SUPREME COURT RULES COMMITTEE

PUBLIC HEARING

Report of proceedings at the public hearing of the above-entitled cause, before Tabitha Watson, an Illinois Shorthand Reporter, on the 24th day of June, 2020, at the hour of 10:55 a.m., via Zoom videoconference.

Reported by: Tabitha Watson, CSR, RPR

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PROPONENTS:

HON. ROBERT McLAREN
ROY C. DRIPPS
DONALD PATRICK ECKLER
HON. JAMES MURRAY, JR.
WILLIAM McVISK
CLINT KRISLOV
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CHAIRPERSON ANTONIO M. ROMANUCCI: Good morning, everyone. I appreciate everyone's patience. As you can see, we are all in new territory. Not just today, but certainly during this COVID and pandemic crisis. So we appreciate your willingness to join this meeting via electronic means as we're doing today. We're all going to have to be patient because I think we may all -- you know, I've had my own technical problems and we may all face some today. So we are just going to have to exercise extreme patience as we get through this process today.

So my name is Tony Romanucci. I'm current chair of the Illinois Supreme Court Rules Committee. And we're about to begin.

We're going to do our best to very strictly enforce the time limitations here. Not only are we getting a late start, but we have a very full agenda today. We have eight items that we have to get through during the public hearing. I believe we have 18 or 19 speakers. You know, we're allowing you each ten minutes. Please use your ten minutes wisely. You don't have to use all of your time if you don't need to. You know, I'm

not encouraging you to use less time, but if you don't need to, that's okay too.

So we've got a long day. We're going to try and power through this and get through this without a break. Having said that, if anybody at any time needs a break for any reason, either raise your hand electronically or raise your hand so that we can see you or send a chat and we will take a break. Other than that, you know, the plan is to try and get through this without.

So without anything else, unless anybody has anything else that they want to add from the Committee or Amy before we start, we're going to begin with our first speaker on Proposal 19-14. So this is a little bit out of order and that is the Honorable Robert McLaren.

If you are on the Zoom, Judge McLaren, are you available? Judge Robert McLaren?

AMY BOWNE: I believe he's having issues with his sound possibly.

CHAIRPERSON ANTONIO M. ROMANUCCI: Do you see any video of him, Amy?

AMY BOWNE: It's blank. It's dark. I see that he's on.

Justice McLaren, are you on? Are you on?

I see him here listed. I don't see audio or video.

HON. JOHN C. ANDERSON: You know, if he's having a hard time, it might be easier to just call him with a phone and not worry about the video end of it. Just pick up a regular phone.

CHAIRPERSON ANTONIO M. ROMANUCCI: Well, what I'd like to do is maybe while Amy is connecting with his Honor, why don't we move onto the next proposal and the first speaker on 19-03 -- on Proposal 19-03 and then as soon as we get Judge McLaren on, we can fit him in either in between speakers or in between the proposal.

So, Roy Dripps, are you on?

ROY C. DRIPPS: I am.

CHAIRPERSON ANTONIO M. ROMANUCCI: Okay. Roy, are you ready to begin?

ROY C. DRIPPS: I am.

CHAIRPERSON ANTONIO M. ROMANUCCI: Okay. Thank very much, Roy. The floor is yours.

ROY C. DRIPPS: Chairman Romanucci and members of the Rules Committee, I am Roy Dripps and I'd like to thank you for allowing me to testify

concerning Proposed Amendment 19-03.

I wrote to identify for the Committee's attention potential issues concerning the use of depositions at trial in specific situations and proposed certain changes to Supreme Court Rule 212 in light of amendments to other Supreme Court rules, as well as changes in the Federal Rules of Civil Procedure. These changes have created potential problems with the present language of Supreme Court Rule 212.

The purpose of the amendment is to allow attorneys to predict accurately whether a particular deposition taken in the same case, but in a different court, will be admissible at trial. Differences in the ability to enforce trial subpoenas outside of the jurisdiction and differences in the definition of unavailable in Illinois is to allow a (audio feedback) in Illinois and in Federal Courts makes drafting a workable rule sort of like fitting a square peg into a round hole.

With regard to cases previously filed in Illinois, dismissed, and refiled in Illinois, the requirement in present Rule 212(d) that the

depositions be duly filed in the prior action is anachronistic.

Rule 207(b)(1) no longer authorizes filing depositions. Rule 207(b)(2) forbids routine filing of depositions. But Rule 212(d) still requires that a deposition be duly filed in the original action before it may be used in the refiled matter.

Although this requirement might be regarded as vestigial, the Supreme Court reminded us in Bright vs. Dicke that the rules are to be enforced as written. Eliminating the duly filed language from Supreme Court Rule 212(d) would conform the rule to the current versions of 207(b)(1) and (b)(2).

In a situation where depositions are taken in Federal Court after removal from an Illinois State Court, but are to be used in a State Court trial after remand, a similar problem is created. As in Illinois, depositions are rarely, if ever, duly filed in Federal Court before trial because Federal Rule 5(d)(1) says they must not be filed until they are used in the proceeding or the court orders filing.

Because the deposition would not normally

be used in the proceeding until trial and because a remand order would normally be entered well in advance of trial and because it's very rare for a judge to order a deposition to be filed, the vast majority of depositions would never be duly filed in a Federal proceedings before a remand. So Rule 212(d) would almost always preclude the use of depositions taken in Federal Court.

The other potential problem with the rule is it doesn't answer the question whether a deposition taken in Federal Court or the court of another state is to be treated as an evidence or a discovery deposition under the Illinois rules.

As a practical matter, this means that attorneys cannot predict with any accuracy before a ruling by the trial judge whether a deposition taken in Federal Court prior to remand will be admissible at trial. And one of the things I hope to avoid with the amendment is to confront a trial judge with a last minute decision about granting a continuance in order to take the evidence deposition of a witness or forcing the parties to proceed to trial without testimony that might be crucial.

Rule 212(a) addresses the circumstances in which it doesn't matter whether the deposition is evidence or discovery. Impeachment, an admission, exception to the hearsay rule, an affidavit, or because the witness is dead or infirm.

In other circumstances, whether the deposition is discovery or evidence matters very much. Both Illinois and the Federal rules authorize use at trial of a deposition if the witness is unavailable, but the Supreme Court rules define a witness' unavailability differently than do the Federal rules.

Rule 212(b)(2) generally allows use of an evidence deposition if the deponent is out of the county. Rule 212(b)(3) allows use of an evidence deposition if you haven't been able to procure the attendance of the witness with reasonable diligence in the service of a subpoena. And Rule 212(b) presumes that physicians and surgeons are unavailable for trial.

The unavailability provision of Federal Rule 32(a)(4) has some important differences. Rule 32(a)(4) authorizes interstate service of a trial subpoena if the witness is within 100 miles

of the Federal courthouse.

So for example, the deposition of a witness in St. Louis could not be used at trial in Federal Court in East St. Louis, but the same witness could be valuably produced in court by subpoena and, therefore, is not practically unavailable. But an Illinois trial subpoena is ineffective if served out of state.

So the same witness whose trial testimony could have been procured by subpoena is now unavailable to testify at trial in an Illinois Court as a practical matter, but would be deemed available by the Federal Courts. And physicians are not deemed automatically unavailable under the Federal rules.

So this brings into focus the difference in the meaning of unavailable for the use of Federal and Illinois depositions. The proposed Rule 212(e) requires the trial court to determine whether the deposition would have been admissible in the jurisdiction in which it was taken. This approach makes the unavailability provisions in Rule 212(b) inapplicable to depositions sought to be admitted under Rule 212(e).

And while an Illinois trial subpoena lacks extraterritorial effect, the Interstate Depositions and Discovery Act will authorize issuance of a subpoena for an evidence deposition in most states other than Missouri. Missouri does have procedures by statute and by rule for deposition subpoenas to issue to aid in an action in another state. So parties should be able to obtain an evidence deposition of a witness if the deposition would not be substantively admissible in Federal or the other state's court.

Finally, a distinction between Illinois actions that have been dismissed and refiled and actions filed in other states and then refiled in Illinois will be beneficial because Illinois is unique in distinguishing between discovery and evidence depositions.

A deposition taken in a case originally filed and refiled in Illinois would necessarily be labeled as either discovery or evidence at the time it's taken. That is not so in other states or in the Federal Courts.

With that in mind, I submit that it is time to update Supreme Court Rule 212. Proposed

Amendment 19-03 is a neutral proposal that does not favor either plaintiffs or defendants. It splits into two categories the use of depositions after substitution or refiling, which remain in Rule 212(d), and the use of depositions taken in other jurisdictions, which the new Rule 212(e) addresses.

