

**MICHIGAN SUPREME COURT**

**PUBLIC HEARING**

**NOVEMBER 20, 2019**

---

**CHIEF JUSTICE MCCORMACK:** Good morning and welcome to our November public hearing, on a number of administrative rule questions. We will start with the first item which concerns amendments to a number of rules that incorporate a requirement that a trial court notify a respondent in a child protection proceeding, of the right to appeal following a child's removal from the home at the initial disposi—in the initial dispositional order. We have one speaker, I believe, Curtis Deshone Baker.

**CHIEF JUSTICE MCCORMACK:** He's not here, Ms. Boomer; as far as we know?

**MS. ANNE BOOMER:** [Indiscernible @1:08].

**CHIEF JUSTICE MCCORMACK:** Okay, let's move onto Item No. 2, which concerns proposed alternative amendments to MCR 6.610 that would allow discovery in criminal misdemeanor proceedings in district court. We have two speakers, John Shea we will call first.

**MR. JOHN SHEA:** Good morning. Thank you for this opportunity. I was before you in the spring when you had a public administrative hearing on the first iteration of this court rule amendment proposal, and I am pleased to be back in front of you to discuss the second iteration.

I want to reiterate a couple of things that I said, when I was here in the spring. Misdemeanor case are important cases. They are serious cases when we're talking about the heartland of them. Now some misdemeanor cases may not be so serious, your dog-at-large case and perhaps your, you know, first driving-while-license-suspended case may be not such a big deal.

But the heartland of cases from my standpoint and my practice involve domestic violence cases, stalking cases, aggravated assault, malicious destruction of property, civil infractions causing serious injury or death, drunk driving obviously, and those are serious cases that require serious consideration.

These cases also carry serious consequences and it's not just jail. The collateral consequences of misdemeanor convictions can be life altering. People can easily get drivers' license sanctions which can impact their job, there could be professional license sanctions which could impact their livelihood. They can lose housing, they can lose their gun rights, there could be immigration consequences to many of these things. So these are important cases and we

ought to have a uniform rule across the state to address the issues of discovery. The Court has also—

**JUSTICE MARKMAN:** Counsel—

**MR. SHEA:** —proposed—

**JUSTICE MARKMAN:** Counsel—

**MR. SHEA:** —two—yes, sir?

**JUSTICE MARKMAN:** I don't quarrel with anything that you've said thus far. These are important cases for individuals and for the state of the law generally. But they were just as important yesterday and last year, and five years ago. What is it that's prompted these proposals right now? What is it that's been—that's suggested that the status quo is something that's in need of fairly significant changes at this juncture?

**MR. SHEA:** The defense bar has been advocating for this kind of change for quite some time. The trend in modern juris prudence and modern criminal procedure is to make litigation more transparent, not less. I just think that we haven't paid as much attention to it as the Court is paying attention to it now. The fact that it is important now, doesn't mean it wasn't important 30 years ago when I started doing criminal defense work. I think it was important then, too.

Another thing, most places where I practice—and perhaps I'm fortunate, discovery in misdemeanor cases has been routine anyway, even without court rule. But I am relying on a prosecutor's largesse, or a township attorney's largesse, or a city attorney's largesse. In southeast Michigan that largesse is more routine than not. I am told by my colleagues in many parts of the state, it's not so routine.

So it may be more important there as a practical day-to-day matter, in those other parts than where I practice. But I still think that the issue is important, always has been important and uniformity is desired. Does—I hope that answers your question.

**JUSTICE MARKMAN:** Thank you.

**MR. SHEA:** Thank you. We support Alternative A. Essentially, it is the alternative that allows defense counsel to opt out of seeking discovery. But if a defense attorney opts in and requests it, then the defense attorney has the same discovery, reciprocity, obligations as would a—in a felony case. And when the defense attorney asks for discovery in a misdemeanor case, defense attorney knows that he or she is going to have to reciprocate as appropriate and as the rule would require. Seems fair. It is consistent with federal practice and it seems to work there pretty well.

Alternative B, I would suggest is unwieldy and ineffective. It has a two-stage process. Before a trial date is set, defense counsel can inspect the police report, but doesn't get to see anything else and doesn't get a copy of it, so you got to make an appointment or other arrangement with the prosecutor, just to review the police report—difficult to do that with your client. You've got to take notes or otherwise rely on memory.

It doesn't seem to be very workable from my standpoint. It's ineffective when it comes to processing cases and when it comes to making an informed decision on whether to try a case or negotiate it because you need discovery to make that decision. Even though trials are not common in misdemeanor cases, or in any case in any sphere of the justice system, to my mind these days, you still need to have discovery in order to properly negotiate a resolution—an appropriate resolution of your case. And—

**JUSTICE VIVIANO:** How much of the discovery, in your experience, is electronic now—provided to you electronically.

**MR. SHEA:** It depends on the jurisdiction. Livingston County, for instance, I get, I think, everything electronically. Washington County, I get everything electronically. Some has to come on separate media. I mean, if you're going to get a recording, a body camera recording or a dash-camera recording, or a booking video, you're going to get that on a—you're not going to typically get that electronically on a cloud, although they are moving that way. Those typically come on a disc with—

**JUSTICE VIVIANO:** Where do you get—where do you get paper copies?

**MR. SHEA:** I still get paper from other counties that haven't gone electronic. Lenawee, for instance, I am just using examples—recent examples. Sometimes I get paper copies from the city attorney's office in Ann Arbor or from the city of Ypsi[lanti], or from township attorneys who aren't maybe as—they don't have the center mass resources to have a full electronic system that many county prosecutor offices have.

**JUSTICE VIVIANO:** Although all the police departments are electronic, right? So the police report, for example, starting in a format that could be sent to you electronically, right?

**MR. SHEA:** I don't know that I can say that's true with respect to all police departments. I know that in Washtenaw County, the police reports—Requests for Review—are transmitted electronically from the police agencies in Washtenaw County through the Washtenaw County prosecutor's office. And authorization approvals or denials are in turn electronically sent back to the police departments. So the days of taking a stack of police reports, you know, the court liaison officer from the police department taking them down to the county prosecutor and leaving them there with somebody, I think those days are gone in Washtenaw County.

I don't know how complete that is when it comes to anything other than the bare investigative reports themselves and perhaps photos that have been scanned in and things of

that nature. Again, when it comes to recordings, I think that's a little more cumbersome. I think in other parts of the state, you are still having police agencies walk the police report across the parking lot to the county prosecutor's office and pay per form; I don't think it's electronic everywhere, I guess is what I am saying.

