representative Assembly. The last few
18 meetings where we have had some meaningful things to
19 fight about here is the most fun I have ever had on
20 the Representative Assembly, and the people who
21 brought those issues to the group should be commended,
22 and I appreciate it. But along those same lines, we
23 sometimes, I think, have a tendency to become too much
24 of nitpickers in a way, and let me give an example.
25 When we deal with a court rule recommendation

1 that we have, the Supreme Court is not going to let us
2 draft the details of that court rule, but our opinions
3 and our values and our judgements of the impact of
4 that court rule are important to them, but sometimes
5 we get consumed arguing over details of the grammar
6 and the comma and things like that and let the broader
7 principles kind of fall to the wayside, and I think
8 sometimes when we debate certain issues we should keep
9 in mind that it's the principles and values that we
10 represent, of the lawyers that we represent that need
11 to be expressed and that sometimes the details of the
12 proposal are not the most important. Sometimes we get
13 lost in those details and good values don't get passed
14 on.
15 The second thing I wanted to mention is that
16 when I check my listing -- I am a member of the
17 Character and Fitness Committee for my county as
18 well -- and when I check the Bar Journal, my listing
19 in the Bar Journal to make sure that I am still a
20 member and haven't been kicked out, it shows that I am
21 a member of the Character and Fitness Committee in my
22 circuit. I am wondering if it might not be possible
23 to list us as members of the Representative Assembly
24 in our State Bar listing too so that, you know, I have
25 opposing counsel on a case and I see that guy is a

1 member of the Representative Assembly, I could mention
2 some Bar issue that I had with him, because somebody
3 else here earlier mentioned that we are not always
4 known, and that might be a cheap and easy way to let
5 our colleagues know that we are a member of the
6 Assembly.
7 MR. CRAMPTON: Jeff Crampton, 17th circuit.
8 If you want an example of diversity, all you have to
9 do is look at the height of this microphone.
10 I just want to make three quick points. The
11 first is, I was looking on the website, and it talks
12 about the creation of the Representative Assembly. I
13 just want to read this to people. I know you can read
14 it, but I am going to read it for you.
15 In 1970 the State Bar Board of Commissioners
16 noted that due to a large increase in membership there
17 was a lack of opportunity for meaningful contact
18 between members of the Bar and the Board. When the
19 State Bar was founded in 1935, there were 4,278
20 members represented by a Board of 21 commissioners.
21 By 1971 there were near 12,000 members and only 23
22 commissioners. A special committee to review the
23 structure of the Bar commented, and this is a quote, A
24 board which involves only 23 individual points of view
25 cannot adequately represent the range and variety of

1 viewpoints to be found in so large and diverse a
2 membership, particularly with respect to policy
3 decisions, which is exactly what everybody is talking
4 about here today.
5 I found it interesting that the last speaker
6 talked about when we debated the court rules. That
7 was my first Representative Assembly meeting when
8 Elizabeth Jamieson was the chair, and we had all
9 these -- the Taylor court had proposed a number of
10 rules to change trial practices, and so we debated
11 those things, and this was my first meeting. I am
12 like, you got to be kidding me, because we were
13 debating where commas went and things like that, but
14 what was really interesting was, in the afternoon,
15 after lunch, there was word sent to us that the
16 members of the Supreme Court had been sitting in the
17 back of the room listening to the debate to get our
18 perspective, and they told us, Listen, stop bogging
19 down on the minute stuff. We just want your input on
20 what these changes are going to be.
21 So they listened to us. They sat here and
22 listened to us. They don't always do that. We
23 sometimes have to tell them what we think, but they
24 sat here and they listened to us, and they did make
25 changes to a lot of it. Some of it they went with

1 what we liked, some of it they didn't. But they did,
2 they listened to us and they made changes.
3 The other point I want to make is, I don't
4 know how many of you have ever looked at Rule 6, but
5 the very first thing is says, The Representative
6 Assembly is the final policy-making body of the
7 State Bar. No petition may be made for an increase in
8 State Bar dues except as authorized by the
9 Representative Assembly. That's this body. And I
10 don't know, but if we end up with a nonvoluntary bar,
11 not only will we be paying, those of us that want to
12 remain members, be paying bar dues, but you can be
13 guaranteed that there is going to be a user fee or a
14 tax or something that the State will impose on us to
15 regulate us, because if we are not regulated by
16 ourselves, the state will regulate us, and if they do
17 that, they will impose user fees, and we'll have no
18 say in that. I am telling you what, when the
19 Legislature needs to raise money, what's the first
20 thing they do? Sin taxes and user fees, and, boy,
21 lawyers are going to be right at the top of the list.
22 I think if we want to control our destiny,
23 this body is needed, and it's needed whether or not we
24 have a mandatory bar, but it's really needed if we
25 have a mandatory bar. Thank you.