Proposed Rule 212(e)'s provision for pretrial orders to require reasonable notice of intent to use the deposition is important because determination of contested admissibility of a deposition should be made far enough in advance of trial so that an evidence deposition may be taken if the deposition in the other jurisdiction is deemed to be a discovery deposition. That will also avoid preventable continuances.

I would just suggest that there is no reason to turn the rule into a trap for the unwary and thank you for permitting me to address the Committee.

MICHAEL I. ROTHSTEIN: Is this an appropriate time for questions by the Committee, Mr. Chairman?

Can you hear me?

CHAIRPERSON ANTONIO M. ROMANUCCI: I can hear

you. I was asking a question. I don't know if you could -- if you heard mine or not.

MICHAEL I. ROTHSTEIN: Oh, I did not hear yours.

CHAIRPERSON ANTONIO M. ROMANUCCI: Okay. Mr. Dripps, can you hear me?

ROY C. DRIPPS: Yes, sir.

CHAIRPERSON ANTONIO M. ROMANUCCI: Okay. So my question was, you are proposing an entire new subparagraph under 212 and that's subparagraph (e), is that correct?

ROY C. DRIPPS: Yes, sir.

CHAIRPERSON ANTONIO M. ROMANUCCI: All right. Just so -- I want to understand procedurally. Subparagraph (e), have you tested that paragraph to ensure that there's no conflict with respect to the laws of another state on how their depositions are to be used when you're proposing (e)?

ROY C. DRIPPS: I'm a little lost about tested. I think the rule says -- proposed rule says that you have to determine whether it would be admissible in the other jurisdiction, which will require the trial judge to make a determination after the proponent of the deposition demonstrates

why it would be admissible in the other jurisdiction.

I'm not hearing if anybody is talking.

JAMES A. HANSEN: Tony and Mike, you're both talking, but no one can hear you.

MICHAEL I. ROTHSTEIN: Mr. Chairman, have you concluded? If so, I have a question. If not, I will wait.

STENOGRAPHER: Is anyone speaking right now? I can't hear Mr. Romanucci, but it looks like he is talking.

CHAIRPERSON ANTONIO M. ROMANUCCI: Mr. Dripps, can you hear me now?

ROY C. DRIPPS: Yes, sir.

CHAIRPERSON ANTONIO M. ROMANUCCI: I apologize. I don't know why -- my phone shows I'm not muted, but it keeps telling me I'm muted. So I don't know what is wrong. So I apologize.

My last question was, are you familiar with any other states that have a similar proposal as you do in subparagraph (e)?

ROY C. DRIPPS: No. And the reason for that is I believe now Illinois is the last jurisdiction to maintain a distinction between evidence and

discovery depositions. So almost every jurisdiction has a rescript of the Federal rules for their discovery provisions. There are some that are a little bit different, but for the most part they follow the Federal Rules. This is why I believe they can be put together in one subparagraph.

CHAIRPERSON ANTONIO M. ROMANUCCI: Thank you. I have no further questions.

Mike, Member Rothstein, I know you had a question.

MICHAEL I. ROTHSTEIN: Good morning, Mr. Dripps.

ROY C. DRIPPS: Good morning.

MICHAEL I. ROTHSTEIN: Your original proposal you submitted in January 2019 proposed language to accomplish this amendment. The proposal that -- and we included your proposal in the materials that were circulated. We took an attempt at trying to maintain the spirit, but to simplify the language in Proposal 19-03 and I'm curious whether you reviewed the simplified language and do you have an opinion as to whether or not it captures what you were trying to capture in your original language

and if not, how so?

ROY C. DRIPPS: First of all, yes, absolutely I've reviewed it and my remarks today have been directed to the subcommittee Proposal 19-03. I think the subcommittee proposal is a significant improvement on what I submitted. I think it clarifies things and does maintain the spirit of my original proposal, but brings more clarity to it and focuses the trial judge on the task at hand, which is determining what the -- how the deposition would have been used in the other jurisdiction.

MICHAEL I. ROTHSTEIN: And so I'll take that as your fervent support for the amended language as proposed in 19-03.

ROY C. DRIPPS: Absolutely. I completely endorse that. And particular -- I want to point out, the provision for having the notice provision in case management orders I think is really a significant step. I think that will allow these issues to be headed off well before trial so that we don't have last minute continuances to go get a late deposition of the witness.

MICHAEL I. ROTHSTEIN: Thank you. I have no further questions.

CHAIRPERSON ANTONIO M. ROMANUCCI: Any other questions from any member?

Thank you, Mr. Dripps.

ROY C. DRIPPS: Thank you, Mr. Romanucci.

CHAIRPERSON ANTONIO M. ROMANUCCI: Mr. Eckler, are you on the call?

DONALD P. ECKLER: I am, sir.

CHAIRPERSON ANTONIO M. ROMANUCCI: All right. Your time is starting now. Thank you so much. You may proceed.

DONALD P. ECKLER: Thank you, Mr. Romanucci. Thank you to the members of the Committee for allowing me to be heard today. I'm speaking on behalf of the Illinois Association of Defense Trial Counsel. My capacity is as legislative chair.

I'll be relatively brief, because as I hope was clear in our statement, it is not an opposition to the proposal that Mr. Dripps has made and has been amended by the subcommittee. It's rather dealing with the issue that Mr. Rothstein asked about regarding notice.

The proposal in (e) is to require reasonable notice of the intent to use the deposition in order to give the trial judge an

opportunity to deal with the issue in sufficient time for the parties to prepare, whether it's another discovery deposition, an evidence deposition, subpoena, what have you in a given situation.

In addition to the other issues that we've laid forth in an order to try to move things along out of respect for everyone's time, we suggest a more specific time be put into the order by which time a party has to propose that they're going to use a deposition taken in another matter at least 60 days before the close of discovery so that the trial court, opposing party, and everyone can prepare appropriately for that, address the issues, address perhaps whether the -- how the other court, the foreign court, would deal with that issue, whether it's Federal Court or a sister State Court and allow the trial judge to get up to speed on that while the parties brief that issue if it requires briefing.

But giving the sufficient notice I think needs to be made more specific with regard to when that disclosure has to be made. The current proposal is just reasonable and while reasonable is

good, a specific time we think would be better.

With that, I'll yield.

CHAIRPERSON ANTONIO M. ROMANUCCI: Do you have a specific proposal that you want to recommend?

DONALD P. ECKLER: As we put in our paper, Mr. Romanucci, we would suggest at least 60 days prior to the close of discovery. So that would be at least 120 days prior to trial. Hopefully under -- if 213 were done, it would be effective -- it would effectively be earlier so that parties would have an idea and hopefully the parties would be discussing the issue. But at least 60 days before the close of discovery.

CHAIRPERSON ANTONIO M. ROMANUCCI: Thank you. Any other questions or comments from any of the committee members?

MICHAEL I. ROTHSTEIN: Michael Rothstein. Mr. Eckler, I appreciate the benefit of what you are suggesting with the 60-day period. Would you be comfortable if in addition to the 60-day period, language was added in the sense of unless the court determines otherwise or absent leave of court to allow for the possibility that a deposition could come to light in a period less than 60 days, but

under the circumstances the court believes it would be fair to all the parties, you know, to use the deposition?

DONALD P. ECKLER: I can imagine a circumstance where that might happen, but it would be -- in a case -- this is a case -- as Mr. Dripps pointed out and the reason for the rule, this is a case that either had been refiled in State Court, was refiled in Federal Court, remanded. It's a case everyone should be familiar with. There shouldn't be surprises. Everyone should know where they're at. I don't know why it would be that all of a sudden we discover a deposition taken in a related case between the parties and it not be known at least 60 days before the close of discovery.

I'm generally in favor -- we're generally in favor of giving courts discretion to do justice between the parties. And if that's the mood of the Committee, we certainly understand. But I think there shouldn't be surprises here. That's the whole point that I think Mr. Dripps is making.

MICHAEL I. ROTHSTEIN: Thank you.

CHAIRPERSON ANTONIO M. ROMANUCCI: Anyone else on the Committee have any questions?

Thank you, Mr. Eckler.

DONALD P. ECKLER: Thank you.

CHAIRPERSON ANTONIO M. ROMANUCCI: I would like to remind all the participants to please, please mute your phones if you are not speaking or not anticipating speaking. You know, we pick up background noise and it does interfere. So I would appreciate that out of respect for those who are speaking to please have your phone on mute.

Amy, are you able to tell us whether or not Justice McLaren has been able to join?

HON. ROBERT McLAREN: I'm online.