**JUSTICE ZAHRA:** Okay, the State Bar of Michigan supports alternative A, but in so doing, they expressed concern over the increased burden placed on prosecutors and they urged additional funding from the funding units. Do you accept the proposition that this is an increased burden on the prosecutors that would require additional funding?

**MR. SHEA:** Where prosecutors aren't already doing it, I think it is inescapable that it's an increased burden. How increased the burden is, I wouldn't know. As I said, in southeast Michigan, where I practice, this discovery already is provided pretty routinely. Some jurisdictions require me to pay for it, which is fine. And—so that helps defray some of the costs. I would imagine and would assume they are charging me what they think their carrying cost is for providing it and it's not usually a big number.

Where would—in parts of the State where providing it isn't as routine, then I think it's going to require some, perhaps some additional staffing, perhaps not. But at least photo copying costs and things of that nature. Again, some jurisdictions pass those costs along. So I don't know if they need funding or not.

**JUSTICE MARKMAN:** Counsel?

**MR. SHEA:** Yes, sir.

**JUSTICE MARKMAN:** I fully understand your impulse to transform what you describe as being, at present, the largess of prosecutors for rules. I completely understand that. But the consequences, I would suggest and I think you probably would acknowledge, there are consequences to doing that. And one of them is the increasing—that increasingly the failure to invoke these new rules would be transformed into essentially constitutional violations, wouldn't they?

**MR. SHEA:** I don't think so. I—there are discovery rules in—Rule 16 of the Federal Rules of Criminal Procedure is a discovery rule. It—the United States Supreme Court still has not recognized that as a rule of constitutional dimension. So I don't think the fact that we've become more enlightened in terms of how we codify, for want of a better word, pretrial discovery proceedings in criminal cases makes the rule something of constitutional dimension. I haven't heard anybody argue that when it comes to felony discovery, for instance.

I am concerned that defense lawyers are going to have an additional burden; I'm not concerned about this in a bad way. I think responsible defense attorneys, if they're going to opt out of discovery, are going to have to discuss it with their clients and let them know—listen, I have an offer on the table right now, it's not going to be here an hour from now. I don't have

any discovery that would allow me to fully and effectively evaluate this. All I can rely on, Mr. Client, is your telling me what happened in terms of this incident and whether you think this is a fair resolution and one you want to take advantage of.

I think you're going to have to have those kinds of conversations or—and if you don't, and if a client, you know, negotiates an outcome that the client later believes was ill-advised and was entered into without sufficient knowledge of all of the facts and circumstances the discovery would have presented, then that lawyer is going to have a problem with his client. I don't necessarily think that's a bad thing. I think lawyers should be talking to their clients about decisions like this and I think that's good practice.

**CHIEF JUSTICE MCCORMACK:** Thank you, counsel.

**MR. SHEA:** Thank you.

**CHIEF JUSTICE MCCORMACK:** The next speaker on the same rule is Michael Tesner from the Prosecuting Attorneys Association of Michigan, also from the Genesee County Prosecutor's Office.

**MR. MICHAEL TESNER:** Yes. Thank you, Chief Justice. Good morning, Michael Tesner. Thank you for giving me this opportunity to address the Court on behalf of PAAM.

As we've stated previously, PAAM supports the concept of a court rule regarding discovery. And it's no surprise to any of you, I am sure, that we support Proposal B or Alternative B that Mr. Vaillencourt brought to the Court's attention the last time he spoke.

Alternative B provides for discovery of the essentials prior to trial, so that defense counsel can make an informed assessment of a case. Many misdemeanors are not contested by the defendant and the defendants themselves seek to resolve their cases expeditiously with a minimal amount of legal fees and court appearances.

Now it's been suggested that reciprocal discovery, as in Alternative B, at a certain stage, is not appropriate. However, the only duty imposed on a defendant by Alternative B is to disclose witnesses. And that is significant and it is necessary to void trial by ambush and especially in cases where experts are concerned. And there are certain cases—drunk driving cases and moving violations causing death or seriously bodily harm where experts often appear. And if the defense chooses not to ask for discovery, then the prosecutor doesn't get discovery and doesn't find that out until trial.

On the other hand, the prosecutor would be forced to file a motion which would further delay things, seeking in a case where the prosecutor believes that the defense may provide expert testimony, the prosecutor would have to file a motion and that would take up the court's time and the litigants time arguing about that. Just to get something that could just be provided by the defense as a matter of fairness in the system.

**JUSTICE MARKMAN:** Mr. Tesner, you are absolutely correct. There's no surprise, I think, on anyone's part, that you support Alternative B. On my part there's only a little bit of eyebrow-raising that you support anything at this point. What are the deficiencies, what are the defects that you see in the current system in the participation of prosecutors in the current system that cause you to support this change?

**MR. TESNER:** Speaking from my own observation, we don't really have issues with discovery. In Genesee County and as Mr. Shea indicated in his practice, we provide whatever discovery we have. At the initial arraignment in our county, defendants either have their own attorney or are provided one. And so they have an attorney present. And at the first pretrial, they are given whatever we have. So in that sense, I agree with you, Justice Markman. And what I think—

**JUSTICE MARKMAN:** I'm just asking a question. I don't know what there is to agree with, I'm just asking a question.

**MR. TESNER:** What I have seen in my practice, it wouldn't really change much that we do in Genesee County.

**JUSTICE MARKMAN:** So is your critique directed toward prosecutors outside of your home county who are not being as supportive of the needs of the system as your office is?

**MR. TESNER:** Well, again, I'm practicing—in my county, I haven't observed those deficiencies. I understand the deficiencies have been mentioned by some of the defense bar speaking in support of the original proposal and now in support of Proposal A. But I really—I really can't speak on what the deficiencies are in those; I haven't seen them.

I think—as I said in most misdemeanor cases, most litigants either plead at their initial appearance or they request a pretrial. And then when the defense attorney reviews the evidence, reviews the police report, or talks to the prosecutor, they work out a plea agreement. Most cases don't go beyond that step.

**JUSTICE MARKMAN:** Should I take your statement to be a full-throated support of Alternative B or support for the status quo?

**MR. TESNER:** PAAM is in support of Alternative B, your Honor. I also believe that Alternative B is really more fair. The proposed language in Alternative A would only apply MCR 6.201(A), if the defendant requests discovery and then only requires the defendant to comply with the rule if he or she has requested the discovery, and the prosecution has complied. Which also has a built-in time factor to it, because there's time to respond to discovery demand and then the defense would have time to respond to the prosecutor. And if the case is set for trial and especially under the time constraints that exist in district court, both parties should be able

to contemporaneously provide the materials required. And again, for the defendant, that's only the witness list and the designation of any expert. That's not an excessively high burden.