1 MR. ROMANO: Thank you. I am Vince Romano,
2 3rd circuit. I rise to speak in favor of the
3 continuation of the mandatory bar and this body in
4 largely the same format as it now exists.
5 The most salient point that I have heard
6 today involves the fact that whether we have a
7 mandatory or a voluntary bar, a deliberative body of
8 this type is going to be necessary to meaningfully
9 address the issues that will come before whatever kind
10 of a bar it is, mandatory or voluntary, and I think we
11 ought to make that point strongly in whatever response
12 we make here to the Task Force or beyond.
13 Second, I believe that a lot of people have
14 identified some of the ways we can tweak this body,
15 and I would suggest that we employ our deliberative
16 skills, somehow get those compiled and bring them back
17 before us when we have more time to kind of look at
18 them and check them off on a list. But I urge you to
19 support the mandatory bar and support the continuation
20 of this body. Thanks.
21 MR. ANTKOVIAK: Good morning. Matt
22 Antkoviak, 48th circuit.
23 I first want to say that I do support the
24 mandatory bar, and I am also in favor of the
25 continuation of this body.

1 The issue that I want to raise this morning
2 is not one of whether the Assembly is relevant, but
3 how can we be more relevant to our constituency? I
4 will give you an example. I sent out all the
5 proposals to the full Bar in Allegan County, and I was
6 looking for input. I thought, well, here is a chance
7 for folks to say I don't like paying those Bar dues
8 anymore. Matt, go to Lansing and tell them dump it.
9 I heard from one person. I was sorely disappointed in
10 that. In fact, the only proposal that I can recall in
11 recent years that really drew a lot of attention was
12 the change to the Court Rule that said that plea
13 negotiations in criminal cases had to be on the
14 record.
15 Now, we all know what kind of hailstorm that
16 would cause, but my point is how do we become more
17 relevant to our constituents? In our world, time is
18 money. We are all busy. Some of us barely have time
19 to grab a sandwich for lunch. How are we to be better
20 members of this body? How do we communicate to our
21 constituents the important issues?
22 We seem to live in a world of urgency, and
23 where is the sense of urgency that we have that we
24 need to communicate? And maybe I am telling on
25 myself. Perhaps I should have made more phone calls

1 about these issues. I would like to talk for a few
2 minutes and maybe someone has some ideas as to how we
3 can be better members of this body so that people say,
4 yes, it's important; yes, that's an issue that I want
5 to be heard on and someone needs to make a decision
6 that's critical in that area.
7 CHAIRPERSON ALLEN: Do you have a suggestion?
8 MR. ANTKOVIAK: Here is how my life works.
9 It's probably like most of yours. We have schedules.
10 We hit the office and we run. What's the first thing
11 we got to do, make sure that we are prepared for our
12 cases. Sometimes we are waiting. I might have a few
13 minutes to talk with a colleague, hey, what do you
14 think about that issue? Maybe as we are standing
15 waiting for a prosecutor or waiting to negotiate a
16 deal or for the judge or something like that, we could
17 talk about these issues.
18 I love the idea of technology, but the truth
19 is life is about relationships. People can easily
20 delete emails. I do it myself, even important ones,
21 notices from the State Bar. I will be honest. The
22 reality is that, unfortunately, the State Bar for a
23 lot of folks is getting your dues, having to pay those
24 when it comes in. We pay them, because that's what we
25 have to do, and heaven forbid we get a letter from the