AMY BOWNE: I did speak to Justice McLaren. He was going to call in.

Are you there, Justice McLaren?

HON. ROBERT McLAREN: Yes, I am. Can you hear me?

AMY BOWNE: Yes.

CHAIRPERSON ANTONIO M. ROMANUCCI: Justice McLaren, this is Tony Romanucci. Sorry we took you out of order, but you were having some difficulty. I think that's resolved now.

HON. ROBERT McLAREN: Yes.

CHAIRPERSON ANTONIO M. ROMANUCCI: So,

Justice McLaren, you'll be presenting. You're the proponent of Proposal 19-14. And I yield the floor to you, your Honor.

HON. ROBERT McLAREN: Thank you.

I thought about what might have caused this problem and I thought that probably what did it was the fact that when the rule was changed in 1983, 330(a)(2) was changed in 1983, so approximately two years after the decision in Sears versus Sears, there was no commentary by the Committee as to the reason for the change and I can accept the rationale for that because I think, as the ALA has said in its comments, that it's self-evident and it doesn't take I think even a lawyer. I think a layman or a grammarian would understand what it was supposed to mean.

And I interpreted that in a case called Augusten (phonetic), which was a marriage -- or a divorce case in the 80s I believe and it wasn't until 2019 where a panel that I was on decided that Sears versus Sears remains in violet and that, according to their timetable, a motion to reconsider a post judgment motion must be filed, not within 30 days of the denial order of the post

judgment motion, but within 30 days of the final judgment order, which for most jurisdictions or most venues is a practical impossibility. But be that as it may, I think my dissent in Orahim, People v. Orahim, is self-explanatory.

And so I would like to spend the time available to discuss the comments made by the Appellate Lawyer's Association. And there were three points that they made. One was maybe since this is a criminal case, the rule should be amended relative to Rules of Criminal Procedure and that's all well and good, except that the majority was interpreting 303(a)(2). It wasn't interpreting criminal rules of procedure and so I think it's kind of a deflection or a misdirection to suggest, as the ALA does, that we should maybe consider changing the rules relating to pleas or a vacation of pleas, et cetera, versus resolving or remediating the ruling or the holding of the majority in Orahim.

They then suggest that my proposed language is somewhat ambiguous and possibly confusing and I can understand why, because I agree with the ALA that what is there is sufficient.

It's appropriate. It doesn't need to be changed. But the thing is, what I'm not aware of or certain of is that a rule doesn't have to be amended, but can merely be clarified by a commentary added by the Rules Committee.

If the Rules Committee can add a commentary saying that we have considered this and we leave the rule as it is because we believe that it is self-explanatory and that it was an attempt by the Rules Committee back in '83 to amend and ameliorate the conflict between the argument relating to a timely appeal and the ability of a trial court to remediate what it considers to be error.

If committee comments can resolve that issue, then I don't see the need for any other language. I proposed the language because I was attempting to address the rather -- what I personally consider to be highly impractical, if not illogical, that one must file a motion to reconsider a post judgment motion within 30 days of an order that it doesn't address. It only addresses it tangentially or indirectly by addressing the denial of the post judgment motion.

So I would suggest that if somebody wishes to amend what I've said and say something like, so long as the court retains jurisdiction, I don't -- I have no problem, but something needs to be done because it -- the rule has been nullified and Sears versus Sears is back on table. And I also would like to thank the ALA for agreeing with what I perceive the rule to be, which is self-evident.

Other than that, I have nothing further to say. Are there any questions?

CHAIRPERSON ANTONIO M. ROMANUCCI: Does anyone from the Committee have any questions for Justice McLaren?

My understanding, Justice McLaren, just so we're clear, is that if the Committee were to comment with respect to the rule as opposed to amending the rule, that would be satisfactory.

HON. ROBERT McLAREN: Yes. If it indicated essentially what I said, which is Orahim was wrongly decided and that trial courts do have the ability, especially since the four or five cases relating to subject matter jurisdiction, and those being three, subject matter jurisdiction, personal jurisdiction, and statutory authority granted to

trial courts relating to administrative review. Those are the three criteria upon which jurisdiction is based.

It's not based upon the old jargon that if you're over, say, 65 you may recall was unauthorized at law is void. That is essentially what Sears said because they basically said there's no statue or no Supreme Court rule authorizing these post judgment -- successive post judgment motions and, therefore, they said it was unauthorized at law, effectively, and the orders were void. That doesn't -- that concept doesn't exist anymore.

Does that answer your question?

CHAIRPERSON ANTONIO M. ROMANUCCI: It does.

HON. ROBERT McLAREN: Thank you.

CHAIRPERSON ANTONIO M. ROMANUCCI: Anyone else from the Committee with any questions or comments?

All right. Very well. Thank you, Justice McLaren.

HON. ROBERT McLAREN: Thank you.

CHAIRPERSON ANTONIO M. ROMANUCCI: We will now move on to Proposal 19-11. Give me one moment, please. And our first speaker on that proposal is

the Honorable James Murray. I saw Judge Murray on the line earlier.

Judge Murray, are you still there?

HON. JAMES MURRAY, JR.: Yes, I am. Thank you.

CHAIRPERSON ANTONIO M. ROMANUCCI: You may begin.

HON. JAMES MURRAY, JR.: Thank you.

Good morning, members of the Illinois Supreme Court Rules Committee. My name is James C. Murray, Junior. I am a retired judge of the Circuit Court of Cook County. I am now of counsel to my brother's rather small law firm.

I think some of you already know that I am related to, and who influenced me to become a lawyer, my father who was a respected Circuit Court judge and Appellate Court justice.

I start out with the Supreme Court Rule 23 was promulgated by the Supreme Court on January 31, 1972. Although over the years, there have been slight modifications to the rule, the essence of the rule has remained the same.

Interestingly, when I was attempting to find out the rationale behind the adoption of the rule, there was no commentary regarding it. So I

reflected back on my own experience and attempted to provide what I thought was the reason the Supreme Court adopted Supreme Court Rule 23.

I look back at my career as a lawyer. At the time, some of you might remember this, opinions from the Appellate Court that were issued would be issued as Advance Sheets. These were paper back volumes in some way with numbers anywhere from two, three, four, 500, even a thousand pages in length. And these types of books would stack up on a lawyer's desk over a period of time when every lawyer was responsible for basically, in effect, making certain he knew the law and essentially had to drive through and review these Advance Sheets.

Eventually, they would be -- these Advance Sheets would be turned into hardcover volumes of our Appellate Court decisions and then added to a law firm's library.

The Appellate Court -- and there wasn't reason for the -- this rule. Each Appellate Court judge on a yearly basis was -- had to generate certain written opinions that basically -- you can only imagine given the number of Appellate Court justices, the number of opinions that would emanate

on a yearly basis out of our various Appellate Courts throughout the state. I believe in order to control the number of such opinions that were to be published in the Advance Sheets and resulted in to being put into hardcover volumes, the Supreme Court adopted Supreme Court Rule 23.

Supreme Court Rule 23 currently consists of three sections relating to this decision of the Appellate Court. My first reason why the rules should be abolished is technology. I do not have to describe to this committee that the practice of law has been radically changed and revolutionized over the last 48 years by technology. Today is a classic example of that. The advancement of technology, both in software and computer equipment, have radically changed the landscape of legal research in the profession of law.

The advent of such software such as Westlaw and LexisNexis have placed what were contained in the law libraries, the purpose of the law, such software contains not only case law, it contains statutes, regulations, court rules, secondary source materials. These services can pay both Federal and all the State laws of our country.

Today, I can carry my entire law library on my cell phone. As a result of this advancement in technology, law firms have eliminated their law libraries. There is no need to be concerned by the problem that existed and was confronted by our Supreme Court in 1972. The problem has been resolved by technology.

There is no longer any reason why Appellate Courts of this state should determine whether an opinion from the court should be in the major league of opinions or the minor league of opinions.

Supreme Court Rule 23 is an obstacle to the practice of law. Supreme Court Rule 23, a substantial number of the opinions by the Appellate Court are designated under Rule 23 as orders so that they cannot be cited to as precedent to either the Appellate Court or to any other trial court. Rule 23 is used more as a source when a litigant cites a Rule 23 case.

A classic example occurred on June 10th, 2020 in the case Moruzzi vs. CCC Services, Inc., 2020 Illinois App 2d 19 -- one thousand -- 199041 -- 411, paragraph 40. The Appellate

Court -- I'm sorry. The Rule 23 opinions to support a legal argument is a phony. You need strike it as the Court of Appeals granted it as being a violation of Rule 23.