And also with this two-step discovery process, the essentials aren't provided initially. And then if the case has been set for trial and the likelihood of going further, then the discovery will kick in, the defendant will kick in and the defendant can request more and the prosecutor will turn it over. I mean, if there's concern and a county is outside southeast Michigan, that rule will provide a—will provide the necessary relief to defendants.

**CHIEF JUSTICE MCCORMACK:** Thank you, very much.

**MR. TESNER:** Thank you, your Honor.

**CHIEF JUSTICE MCCORMACK:** Thank you for coming.

**CHIEF JUSTICE MCCORMACK:** The next item is Item No. 4 on our agenda. And it is a proposed amendment to Rule 8.115 that would explicitly allow the use of cellular phones as well as prohibit certain uses in a courthouse and a courtroom. Our first speaker is Robert McKay.

No Mr. McKay. How about Charles Hobbs?

**MR. CHARLES HOBBS:** Good morning, your Honors, may it please the Court, my name is Charles Hobbs. I'm from the Detroit-based non-profit Street Democracy whose systems change advocacy is informed by our direct representation of the homeless. And I am here to speak in support of the proposed court rule Amendment 2018-30, to allow litigants to bring their cell phones to Michigan courts.

One of Street Democracy's core principles is to amplify the voices of those most affected by an issue. So I went to speak with the folks at the largest district court in the state, to see what they had to say about this issue. As you can imagine, there was overwhelming support for the rule change. The signatures we gathered have been submitted to the Court, but I'd like to tell you a few stories that accompanied those signatures.

The first is from a young woman that during her first prior appearance at the court, she used a ride share app to get to the courthouse as her driving privileges had been suspended. Unaware of the prohibition of cell phones in the court, she had no choice but to hide her phone in some bushes outside the court. I'm sure your Honors can predict what happened next. She went out, her phone was gone and she was left relying on strangers to find her way home.

Another notable exchange was with a young man who, when I asked if he supports the amendment said, man, I need a phone right now. I asked why and he said that his attorney didn't show up. Luckily, for him as well as for his defense counsel who had forgotten about the court date, he was talking to someone not only privileged enough to be able to be allowed to bring in a phone, but also willing to let him use it.

I also spoke with a woman, a young woman, who was a tenant in a landlord/tenant matter in her second appearance on the case. She had to return because her evidence of the conditions in her apartment were on her phone and, because of the ban, she was not able to proceed with that first appearance.

Coincidentally, I spoke with a landlord who also supports the cha—the rule of change because it would save her the time of having to appear more than once on a case, because the tenant, you know, because the tenant alleges has habitability issue. And she says the so-called evidence is on their phone. She also supported it as being able to verify information with the tenant, with the office in real time without having to come back.

Now, those stories are reflective of the issues at stake; not having a cell phone impairs an individual's ability to get to court, to present evidence, and in the case of the young man to have counsel present. It also hurts judicial economy in the form of a court's ability to adjudicate at first appearance.

Therefore, Street Democracy believes that the benefits to individuals and the courts outweighs the risk to public safety and that the amendment's language properly safeguards against any such risk.

For those reasons, we ask this Court to adopt the proposed court rule amendment. Thank you.

**CHIEF JUSTICE MCCORMACK:** Thank you, very much. Judge Darlene O'Brien from the Michigan Probate Judges Association.

**JUDGE DARLENE O'BRIEN:** Good morning, Honorable Justices, Darlene O'Brien, Washtenaw County Probate Judge and I'm speaking to you as President of the Michigan Probate Judges Association.

We acknowledge that the court's rules and policies do need to keep pace with technological changes. However, the proposed amendment of 8.115 should not be adopted for a number of reasons. Courts differ greatly in the volume of cases, security resources and availability of staff, making the application and effect of the Amendment different from courts to courts.

Judges and other officials, in each county, are best able to create and tailor a policy serving their court to balance the safety and fairness to court personnel and litigants, as well as general public. These local administrative orders should permit exceptions so that litigants could use their phones on a case-by-case basis for legitimate court business, like offering evidence.

Historically, courts have observed that cell phones have been used for inappropriate purposes like circumventing witness sequestration orders, witness intimidation and bullying through publication of surreptitiously recorded testimony; ringing phones and unauthorized usage of electronic devices including pictures, videos and photographing of jurors can be expected, causing disruption in court proceedings. It would open the door to manipulation of legal documents for inappropriate purposes, quite possibly compromising the integrity of a case and the security of those involved.

In many counties, especially busy or a larger ones, it's almost impossible for judges to staff—judges and court staff to police cell phone usage on any given day, particularly busy motion days where hundreds of people are in and out.

Funding is often not available at a county level to employ additional personnel to police electronic device usage. And also many courts rely on copy fees to provide a significant source of revenue that would be lost under the amendment.

In summary, if the Supreme Court believes that a court rule is necessary, it should simply require each county to create its own local administrative order to allow electronic devices, in the manner best suited to that county's unique limitations to be approved by the State Court Administrative Office.

I urge that whatever you do, please provide sufficient time for the courts to seek funding needed to keep our courthouses safe and secure. Thank you.

**JUSTICE MARKMAN:** Counsel?

**JUDGE O'BRIEN:** Yes?

**JUSTICE MARKMAN:** I understand your concern about the unique limitations that might be evident in one county, compared to another county. And I understand how that would argue in favor of a less-centralized rule and a deference to more local decision-making. But I guess I haven't really heard clearly, at least in my own mind, what those unique principles are. I mean the difficulty, for example, of monitoring what's being done with the phones that you identify in Washtenaw County, would that truly be any less so in Alpena County or Chippewa County or any other county in the state?

In other words, I'm leading up to the final question that I have or the ultimate question which is, why is this a rule that ought to be decentralized as opposed to one that, in your judgment, ought to be restructured in some respects, perhaps, and then applied in a general fashion across the state?

**JUDGE O'BRIEN:** Well as I said, courts differ in, you know, their resources and the problems that are presented in Alpena. It may be that their population is much smaller, they are familiar with a lot of their community members and they don't have a problem with people

bringing phones into the court. Whereas in some of the busier courts, we can expect more problems, and security and safety issues are a concern.

**JUSTICE MARKMAN:** Is the uniqueness that you are identifying really more—less a function of things that differentiate Alpena from Washtenaw and more attributable to the uniqueness of the judges themselves in their own individual predilections and perspectives?