1 grievance section.
2 But we need to be more relevant. The cases
3 that come out, those updates, we need to find a way to
4 make those practical. How do we do that? Well, it
5 has to be urgent. Talk to other colleagues. That's
6 hard to do though, unless you are purposeful. I don't
7 know. Our Bar meeting, our Bar association in the
8 county meets four times a year. That's not really a
9 tremendous amount of time to be able to facilitate
10 those issues. So apart from just those conversations,
11 I don't know. Does anybody else have any ideas?
12 CHAIRPERSON ALLEN: We'll have that on the
13 floor. Thank you, sir.
14 MR. POULSON: Barry Poulson, 1st circuit.
15 First, briefly, as an intermediate step in
16 technology is a concept called the blog, and I know
17 our young colleague here, way ahead of me, and I know
18 another member talked to me whose technology is so far
19 beyond what I am able to comprehend, but that blog
20 situation, a lot of people have interactions and
21 conversations and threads, the technology is in there.
22 You may be involved in them already. If not, you can
23 find one.
24 I know my tanker client is getting ready to
25 fight a big battle tomorrow against Russian tankers to

1 decide whether to advise Obama to have a land war
2 against Russia. So you can imagine it's a discussion
3 of politics, but it's a real thing. Hundreds of
4 thousands of us communicate with that blog in nice
5 threads, and it works.
6 I am suggesting that an intermediate step,
7 before going to fully online meetings that could
8 disenfranchise people or an optional one which could
9 disenfranchise the U.P., that we have some
10 consideration of creation of a blog with issue
11 discussion. I am not capable and leading it. I am
12 glad to participate in it. I know the technology
13 exists.
14 Second thing, question for the Chair. Is
15 Section 5, Terms, on the goldenrod thing appropriate
16 for discussion at this time? That's about terms of
17 office.
18 CHAIRPERSON ALLEN: Sure.
19 MR. POULSON: Every few years this seat sits
20 empty. Thank God, Hillsdale County is silenced. But
21 that comes about because you can't succeed yourself.
22 I work hard to try to get people to take over this
23 thing. All I have to do is go to a meeting, I write
24 my letter to the constituents. I can't get anybody to
25 come. So what I am discerning here is -- I hesitate

1 to say that there is a plot by the big counties to
2 disenfranchise the little counties, but I think there
3 is a puzzle there that could be solved. I don't know
4 why they have term limits on it. Maybe there is a
5 good reason, so somebody doesn't get stuck to the
6 chair, but it's a problem, and so I would ask the
7 collective membership to think about that at some
8 point. Thank you.
9 MR. RIGGLE: I am James Riggle from the 50th
10 judicial circuit in the Upper Peninsula.
11 The Supreme Court has asked us to look to see
12 if the Bar functions can be done with means less
13 intrusive to First Amendment rights of its members and
14 the idea of abolishing this group. Aren't we doing
15 that right now? Aren't we providing a forum for the
16 expression of urgent views, your First Amendment
17 rights, as it is? If we abolish the Representative
18 Assembly, then where do those rights, where do those
19 views get expressed? So I am certainly in favor of
20 the mandatory bar and continuing the Representative
21 Assembly.
22 I agree to the use of technology, that the
23 world is evolving and if we don't evolve with it, we
24 will be the victims of technology. We have to be able
25 to respond to this type of proposal that was made in

1 January about our Bar more quickly than we are. I
2 agree that there should be the two in-person meetings,
3 but I also agree that there should be electronic
4 communications, webinars or email even, to allow us to
5 respond, and we should have a procedure developed on
6 when we will use technology and how. Two more
7 electronic meetings would seem to be appropriate.
8 As to the State Bar using money to express a
9 political view, all our judges are elected, or they
10 are supposed to be elected, and the public perception
11 of those judges is certainly a State Bar concern, and
12 the dark money altered that perception, as it has, in
13 a very negative way, and I think that's a legitimate
14 concern of the State Bar, because it reflects on the
15 State Bar, it reflects on the judges, it reflects on
16 the law, and it reflects on all of us as lawyers as we
17 are working the system where the playing field is not
18 level. So I have no problem with Mr. Courtade's
19 remarks.
20 CHAIRPERSON ALLEN: Thank you.
21 MR. HILLARD: Martin Hillard, 17th circuit.
22 Couple of suggestions, Madam Chair. First,
23 with respect to the communication to members, perhaps
24 putting our proposals on the website with a prominent
25 link on the home page so that members may quickly get

to it. Perhaps even an email blast from the office before our meeting with a listing of the proposals in the link for them to read them in more detail and the earlier suggestion on how to find out who their Assembly members are, maybe even a link to the blog spot that Barry just volunteered to moderate.