I have known -- I have known -- I have been both an attorney and a judge. As a judge of Cook County, I was responsible for entering judgment of confessions for the entire county.

In one particular case, a rule to vacate the confession of judgment, I denied it, denied it, and the matter was taken up -- my opinion was taken up by the Appellate Court. I was affirmed on appeal.

Unfortunately, the opinion was affirmed under Rule 23 as the case First Bank versus Kaiser, 2012 Illinois App 1st, 112 505U. If that opinion was published, that would have relieved me of a heavy burden because I handled all the confession of judgments in Cook County and I could have eliminated a lot of unnecessary motion practice as it relates to it.

The fact is this rule has deprived lawyers and judges of valuable decisions that could be used by the attorney or the judge for that matter to

support his or her legal argument or assist in rendering a decision. The rule should be abolished.

Supreme Court Rule -- Supreme Court Rule 23 has problems in its structure. The only cases that Rule 23 determines that are precedential are cases which establish a new rule of law, modifies an existing law, criticizes an existing rule of law, prevents or absolves or avoids conflicts within the Appellate Court Division.

Supreme Court Rule 23(a), that section of the rule seems to be that -- to ignore not only that -- that only the law applies. Well, we all know Appellate Court decisions can talk -- can hang two aspects, fact and law. And I direct the Committee's attention to the Illinois Supreme Court decision in People ex rel. Hatrich versus 2010 Harley Davidson 2018 Illinois 121636. It was a civil forfeiture case. And reading the majority's opinion in that case and the dissent in that case, which focused on the facts, we will see how and what matters of fact in a particular case are equally important.

What about the lawyer that finds a Rule 23

case that has similar facts in his case, but he can't cite it because of the fact that that Rule 23 precludes him.

Rule 23(b) is where the vast majority of opinions are emanated out and they're called Rule 23 orders. For me, over the years, it has always been difficult for me to determine why a Rule 23 order cannot be cited as precedent since many of those orders cannot be considered distinguishable from those that are classified as precedent.

Rule 23(c) entitled summary orders. I must admit, I have looked for such orders. I have been unable to find such decisions, decisions from an Appellate Court. I'm just wondering whether or not that -- that meet that standard. My impression is that this section is not used or if it is used, it's not invoked very often.

I want to thank the Committee for its consideration of my proposal. I urge the Committee to act favorably on it. I think technology basically eliminates the rationale and reason and it will open up an entire scope of opinions that should be considered as precedent for the attorneys and judges, even including Appellate judges, judges

of the State.

I don't have to express how technology has radically changed our laws. We no longer file paper copies of our briefs, e-filing. Look at this on Zoom. Our Illinois Supreme Court has issued our orders as far as the commencement of trials to basically consider off-site hearings of the Appellate -- of court, bond hearings are conducted by Zoom. And I think we should now -- Rule 23 should be basically done away with. Technology has eliminated its reason.

Thank you very much for listening.

CHAIRPERSON ANTONIO M. ROMANUCCI: Justice Murray, maybe I missed something. I just want to make sure I have it. You said there are three reasons to abolish Rule 23 and you said number one is technology. Can you just tell us in the bullet points, what is -- what is reason number two and reason number three? I may have missed them.

HON. JAMES MURRAY, JR.: Maybe they're not --

CHAIRPERSON ANTONIO M. ROMANUCCI: One is technology. Number two is what?

HON. JAMES MURRAY, JR.: Basically that rule -- Supreme Court rule represents an obstacle to the

practice of law. What it does is it deprives lawyers when they can -- when they're doing their legal research, and this has occurred to me both as a lawyer and as a trial judge, that I run across Rule 23 opinions that I would like to cite, but I know the rule prohibits it. So I don't do it because the rule prohibits me.

So I think basically, in effect, there are other lawyers in this state that are like me that have come -- in their legal research, come across Rule 23 opinions that they believe would be favorable to legal positions, but recognize -- recognize they can't cite it to a court because of Rule 23.

CHAIRPERSON ANTONIO M. ROMANUCCI: And what was reason number three?

HON. JAMES MURRAY, JR.: The reason for number three, I think if -- this is my opinion. I don't know whether anyone wants to agree with me, but I think the Supreme Court rule has problems in its structure. If you look at Rule 23(a), it basically focuses all attention on the law. That is, it has to generate either new law, represents a change or modification of the law, avoids conflict within

judicial -- Appellate judicial districts. Primarily, that would be in the First District where we have five divisions. And I remember in practicing law, I ended up with about two or three cases on discovery that were directly opposite each other.

So that's an admonishment there, but it doesn't take into consideration that really, in effect, there is a factual component to every case. And if the facts are somewhat unique, then I think that should be included in considering whether or not it rises to a precedential value.

CHAIRPERSON ANTONIO M. ROMANUCCI: Thank you.

HON. JAMES MURRAY, JR.: And Rule 23(b) -- Rule 23(b), if you look at that, if you look at the vast majority of Rule 23 cases, there is little to distinguish those type -- they represent almost full-blown opinions -- full-blown opinions. So there's no distinguishing that, those Rule 23 orders, the actual opinions that are classified as precedential. And Rule 23(c), I don't think is used. I mean, you know, you have a rule there that's just not used. At least, I haven't seen any cases that use it.

Those are my three points.

CHAIRPERSON ANTONIO M. ROMANUCCI: Thank you, Judge. Are there any other questions or comments from committee members?

HON. JAMES MURRAY, JR.: All right. Can I have one -- can I add one remark, please?

CHAIRPERSON ANTONIO M. ROMANUCCI: Sure. Brief.

HON. JAMES MURRAY, JR.: It is very brief.

First of all, I want everybody -- I don't want -- I want to eliminate a couple of problems, what might be a problem.

One, if you -- if the Committee adopts my rule or position on this, I think it has to make clear in the adoption that it has prospective application. We're not, by virtue of this rule, resurrecting everything that went in the past that fell under Rule 23 that were not precedential, we're not resurrecting them and considering them precedential. I think that would be a problem.

The other thing is that in the modification that I read, it talks about a full opinion and, frankly, I think it could be expressed as a full opinion.

The last thing I want to do is impose any further burden on our Appellate Court justices. I don't know what full opinion means.

Take a look at Rule 23 opinions. Those are full opinions. So I would ask for the deletion of the words "as a full" out of the proposal one and must be expressed in an opinion.

Thank you.

CHAIRPERSON ANTONIO M. ROMANUCCI: Thank you, your Honor. Our next speaker is William McVisk.

HON. JOHN C. ANDERSON: Can I ask a quick question?

CHAIRPERSON ANTONIO M. ROMANUCCI: Oh, of course. Who is that?

HON. JOHN C. ANDERSON: Judge Anderson.

CHAIRPERSON ANTONIO M. ROMANUCCI: Thank you, your Honor.

HON. JOHN C. ANDERSON: Sorry. Judge Murray, are you of a -- do you have an opinion on whether Rule 23 prohibits a judge from citing a Rule 23 case? I mean, if you're to be a strict constructionist or a textualist, there's nothing in Rule 23 that prohibits the court from citing a Rule 23 ruling. Would you agree?

HON. JAMES MURRAY, JR.: Judge, with all due respect, if you take a look at the decisions under Supreme Court Rule 23, I think there's an opinion if my recollection serves me correct.

HON. JOHN C. ANDERSON: There's several and they're split.

HON. JAMES MURRAY, JR.: Well, I'll tell you, the Supreme Court has criticized judges of basically, in effect, citing Supreme Court Rule 23. I think I look to the Supreme Court for my guidance as to what kind of practice -- how I should determine my practice. And I rarely, rarely -- I've never used a Rule 23 opinion. I think it's a violation of the rule. It applies to both lawyers and judges.

HON. JOHN C. ANDERSON: If there's a Supreme Court ruling on this, I'd sure appreciate it if you'd send it to me. And there may be, but I haven't seen it.

HON. JAMES MURRAY, JR.: Would you do me a favor, Judge? I'd appreciate it if you would -- I think that Amy has my e-mail address. If you e-mail it, so I can basically get back to you on it.

HON. JOHN C. ANDERSON: I will do that. I don't want to take up any more time. I would just point out for the record though, there are Appellate Court cases that go both ways on this. I'm not aware of a Supreme Court case.

Thank you, Mr. Chairman.

CHAIRPERSON ANTONIO M. ROMANUCCI: Thank you.

Any other questions or comments before we move on to Mr. McVisk?

All right. Mr. McVisk, the floor is yours. Thank you.

WILLIAM McVISK: Thank you. I hope everybody can hear me. I'm using my speaker phone. If there's a problem, please let me know.

