MICHIGAN SUPREME COURT

PUBLIC HEARING

SEPTEMBER 23, 2020

CHIEF JUSTICE MCCORMACK: Good morning, everyone. Welcome to our September public hearing. We have a number of items that we have speakers endorsed for. We are following the normal procedure-ish. If—I will call each endorsed speaker on each item and at the end of hearing from the speakers, I will see if there are questions from the Justices. And so we'll start with item number 2, which involves proposed amendments for the appeal process from child protective cases and we have one speaker and it's Liisa Speaker. Liisa.

MS. LIISA SPEAKER: Good morning, your Honors. We wanted to just—this is—I'm speaking on behalf of the Michigan Coalition of Family Law Appellate Attorneys and the main reason we wanted to speak today was because we felt that one of the revisions affected other types of appeals, not just the child welfare appeals. And specifically there was a change to 7204 that's actually inconsistent with another proposal that's being put forward today and it has to do with the ability to—for a trial court to entertain a late post-judgment motion for good cause. And so we would ask that that language that was originally in the court rule and it's in another court rule that's before the court today, retain that good cause language. And just to give one example of why that might be important and honestly this doesn't come up very much but when it does it's really helpful to have the trial court have the discretion to entertain such a motion for good cause which would preserve the right to appeal by right down the road. So for example, in the court rules there's a safety valve. If an order is served late; you can still file an appeal by right within 14 days of the delayed service. And I've had cases where service has been delayed even up to a whole year so nobody's notified of the order and so there's a way of getting an appeal by right in those very limited circumstances. But there is no such safety valve in the court rules if for a mo—for the post-judgment motion if the order is served late. So I think that that good cause requirement is really there in the event that the trial court is willing to entertain it if a party is served with an order late. They could still file that post-judgment motion. So we're just asking to retain the language that was originally in the court rule and isn't yet another court rule today because we think it was taken out hopefully by mistake.

CHIEF JUSTICE MCCORMACK: Thank you, Ms. Speaker. Are there any questions from for Liisa, Liisa Speaker? Okay. We'll move on to item number 3, which concerns amendments regarding post-judgment motions in criminal cases and we have one endorsed speaker here as well, Kathy Swedlow. Kathy.

MS. KATHY SWEDLOW: Thank you. Good morning. I'm Kathy Swedlow. I'm the deputy administrator of Michigan Appellate Assigned Council System—MAACS—and we are part of SADO. This is part of a package of rules or proposed rules that came out of the SADO court rules committee but I should also acknowledge that we consulted with a number of

stakeholders as part of coming up with these proposals, including PAAM and the Court of Appeals and also the MDOC. Because there are a number of rules, would you like me to address all of them at once or one-by-one?

CHIEF JUSTICE MCCORMACK: Your call. You get to spend your time the way you want to spend it.

MS. SWEDLOW: Okay. I will start out with rule 1.112. This is a general "mailbox rule" and it would apply to pleadings and other documents submitted to a court by an incarcerated individual. I won't go into the policy reasons for mailbox rules; I think they're well known. This proposed rule builds on what we currently have, the mailbox rules we currently have in our court rules, in two ways. It would apply to submissions from people who are in jails as well as prisons and it would also extend to submissions in civil matters as well as requests for appointments of counsel. I did want to address two possible concerns that the Court might have and things that were raised in the various submissions. First of all, the State Bar in its letter expressed some concern that the mailbox rule might be or the proposed mailbox rule might be overbroad in the sense that it would not give notice to an adverse party regarding a pleading. And what the recommendation was from the State Bar is that the rule be limited to those situations where the incarcerated individual was losing a right. I think our position from those of us who drafted the rule or the proposed rule is that the mailbox rule only does apply to those people who might be losing a right. It only comes into play when there is some question about the timeliness of the submission. But it wouldn't come into play under ordinary circumstances. The second thing I did want to address about this proposal is that there was a notation in the Staff Comment that this would perhaps create some difficulties because jails might not have mail logs. Under the proposed rule, there are alternative ways to establish the timely filing. One is through a prison or jail mail log. The other is through a sworn statement. And so if a jail did not have a mail log certainly then the defendant or the incarcerated person could rely on the sworn statement to prove their timely filings. So I will stop there and ask if there are any questions about that rule or proposed rule

CHIEF JUSTICE MCCORMACK: And you're almost out of your three minutes. So are there any questions for Ms. Swedlow? Okay, you want to use your second left and quickly address anything else?

MS. SWEDLOW: The—I will stop there and ask if there are any questions about the proposals rather than launching down that.

CHIEF JUSTICE MCCORMACK: I should assure you that we have all read the written submissions, which were extremely helpful from SADO and MAACS and so don't—rest assured we have read everything that you have submitted.

MS. SWEDLOW: Okay. Thank you.

CHIEF JUSTICE MCCORMACK: Are there any further questions? Okay. We'll move on to item number 4, which concerns the appointment of counsel when the grant of parole is litigated, and we have one speaker here, Marilena David-Martin. Marilena.

MS. MARILENA DAVID-MARTIN: Good morning. I would ask you to grant the proposed amendment to MCR 7.118. I'm speaking on behalf of the State Appellate Defender Office and the Prisons and Corrections Section of the State Bar of Michigan. We asked the Court to adopt this change along with the suggestion in the SADO letter that the court rule proposal be amended to specify that counsel should be appointed through the Michigan Appellate Assigned Council System. We think that's an important change to ensure the appointment of counsel is independent. And I'll start by noting that there were no comments submitted to this Court in opposition to this court rule proposal. All organizations that commented, including the State Bar of Michigan Board of Commissioners, believe this proposal would create a more equitable system of justice for all. And I agree when the par—when parole is granted, the Parole Board has already made a determination that the individual is ready to go home. They're convinced the person is not a threat to public safety and they should no longer be behind bars. This is a big decision the Parole Board does not take lightly and it's why they exist and it's what they do. When that decision is appealed, our system of justice should ensure that the appeal process is fair and equitable. As it currently stands, it's not. But it could be if indigent incarcerated individuals who have been granted a parole are provided with attorneys who will help them defend against an appeal of that decision. The Attorney General's office routinely steps into these appeals to represent the Parole Board during the process. But no one represents the indigenous incarcerated individual unless that individual is somehow able to afford to hire a lawyer, which normally they are not. So the individual remains behind bars while this appeal is taking process and nobody's consulting with them about the appeal or asking them for information that could help the appeal. In some cases of the type that are highlighted in the Prisons and Corrections' letter and SADO's letter, it was noted that when SADO was appointed to a number of these appeals during a certain period of time it really did help the appellate courts form the foundation for what the standards should be for prosecutor parole appeals. And so appointed counsel serves an important function to this process. And really the point that needs to be emphasized is that there are so few of these appeals that occur each year—the numbers are about 53 for a two-year period, highlighted by the Prisons and Corrections Section in that data—and so it won't affect that many people. It won't cost the courts much money to appoint counsel because SADO is in a position to do that and so there really is, I see, no good reason not to adopt this proposal and we hope that the Court will do so and improve our system.