And the second suggestion I have is our technology here. Why don't we use this all the time and, when we report the results of the actions on those proposals on the website and whomever they are sent to, report the vote. It means something maybe if it passed 131 or however many people we have here today to zero, that that reflects that this diverse body, geographically, politically and otherwise, all supported it, or that it passed, you know, 70 to 61, that it maybe passed, but it reflects that we are not all of one mind and that we are not just jamming ideas down the throat to say that this is what the Bar is saying. Just a couple of suggestions. Thank you.

MR. MORGAN: Ken Morgan from the 6th circuit.

My practice is largely national. As a percentage, I probably do only about 20, 25 percent in Michigan. When I began to do that, I thought that what I was going to find was a better quality of communication and lawyering in places like California,

New York, Chicago and elsewhere. What I found is that's not true. What I found is lawyers around the country are in the same circumstance we are as far communicating with each other. Everybody is too busy, everything is moving faster than it used to, there is more to lose, but what I have found is in those places where the bar has created the method of communicating, it goes easier. The lawyers work better together, and they do actually, it surprised me a bit, they have a more collegial relationship when they are dealing with each other.

I think that this body is First Amendment. I can't imagine someone who would argue that a legislature should not exist because it interferes with the First Amendment rights of the citizens. So the very notion of that I have a hard time with.

This body has to exist. How it exists becomes a more interesting question to me, and it seems as if an attack on it generally or an attack on the integrated bar is an impetus for improvement. I think that improvement can really be here. I think that this bar can become better than elsewhere if this organization embraces the kinds of communication technology we are talking about.

And the face-to-face, it's essential. We are

lawyers who self-select to be in a social position, a profession where we deal with people. We can't dispense with that either, but we can do so much with a lot less than we used to. It's not as expensive. There are only 130-some people here. There are organizations ten times bigger than that that communicate more effectively with technology they can buy off the shelf.

So there should be a group that focuses on that. Those that haven't used it, it's going to be a little harder. Once you use it, you are going to like it better than not having it. To me there is no question this organization has to push forward to take the tractors out and just change the conversation. So that's all I'd like to say.

CHAIRPERSON ALLEN: Thank you.

MR. LARKY: My name is Sheldon Larky from the 6th circuit. A lot of people this morning asked me to stand up, and I will stand up and talk.

I am one of those rare people in the room. My P number starts with a 1, which means that I have been around for a while. I think I was 15 when I got that number, by the way.

However, I have been on the Representative Assembly, as my brother from the 7th circuit has

indicated, I think I have been on the Representative Assembly since the mid-eighties, and the only way I get off is I am term limited, so I am probably one of the more consistent people here, and I have to give you a background story.

Background story is I am heavily involved in politics. In my local bar association, I am the co-chairman of our legislative committee and have been for almost two decades, and I read every single bill, every single piece of legislation that comes out of the House or Senate of Michigan. In the 44 years that I have been an attorney, not once ever has there ever been a bill introduced to take away the mandatory State Bar. And it's only been brought because Bruce Courtade and the Board of Commissioners and our Assembly took a position regarding the openness regarding judicial elections. That's what brought this all about. And we are now arguing and we are now fighting with ourselves and we are fighting with the Legislature to try to convince them to not change the state law that was enacted in 1933, I think, because in '35 we got the State Bar, to fight against the mandatory State Bar.

What happens if Michigan goes to a voluntary State Bar? Let me give you the easiest example. When

1 I was chairman of the Oakland County Bar Association's
2 membership committee, we had a little under a thousand
3 members. In the two years that I served as the chair,
4 we were able to double the membership from about 800
5 to about 1600. Membership now in the Oakland County
6 Bar, which is the largest bar association, voluntary
7 bar of Michigan, is 3,000 members. There are almost
8 12,000 lawyers in Oakland County, which means only one
9 out of every four lawyers belongs to the largest
10 voluntary bar in the state.
11 What's going to happen if we become a
12 voluntary bar? For those of us in this room, the
13 answer is we will pay the bar dues. We will pay the
14 bar dues, because we are bar trekkies, all 131 of us
15 are bar trekkies. What's going to happen though to
16 our brothers and sisters who are not in this room?
17 Are they going to look at the maybe upwards of $400 a
18 year that they have to pay for bar dues, are they
19 going to look at that as, well, maybe we should, we
20 could safe that money?
21 As someone said initially, if we don't pay
22 the bar dues, the state is going to take it from us.
23 The state is going to take us and they are going to
24 impose numbers, and those numbers are not going to
25 take care of the disciplinary functions that we help