CHAIRPERSON ANTONIO M. ROMANUCCI: We hear you fine.

WILLIAM McVISK: Great. Okay.

I am the immediate past president of the Illinois Defense Counsel. Illinois Defense Counsel, as most of you know, is an organization made up of people -- civil litigators who represent defendants and their insurance company. We basically agree with almost everything Judge Murray just said. I think we need to eliminate Rule 23,

so I'm going to keep my comments brief.

As Judge Murray said, there's no need for this rule anymore with additional case law. It was one thing when the expense of printing volumes was huge, the expense of purchasing libraries was huge. That's not such a big deal anymore.

I guess what I would talk about is the practical impact that this has had on litigators. I can't tell you -- I think courts would be surprised -- given the number of Rule 23 opinions I see, I think courts would be surprised at how often something that they have decided really does break new ground, even if it's with respect to the application of facts.

Most of my practice or a big huge part of my practice is insurance coverage. And in insurance coverage cases, the thing that is most important in 90 percent of the cases is the application of specific policy provisions.

I can't tell you how often I have found in my research a Rule 23 decision which is the only decision that is on point interpreting the policy language that I've got. Now, if I can't cite that, that means that I can't tell -- I can't use that

for the judge and I -- basically, it's a meaningless decision despite the fact that often, as Judge Murray said, these Rule 23 orders are very well written, they are well thought out, they are -- sometimes they hurt me, sometimes they help me, but at least I know which way I'm going to go. But with Rule 23 being the way it is, we can't rely on them. So I think both insurers and insured need to be able to know how an Appellate Court has interpreted this rule and be able to cite that in the future.

Up until now, this has just not been the case. And I can tell you, I've had a couple of cases that I've been on when an Appellate Court granted a decision, either in my favor or against me on a Rule 23 order and then we've moved to have it published and that has been great. Usually the courts are pretty receptive to that if you can explain why it is that the court needs to be published.

But I think relying on the litigants to make a motion to publish the case, that's probably not the best thing either because sometimes litigants don't want that result published. So

they're not going to make the motion. Especially when you lose a case, you're not going to have something published. Insurance companies often don't want even a win published, because then it's going to be used against them. But I think it is fair if they are published.

One thing I would also add is just, I agree with Judge Murray's comment that it probably needs to be done prospectively. We recognize that a lot of the opinions or Rule 23 orders in the past may have been written differently if the court was aware they were going to be precedent. And I think given that, it would be not appropriate to have them be citable by litigants prior to the time the rule changes. If the court is making its decision being aware that its rule would be cited, I think it might write its opinions somewhat differently. And I think that is something that has to be borne in mind by the Committee.

We have offered -- some members of our task force who were looking at this thought there might be some utility to Rule 23 insofar as maybe some decision shouldn't be precedential, but we all agree that even non-precedential opinions ought to

be able to be cited just like you would cite the law of a foreign jurisdiction as persuasive authority. My personal opinion is I think we should do away with Rule 23 all together and all decisions should be something we can cite.

Thank you. Those are all the remarks that I had.

CHAIRPERSON ANTONIO M. ROMANUCCI: Thank you, Mr. McVisk.

Any questions from any members?

All right. Hearing none, our next speaker on the same proposal is individual Clint Krislov.

Mr. Krislov, are you on?

CLINT KRISLOV: I am. Can you hear me?

CHAIRPERSON ANTONIO M. ROMANUCCI: We can. I can hear you at least.

CLINT KRISLOV: Terrific. Okay. I have my phone and my computer on and I'm hearing you on one side and speaking on the other. Thank you, Mr. Romanucci, and thank you, the Committee.

I come from the other side of the aisle. We are an almost always plaintiff firm doing class actions and public interest cases and I can tell you that our experience over my 45 years of

practice is that we have been -- we have had to deal with Rule 23 again and again and again in every different combination and permutation that you can imagine.

The fact is, as the justice noted, the rule's purpose has become obsolete. Although you've got books behind me, the fact is most of the record -- case recorder decision books have been gotten rid of. And the fact is, you can cite anything as persuasive authority. You can cite the aphorisms of Ms. Piggy and Kermit and you can cite Bob Dylan. Bob Dylan is -- in our submission, we've cited a number of situations where either the courts or the parties cite Ms. Piggy, Kermit, Bob Dylan, Bruce Springsteen, you name it, because they are persuasive authority, because they do ring true in people's mind to support the proposition being offered.

And if you can -- if you can cite Sesame Street, the idea that you are prohibited from citing the, hopefully, thoughtful opinion of learned justices, that you're barred from citing them, makes no sense whatsoever and indeed, although we've struggled through this in the

Federal Court, the Federal Rule of Appellate Procedure 321 threw out this concept that there's anything that you can't cite. You may have to provide a copy of it. You may have to provide the basis that you're quoting. That's fine and that's what persuasive authority is all about. The fact is the rule has always been ridiculously or unevenly applied.

We have a retiree health care case that has been going on for 30 years. We were apprised of a case downstate where a district downstate had rendered an Appellate decision that was a Rule 23 order. We had to move to intervene in that case to move to have it published and, indeed, it was then published. But the problem -- the amazing thing about it, so now I'm cited as one of the attorneys in the case if you go to look up Dell versus the City of Streeter.

The fact is parties cite unpublished rulings. And a couple of the comments that have been made question does it apply to judges. Well, if you go to Byrne against Hayes Beer Distributors, 2018 Illinois Appellate 172612, you see the colloquy between my friends Justice Hymen and

Justice Mason over whether the rule should continue and whether it should apply to judges.

Now, if you can have a judge citing an unpublished order, where does it come from? The Judge pulls it out of the blue and nobody addresses it in the briefs? That doesn't make any sense either.

The other thing that is very bad about the rule is that it suggests something that is -- that cases are put into two tracks. The ones that we care about and the ones that are perceived as justices devoting significant attention to them and all the rest of them.

And the fact is, the combination of people's perception of our system is based on what the justices do. And so if it is perceived that my case has been sent to -- it's before a panel, that these days getting oral argument is rather challenging and then you get a decision that can't be cited by anybody, the perception is that there is a two-track system and justices really don't care about these and that's a disservice because people should not perceive that their cases have been regarded as less than worthy of attention,

less than -- who knows who actually dealt with them.

And the justices don't get a pass on this. The comments that the only decision that should be now citable are those rendered after the rule changes, we don't agree with that at all. The fact of the matter is this is a part of the Illinois justice system. These decisions have been made in the past. We would support the order to digitize all the old Rule 23 orders for whatever purpose can be made of them, even if they are just to show that there has been a whole series of bad decisions on some area of the law because the bad decisions eventually lead us, hopefully, to get to the right decisions.

This has all been hashed out on the Federal level and the Federal Rules of Appellate Procedure 32.1 provide absolutely fine guidance. You can cite whatever you want to cite for whatever persuasive authority you think it has and the court may agree or not, but that's how the system should work. We don't give the justices a pass any more than we give the lawyers a pass on doing a slipshod job on occasion. We all err. But the fact is that

all the cases should be made public and should be accessible. Why not?

I mean, I can go into all of the facts and the different situations where this has occurred, but I think the fact is, harkening back to the first speaker who talked about Illinois being the last state to keep this distinction between discovery and evidence depositions, there is a -- enough with the mother-may-I's for any number of things.

The idea is to have the practice of law and the rendering of decisions be fair, be open, be essentially uniform, coming up with a bunch of local things that make us a very unique jurisdiction that's less efficient. It's not good and it's not good for the perception of justice.

I really don't care, I suppose, about most of Rule 23 because the only one that really affects us all and the one that brings this on is 23(e), the effective orders that you can't cite -- that somebody can't cite them.

At the very least, we should get rid of 23(e). The rest of the rule, I don't know whether we care or not, but the fact is that the next thing

should be that we do digitize all the past decisions so that we can see what the law of Illinois has been. It is not secret. This is public and transparency is an important aspect, an important guide for justices to do in the future as well.

I'm happy to answer any questions.

CHAIRPERSON ANTONIO M. ROMANUCCI: Does any member of the Committee have any question or comment for Mr. Krislov?

CLINT KRISLOV: Thank you for having me.

CHAIRPERSON ANTONIO M. ROMANUCCI: I appreciate your time.

Next speaker on the same proposal is Donald Ramsell. Are you on the line?

DONALD RAMSELL: Yes, I am and I would like to thank the Committee for being given this opportunity to speak.

I am the author of the DUI Law and Practice Guidebook. So I spend a great amount of time dealing with and reviewing Rule 23 decisions as well as published decisions.

Bluntly, an opinion worth writing is an opinion worth listening and Rule 23 should be

appealed.