**JUDGE O'BRIEN:** Well that could be, in part. But I think that having something that would allow litigants to bring phones into the court for proper purposes would be helpful. And I understand that you do have a desire to have something uniform across the state.

If you do allow people to bring in the phones, who is going to be policing that? You don't have bailiffs in my court. If it's a docket that has criminal defendants, there would be transport there, but we simply don't have the resources in our court. And we provide lockers for people who can't bring their phones in to lock them up before they enter the building.

**JUSTICE BERNSTEIN:** So counsel, first off, thank you so much for coming. And thank you for being here today. So that was—I guess my point is that you don't object to people bringing—well, to bring phones in the building. You would—you—I mean, I guess my question would be is that I understand your concerns. I think you've expressed it beautifully.

I just want to kind of go back to the ride share component. So—and in many of the statements that we got, a lot of folks have this same issue. So let's just take a person who is blind, like myself, who would use Uber to get to the courthouse. And you wouldn't object or your organization wouldn't object to the idea that someone like myself, if I'm called for jury duty, or I have a matter in court, you know, I'm able to use the ride share. I get to court. You would—you would feel or would you not that there needs to be a uniform standard that says that I can still bring my phone into the building. That I don't have to dispose of my phone or not come in the building; what would your position be on that?

**JUDGE O'BRIEN:** Well the Washtenaw County trial court experiences that. We provide lockers so that you can put your phone in the locker before you enter—

**JUSTICE BERNSTEIN:** Right.

**JUDGE O'BRIEN:** —if you are a juror, if you are going to be sworn in and want pictures taken, if we're performing a marriage ceremony, or if you have evidence on your phone, we just call down to security and say, let Justice Bernstein bring his phone in and they do.

**JUSTICE BERNSTEIN:** But I guess the question would be, though, is that—I mean, should we in looking at this that the challenge is that we don't have a uniform standard. So I mean I think that is excellent that Washtenaw County does that, because I know I can get to Washtenaw County. But not all the other coun—like not all the counties do it.

So, the challenge that I think we have is, is that because it is not uniform, it is more subjective. So you could wind up getting to a courthouse in a county that doesn't allow it, for non-lawyers to bring their phones in and then that's where you have these problems. Just like the gentleman was talking about in district court where, you know, she came to court and they didn't allow her to bring the phone into the building, so she ultimately had her phone taken from her and lost it.

So I guess that's the question. I mean so, basically, would you feel that—or I mean would the Probate Judges Association feel that we should adopt some of a uniform standard that says that courthouses should have locker facilities or that all courthouses should allow a phone to be brought into the building. However, it can't be used in a courtroom, but it needs to be stored so that way people who have to use their ride shares to get there, know that when they get to that location, they can still enter?

**JUDGE O'BRIEN:** Well speaking on behalf of the Michigan Probate Judges Association, they didn't address the issue of what do you do with your phone if you brought it. But speaking personally and from the Washtenaw County Court experience, perhaps having something—a requirement that if a court doesn't permit the phone to be brought in, that you have to provide a safe and secure location for it to be housed for the person while they're doing court business.

**JUSTICE BERNSTEIN:** And you would be okay with—I mean that would be something that you guys would be amenable to?

**JUDGE O'BRIEN:** I think that would be workable. But again, the courts may need to get funding from their funding units. That's why I was urging a little bit of time so they can build that into their budget if they do need to buy some lockers, let's say.

**JUSTICE BERNSTEIN:** Judge, thank you so much for coming.

**CHIEF JUSTICE MCCORMACK:** Thank you.

**JUDGE O'BRIEN:** Thank you.

**CHIEF JUSTICE MCCORMACK:** Now the next speaker is Erin Keith.

**MS. ERIN KEITH:** Good morning, your Honor. My name is Erin Keith and I'm a staff attorney at the Detroit Justice Center. Thank you for the opportunity to express our support for the proposed amendment to Rule 8.115 of the Michigan Court Rules.

My client—we'll call her Ms. Burns, is a Detroit resident who had a traffic case in a suburban court far from her home. Because Ms. Burns' traffic matter had resulted in the suspension of her license, she could not legally drive to her hearing and instead had to take an hours' long journey on the bus while leaving her phone at home. This meant she could not check in with her childcare provider as her three young children were not allowed to accompany

her to court. It also meant she could not see when the next bus was set to arrive or have any communication with her attorney during transit.

On the morning of her scheduled sentencing hearing, I received a call from the court indicating that the hearing would be canceled and rescheduled because the judge had become ill. I tried calling Ms. Burns so that she would not make the unnecessary trip to the suburban court on her fixed income. However, because she did not have her cell phone and had already left the house so early, she did not receive any messages. Ms. Burns arrived at the court only to be informed that her hearing had been cancelled and that she would need to make the long journey back home and to come to court on another day or risk having a warrant.

Ms. Burns is not alone. Other clients who arrive at the court without a vehicle, with their cell phones in tow, unaware of the court's policies have been forced to grapple with a difficult choice; they can attempt to return home on public transit to leave their phone and risk missing their hearings, and getting a warrant, or attempt to hide their phone somewhere outside the court where it can be stolen. Thus, prohibiting entrance to the court with a cell phone, in many ways, comes from a position of privilege. Just leave it in the car; just leave it at home. That infringes on litigants rights to participate in their own case.

To put it plainly, my homeless clients simply don't have a home to leave their device. Conversely, allowing cell phones would have several benefits. As just one such example, in the context of evidence, cell phones often contain information relevant to litigants' court cases such as proof of payment, proof of communication in the form of texts, video evidence and pictures.

While some district courts throughout the state offer places to email evidence or upload it online before hearing, notably 40% of Detroiters have no Internet access and many lack printers; thus allowing individuals to bring their cell phones to court is the easiest mechanism for a low-income litigant to display such evidence. Additionally, cell phones have other important benefits such as helping unrepresented litigants access legal self-help tools, during their case, and helping those with limited English proficiency communicate with court staff.

Lastly, it is important to note that commonly raised opposition to allowing cell phones does not survive baseline scrutiny. The principal argument for banning cell phones is that these devices will be a distraction if used in the courtroom. Or that people will record the proceedings or take pictures on their phone.

**JUSTICE BERNSTEIN:** Counsel, I have a question. Just—and you don't have to identify Mrs. [sic] Burns, but I'm just curious. What county was it that had that rule?