CHIEF JUSTICE MCCORMACK: Thank you. Are there any questions for Ms. David-Martin?

JUSTICE MARKMAN: I have a question, Chief Justice. Ms. David-Martin, are there any other—are there any other federal or state jurisdictions that have adopted a policy of this sort? Obviously, the paucity of such jurisdictions is not tantamount to saying that this isn't a good idea but I'm just wondering what other jurisdictions have a similar policy in place, please.

MS. DAVID-MARTIN: I'm sorry to say I don't know what other jurisdictions have a similar policy in place. I can certainly try to find that information out and get it to you somehow, Justice Markman. I don't know and I wouldn't want to guess.

JUSTICE MARKMAN: Thank you.

CHIEF JUSTICE MCCORMACK: Any additional questions for Ms. David-Martin? Okay. Thank you very much. We'll move on to item number 6, which concerns clarifying and simplifying the rules regarding procedure in criminal appellate matters. We have two speakers endorsed. We'll start with Liisa Speaker.

MS. SPEAKER: [Unmuting] Sorry about that. Good morning. I'm here once again for the Michigan Coalition of Family Law Appellate Attorneys and this is another court rule modification that I think inadvertently changed a small part of the rule that will affect lots of appeals, not just the criminal appeals, and it has to do with the filing of an application after a case has been dismissed for lack of jurisdiction. So under the current rule and the proposed rule if an order is dismissing a case for lack of jurisdiction, the party will have 21 days to file a delayed application for leave. But under the proposed rule, if there was still time, if they still had time in their six months—six-month window from the order, which could very well happen by the time you file an appeal by right and get a dismissal, that often happens within like a two-month period. The proposed rule takes away the rest of that six-month delayed application period. This is especially important in family law cases because there's [sic] so many court rules that I still think are causing confusion among practitioners about whether they have an appeal by right or an application. So it potentially could happen where the app—appeal by right is dismissed for lack of jurisdiction and we still have four months left in a delayed application but the way the proposal is written, that four-month period now goes away. And it's important for family law attorneys and other practice areas because to write an application you really need to have the transcripts. And so at the way the proposal is written you'd only have 21 days, which means you're going blind writing the application without even having the transcripts. And so we just ask that the original language be retained that would allow either/or the 21 days after the dismissal for lack of jurisdiction or within the six months from the order, which is what the delayed application rule provides. And we've also provided some sample language to help the Court's process in hopefully retaining that language

CHIEF JUSTICE MCCORMACK: Thank you, Ms. Speaker. We'll go now to Kathy Swedlow and then I'll see if there are questions for either of you.

MS. SPEAKER: Thank you.

MS. SWEDLOW: Thank you, Chief Justice. This proposed rule is a collaboration really between SADO, the Appellate Practice Section and also with a lot of input from the Court of Appeals. I do want to make that note. The changes are largely to make the rule make more sense for new practitioners. At MAACS, we train new lawyers coming into our roster every year.

I have to say that this rule is a source of great confusion and so that's why we worked to revamp the rule, trying not to change it substantively—I will respond to Ms. Speaker in a second—but just to reorganize it and have it make more sense and have it better reflect really the way the practice does work. The one substantive change I do see in this proposed rule is, under the current rule, a party in criminal cases has 21 days to file an application after a post-judgment motion is denied in a criminal case. Under the proposed rule, that would be changed to 42 days so just to align the deadlines to 42 days and six months, instead of 21 days—42 days and six months. That would be the only substantive change. In response to Ms. Speaker's comments, we certainly have no objection to the proposed language as offered. But I do think that, when I read that provision, it does not require a filing within 21 days. It says the party may file within 21 days but that six-month deadline is still there. But again we have no objection to that proposed language.

CHIEF JUSTICE MCCORMACK: Thank you. Any questions for either Ms. Speaker or Ms. Swedlow? Okay. We will move on to item number 7, which concerns making the appendix rule consistent between the Court of Appeals and the Supreme Court. We have one endorsed speaker. Scott Bassett, you may proceed.

MR. SCOTT BASSETT: Good morning. Like Ms. Speaker, I'm here representing the Michigan Coalition of Family Law Appellate Attorneys. We're a small group consisting of solo and small firm attorneys so we come at this from that perspective. We think it's a great idea to bring the appendix rules into compliance between the Supreme Court and the Court of Appeals just as the briefing rules have come together over the last decade or so. I think that provides a lot of efficiencies. We have submitted a number of written concerns, however, about the specifics of this proposal. I'm going to touch on three of them. The first has to do with the—what we think is a redundant requirement and potentially costly to the attorneys and that gets passed through to the litigants so to access to justice issue, of having both a linked table of contents and the bookmarks required. Currently we are supposed to—required to bookmark our appendix and that appendix should be that—the bookmarks should be visible on the bookmarks panel on the left. If we follow the appropriate instructions, our initial view should always be the bookmarks panel and the document itself. That way it's easy to navigate through the appendix because the bookmarks are always there on the left pane visible. The problem with creating a linked table of contents is, it's very labor intensive to do that. There is no easy way to do that from within Acrobat and that takes an additional amount of time, which gets passed along as cost to the clients. It's also not that useful because it's only useful when you're on that first page anywhere you are in the document you always have the bookmarks available to you. So that's our first concern. The second two concerns relate to transcripts. It is very expensive, at least in our cases, to try to pull out those portions of the transcript that are quote-unquote relevant to the issues in the brief. That could easily add a dozen or more hours to the cost of doing an appeal, at least in the cases that I handle. Typically the resolution we've been finding is to attach the entire transcript. This requirement discourages that but also says if we attach the entire transcript we must include an appendix. The problem with that is we don't get transcripts from the court reporters with an appendix and there is no feasible way through software to create an appendix from PDF transcript that we receive from a court reporter. The

first step should be to require the court reporters, because they can create the transcript in Word before—or whatever program they're using—before they convert it to PDF and send it to the attorneys, would be to require the court reporters to create that index so that we can then submit it. But until then we have no viable way of doing it. The second has to do with mini scripts. Sometimes many of our cases come from referee hearing transcripts. A lot of those are produced with mini scripts because they were ordered a year or two ago by trial counsel. It can be very difficult to track down the court reporter and get a full-size transcript made. We would prefer full-size, obviously, but sometimes it's very difficult and time consuming to get that.