CHAIRPERSON ANTONIO M. ROMANUCCI: Mr. Ramsell, I'm going to stop you for just one moment.

Please mute your phones, anyone, if you're not speaking. Please mute your phones.

I apologize. Go ahead.

DONALD RAMSELL: No problem.

I know that one of the concerns with Appellate justices, as I've spoken to them about this rule before, is that they are worried that they would add additional work and they would have to write a different opinion, but having read many, many Rule 23 decisions, I've certainly been involved with more than 50 appeals myself across 35 years, I think that the judges take their work seriously and they make every effort to ensure that the outcome is fair, that the decisions are logical, and that they do follow precedence.

So you don't -- I don't think they need to change the manner in which they handle a case in writing an opinion. Certainly they can -- any opinion can be limited to its facts. It can be noted to be fact specific. Justices can certainly recognize that the opinion they write, without

declaring it unpublished as we used to say, is of a very limited value or very narrowly to be construed. This is all a process that could be used by the justices when they write an opinion.

There are many times, especially in my world, I handle what would be considered smaller cases where people may be paying $1500 for a DUI case. We appeal most of our cases pro bono because there are issues that we feel will likely occur in the future and we spent a great amount of time on a very small case to take it up on appeal devoting tens and perhaps even a hundred hours of work to obtain an opinion at our cost, only to have it issued as a Rule 23 order of no value for anyone. Many of our cases involve suspensions where the length of the suspension for the driver's license is 6 months or 12 months. By the time we get the decision, that suspension has already run its course. Its only value is for the future, yet we will get a Rule 23 order.

We file motions to publish frequently that are denied and I, frankly, am at a loss for some of the reasons that are offered. We have had cases where they were dealt with issues of first

impression that suddenly become a 23.

It is very difficult to sit in a law office and have a client come into a law office with a problem where we will tell them, there is an Appellate decision right on point that favors you, but guess what, we cannot use it. Someone else's effort of one to two years is worthless to the next client that walks into the office for really no reason. And the public I think sees this as almost a body of secret law before we had the internet.

There is a very great article that's called Are Some Words Better Left Unpublished, a law review article from the Journal of Appellate Practice and Process, Volume 3, Issue 1 that was written in 2001 after a decision of a Federal Court in Anastasoff versus United States held that unpublished opinions not being able to be cited as precedent was an unconstitutional rule. Although that opinion was vacated as moot, the decision itself is very informative and this law review article is very informative.

Obviously, we no longer worry about the cost of publication. So the reasoning for -- the two basic reasons for Rule 23, one being cost, is

now irrelevant. The second being that the opinions would have to be greater with greater attention to detail. It would add work to an Appellate justice already overworked or with a large caseload.

If you read the Rule 23 orders, frankly they're just as good and are as well written in my opinion as the published orders are. And Illinois is in the minority insofar as having a rule where not only is the decision not precedential, but it is also not persuasive and not to be cited whatsoever. There is a hybrid rule that is more often used where these cases can be cited as persuasive only. We don't even follow that.

I would suggest that Rule 23 has the effect of discouraging lawyers, such as myself, or those with public interests from pursuing appeals on something that does matter because you can do all that work and receive a Rule 23 order.

In my opinion, the basis for Rule 23, which was primarily cost-saving, no longer exists. You can still use, and frequently there are, summary orders where cases can be remanded without jurisdiction. There's no reason why we can't continue to use summary orders in Appellate Courts,

but the idea that we cannot cite to a fully briefed, fully litigated case that meant something to somebody makes no sense.

Finally, motions to publish. Motions to publish are not always granted or denied in my opinion for the reasons that they should be granted or denied. Many parties -- as mentioned by previous speakers, many parties choose not to seek to file a motion to publish and there's no access. No one else is allowed to ask that an opinion be published even though it may be of great interest to other attorneys. That's a problem with the motion to publish. And, frankly, limiting the motion to publish only to the parties who have already received whatever relief they seek, they're the least likely to be interested in seeking to have it published other than ego because they either won or they lost and it's over for them. Their parties have actually gained whatever relief they sought or obtained.

So for those reasons, I would ask that Rule 23 be repealed. It violates and is contrary to the rule of stare decisis, which worked for well over 100 years without difficulty prior to the

1970s when Appellate Courts started to employ the concept of unpublished opinions.

CHAIRPERSON ANTONIO M. ROMANUCCI: Thank you, Mr. Ramsell.

Anybody have any questions or comments?

Thank you. Next we will move on to Proposal 19-01 and we have the proponent of that rule, one speaker on that and that is Benna Crawford.

Are you on the line?

BENNA CRAWFORD: I am.

CHAIRPERSON ANTONIO M. ROMANUCCI: The floor is yours.

BENNA CRAWFORD: Thank you very much for having me. My name is Benna Crawford and I am the director of the Children and Family Practice Group at Legal Aid Chicago. Legal Aid Chicago represents survivors of domestic violence in court proceedings throughout Cook County.

We were joined by a multitude of other legal aid organizations and domestic violence organization in proposing that Rule 7.3 of the Illinois Rules of Professional Conduct be amended to bar attorneys from soliciting respondents in

protective order cases prior to them being served with summonses.

Currently, Rule 7.3 regulates solicitation letters sent to a prospective client, but the rule does not address any risk of harm that such a letter might cause to a prospective adverse party.

In 2018, we discovered at least one law firm had been sending solicitation letters routinely to respondents in order of protection cases. We believe this practice continues, having seen a letter as recently as late 2019.

Some solicitation letters arrived at the respondent's home before they were served with the petition for order of protection. In at least one of our cases, the respondent was still living with the petitioner when the solicitation letter arrived in the mail.

Sending solicitation letters to respondents in order of protection cases before they have been served with summons creates a high risk of harm to petitioners and undercuts the very purpose of allowing a party to seek an ex parte court order.

The most dangerous time for survivors of

domestic violence is when they leave the relationship. According to the National Domestic Violence Hotline, 75 percent of all serious injuries in abusive relationships occur when the survivor ends the relationship.

In 2000, the Chicago Women's Health Risk Study found that in 45 percent of the homicides in which a man kills a woman, an immediate precipitating factor of the fatal incident was the woman leaving or trying to leave the relationship.

That same study found that among women who tried to leave their abusers, 69 percent suffered severe abuse since the attempted departure. The Illinois Domestic Violence Act and other laws which allow for protective orders permit petitioners to obtain those emergency protective orders ex parte if they fear that prior notice would put them in danger. Thus, every ex parte emergency protective order is premised on the judicial finding that prior notice would put the petitioner in danger.

However, the enforcement of such ex parte orders does not begin until the respondent is served. A respondent can only be arrested for violating the order after having actual knowledge

of its contact. Therefore, the time between obtaining an order of protection and service upon the respondent is a particularly vulnerable time for petitioners. They have taken the steps of separating and seeking legal protection from their abuser, but they do not yet have the ability to enforce the order.

Because a judge only enters an emergency protective order ex parte after a finding that prior notice of the court proceeding would put petitioner at a great risk of harm, attorneys should be prevented from circumventing that judicial finding. This proposed rule change barring attorneys from soliciting respondents in protective order cases prior to service of summons is narrowly tailored to bar solicitation for a very short period of time.

The Illinois Domestic Violence Act and similar protective order statutes provide for expedited service of summons. Specifically, those statutes mandate that these summons take precedence over other summons and must be served at the earliest possible time.

This proposed rule change, therefore,

appropriately balances the need to keep survivors safe against private attorneys' interests in soliciting business and respondents' interest in obtaining an attorney.

I would like to note that passage of Public Act 101-0255 amending the Illinois Domestic Violence Act, Stalking No Contact Order Act, and Civil No Contact Order Act to keep emergency protective orders out of the public record until after service on respondent does not in any way diminished the need for this rule change. The act curbs the actions of clerks and other court officials by prohibiting them from releasing court records prior to service of summons.

Protective order court proceedings, however, remain open to the public. Nothing in the act prevents attorneys or their employees from systematically observing court proceedings where these emergency proceedings are held and using the information gained to solicit respondents.

Emergency protective orders are a necessary and critical tool meant to protect petitioners who have made the decision to separate from their abusers under extraordinary risk to

their physical safety. Amending Rule 7.3 of the Illinois Rules of Professional Conduct to bar solicitation of respondents prior to service safeguards that protection.

Thank you.

CHAIRPERSON ANTONIO M. ROMANUCCI: Thank you, Ms. Crawford.

Does anyone on the Committee have any questions or comments for Ms. Crawford?