1 pay for every year. It's not going to take care of
2 all the things that we protect the small person and,
3 frankly, the big corporations as we do our activities
4 in this association.
5 So the question really is -- we did A, we
6 approved A that says summarize our comments and
7 recommendations made April 26. That's what it says we
8 have to do. I would urge the committee to do the
9 following: One, in no uncertain terms say to the
10 Task Force and to the Supreme Court and to the
11 Legislature, as the final policy-making Bar, policy
12 positions of the 43,000 members, we urge the
13 continuation of the mandatory bar, that's number one.
14 That should be the first line of that report.
15 Second line is we believe that the system
16 works, the bar system works, and we believe that --
17 what's wrong with what we have done for almost the
18 last 80 years as a bar association? If it isn't wrong
19 from the standpoint of big generalities, why dismantle
20 it? Why does it have to be dismantled if it's
21 working? To all of us in this room, especially those
22 in the smaller communities, ladies and gentlemen in
23 the smaller communities, whether in Hillsdale or
24 Menominee, our brothers and sisters are too busy. We
25 are the eyes and ears of them. If you want, maybe we

1 ought to do like congress. They talk about our
2 constituency. I think we ought to mandate the
3 State Bar ought to pay us to have constituency offices
4 and have constituency hours. It isn't going to work.
5 Let's be honest, it's not going to work,
6 because people are satisfied with what's going on. If
7 you are satisfied with what you are doing -- yeah, you
8 can grouse about we ought to have a law, we ought to
9 do this, the judge should have done that, but if we
10 live day by day and we are successful and we have been
11 successful for almost the last 80 years, why do we
12 have to change a thing? Why do we have to change a
13 thing? We don't have to change our goal.
14 Section 1 of the rule is exactly what we
15 should be, and yet, I agree, that there have been many
16 meetings personally where I sat there and said, oh,
17 hell, we are going to talk about commas and we are
18 going to talk about T's and Q's, and we are going to
19 talk about this rule. Guess what, we are lawyers. We
20 love to nitpick. Why not? Why not do that? It's
21 part of the process. It's part of discussing this.
22 You don't think the Supremes do that when they have a
23 court rule decision. They talk about nitpicking. We
24 can do it too. So we are 150 people. We have 150
25 opinions of it. All right, big deal. We will come to

1 a consensus, and like my brother from the 3rd circuit
2 who says there is only two liberals in this room. I
3 can count more. Matt Abel makes it three.
4 But the bottom line is, the bottom line is
5 we, all of us bring our wants and our needs to this
6 room, and we try to bring the wants and needs of our
7 constituents, but our constituents for the most part
8 don't know what we are doing. They don't.
9 Let's be honest about it. Larger circuits,
10 like I am in the 6th, I don't know how many members we
11 have. We have 20-some members. Do you think that all
12 20 of us go out and sing Kumbaya to all of our people?
13 No, we don't. Do the people come to us? No, not
14 always. But when there is a major issue, we bring it
15 back, we talk about it, we discuss it.
16 So the bottom line, I think, is part A of
17 what we voted yes on, I think we have to send a clear,
18 concise message.
19 Just one last thing. I think personally for
20 over the years what has really disturbed me personally
21 is the annual meeting. At the annual meeting I think
22 we make a serious mistake. The serious mistake is
23 many of us are members of various sections and
24 committees, and we would like to go to those meetings,
25 and they interfere with the Representative Assembly.

1 And if there is anything, I wouldn't have the
2 Rep Assembly meeting on the State Bar day. I would
3 have it meet some other time. I don't think we have
4 to meet at the annual meeting. It doesn't make sense
5 personally, and there is no reason for us to coincide
6 with it. I think we should be able to spend time in
7 our various committees and various sections.
8 And I personally, after having being on this
9 RA for this many years, I like to talk to people. I
10 love to meet people. I want to talk and shake
11 Tom Rombach's hand, and I want to tell a dirty joke to
12 somebody around here. And I want to find out who is
13 interacting with me, and this body does that, and it
14 gives me, ladies and gentlemen, I don't know about
15 you, it gives me a network to find new business.
16 Forgive me for saying it. You want an
17 attorney in Hillsdale? You better talk to somebody
18 here. You want an attorney in Menominee? They are
19 here. And they think that they are dedicated. I want
20 that dedicated person. Thank you.
21 MR. HERRMANN: Fred Herrmann, 3rd circuit. I
22 rise in support of the mandatory bar and the
23 continuation of this body. Mr. Larky is always a
24 difficult act to follow. I will do my best.
25 Picture for a minute your least sophisticated