CHIEF JUSTICE MCCORMACK: Nice job speeding up at the end there. Thank you, Mr. Bassett. Are there any questions for Mr. Bassett? Thank you very much. We will move on to item number 9, which concerns the professionalism principles for lawyers and judges as submitted by the State Bar of Michigan and we will start with Joan Roberts. Joan Roberts. You're muted. There you go; all right

MS. JOAN ROBERTS: I'm sorry. I want to thank the Justices of this honorable Supreme Court for allowing me to speak today on your proposal of professional principles for lawyers and judges. I am a veteran of the United States Air Force and Army Reserves. In May, I graduated magna cum laude, earning a degree in criminal justice from Northern Michigan University. These comments are based on my personal involvement as a plaintiff, as a volunteer working for defendants, and interacting with attorneys. Most of my encounters with lawyers and judges have been positive in their exemplifying professional principles. However, as a plaintiff and advocate for those falsely accused, my personal experiences included negative encounters of the unprofessional kind. These unprofessional encounters involve adversary attorneys obstructing justice, acting with dishonesty and illegal manner in writing, practicing deception before the Justices of our Supreme Court in writing, ad hominem attacks impugning my character in writing, subject humiliating treatment during a deposition, rudeness, abrasiveness, and demeaning of plaintiff's attorney through a total lack of unprofessional [sic] courtesy, and intimidating mannerisms in writing, as a means to conceal evidentiary facts. The merits of your proposal may very well put justice back into the judiciary if it puts into practice its aspirations. Attorneys who do not act with honesty and integrity silence those defended through their superior resources, especially the indigent. I want to finally thank you for listening to my concerns.

CHIEF JUSTICE MCCORMACK: Thank you very much. We will next hear from Ed Pappas and then we'll take questions for either of you so hang on. Thank you. You're muted, Ed; you're going to have to unmute yourself. I think you're good now; okay.

MR. EDWARD PAPPAS: Again, good morning. May please the Court. My name is Ed Pappas and I'm appearing for the State Bar of Michigan to speak in support of the professionalism principles for lawyers and judges. The focus of the principles is aspirational and educational in nature. not punitive. As the American Bar Association has emphasized, civility is an important concept that can go far to enhance dispute resolution, improve the image of our profession, and improve the quality of life for lawyers and judges. The majority of judges and

lawyers in Michigan adhere to the highest ideals of our profession and treat people with respect and dignity. But there are still too many judges and lawyers, experienced and inexperienced, who resort to rude, hostile, insulting, and offensive behavior. And with incivility rising to a crisis level in our society, there's no better and more important time than now to address civility in our profession. Lawyers and judges play an important role in our society and they have the responsibility to safeguard our Constitution, protect human rights, advance the rule of law, and ensure access to justice for everyone. As former United States Supreme Court Justice Warren Burger suggested and I quote, "the necessity for civility is relevant to lawyers because they are the living exemplars and thus teachers every day in every case and in every court and their worst conduct will be emulated more readily than their best." Civility starts at the top and at the top of our profession are the judges. Judges set the tone for civility and cannot effectively demand civility from lawyers if they do not exhibit civility themselves. The professionalism principles and their commentary provide guidance to lawyers and judges on what constitutes professionalism. Many other states have adopted statewide civility guidelines for lawyers and judges. And the many lawyers and judges that I've spoken with across the state welcome the idea of civility guidelines, not just for lawyers but for judges as well. So the question is not why these professional—professionalism principles are necessary, but what can we do to foster and sustain a culture of civility in our profession and ultimately in our society. What we do now, what you do now, will set the stage for generations of lawyers and judges to come. So I urge you to adopt the professionalism principles for lawyers and judges. And thank you and I'm happy to answer any questions or try to answer any questions you may have.

CHIEF JUSTICE MCCORMACK: Thank you. Are there any questions for Ms. Roberts or Mr. Pappas on this item?

JUSTICE VIVIANO: Yes, I just have one question for Mr. Pappas. I guess my question is, I think this is all sort of badly needed and a good a good mission that you're on and that I think we've all been on and that, you know, I learned a lot about as a young lawyer at Dickinson Wright, Ed, working at the same firm that you that is, with you and for you. But I guess my question is, you know, if we just put out an order that sets forth these principles, what does that do to make sure that people comply with them or feel some obligation to comply with them? I'm sort of old-fashioned and you know the—we've been thinking a little bit about the Lawyer's Oath in a recent administrative conference. Isn't there—wouldn't there be a need for people to pledge or subscribe to these principles in order for them to have an impact?

MR. PAPPAS: Well, I chaired the work group for the State Bar on professionalism that developed the principles and the idea is that the principles can be used in a variety of ways. They can be provided to lawyers with scheduling orders, at pro hoc vice admissions, or at swearing-in ceremonies for new lawyers, or simply as reminders to lawyers who are acting unprofessionally. A lawyer can also provide copies of the principles to clients to educate them about the professional integrity required of Michigan lawyers and judges. And they can also be a basis for continuing legal education for lawyers and judges and we're in the process now, the work group if the Court adopts these principles, of establishing ways that they can be continually used and rem—as reminders to lawyers and judges about what it means to be

professional—professional and civil. And I should just mention, we have disciplinary rules but I—in my opinion they deal with the lowest acceptable level of behavior that will be tolerated. And the professional—professionalism principles, being aspirational and educational, can be used for the purposes I talked about: To raise the level of behavior of all judges and lawyers, not by the threat of sanctions but rather by the desire to do what's right for our profession and the public that we serve and protect.

JUSTICE VIVIANO: Thank you.

CHIEF JUSTICE MCCORMACK: Any additional questions for Mr. Pappas or Ms. Roberts? Okay. Thank you both. We'll move on to item number 10, which involves establishing a mandatory continuing judicial education program for the state's justices, judges, and other judicial officers. And we have again Joan Roberts endorsed as a speaker on this item. Ms. Roberts. You're still muted.

MS. ROBERTS: How does that work now?