I just want to confirm one thing, Ms. Crawford. I believe that when this went to the Committee, there was a recommendation for a comment. You have no issue with the comment, is that correct?

BENNA CRAWFORD: That is correct.

CHAIRPERSON ANTONIO M. ROMANUCCI: Okay. Anything else from anyone?

Thank you, Ms. Crawford.

BENNA CRAWFORD: Thank you.

CHAIRPERSON ANTONIO M. ROMANUCCI: Next, we move on to Proposal 19-05 and the proponent of that is Mr. Eaton.

Are you on the phone, Mr. Eaton?

TIMOTHY EATON: Yes, I am, Mr. Chair. Thank

you.

CHAIRPERSON ANTONIO M. ROMANUCCI: You may proceed.

TIMOTHY EATON: I know you've heard a number of comments for Rule 23. There was a letter which we sent to the Supreme Court several years ago, which was signed by Mike Reagan and myself on behalf of the special committee that was comprised of the ISPA CPA representatives of the IJA and the Appellate Lawyers Association proposing a modification to Rule 23 and I believe it was submitted to this committee recently as an alternative to consider. I won't discuss anything further other than to say we prepared a report, looked at other jurisdictions, and I certainly support the revision or modification as we set forth in that letter. I would be happy to answer any questions on that as well.

The other proposal that I have had to do with what was presented so far, somewhat mundane, but I'll proceed anyway because I think it will be helpful to Appellate practitioners. This comes from the Chicago Bar Association's committee on Appellate practice, which is comprised of all past

presidents of the Appellate Lawyers Association. Not all, but most. And these are common issues or problems that they run into in practice and we would just like to have the rules modified to improve Appellate practice with these modifications.

The first deals with 306, which the Committee knows are interlocutory appeals which are file by permission. So you file a petition with a supporting record and if the petition is granted by the Appellate Court, you can supplement the record or the court can order the entire record and the modification that we're asking is that the party can request the clerk to prepare the entire record.

Right now, that's not done. The Clerk's Office does not believe they have the authority where a party requests the entire record and that just makes sense because the court should have the entire record whether they order it or not. It's much simpler if we pay for it ultimately. So we think that modification makes sense.

315, when someone files a petition for leave to appeal, the time period for running is from the decision of the Appellate Court or the

denial of a petition for rehearing in 35 days from that point.

Sometimes the Appellate Court files a corrected opinion after the initial opinion and the question comes up, does that also toll the time to file a petition for leave to appeal. The Clerk's Office says no and I think they're right and I know I get a lot of questions on this issue. We're just making it clear in the rule that if all the Appellate Court is doing is filing the corrected opinion where there has been no petition for rehearing, that does not toll the time for filing a petition.

So that's just a clarification we think is important. It does arise more often than you would think and we will encourage the Appellate Court to file correct opinions, but that has no impact on whether or not the time for filing a petition for leave to appeal is affected.

Rule 316 is the next rule that we wanted to address and that is a petition to the Appellate Court to certify the question to the Supreme Court. For whatever reason, 316 has no page limits. I don't think the court ever intended that. So what

we're asking is that the page limits be the same as in the Supreme Court Rule 367, which is a petition for rehearing, which I believe is 8100 words or 27 pages. So we would simply ask that that be amended.

Since we've submitted this package, we've received some requests for filing amendments and there is one I would like to just mention to you and I can follow up in writing on this. What we've added is the length of the application should be governed by Supreme Court Rule 367. We'd like to add the length of the application and answer. Because I think the rule should indicate that if an answer is requested by the court, it be limited to the same number of pages, which is 8100. So I will follow up in writing just to amend our proposal to include both the application and the answer.

The next rule is 341. In Federal Court, it is Appellate procedure, parties file table of contents and table of cases. Most Appellate practitioners, and I believe the court does as well, likes points of authorities, but many of us also file a table of contents just for the cleanness of the court. It's not permitted in the

rule and the only reason why one would not do it, even though it would be more convenient, is if it would not -- it would count towards the word count because it's not specifically excluded in the Rule 341.

So we would, one, propose a table of contents and, two, any words in the table of contents would be excluded, or pages, from the limit that one would be allowed. And then also with respect to the rule itself under H, we would have as the first point, table of contents.

And then since we have proposed this, there has been a proposed amendment and I'd leave this up to the Committee for how they want to handle it. I don't think we ever intended that the table of contents would include the points and authorities followed by an additional section of points of authority. That would be too repetitive.

So it seems to me the points of authorities would go into the table of contents and then you eliminate the second item in that rule, which is points of authorities, or you can just simply have a reference to the table of contents to the points and authority and what pages they start

and then it could be filed by points of authority.

So that's a minor amendment. Again, I'll follow up on writing in that. We think it will be helpful to practitioners to be able to have a table of contents because points and authorities only covers argument and this would allow the court to look to the jurisdictional statement or nature of the case or other items which are not currently included in the points of authority.

Finally, Supreme Court Rule 368, just to be consistent with our prior proposal, under 315, if a corrected opinion was filed, it should not have any bearing on the transmission of the mandate. It shouldn't delay it. So if the court, two weeks after the opinion the Appellate Court has issued, wants to file a corrected opinion, it does not have any impact on when the mandate would be returned.

And that's all I have, Mr. Chair, and would welcome any questions.

CHAIRPERSON ANTONIO M. ROMANUCCI: Mr. Eaton, I want to confirm that you're going to follow up with us on 318(c) and 341, true?

TIMOTHY EATON: That's correct.

CHAIRPERSON ANTONIO M. ROMANUCCI: The proposal that you have -- are requesting amendments, they are to be taken individually and not in their entirety so if one fails or one goes, not -- so goes the other one also, is that correct?

TIMOTHY EATON: Yes. The proposed amendments -- by the way, Mr. Chair, I believe you said 316. That's what I intended.

CHAIRPERSON ANTONIO M. ROMANUCCI: No. I have 318(c) --

TIMOTHY EATON: No. It's -- sorry. It's 316. The proposed amendment would have the application under 316 be the same thing as under 367 and we would propose amending it to include the answer would be the same length as under 367 as well.

CHAIRPERSON ANTONIO M. ROMANUCCI: All right. So you're going to follow up on 316 and 341?

TIMOTHY EATON: Yes, I will.

CHAIRPERSON ANTONIO M. ROMANUCCI: Thank you. Thank you for that clarification.

Anyone else, questions for Mr. Eaton?

Thank you very much.

TIMOTHY EATON: Thank you.

CHAIRPERSON ANTONIO M. ROMANUCCI: Our next

speaker, Seth Horvath.

Seth, you are speaking on two proposals. Are you on the phone or on Zoom?

SETH HORVATH: I am, Mr. Chair. Are you able to hear me okay?

CHAIRPERSON ANTONIO M. ROMANUCCI: Yeah. I can hear you fine.

Just so I understand, how -- are you going to use up your ten minutes for both, do you need ten minutes apiece? Just so I can kind of set my time limit.

SETH HOVATH: I think I can cover what I had planned to say within one ten-minute block, so I'll try to address both within that ten minutes. I would also like to, if the Committee would indulge me, on behalf of Proposal 19-11 as well on behalf of the Appellate Lawyer's Association. That's the Rule 23 proposal. So I would propose commenting on three proposals during my ten-minute allotment.

CHAIRPERSON ANTONIO M. ROMANUCCI: That's fine. If you go a little bit over, that's okay. You're speaking on at least two and now you want to comment on 19-11. So go ahead. Thank you so much.

SETH HOVATH: Much appreciated. Thank you and

thank you, other members for the Committee, for allowing us an opportunity to speak today. The Appellate Lawyers Association is always very enthusiastic about having a chance to present to the Illinois Supreme Court Rules Committee and offer the thoughts of our organization on various pending proposals.

Today we are not presenting any of our own proposals. We are simply here as a commentator on the three proposals I just discussed with the chair. That's Proposal 19-14, which has a jurisdictional component to it; Proposal 19-11, which pertains to Rule 23; and Proposal 19-05, which Mr. Eaton just walked through in some detail that contains various technical amendments to the Appellate rules. I will do my best to get through those in the remainder of my ten-minute allotment.

We have submitted to the Committee a letter that articulates the ALA's position on Proposals 19-14 and 19-05 that is in the public comment section of the Supreme Court's website. It was submitted on 6-16 -- I'm sorry, submitted on 6-10. So my comments are designed to hit some of the high points, if you will, of our written

submission and also build in some commentary on the Rule 23 proposal, which has been the subject of much discussion.