1 client. The person comes to you knowing very little
2 about the law or the legal system or even the
3 structure of lawyers in the State Bar. Bring that
4 person into this meeting and witness this debate that
5 we are having today. That's the person we serve.
6 That's why we exist as a profession. And although
7 today we have been discussing the structure of the
8 Representative Assembly and the State Bar with respect
9 to lawyers themselves, our ultimate purpose is to
10 serve that client.
11 We are a body not just representing lawyers.
12 We represent those clients and their interests as
13 well. That's why the State Bar exists. That's its
14 fundamental and primary purpose, not to serve lawyers,
15 but to serve their clients. The work we do here, the
16 rules we debate, the policies we discuss, they are all
17 before us for the ultimate purpose of serving those
18 clients.
19 If we take away the structure we have today,
20 the ability to talk to one another, the ability to
21 discuss issues with people up in the Upper Peninsula
22 who perhaps don't have the infrastructure support that
23 we have downstate, how are those clients going to
24 benefit when we are all islands floating out there on
25 our own just trying to do our best without coming

1 together?
2 The issues we debate, the viewpoints we get
3 from across the state allow us to create better policy
4 and create better rules that ultimately serve those
5 clients, and, if we give that up, we take away that
6 structure, we are hurting the public, and that's what
7 we are all about, and that's why I support this.
8 CHAIRPERSON ALLEN: Thank you.
9 MR. WEINER: Jim Weiner from the 6th circuit.
10 I have also been a member of the Representative
11 Assembly almost since I became an attorney in the
12 early 1990s, except for the mandatory one year sitting
13 off when I served my two terms. It's been a very
14 rewarding, personally, and I hope the Bar, experience
15 for me and everybody else.
16 I come out in front in favor of a mandatory
17 bar. I can't imagine not having a mandatory bar. I
18 haven't practiced in a state that didn't, except
19 Illinois, as I understand, doesn't have a mandatory
20 bar, but they have the same dues structure as we do
21 anyways.
22 I can't imagine the State Bar without the
23 Representative Assembly. This body does do -- at
24 times it doesn't seem like it does a lot of work, but
25 it really does. I think it grounds the Board of

1 Commissioners, it grounds the State Bar as something
2 that is representative of all attorneys, and I think
3 that it's very, very important for us to recognize
4 that.
5 We have all sorts of viewpoints, and
6 sometimes we do argue about commas, but I remember
7 times when we have come up here and something has been
8 presented to us and it doesn't say what the drafter
9 has intended. So sometimes we have to debate those
10 commas, we have to make those changes just to make
11 sure that the Court Rules, or whatever rules that we
12 are looking for, mean on paper what we intended it to
13 mean. A misplaced comma, a misplaced period, or the
14 wrong word in a certain area can make a major
15 difference.
16 For those of you that practice administrative
17 law, for those of you that deal with legislation day
18 in and day out, you understand that. A change in the
19 law, a change in a single word can mean a
20 significant -- make a significant difference to what a
21 law, regulation, court rule means. So I don't think
22 that's bad. Sometimes there are ways we can
23 streamline it.
24 There are ways, whether it's an email blast
25 or blog, it gives people ten days to respond and do

that and things like that, especially now with the cloud out there that we can all have access to. There are ways that we can make ourselves even more relevant for those things and get the Representative Assembly's input on documents, on regulations, on acts and not have to deal with it at a meeting every six months and not have to wait.

There are times, whatever we do, if we do put that in, I hope that we all realize that there is a failsafe, that we should put in a failsafe for that so that when there is something that rises to a certain importance that people feel strongly about that is very, very divisive, that it is adjourned to a mandatory meeting. It is adjourned to one of the six meetings. If we all agree on something, there is no reason to bring it before this Assembly on one of these days. So I just want to put that together.

CHAIRPERSON ALLEN: Thank you.