CHIEF JUSTICE MCCORMACK: We can hear you; we can't see you. That's okay with us but just letting you know that your video is now off even though your sound is on. There you go; whoa, good.

MS. ROBERTS: I'm sorry. I'm new to this. I volunteer for the National Center for Reason and Justice, assisting those falsely accused of sexual abuse. I analyze court transcripts by identifying inconsistencies and contradictions, by approving misdiagnoses and fraud. Verifications culminated into PowerPoints in a webinar for Northern Michigan University and I received an invitation to Lansing by former Senator Tom Casperson when I was exposing my evidentiary facts. Documentation cited in my peer-reviewed and published article "*Modern-Day Witch Hunts: How the Mental Health Industry Abuses Patients and the Judiciary While Committing Fraud*" provides compelling rationale for continued education. In assisting—in addressing Justice Bernstein's thought-provoking dissent comment, I can explain the negative impact when knowledge is lacking. I fully appreciate Justice Bernstein's concern for an already burdened judiciary. With all due respect, I will opine a probable scenario that because the individual judiciary officers were allowed to choose for themselves, that a more burdened judiciary evolved. I respectfully disagree regarding the government not interfering, not intervening. They must correct previous legislative errors. Legislative decisions detrimental to vulnerable persons and third parties allowed mental health theorists, through special privileges, to virtually control judges who can hardly be expected to—who can hardly be experts on such nuanced, complex issues. The special privileges resulted in emotional and mental harm and suicides. If law enforcement officers engage in such proven psychological control, they would be cited for violating criminal procedure. The legislated yet problematic special privileges for licensees are antithetical to justice. In response to Justice Markman, serving as responsible custodian of public funds, preventing therapy abuse and wrongful convictions through continuing education, would financially benefit states because void that lacked legal knowledge of junk science and fraudulent billing practices the judiciary continues as unwitting accomplices to fraud and false

claims. One nuts and bolts class exposing therapy skills abuse could halt injustices. Judiciary knowledge of policy essentially legalizing mental torture and its resulting false claims loophole assures lasting value. The sordid truth of special privileges will lay bare the shielding of therapy abuse, which denies the falsely accused due process. There is a basis to disagree with Justice Bernstein that if mandatory continued judicial education is adopted mandatory continuing legal education for attorneys will likely follow. The Justices of this honorable Supreme Court should not fear continued legal education for attorneys. Prior to being Justices, you were yourselves but attorneys unaware that causal relationship between the lack of continued legal education and its contribution to mental harm and wrongful convictions. A convoluted process decries exposure. Decidedly, the judiciary has a right to know what victimized patients and third parties know. Finally, I do not believe that if those involved in the judiciary process were aware of gross cruelty of our victimized children, vulnerable adults, and subsequent third parties that they would hesitate for even a second to authorize mandatory re-education. Anything less promotes injustice. It is past time to stop abuse notwithstanding false claims. That, your honorable Justices, would be the most compelling present rationale for such a program. I want to thank you for considering my comments.

CHIEF JUSTICE MCCORMACK: Thank you, Ms. Roberts. Are there questions about this item for Ms. Roberts? I think Justice Bernstein might have a question.

JUSTICE BERNSTEIN: All right. Thank you; yes. Good morning, good morning and I have to say, first off, thank you so much for coming and also I really want to thank you for your work and thank you for your passion and just thank you for your dedication to helping people. I mean I think that we really need, we need more extraordinary people like you who are so dedicated to helping folks who otherwise don't have a voice.

The concern that I have about continuing education and kind of why I have some concerns about it is, that I think in the abstract I agree with what it is that you're presenting. In the abstract I think it would be an excellent idea to allow for folks to have a better appreciation or better understanding in certain subject areas that could help promote justice and so I have to say that like in that perspective I think that we're in agreement. I think my concern is that in terms of the kind of way that we would ultimately attempt to put it into actual practice, you know, as it affects the judges that are currently on the bench right now is, I think the concern that I have is, is that judges wouldn't necessarily look at this as something that aids them. My concern is that with the dockets that we have, with the stress that occurs, with the things that judges have to contend with right now, my main concern is that this would just be seen as an additional thing that they have to do. So they wouldn't do this with enthusiasm or energy or excitement. It would just be seen as a burden and something that, on top of all the things that they're now responsible to have to do, they would have one other thing and I would just kind of, just for the record, just kind of, end with this is that my concern, and I do respect where you're coming from when it comes to continuing legal education, but my concern about continuing legal education as it pertains to lawyers is really two-fold. It really goes to the idea that when you see how it's really implemented in other states, that lawyers tend to not really take it seriously. And you know you have CLE classes in Honolulu, you have CLE classes in Maui, you

have CLE classes in Mexico. And I think what it really is looked at is something which is not one thing that benefits lawyers where they go with some excitement to learn but yet another thing that they have to do. So that would be kind of my concern. I guess if you could address that I would greatly appreciate the notion that an idealistic perspective you and I agree wholeheartedly but in a realistic perspective in terms of how CLE has been implemented in other jurisdictions, I think if you talk to most lawyers, most folks that are having to go through it, they look at it as a tremendous burden and they look at it as really a revenue making entity rather than something that allows for them to be inspired about the practice of law and that often is the case that if you want to learn there's ways for us to learn and we should do that because we're professionals but we want to learn our fields as best as possible. Thank you.

CHIEF JUSTICE MCCORMACK: Ms. Roberts, do you want to respond to Justice Bernstein?

MS. ROBERTS: Yes. I appreciate that opportunity and I'm not trying to burden the court more and I certainly understood that when I read the reasoning. I didn't consider while I was in Northern Michigan University this past year my degree in criminal justice, I started crafting a course in repressed memory therapy and the abuse that's been seen in the mental health industry on special privileges. And my thought was that the best place to engage these—the future lawyers would be in criminal justice classes or psych classes or in universities if they take the burden off the attorneys later down the road, and the judges, just to make people more of aware of what's really taking place and how the judiciary as a whole, including law enforcement, is actually used as pawns to promote—to abuse state funding. And I started my article on modern-day witch hunts. I cite all the cases where I was able to go in and do that research and find that this was happening. So I empathize with you. No one wants to be more overburdened. But the judges and the attorneys who defend people on sexual abuse cases, they have to understand there's two sides of this and there's a lot more going on than the public is aware and I'm trying to bring that awareness out into the public eye.