**MS. KEITH:** Yes, it was 48<sup>th</sup> district court.

**JUSTICE BERNSTEIN:** Okay, thank you.

**MS. KEITH:** Yes. However, judges can request at the beginning of the proceedings that all phones be silenced or placed on airplane mode. They can also designate a specific area in the court where calls can be made. Additionally, as most proceedings in Michigan courts are already open to the public, and various local courts successfully navigate the frequent attendance of the media during high profile cases, the court can similarly adapt to do with cell phones in the courthouse as technology—

**JUSTICE BERNSTEIN:** I just have another question. For many of your clients that come to court—and again, I'm very sensitive to this for obvious reasons, because I use Uber. So I am just really curious. For many of your clients that come to court, you know, with their phones, because their phones are essential for them to actually get to the court, because there is really no way to get there especially with a disability. Siri is going to give you navigation and allow for you to locate where you are going. And, allow for you to get to the location, because I don't know how else you're going to get there if you can't use an Uber or a public transit.

So when they get there, what is the attitude? Is the attitude just too bad? Like, if I show up and I have a court appearance, I am clearly blind. I show up in an Uber, because I want to be there for my court date; what's going to happen? I'm going to walk in and what am I going to be told?

**MS. KEITH:** You are going to be turned away. Sometimes unfortunate in that I know my clients before the case, so I'm able to put it in my own vehicle and meet them outside the court, if that is an option. But a lot of people, especially for the driving while license suspended cases are meeting their counsel the day of their hearing; they have no communication with them before or after the hearing

**JUSTICE BERNSTEIN:** But I just want to get to the logistics of this, because I think this is incredibly insensitive. If I show up in the courthouse, right? I'm here for whatever reason I want to show up. I've come in my Uber. I've shown up for my court appearance, okay? I am here independently. I walk in and I say, I'm here for court. They say, Mr. Bernstein, we're sorry; you have a cell phone; what do they tell me? What—what's—would they give me options, do they tell me what I can do, do they help me or—what's the attitude. Sounds kind of callous—

**MS. KEITH:** Yes.

**JUSTICE BERNSTEIN:** —to me. Help me to understand—

**MS. KEITH:** Most courts—

**USTICE BERNSTEIN:** —this.

**MS. KEITH:**—most courts just tell you that you would have to come back a different day. Some will record that you did attempt to show up for your hearing, others will issue a warrant.

**JUSTICE BERNSTEIN:** Are—are you kidding? They will tell me I've got to get a warrant because I show up because I'm blind and there's no other way for me to get there but to use a ride share? And you're telling me I show up and they're going to tell me there's going to be a warrant issued?

**MS. KEITH:** Because you did not attend the hearing. Yes.

**JUSTICE BERNSTEIN:** I did not attend the hearing?

**MS. KEITH:** Right.

**JUSTICE BERNSTEIN:** And that is our current—that is how it is currently operating?

**MS. KEITH:** Yes.

**MR. BERNSTEIN:** Well, I am looking forward to hearing why that—why I shouldn't see that as being completely unacceptable.

**MS. KEITH:** Yes, it does tend to violate due process. So I would like to thank you all, again, for the opportunity to address you. And I, again wanna' just reiterate our support of the Proposal.

**MR. BERNSTEIN:** I want to ask one more question. I'm just—I'm really a little bit upset. I come—I show up and I'm told—but I'm not given any options. So I—

**MS. KEITH:** Well, many courts do not have the lockers. I know 36<sup>th</sup> District Court does not have lockers, so it's a very common thing. Which is why so many clients really do hide their phones outside the courthouse. And I almost think that people know that and so they watch and it becomes a thing where they know they can steal phones outside the courthouse; it is a very common occurrence.

**MR. BERNSTEIN:** And then how would I get home? I don't have a phone anymore, now what do I do? And nobody seems to care, like no one says boy, we're here to serve the public? And this just—and no one says, boy, we need to help these people. No one comes down and says to you, hey, I'm sorry this is our policy but here, let—we're going to—

**CHIEF JUSTICE MCCORMACK:** We published a rule to consider helping the people; that's what we're doing here today.

**JUSTICE BERNSTEIN:** Okay. Well—

**CHIEF JUSTICE MCCORMACK:** We have a lot of speakers to get through.

**JUSTICE BERNSTEIN:** No, I understand—I understand.

**CHIEF JUSTICE MCCORMACK:** I want to thank you very much.

**JUSTICE BERNSTEIN:** Thank you.

**CHIEF JUSTICE MCCORMACK:** Yeah. The next speaker is Sydney Ballens.

**MS. SYDNEY BALLENS:** Do I just begin and then—

**CHIEF JUSTICE MCCORMACK:** Yes, you may.

**MS. SYDNEY BALLENS:** Okay. The Warren District Court must be investigated for their crimes committed against Keith Olson and Frank Garowski (ph). In Olson's case, Warren's Judge Chmura has unlawfully modified Michigan's court rule 8.115 with an unrecorded verbal directive with no record at all.

After the unlawful modification, Olson was assaulted. Dozens of judges have illegally modified Michigan court rules, but none of them have ever been imprisoned. In Garowski's case, Warren District's [sic] Court Judge Chupa continued his attack on Garowski, after Macomb County Judge Edward Servitto ruled Warren's caregiver ordinance illegal in *Warren v Beezi* [ph].

Dozens of judges have imprisoned caregivers under unconstitutional laws, but none of them have ever been imprisoned. At Garowski's trial, Olson was assaulted and removed from the courthouse. There should have never been any trial. Public access to the courts is protected by the First Amendment, the Sixth Amendment, the due process clauses and the privileges and the immunities clause.

Cell phone restrictions pose an even greater risk in practice. The standards that a security officer is likely to apply in determining who is and isn't appropriately using their phone, and what phone use is disruptive or threatening, are likely to be entangled with culture, race, gender and class. Simply put, a security officer must arrest and detain someone to inspect their device and determine whether or not someone has been recording.

The enforcement of electronic policies at the courthouse gives further control of the palaces of justice to security and law enforcement rather than elected officials sworn to uphold the constitution.

Olson was denied access to the courts by a security guard who did not understand Olson's constitutional rights while enforcing Judge Chmura's unlawful verbal directive, contrary to plain language of MCR 8.115. In Garowski's case, Judge Chupa was illegally enforcing an unconstitutional medical marijuana caregiver's ordinance.

Macomb County and the Court of Appeals already ruled Warren's caregiver ordinance null and void. The City of Warren and prosecutor Eric Smith put charges out on Olson with no

basis whatsoever to cover up their crimes. Olson does not belong in the Macomb County Jail. They attempted to kill him once and they will try to do it again. They just detained him outside, just now.