We only have five minutes before lunch, and this is the first time that I am going to have all of you people in one room to ask a question. And this is something that I struggle with as being Chair. What types of issues do you want to hear? Because we have got five minutes to give some ideas to get a feel. What type of issues do you want to hear? Anybody? Do

you want just only court rules? Come up and tell me. What do you want to hear?

MR. SMITH: Less speeches. Joshua Smith, 30th circuit.

Somebody right next to me suggested that some of the speeches and awards ceremonies actually could be done in the annual lunch. Everybody is there, more people than you have in the Rep Assembly. The person gets the recognition that they, quite frankly, deserve and a broader group of people get to hear their speech, their acceptance, and their story.

CHAIRPERSON ALLEN: Thank you. Got three minutes before lunch starts.

MS. KAKISH: Kathy Kakish, 3rd circuit. I don't think that we should make any preferences. Any court rule, any legislation that properly belongs before the Assembly should be submitted before the Assembly, and to limit our work would actually defeat the purpose of the role of the Assembly.

MR. WEINER: Jim Weiner 6th, circuit. I agree with that. I don't think we need to limit what comes before us as much as we need to be efficient about it. I remember one time -- it was very, very important -- was the Supreme Court wanted this Assembly to come out in favor of appointment of judges

rather than election of judges, which would require an amendment to the state constitution, and, in fact, we had a special Representative Assembly meeting for that, and we came out strongly in favor of elected judges and continuation. I think that's important.

CHAIRPERSON ALLEN: Thank you.

MS. BRANSDORFER: Liz Bransdorfer from the 17th circuit. I think this body needs to reach out to the committees of the State Bar and to the sections of the State Bar and to invite those groups, smaller groups of our constituents to let us know what are the issues that affect their members' daily practices and what they think would make the practice of law better for the lawyers and for the clients that we represent, and that this group ought to take affirmative steps to invite those groups to let us know what's important, and then we ought to listen to those smaller constituencies. We shouldn't be limited to things that are going to affect every lawyer in this state. Those smaller constituencies have very important concerns.

MS. KRISTA HAROUTUNIAN: Krista Licata Haroutunian, 6th circuit.

I think in sort of echoing what a lot of the other members have said, but I think one of the things

to do is to look at the liaisons. We were talking to some people in the break and, you know, we were talking about what about the liaisons, and I think Kathy Kakish maybe mentioned that as well. What about the liaisons? I mean, the commission, I think, has liaisons, but the RA has liaisons. I am not exactly sure, I haven't thought it through enough to know, but I am not exactly sure how to bring that out, but there has got to be a better way of bringing out what the liaisons learn at those sections and other meetings and bring that to us and maybe be a little more active in those meetings to say, Do you want the RA to look at this? Obviously they are talking about different things and that those issues could come out most effectively through the liaisons, because we have people there, and those are our people. Those are our RA people. So anyway, that was the thought I had.

CHAIRPERSON ALLEN: Thank you.

MR. PHILO: John Philo from 3rd circuit.

I would just oppose anything that seeks to narrow what we discuss. I think that just confining ourselves to court rules, we have a greater duty, and I think it was well said, we have a duty to the public, and that is what we are about. We may express that as we should talk about the things that affect

the practice of law, but that's in relation to the public, and I think it's filtered through that, and that sort of arbitrary narrowing I think diminishes our role and the value of our role.

CHAIRPERSON ALLEN: Thank you.

MR. MEKAS: Pete Mekas, 49th circuit. Our body has a lot of experience bringing in here a lot of knowledge and very important, not only issues, but arguments. Is there a way, especially with our new emphasize on technology, that when a speaker comes before the microphone, can we put his name or her name on the board? With some circuits that have 20 representatives, not all of us know who all of them are. We try to make notes as to who they are, but I just wonder if there is a way that we can flash the name and the circuit instead of just hearing it and scurrying to write it down.

CHAIRPERSON ALLEN: Thank you.

Lunch. Okay, we made it. I adjourn the meeting so we can go to lunch, and our lunch is from 11:50 and we will begin at 12:45.

(Lunch break 11:53 a.m. - 12:48 p.m.)

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CONCLUSION OF EXCERPT OF PROCEEDINGS

STATE OF MICHIGAN)
)
COUNTY OF CLINTON)

I certify that this transcript, consisting of 81 pages, is a true and correct transcript of the proceedings had by the Representative Assembly on Saturday, April 26, 2014.

April 27, 2014

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

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