CHIEF JUSTICE MCCORMACK: Thank you very much are there other questions for Ms. Roberts on this item? Okay. We will move on then to the final item which has a number of people endorsed to speak and this concerns the case evaluation process and amendments to it and we'll start again with you, Ms. Roberts, because you're all warmed up. So why don't you just let us hear what you have to say about case evaluation amendments. You're going to have to unmute again.

MS. ROBERTS: Sorry—

CHIEF JUSTICE MCCORMACK: There you go.

MS. ROBERTS: I got a new my phone, went out and I got a new phone yesterday and it went off and I haven't learned how to use it. I'm sorry. I'm not a tech person. Well, I want to thank you again I think the Justices of this honorable Supreme Court for allowing me to speak now on case evaluation. And I come before you as a former plaintiff involved in case

evaluations that were less than helpful. In fact they were wrought with problems. I did not pretend to have a real clear understanding of this entire—the entire related rules. However, the procedure in summary brief caused great concern. Will the Justices please consider that absenteeism by the parties denies challenges to false statements made in briefs and in person. Arriving at a settlement agreement or proceeding to trial with facts seems more logical than having attorneys lying and giving disinformation that negatively prejudices the panel. We determined that case evaluation was a pseudo-fielded process that costs more than it's worth. If the goal is to determine merit and value yet the actual procedure and briefs' content is not subject to rebuttals, then how will worthy value manifest. Page after page of briefs contains [sic] slanderous statements about my character, disinformation, and childish name calling, as in "Mrs. Roberts is rabid." I don't feel rabid and I probably have my rabies shot. I am certain that this negatively impacted the attorneys' opinions. I was not there to challenge the claim nor to bite the defense attorney which would have been the case if I were indeed rabid. Given the disinformation and perjury evidence, I appreciate the Justices' amendment strikes in rule 2.403. Per rule 2.404 regarding neutral evaluators, I appreciate this edition. We did not find neutrality. We found rudeness in one case through insults, in disinterest of our attorney's presence, and another a refusal to return calls following my revelation of perjury statements and excessive disinformation. I appreciate that the Justices are looking toward exceptions to first impression cases per rule 2.405 but half [ph] in the courts especially in cases involving first impression or an issue of public interest where fraudulent treatment and false claims clearly fall, determine actual cost incurred if they are fed this information. And thank you very much. I certainly appreciate this opportunity to be here today.

CHIEF JUSTICE MCCORMACK: Thank you again. Next we'll hear from Donna McKenzie.

MS. DONNA MCKENZIE: Thank you. I am here today on behalf of the Michigan Association for Justice, which is committed to protecting the right to trial by jury. And the findings of the multiple studies that have been done with regard to case evaluation, which reveal a mere 15 percent effective rate and the fact that case evaluation actually prolongs the resolution of cases, was not very surprising to us. But another number that was really striking is the number of cases filed which actually proceed to trial and that number is less than one percent. So less than one percent of litigants are exercising their right to a trial by jury. And I think it's important that we consider the impact of case evaluation, and particularly the impact of the threat of sanctions, on a plaintiff's ability to exercise their right to trial by jury. The threat of sanctions all too often forces a plaintiff to accept a case evaluation award and potentially give up the right to a trial by jury out of the fear of sanctions. Unlike large insurance companies who can absorb sanctions as just a part of doing business, most plaintiffs who have recently suffered a tragedy that has caused them to be injured both physically and financially do not have this luxury. And for a process that has such a significant impact on constitutional rights of the parties, one would think that it is a significant process but in reality it is not. Under the current system, it is forced on the parties but the parties do not participate. In fact, they are not even present during the process. Case evaluation is for attorneys only. The entire process takes anywhere from 15 to 30 minutes if you're lucky and then after this forced brief process where

the parties do not participate they are threatened with sanctions if they do not accept what has gone on behind closed doors. It is no wonder that plaintiffs perceive this process as unfair and why they are willing to incur the additional costs that are associated with mediation to attempt to resolve their disputes. Mediation is more effective and more efficient because it is the opposite of case evaluation. The parties participate, there is time to dedicate to the issues, and there's no threat of sanctions. This whole experience of mediation not only protects this constitutional right but it enhances the party's perception that the judicial process is fair, whereas the imposed structures and sanctions of the case evaluation process do exactly the opposite. So we would ask that you adopt the changes proposed by the committee.

CHIEF JUSTICE MCCORMACK: Thank you, Ms. McKenzie. Next we'll hear from Scott Brinkmeyer.

MR. SCOTT BRINKMEYER: Good morning, Justices, Madam Chief Justice. Thank you for the opportunity to appear before you today. I'm here as a member of and the current chair of the ADR section of the State Bar of Michigan. Also I was a member of the SCAO work committee which analyzed and formulated the very amendments that you have under consideration and I drafted the comments that you've read that were approved by the section. I'm not going to just repeat what you've already read but I think perhaps I can give a little perspective. The question is why change these rules. And there are a couple of very important reasons. Simple. Number one, this process no longer meets the objectives for which it was created; number two, the practitioners who use this process have lost confidence in the process itself; and number three we're behind the eight ball in terms of sanctions because the data presented to us in the committee shows we're the only state that penalizes people for rejecting settlement type awards such as those that are awarded in case evaluation. Now I've got to confess, reluctantly, that I'm well into my fifth decade of practicing law in the State of Michigan. I guess that beats the alternative but during that period much of my practice was in in the tort area, serious personal injury death and property damage in circuit courts all throughout the state. I also was around when this process was first implemented. And I know it was intended to address what was then a huge backlog of civil litigation in cases in courts throughout the state. When we first started doing case evaluation I was involved, I was an evaluator, many, even more, experienced trial lawyers at that time were anxious to participate because they believed we were all helping one another to make the system better and to help the courts to solve this backlog. As this process began to take on the assembly line character it has now become, the experienced trial lawyers began to become more and more reluctant to participate as case evaluators. And what has now has been effectuated is younger and less and or less experienced lawyers actually doing the evaluating. That's unfortunate. The brevity, as was just mentioned, of these arguments is ineffective and this—the abuses that we've seen in many of these cases need also to be addressed. Unfortunately it's come to a point where you—you just heard from Ms. McKenzie, the net effects of case evaluation are no longer what they were intended and it's not having the effect that one would have hoped for. And so I think that it's critical that these changes are implemented. Just two other quick comments. I know that the committee submitted to you, the work group I should say, a proposal for evaluative mediation. That's been an effect in the domestic court rules for many years. It's being done all throughout the state. I

realize the court did not go forward with that. The section has asked that I ask on their behalf that you consider in the future looking into that and perhaps developing an effective, efficacious process for doing the same thing with civil cases that you do with domestic cases. One last little editorial comment in section, in court rule 2.404(B), I would take another look at the underlined language—the proposed language—because albeit too late to get to the Court before these were submitted for comment, it looks to me if that as if that language is not what was intended in that particular portion of the rule. Our objective was to get more experienced case evaluators, especially neutrals, involved. That language can almost be read to do the opposite.