Olson intends to file a 42 USC Section 1983 civil action for deprivation of rights against the City of Warren, Macomb County, the entire State of Michigan, the United States of America, all parties involved and this very Court.

Thank you. That's my time today. I'm Sydney [indiscernible @1:08:42] Ballens. You can follow me on Facebook and find more information. Everything I have to say is factual here and I have proof of everything. Thank you very much.

**CHIEF JUSTICE MCCORMACK:** Thank you, Ms. Ballens. It sounds like Mr. Olson, who is the next speaker endorsed is not present in the courtroom, so we will move on to Angela Tripp.

**MS. ANGELA TRIPP:** Good morning. Excuse me. Thank you, your Honors. My name is Angela Tripp and I'm here on behalf of the Michigan Legal Help Program and the Michigan State Planning Body which drafted the proposed rule that we are discussing here today.

Thank you for considering this important rule change and thank you for giving me the chance to speak about it. We do support this court rule.

And as you've heard from previous speakers, what we are talking about today in allowing people to have their cell phones in court, are not matters of mere convenience. But they are matters of extreme importance, the ability to safely get to the court, the ability to communicate with employers or child care providers in the event that you are held up in court, the ability to access self-help information online, the ability to even get to court and then to get home once again.

Justice Bernstein, in response to your question, there are many courts that have lockers, there are many that do not. And I, you know, heard stories of people hiding their phones in bushes, burying them in the ground. I've even heard stories that entrepreneurial folks hang outside courtrooms—courthouses, offering to hold your phone for money. And that in no way is access to our courts.

And then not least of all, it's a testability for people with disabilities to rely on their phones for support when in court or when in the building. And then, of course, the ability to present important evidence, photographic, email, text, video, audio to a court of law. And this is what is at stake with this court rule.

Some commenters would have you think that it's impossible for people to have their phones without chaos ensuing in a courtroom, but over 50 courtrooms in Michigan allow cell phones, already. And these include big busy courts like Macomb Circuit, small courts like Iron and Dickinson Counties and plenty in between, including this courtroom.

At least nine other states have passed state-wide court rules allowing—explicitly allowing cell phones in courthouses. Some going back as far as 2008. And those are still in place today, which leads you to believe that they have found a way to make it work.

Arizona's court rules were enacted in 2014, after their court credited a commission to study the issue for a year and a half. And after that lengthy study, they concluded after weighing the potential harms, and they considered them all, the same ones that had been brought up with regard to this rule, they decided that access to phones was the right answer and was needed. And the court rule that we're discussing today is largely modeled on that Arizona rule.

This is such an important issue that the National Center for State Courts has an entire page on its website devoted to it. And access to cell phones is critical in engaging in e-filing. And this Court has dedicated countless resources to ensure in the very near future, every court in Michigan will have e-filing. But you can't create a MiFile account in a courthouse like a self-represented litigant would do without having your cell phone with you. You have to verify your e-mail address. You have to check your e-mail.

But more critically, once e-filing is in place, everyone's entire court record will be electronic. They won't get copies in the mail. So they will be forced to stand in front of the court without access to their court record, while the other side, if it's a represented party or the government, has access to everything. And so this—the lack of consistent court rule enables many courts to prohibit cell phones, creating this unfair situation.

I believe that this Court is a court about access and a court about people. And adopting a state-wide court rule to eliminate the ban on cell phones is in line with this philosophy. We understand—I understand that there has to be a balance of safety in access, but I urge you to consider what other courts have done before you, and the comments that you've heard today about the risks of—the actual harm on the other side, with the litigants trying to go to court without this access.

The reality, you know, many of the concerns raised by opponents, sight behavior by people who are already breaking the law as a reason that no one can have a cell phone. But the reality that people who want to behave badly are going to do so whether they have a phone or not; they're going to intimidate a witness outside the courtroom or inside. The courtroom ban is not going to prevent these harms. But, in fact, what it does to the other 99 percent of people in the courthouse is make them suffer these access issues.

Increasing access to justice for disadvantaged people means change. Uncomfortable change and it always has. However, it's always been the right answer.

**CHIEF JUSTICE MCCORMACK:** Thank you.

**MS. TRIPP:** No questions?

**JUSTICE VIVIANO:** Let me ask you this one question.

**CHIEF JUSTICE MCCORMACK:** Yup, one question. Nice job. Nice job extending your time.

**MS. TRIPP:** I almost made it.

**JUSTICE VIVIANO:** My question is what do you think about—I mean, I came from Macomb County where we allowed cell phones and made it work. But then we also had our own deputies in the courtroom so I had someone who was with me who was able to enforce the rules. I am concerned about Judges losing control over courtrooms—crowded courtrooms where they don't have a security officer present even aside from the cell phone issue. But when you introduce the cell phone issue, it creates more ability or areas of potential problems.

So, I guess my question is, what do you think of the system that Judge O'Brien talked about that they use in Washtenaw County, where they have a lock box similar, it seems—it sounds to the federal courts, at least the Eastern District of Michigan, where folks can bring their phones in and check them at security. And then assuming that there's a way for folks who need to use their phones to assist with their cases, to have you—to make those requests to the judges. You know, I need to present evidence. I need to use the phone because I have my notes, or my outline and what I want to say to the jury for example. Would that—how far would that go to answering the issues that you see, a system like that? In courts where they do have some resource challenges, for example.

**MS. TRIPP:** That's a great question and I'm glad that you asked. I do agree with you that ultimately the issue of resources in courts is a much larger issue and a much more serious issue. You know, there are much more serious threats than cell phones.

I think the—

**JUSTICE VIVIANO:** There's wide—wide disparities—

**MS. TRIPP:** Right.

**JUSTICE VIVIANO:** —in resources.

**MS. TRIPP:** Right. And I think that's a serious problem in our court-funding system. I think the system that Judge O'Brien proposed is certainly better than the one we have now with putting your cell phone in the bushes. I think that it will be quickly outdated.

I think—you know, when e-filing is here, the entire court record will be electronic. And so literally every litigant standing up in court will—

**JUSTICE VIVIANO:** You are very optimistic about that.

**MS. TRIPP:** I believe in e-filing. That's a different conversation.

**JUSTICE VIVIANO:** So do I, but public access—immediate public access, the court records electronically is a goal. But not on the—not on the near-term horizon. But, anyways, go ahead.

**MS. TRIPP:** I do think that the more litigants than not will be needing their cell phone to present evidence. And I think that's only going to increase, not decrease. And, you know, I think out of bare minimum if courts are going to be allowed to prohibit cell phones, for any reason for any particular hearing or within the courtroom generally, you know it will take time.