CHIEF JUSTICE MCCORMACK: Thank you, Mr. Brinkmeyer. Next we will hear from Thomas Behm.

MR. THOMAS BEHM: Good morning and thank you for the opportunity to address the Court. I am speaking in support of the proposed rule changes. By way of background I have spent the majority of my 34 years as a trial lawyer here in Grand Rapids in the area of negligence and tort litigation. And for the past 10 years I have been involved in the mediation process, handling about 150 cases per year. I strongly believe that is, that it is in the party's best interest to be allowed to select what type of ADR they want to use in their case. The parties and their council seem to have, in my opinion, the most knowledge, they're best equipped, and have the most at stake and so I think they should ought—or they ought to be able to select which type of ADR they use and which fits their case best. As you've heard from Ms. McKenzie and others, the success rate for case evaluation has significantly plummeted over the years and I want to address just a couple of reasons that I see in my practice for this low success rate. Probably the biggest single problem we face in this area is the competence of the panel members. Some retired or semi-retired lawyers simply don't have the expertise or the understanding to competently evaluate the case. I think I speak for many when I say that oftentimes we receive comments from the panel to the effect that, "boy I'm not sure why they selected me I don't have any expertise in this area; I've never handled a medical malpractice case." That type of comment and acknowledgement by the panel often leads to what I'm going to say are unreasonable, unjust awards. The other problem that you face, and it's been mentioned here a little bit, is the fact that there really isn't sufficient time, many times to address the issues in the case. If you're talking about a complicated construction case or you're talking about a medical malpractice case, we often just don't have time to discuss with the panel members what they should do. Often times, you have a real significant problem with the panel not understanding the law. Recently I attempted to explain to a panel an issue about the common work area doctrine to a very nice gentleman who specialized in bankruptcy. So you really have a disconnect in many situations. The other challenge we have is we don't really get a rational decision from the panel. That causes significant problems for our clients and these problems don't get any better in small counties where really they don't have anyone who can adequately serve on the panel. And in larger counties we have challenges with the perception that certain panel or certain litigants want to win this process. There's also issues with the suggestion that maybe panel members are biased one way or the other. In the end we're left with a very disappointing result that oftentimes has a chilling effect on our ability to take our case to trial because our clients are faced with this threat of sanctions, which can many times push them into making a decision that

they wouldn't otherwise make. In the end I think it's in everyone's best interest to allow the parties and their lawyers to select what ADR method they feel best suits their case and—

CHIEF JUSTICE MCCORMACK: Your time is up. I don't mean to interrupt but we have a number of speakers on this item so we're going to move on to Robert Riley and we may come back to you if there are questions. Thank you so much. Robert Riley.

MR. ROBERT RILEY: Hi. I'm just checking to make sure I'm being heard. Let me begin by thanking you for the opportunity to have this conversation. I've submitted written materials for the Court and I have no doubt that they've been considered. So my conversation with you is really devoted to just a couple of issues. The cultural changes that have occurred in the practice of law have in effect generated an industry of mediation that has usurped case evaluation as a tool and in fact case evaluation has become a tool which is, in some respects, inconsistent with the mediation process. The dichotomy really comes about because of lack of trust, lack of conviction, concerns over competence, limited time, and quite frankly a lack of involvement in the case. And the marketplace is telling us that people are willing to invest substantial sums to secure trust, perceived competence, an opportunity to be heard, a chance to have issues fully vetted, legal research if necessary added to the mix, a chance to thoughtfully hear the pros and cons of a case in an environment that is keyed to settlement. The problem with the case evaluation award going into a mediation is the expectations it creates if an award misses the mark and the statistics tell us overwhelmingly that it is missing the mark. The problem for the mediator is how to unravel a recommendation by a panel with parties who have elected mediation at sometimes at high cost to see if they can get a better outcome than that which was presented to them in a short brief hearing that didn't really address all the things that I've outlined for you. So where are we? The system that Shel Miller and Sam Garza instituted in Wayne County over 40 years ago, of which I witnessed as a young lawyer, involved a lot of thoughtful lawyers, dedicating their time to a case evaluation process where people came into it committed to finding settlements and talking candidly about what a settlement might look like and how to achieve it. Well today those conversations don't take place. For example, a key obstacle in many cases are third-party liens where there's a substantial obligation to a party who isn't even present in the litigation but who's looking to the outcome of the negotiation process that theoretically occurs and doesn't even incorporate anything regarding the lien interests that might be at issue. That's a key issue in personal injury litigation across the bar. We have the problem in auto cases where what do you do with the providers and how do you allocate among them? You just return an award in favor of the plaintiff; it doesn't address this collection of issues that lurk behind the scenes. What we're urging you to consider is a thoughtfully made recommendation to allow the parties who are electing overwhelmingly to use mediation to at least have a choice as to whether they want to add to the mix and have a case evaluation award.

CHIEF JUSTICE MCCORMACK: Mr. Riley. you're also out of time so I'm going to ask you to bring it to a close, please.

MR. RILEY: Well, I would just endorse the rule and leave it at that judge. Thank you.

CHIEF JUSTICE MCCORMACK: Thank you so much. I appreciate that. Next we'll hear from James Bradley.