As Judge O'Brien described, the litigant says, I need my phone. The judge calls down to the front desk, hey, let this person get their phone. Okay. They go down. What do they give the security their ID, they go to the locker, they get the phone, they bring it back up Like, how is that efficient? How is that not disruptive to the court process? I think that it is better than the current system but I think it will still create a fair amount of inequity and complications and delays.

And I also am concerned about having—not having a uniform rule—is that people won't know what to expect. And so people will still think that they can't have their cell phone and not really understand and be afraid to ask. And the lack of uniformity will make it hard.

You know from Michigan Legal Help's perspective, it's hard to explain to people what to expect across the State. So, I realize that resources are different in every court but the need for access is the same in every court.

**CHIEF JUSTICE MCCORMACK:** Thank you, very much. Judge Michelle Rick on behalf of nobody but herself.

**JUDGE MICHELLE RICK:** Thank you and good morning. As Justice McCormack—Chief Justice, has indicated, I am speaking on my own behalf. And particularly as a trial judge who does not do abuse and neglect, does not have an adoption docket or kind of a traditional probate docket matters; I am a traditional circuit court judge. And I'm here to speak in favor of the spirit of the proposed amendment. I have a personal commitment to increasing access to justice and I teach a class by the same name at the Detroit Mercy School of Law.

Given the large percentage of litigants who are self-represented, it is critical that they have the same ability to access the same technologies, including cell phones as attorneys. Banning cell phones, not only in courtrooms, but in courthouse buildings where other business is conducted is a huge barrier to access to justice. And as you have heard from Detroit Justice Center, a cell phone ban effectively serves as a bar to litigants with cell phones.

Many comments to this proposed court rule modification, highlighted barriers actually experienced by litigants who were not permitted to have their cell phones while in the courthouse. And I believe that scores of people experience similar problems every day in courts that ban all phones, particularly those that have no storage option.

Some of the comments in opposition focused on the lack of decorum in a courtroom with cell phones are said that babysitting and policing that would be required, to enforce the policy, would be impossible. Those anticipated harms strike me as quite different from the actual experiences and hardships experienced by those persons attempting to navigate the court system without their cell phones.

And furthermore, we as judges have tools in our arsenal to address decorum and to enforce the limits of the court rule. A consistent court rule, across the state, would also make enforcement easier because there's a better likelihood that people would know the rules and consistent rules could be easily conveyed on platforms like Michigan Legal Help, while 220-plus sets of individual rules cannot. Access must be a priority.

Some of those opposed to the rules have also cited security concerns which are critical for all of us. Public safety in and outside the courtroom is paramount. And I will tell you I am very blessed that I do have security detail.

So again, my impression might be very different from those that do not have a bailiff at all times in their courtroom. However, having said that, banning cell phones alone does very little to increase courthouse security overall and does nothing to promote the individual safety of litigants, witnesses and courthouse visitors who are left without any means of calling for help. Cell phone technology is not required for bad actors to act badly, but it can protect victims.

There are a number of people who are going to speak, so I want to focus on one less point for you and that is a reminder that people who come to court, who come to courthouses do more than just enter a courtroom; they have other business that they conduct. Many courts house the county treasurer, register of deeds, self-help centers, probation departments and other public records. And it is overbroad to ban cell phones for the entire population of visitors based on concerns about disruptive behavior in a few spaces within the building.

**CHIEF JUSTICE MCCORMACK:** Thank you, Judge Rick.

**JUDGE RICK:** Thank you.

**CHIEF JUSTICE MCCORMACK:** Thank you, very much. Next is—and if I mispronounce this, I apologize, Chakeya Walker? Okay—How about Pastor Idella Williams? Tuere Williams? Pearl Sullivan?

**MS. PEARL SULLIVAN:** Good morning, Justices.

**CHIEF JUSTICE MCCORMACK:** Good morning.

**MS. SULLIVAN:** My name is Pearl Sullivan and I am from Jackson County and thank you for giving me the opportunity to address you this morning. I totally support this amendment. I am a retired legal assistant with over 40 years' experience. And I currently own a legal services consulting business where I assist individuals navigate the legal system when they don't necessarily need an attorney.

This proposed amendment is very important to me, because it directly affects my ability to effectively conduct business in some courthouses. My county, for one, does not allow the use of cell phones except for attorneys or media. The following are a few what if scenarios in courts where such use is prohibited: what if a person has to walk; what if they take a bus; what if they take an Uber? They can't just leave it. What if you're a juror or a witness, a litigant or spectator? What if you have an emergency? What if you are legal support staff and you need to contact your office? What if you are a private business like me? And I have to have the ability to research, contact my client, etc.

An individual needs the ability to access his or her own attorney and do research for themselves. Benefits clearly defines rules, provides consistency among counties, potentially saves time for the clerks' offices and other offices, and allows people to perform their own research and note taking.

Please let me emphasize that since we have the technology to be more effective and efficient in our daily lives, why should we unduly prohibit that ability? This most Honorable Court allows the use of such devices so why not implement that benefit uniformly? I urge you to please adopt this amendment. Thank you.

**CHIEF JUSTICE MCCORMACK:** Thank you, very much. Next is Judge A. T. Frank from the Michigan District Judges Association.

**JUDGE A.T. FRANK:** Good morning. May it please the Court, Madam Chief Justice, Justices of the Court. I am A. T. Frank and I am here on behalf of the Michigan District Judges Association to present our position as to the proposed rule change.

I would leave the Court to our written position that was put forth by Judge Beth Gibson from Mackinac and Luce Counties. We are at the front line at the district court. We see litigants every day that are not represented by counsel. We notice that the one thing that is a common denominator that on our cell phone is basically our whole life. And so we see the litigants come in like that. I come from a county that does have a complete ban. And we applaud the Court for coming forward to set minimum standards.

We would ask that—that we go to the local level, with a local administrative order to let each court determine what is appropriate for their district. In addition, we would also support

the requirement that would allow for lockers to be used for those that bring their phones to the court and find that they can't bring them in; now that is one thing that we see—at least that I see every day in my own court, is that you come for landlord/tenant matters, a small claims matter. And all their proof is on their phone that they would like to show the court. But to find out that they can't bring it in. Even though we do have a notice that does say, at the bottom, if you'd like to make the permission of the court to bring your phone in, contact us ahead of time. Oftentimes that's in the print at the bottom, so they don't quite make it past the date.

So we applaud the Court in reaching standards. We would support a minimum standard, as highlighted in our written comments, but we would ask that it be determined by the local jurisdiction.

**CHIEF JUSTICE MCCORMACK:** Any questions?

**JUDGE FRANK:** Thank you.

**CHIEF JUSTICE MCCORMACK:** Thank you. And finally, Gina Fisher.

**MS. GINA FISHER:** Thank you. My name is Gina Fisher and I'm representing Wings for Justice. We are an advocacy center for domestic violence survivors.

According to the AP article of Saturday, November 16, clerks are worried about lost revenues from public documents. These belong to the people, We the people. They should not be profiting off copies made when we have electronic means to deliver these items. James Stover, Professor of University of California Irvine law School's research, shows over 80 percent of litigants cannot afford representation, and this is another expense, in addition to filing fees between \$60 and \$100 promotion. And those copies should be able to be falling under those fees.

*Sullivan versus Gray*, allows us in the State of Michigan to record our own conversations and these are permissible in court. It is 2019 and we can't even get gasoline in our vehicles or grocery shopping without being recorded. In DV cases in Ottawa County, protective mothers and anyone there to support them in domestic violence cases have been targeted and forced to hand over their cell phones to be placed in plastic bags for the entire time they are in the courthouse. Meanwhile, the abusive fathers, nor their witnesses, or those supporting them, are not required to hand over their cell phones.

*Riley versus California* is a Supreme Court case that categorizes cell phones and the contents as protected items under the Fourth Amendment. The Fourth Amendment is the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches, seizures shall not be violated and no warrants shall issue, but upon probable cause, supported by the oath or affirmation and particularly describing place to be searched and the persons or things to be seized.

Recording for our own preparations for hearings, is essential for someone who is representing themselves. Domestic Violence, victims and survivors often have PTSD. And they are sitting mere feet away from their abusers in the courtroom, leaving their mind in a fog. Being able to reference and hearing again, without having to pay the court \$2.00 a page in transcription fees, would allow her to understand what transpired more clearly and prepare for the next hearings.

Another disturbing trend of portions of hearings are going missing. Recordings and transcripts have been disappearing in several high-conflict domestic violence cases. There's a current case on appeal where the mother had most of her witnesses denied, including her own adult children; twelve minutes of her only witness testimony that supports her as a DV survivor and that parental alienation does not exist in her case went missing. Chief Judge John Menalsberg re-wrote the testimony of this witness five months after the hearing, and his account was not the same as Ms. Martens nor her attorney, or witness accounts of the testimony, which should have been preserved on the record. Had this mom had her cell phone recording, there would be another record.

We have other cases that have the same types of things that have been happening, and it is a disturbing trend.

I respectfully ask this distinguished Court to consider allowing cell phone usage, not only in courthouses but also in the courtrooms to record and adopt other policies such as Connecticut that detail the specific use in allowing a recording in courtrooms.

**CHIEF JUSTICE MCCORMACK:** Thank you.

**MS. FISHER:** Thank you.

**CHIEF JUSTICE MCCORMACK:** Our last item for which we have a speaker endorsed is number 7, concerning proposed amendment of 9.123 that would update the attorney discipline process. And we have Mark Armitage, the Executive Director of the Attorney Discipline Board, here.

**MR. MARK ARMITGAGE:** Thank you and good morning, Chief Justice, Justices of the Supreme Court. May it please the Court, I am Mark Armitage, the Executive Director and General Counsel of the ADB. And, I'm here to briefly outline some proposed amendments to the rule regarding what I will call short suspensions of 179 days or less and to answer any questions you may have.

This proposal was formulated in consultation with the AGC, after members of the ADB and the AGC staff got together. And I should say Cynthia Bullington is here from the AGC, if you have any questions for her, too I'm sure, I will volunteer her.

We talked about ways to address long-standing solutions under the current rule which provides for automatic reinstatement upon the filing of an affidavit by the attorney who is suspended that compliance with the order of discipline has occurred. And that's—I don't have to talk about the longer term suspensions of 180 days or more, where a petition is filed, it's assigned to the panel. There is a clear and convincing burden of proof for a series of rigorous fitness requirements.

In this case, the short suspensions really provide for this automatic process and that if there is a material misrepresentation in the affidavit, then that's a ground for disbarment. The proposed amendments you have before you would maintain an abbreviated and expedited process, but would do away with the automatic nature of the reinstatement upon the filing of the affidavit, with just the nuclear option that may or may not apply, of disbarment.

Instead, the ADB and the AGC propose that the suspended attorney may file an affidavit of compliance no sooner than seven days prior to the expiration of the suspension and the AGC would have seven days to object. So, for example, if the order of discipline required the attorney to make restitution to one or more clients, and provide proof of the same to the AGC, and the AGC does not have this proof, this would be sorted out and addressed before reinstatement actually occurs. And it could be that the client was actually paid back, but the documentation wasn't provided to the AGC. Or, in a more serious case, it could be that the client was not paid back and that would have to be sorted out. And if the client was not in fact reimbursed, the attorney would not be reinstated prior to that condition being met.

And the most important thing to me, as an administrator here, is that the proposed amendments would put the reinstatement process on a firmer footing in that an order of reinstatement would be issued reflecting that the attorney has in fact satisfied the terms of the suspension order.

Currently, the ADB has divided a process where a notice of filing the affidavit, a notice of reinstatement is posted on our website, e-mailed to court clerks, e-mailed to the Bar. And the Bar relies on that to show the attorney as active and in good standing. And we just think that the—actually sorting this out ahead of time would be better than having perhaps an inaccurate statement leading to an automatic reinstatement, as a matter of law and having to sort that out. We've gotten creative. I had a paralegal who used to say, I'm not putting him back in and I'd say, I admire your dedication and your protection of the public, but the law has already put him back in. The most we can do is talk about our notification and we'd work with that. So that's—if that's not clear, I'd be happy to answer questions on that.

Some comments from the Bar and from Ken Mogill and his colleague Erica Lemanski raised issues about in matters of, you know, where there's a contested, factual issue, say for example an attorney continues to practice and denies it or, you know, that needs to be sorted out. It's not just a question of, did you go to this class and do you have proof but something more complicated to prove, that should go to a hearing panel in the first instance, rather than the board. Which our proposals nebulously provided for in the first iteration. So we have

hopefully addressed those concerns. It would go to the panel for resolution on an expedited basis and that issue would be able to be resolved. So I think we've addressed those questions. But...

**CHIEF JUSTICE MCCORMACK:** Thank you, very much.

**MR. ARMITAGE:** Thank you.

**CHIEF JUSTICE MCCORMACK:** That concludes the administrative hearing and we are done for the day.