MR. JAMES BRADLEY: Good morning, your Honors. I am currently the chairman of the Negligence Law Section for the State [Bar] of Michigan and I come to you today in that position, to endorse not only the rule but also the comments being made by the other speakers before me. And I'll try very hard not to repeat any of the arguments that they've made. I will simply say that those arguments I think are valid and I think that they are important for purposes of consideration and I hope support for this amendment. For the last 35 years, I have primarily represented defendants through insurance carriers in in negligence law cases and I want to not necessarily speak for the insurance industry but provide some anecdotal observations that I've made representing parties through the insurance companies. And why I think the amendments to the rules better serve the defendants than they do the plaintiff. First and foremost, a mediation process allows an adjuster who is handling a case to meet a plaintiff. That is a severely underappreciated concept but it is something that speaks highly to the value of the case because it speaks to what a jury will think of a plaintiff at the time of trial. There also is the—this issue of success and insurance carriers are fairly pragmatic when it comes to handling these types of cases. They do their own studies. They do their own evaluations. And if awards are rendered in case evaluation that are wildly divergent from their own internal observations and evaluations, these sanctions are not a limitation nor are they a deterrent to the insurance carriers. They simply will reject it. They have the ability as indicated previously to pay those sanctions, if necessary. They don't serve as a deterrent in a case where the case evaluation award is widely divergent from their own evaluation. They also do studies within the insurance industry about what works and what doesn't. I've been a case evaluator, a party, and a mediator in my career and I can tell you that the numbers for success in mediation dwarf case evaluation. And from the standpoint of costs and fees, bad case evaluation awards do nothing but run up fees because then defendants reject case evaluation and they—they're incurring costs that they don't need to incur. So from a standpoint of costs from the defense perspective mediation is much more cost effective. And I see that my time is about to run out so I don't want to run over but I would simply say that, on behalf of the Negligence Law Section. we heartily endorse these changes and we would encourage the Court to adopt them. Thank you.

CHIEF JUSTICE MCCORMACK: Thank you, Mr. Bradley. And finally we have Debra Freid.

MS. DEBRA FREID: Good morning, Justices. I'm Debra Freid. I appreciate very much the opportunity to speak with you this morning. I am actually appearing as a representative of the plaintiff's perspective for the State Bar Negligence Section. The section, as Mr. Bradley just said, supports the proposed changes to MCR 2.403. I intend to focus my comment on the reason the section supports the elimination of sanctions. In addition to the criticisms, you've heard regarding lack of panel competence and lack of general efficacy in the case evaluation process, there really is a more central concern that exists with the sanctions component of case evaluation. Specifically the threat of sanctions after an unsuccessful case evaluation

disproportionately impacts plaintiffs. Certainly the focus of any ADR including case evaluation is on case resolution. However sanctions are widely considered among experienced members of the plaintiffs' bar who diminish the ability of a plaintiff to obtain a reasonable settlement, often prompting a plaintiff to accept an undervalued case evaluation based on a fear of sanctions not based on the assessment of the merits of the claim. In fact I would go so far as to say the fear of case evaluation sanctions actually limits a plaintiff's access to trial. It effectively provides defendants with disproportionately greater access to the opportunity to try a case in our courts. This is because individual plaintiffs must consider what they risk if they reject a unanimous case evaluation award. When the award is unanimous but the award is unreasonably low, the discussion with the plaintiff is not simply whether or not they're willing to risk a loss at trial or a lower verdict at trial. Instead is whether they're willing to risk a judgment of tens of thousands of dollars in defense attorney fees and costs and their willingness to tolerate or even their ability to enter a bankruptcy which would likely be their only way to stay afloat if sanctions are actually imposed. I recently had this discussion, frankly, with the plaintiff after a panel of general practitioners returned a unanimous that extraordinarily low award an employment case against a large defendant. As Mr. Bradley related the risk of sanctions is rarely determinative when defendants debate response to a case eval. But it is invariably considered and often determinative when plaintiffs have that same discussion. In the end, it means that plaintiffs are often compelled to accept unreasonably low, even inequitable resolutions because they cannot tolerate the threat of sanctions. And with that plaintiffs, not defendants, lose a right to reach a trial. I appreciate the opportunity to speak with you.

CHIEF JUSTICE MCCORMACK: Thank you very much, Ms. Freid. Are there any questions from the Justices for any of the speakers? We'll open it up.

JUSTICE ZAHRA: Well I suppose I'll start. I have a question that could be addressed to almost anyone who supports this but I guess in particular to Ms. McKenzie. You indicated that there's a very meager acceptance rate and that's a reason to reject this. And then in the next paragraph, you talk about how there's only one percent of cases that go to jury trial. It seems to me these are inconsistent and the 15 percent meager acceptance rate only relates to the acceptance within the period not whether the case goes away. We have some support, although not here today, from judges' associations that suggested it's still a very effective tool. So can you kind of bring together for me how it is that there's a meager acceptance rate yet this rule somehow causes for only one percent of cases to go to jury trial.

MS. MCKENZIE: Well, thank you, Justice, and I would be glad to answer that. I don't think that this rule in the 15 percent effective rate is the sole cause of the low number of cases that go to jury trial. But I do think that it is a very important and significant one. I think that the other ways in which cases are being resolved are through mediation. And I think that that's the reason why there's a low number of cases that are going to trial, is because the mediation process is far more effective, far more efficient and most, I mean, if you look at the numbers, the higher number, overwhelming number are being resolved through mediation.

JUSTICE ZAHRA: There's nothing that stops the parties from going to mediation either before or after case evaluation, correct?

MS. MCKENZIE: There is nothing that stops going before or after but I think the issues arise because of the fact that a low or high case evaluation number can significantly impair the mediation process. And also the study revealed that when cases do go to case evaluation that the resolution time, the period in which the case is resolved, is three to four months longer for cases that have gone to case evaluation and I believe that that is why. I believe it's because the process is ineffective and produces results that have low credibility and it affects the mediation process.

JUSTICE ZAHRA: Okay. Thank you.

CHIEF JUSTICE MCCORMACK: Are there additional questions for any of the speakers?

JUSTICE VIVIANO: I have a question for Mr. Riley. Mr. Riley, you were talking about—and any of the speakers can address this —but you were talking about some of the historical perspective on how private mediation has largely eclipsed the court-run process in resolving cases. And you mentioned that people are willing to invest substantial sums to go to private mediation and certainly in my experience a lot of cases went to private mediation and that was an effective way of resolving cases. There are—there are a lot of very good private mediators out there. The—but I guess the question comes who—who's the one who's investing these sums and what happens if a party doesn't have these sums to invest? And I guess just to follow the follow-up question maybe you can address all of these is, what we'll be left with left of the case evaluation process? I mean, these rules are really I think intended in some ways to dismantle that process and so what happens for those who don't have the resources to pay for private services when the court services are diminished even further then you're telling us they are now?

MR. RILEY: That's a very good question, Justice Viviano. The data that's available to me and that I'm aware of is that we have in Michigan somewhere in the range of 200 to 300 active mediators hearing anywhere from 100 to 200 cases a year. So this is a significant number but if you start breaking it down, it is expensive and it is a commitment that large corporations and well-heeled plaintiffs' attorneys can and do elect to spend. For those that can't spend these dollars, the rule allows them to continue in case evaluation and go through that process. But for those that are willing to exercise mediation rights and to go through a more expensive process with mediators throughout the state, that option exists under the rule change that's proposed. For those that are willing to invest those sums, should they be handicapped by a compulsory case evaluation process? I think when you get to the question of what becomes of the system and what's left? The answer is, the marketplace will tell us what is left. That is, what the parties, if given a choice, will elect to do, what they will consider to be worthwhile for them or within their resources. To me, that's the best answer I can provide.

JUSTICE VIVIANO: Do you think that carnage that may result from the people who can't pay their way into the private system is why the judges who have given some input here, the Wayne County judges and I guess the Oakland County district judges, do you think that's what they're sort of concerned about? You know it's—it's, in other words, when I was a trial judge I was happy if Bob Riley got one of my cases and settled it and took it off my docket. I thought that was great. That's not—but, as a trial judge, you have a docket where you have to deal with all of the cases, including those where people don't have resources or where maybe the lawyers don't want to invest their own resources in those cases. So is that do you think we're down to some of the issue

MR. RILEY: Well, you're absolutely correct that there are those who, because of a lack of resources, will look to the court and look to case evaluation perhaps. But in terms of carnage, in terms of destruction of the system, I'm not sure that that necessarily happens. But the discontent is so high that now we're balancing discontent concerns over competence concerns over efficiency. Right to trial by jury versus the needs of an undocumented segment of the legal community that, as you correctly point out, don't have the resources and it's that balancing that we attempted in the committee work to strike as we proposed to you to consider a voluntary system of case evaluation that could accommodate competing needs.

MS. FREID: If I may, is it possible for me to comment on Justice Viviano's question as well.

JUSTICE VIVIANO: Yes, please.

CHIEF JUSTICE MCCORMACK: Yes.

MS. FREID: I think the question is well taken and one thing that I would echo for Mr. Riley is the case evaluation is still available. But the point that I would highlight here, is that the Justice's concern about persons without resources is really telling when you discuss sanctions. So doing-away with sanctions protects the very person you're concerned about, Justice Viviano. The person without resources is even less able to tolerate sanctions so this amendment provides for continuation of case evaluation where that is the appropriate option but eliminates the danger of sanctions. I appreciate the opportunity.

JUSTICE VIVIANO: Let's—let's put them put a finer point on it, on the on your point. You know if someone has a tort case and it's a very good case, they're likely to find a lawyer who may want to invest—the lawyer, the lawyer, the firm might want to invest their resources and cover these costs, right? I assume, although I don't know firsthand but I assume that's what happens frequently. But what happens when now a person without resources doesn't have a very good case and so the lawyers, the law firm doesn't want to invest resources in it. That case still has to be resolved in the court system and when you eliminate sanctions, you eliminate an incentive for a person who may not be being realistic about their case, the value of their case to become more realistic. And again I'm just looking at it from the perspective of what I think is motivating some of the comments we're getting from the judges. So it's not you know, it's not

the person without resources who has a great case. It's the person without resources who maybe doesn't have such a good case.

MS. FREID: Well, if I might. Everyone has the right to access to our courts and they are not precluded from—the judges are not precluded from having case evaluation where the parties, certainly someone you're speaking about, is not likely to elect an alternative ADR, they are likely to fall to the default of case evaluation. But the issue is whether or not they should be—they should have a hammer blow against them in their approach to the case. I mean my experience with courts is that they're very, very creative and they're very, very inventive when it comes to trying to resolve cases. Settlement conferences, among other things, are available and courts use them routinely. So I think that the bigger issue and the thing that concerns us most is that you penalize or punish that individual, the one you're actually concerned about by imposing that sanctions.

MR. BRADLEY: if I could interject here, Madam Chief Justice. I would suggest, in response to Justice Viviano's concern, that one of the ways this issue is often resolved and Mr. Riley can speak to this probably as well as anybody but I would guess that of all the mediations that I've had in the last 12 months where I've been a litigant, and it's probably in the range of 50 to 100, I've been asked as the defense attorney to pay the mediators costs for the plaintiff so the concerns that are raised about, you know, you don't have somebody who can afford those costs. Oftentimes, the insurance carriers are going to be willing to pay those costs. Now I'm not going to suggest that it happens all the time. But oftentimes those charges are paid for by the defense, in part, because it's less expensive than all of the additional litigation costs that are brought about by a bad case evaluation award. Now is it a one-size-fits-all? No. And I'm not going to suggest that it is. But I think mediation lends itself better to resolving both the bigger case and the case that's got of a marginal value because I've got a carrot that I can slide in front of the plaintiff that says you know you may think that this is a great case, it's probably not a great case but we have a number here and maybe we can resolve this matter by my paying your share of the mediation costs. It's amazing how many times in my experience that results in a resolution. And again Mr. Riley can speak to this better than I can because he does way more mediations. But it's—it is an issue that comes up often in mediation processes.

MR. RILEY: Mr. Bradley's correct. If I can just editorialize. Not only do defendants fairly often pick up the tab if you will. In addition I have waived my costs in some cases because of either the nominal nature of the settlement or because of exigencies that exist with particular circumstances. In some instances it's the defendant who has limited resources. So I've seen it both ways and accommodations are, on occasion as Mr. Bradley suggested, through insurance carriers or corporations willing to absorb the costs or having dealt with it myself with litigants on both sides. Again not perfect; not a hundred percent; not all cases fit but at least from what I'm understanding in the mediation community, my remarks are not unique or unusual.

CHIEF JUSTICE MCCORMACK: are there any additional questions for any of the speakers on this item?

MS. ROBERTS: Madam Chief Justice, is it possible for me to make comment here?

CHIEF JUSTICE MCCORMACK: Sure, one last one.

MS. ROBERTS: Yes, ma'am. We were intimidated by the sanctions and we were the plaintiffs and I just want to say it wasn't the monetary issue as far as the settlement. It was the fact that we wanted to bring our case to trial because we knew that we could expose fraud and false claims within the medical—mental health industry and abuse of the judiciary. But we've—we were just starved out. We had to quit and because of that I continued to pursue my college degree and I tried to come at this another way to expose this. So I really appreciate the efforts being made to change case evaluation and if you could eliminate that sanction it could help somebody further down the road.

CHIEF JUSTICE MCCORMACK: Thank you very much. And if there are no further questions for any of the speakers, that will conclude today's hearing. Last call for questions. Thank you all for appearing this morning. As always, this is extremely helpful to us as we consider these rule changes. And that will conclude this morning's hearing.