So without further ado, I want to turn, first, to Proposal Number 19-14, which has a jurisdictional element to it. That involves 303(a)(2). The rule is the rule that says a motion to reconsider a ruling on a post judgment motion does not toll the time for filing a notice of appeal. This proposal was put forward by Judge McLaren. He spoke earlier today regarding his thoughts for the need for it.

The proposal doesn't target the notice of appeal elements of Rule 303(a)(2). The proposal rather suggests clarifying that the Circuit Court retains jurisdiction to hear a motion to reconsider the denial of a post judgment motion. So it addresses a slightly different aspect of 303(a)(2) than the notice of appeal aspect. I just wanted to be clear on that.

The proposal stems from a very lengthy and very thorough dissent that was submitted in the People v. Orahim case. Judge McLaren authored that dissent in Orahim and I think it is important to

briefly put this into a procedural context. In Orahim, the defendant moved to reconsider his sentence in a criminal case and within 30 days of the denial of the motion to reconsider, the defendant then moved to vacate his guilty plea. So motion one was denied.

Motion two was then filed within the 30-day window prior to the time of filing notice of appeal. The majority and concurrence in Orahim had a very extensive disagreement and discussion over whether the Circuit Court retained jurisdiction to hear the second motion and the proposal is an attempt to clarify the scope of Rule 303(a)(2) and set forth in writing that the Circuit Court does, in fact, maintain jurisdiction to hear motions to reconsider the denial of post judgment motions.

The ALA respectfully opposes the proposed amendment to Rule 303(a)(2). It seems to the ALA that this proposal is perhaps better targeted to the criminal rules than the civil rules. Rule 606(b) is a criminal rule of Appellate procedure that addresses the effect of the post judgment motion on the time for filing a notice of appeal in a criminal case.

In addition, the proposal refers to a concept jurisdiction over the cause generally. The ALA believes that that concept may inject more confusion into the rules than it alleviates. The rules don't tend to address jurisdictional issues explicitly and it would be an exceptional circumstance for them to do so as the proposal suggests.

In addition and most importantly, nothing in the current version of Rule 303(a)(2) negates the jurisdiction of the Circuit Court to consider a motion to reconsider the denial of a post judgment motion.

So with those considerations in mind, the ALA respectfully opposes the proposed amendment of 303(a)(2) and suggests that perhaps the concept of an amendment to address this criminal sentencing issue is better taken up in the framework of Rule 606.

I'm going to turn now quickly to the Rule 23 proposal. That's number 19-11. Just to offer up some comments that I hope encapsulate and echo the position the ALA has historically taken on this rule. The ALA continues to support the position of

the special committee on Supreme Court Rule 23 in which the ALA participated in 2016. That position is that Rule 23 opinions ought to be citable prospectively as persuasive authority.

The ALA has believed for many years now and continues to believe that that position represents a sensible middle ground between abolishing the use of unpublished opinions all together and making everything precedential on the one hand and maintaining the status quo of non-precedential, non-citable opinions on the other hand.

The court -- the Supreme Court has demonstrated a willingness to incrementally revisit the scope of Rule 23 as the joint committee pointed out in its 2016 letter. That's the letter that's available on the Supreme Court's public commentary web page that has been resubmitted to the Rules Committee for consideration.

As that letter points out, in the early 2000s, the Rule 23 limit on opinion length was abolished eliminating hybrid Rule 23 and published orders and at the same time, Rule 23 orders were made available electronically for public

consumption and for use by members of the Bar.

We submit that now in light of additional technological advances and the overall availability of Rule 23 orders, the time is right to, again, revisit the rules and certainly to take a measure that does not involve abolishing it in its entirety.

I'll use my time now to address some of the points that were brought up with respect to Proposal Number 19-05. The Rule 306 component of 19-05 was discussed by Mr. Eaton. The current version of Rule 306, which involves expedited interlocutory appeals, states that a court may order the appellants to file additional portions of the record on appeal in an expedited interlocutory appeal under Rule 306.

Under the proposal, any party would be able to ask the Circuit Court to file additional portions of the record. We submit that the rule already appears to allow what the proposal is suggesting insofar as it allows either party, after a Rule 306 petition has been granted, to request preparation of the record in accordance with Rule 321 and related rules. So the rule already seems

to allow what the proposal would put forward and in addition to that point, it seems prudent for courts to retain the authority to be able to allow the appellant to put the records together, particularly in situations where an appeal is expedited and the appellant oftentimes has the most interest in carrying this appeal forward on an expedited basis.

With respect to the Rule 315 component of Proposal 19-05 as well as the Rule 368 component of Proposal 19-05, the proposals suggest that the issuance of a corrected opinion should not pause the deadlines for filing a petition for leave to appeal or the deadline for submitting a mandate to the Circuit Court. Those deadlines revolve around the 35-day timeframe set forward in Rule 315 governing POAs and Rule 368 governing the issuance of mandates.

The ALA respectfully submits that one problematic aspect of the proposals is that the notion of a corrected opinion isn't defined and if an opinion is changed in a substantive fashion, it seems sensible for a party who is filing a petition for leave to appeal to be able to address the correction within the opinion and the 315 proposal

and the 368 proposal would seemingly negate the ability of a party filing a petition for leave to appeal to do so if there are substantive changes within a corrected opinion with further definitional clarity. The proposals may not be problematic. They may be well taken. But the ALA wanted, based on its experience, to flag that issue with respect to the 315 and 368 proposals.

I believe I've hit my ten minutes. If I could have perhaps one more minute to wrap up, I will address the remaining components of 19-05. Is that acceptable, Mr. Chair?

CHAIRPERSON ANTONIO M. ROMANUCCI: It is since you are commenting on several proposals.

SETH HOVATH: Thank you.

The next piece of 19-05 that the ALA submitted comment on is the piece regarding Rule 316. That's the rule on appeal by certificate of importance from the Appellate Court to the Supreme Court. The ALA endorses that proposal. It seems -- it seems useful to both bench and Bar to include some additional limitations on the page numbers associated with briefings that happen in connection with certificates of importance.

The issue the ALA wanted to flag is perhaps it would be useful within the 316 proposal to clarify that the court to which the proposal is referring is, in fact, the Appellate Court given that certificates of importance are issued by the Appellate Court. A small technical point, but one worth mentioning nonetheless.

With respect to the 318(c) proposal, the ALA also endorses the 318(c) proposal. That proposal involves the rule whereby Appellate briefs certified by the Clerk's Office may be transmitted to the Illinois Supreme Court if the contents of the Appellate briefs are relevant to the appeal pending before the Supreme Court. The rule would allow transmittal of e-filed stamped copies of those brief and that would bring the rule into conformity with general e-filing practices that have been adopted by the court over the last five to ten years.

And, finally, with respect to the Rule 341 proposal, Rule 341 contains a requirement that is very familiar to Illinois Appellate practitioners that Appellate briefs must contain a table of points and authorities. As the ALA understood the

rule, the proposed amendment would add a requirement that a table of contents be added before the table of points and authorities. That struck the ALA as duplicative.

I gather from Mr. Eaton's comments that there will be some clarifying submission tendered to the Committee and the ALA would certainly appreciate the opportunity to review that and comment further if appropriate. To the extent the clarification is going to resolve the issue of a duplicative submission and duplication between the table of contents and tabling of authorities, the ALA believes that that type of clarification would be well taken.

I thank the Committee for this time to comment. If anybody has any questions about the ALA position on any of the proposals, I am more than happy to address the questions. Thank you.

CHAIRPERSON ANTONIO M. ROMANUCCI: Thank you.

Are there any questions for Mr. Horvath?

MICHAEL I. ROTHSTEIN: I have one.

Mr. Horvath, thank you for that presentation. You threw a lot of material in a short time. I want to comment on the ALA's

apparent opposition to Proposal 19-14, which is Rule 303(a)(2) regarding the court's jurisdiction to reconsider a post judgment motion. You suggested that you did not think that -- you thought that the rule was clear as it is that the trial court would continue to have jurisdiction with respect to considering the reconsideration on the post judgement motion.

Mr. McLaren -- Justice McLaren also thought that was clear, but apparently two judges of the Appellate Court did not think it was clear would suggest that perhaps a rule amendment would be appropriate.

Justice McLaren suggested it might be sufficient simply to have the clarification in the comment. You said that the ALA opposes the amendment of the rule. Would the ALA -- what is the ALA's position with respect to providing that clarification in a new comment to the rule?

SETH HOVATH: I think that's a very interesting point. To the extent the ALA were to receive a proposed comment, we'd certainly love and be enthusiastic about the opportunity to review it. But that may, in fact, address the ALA's concerns,

which are premised on the notion that an amendment of the rule could cause a bit of confusion if it's textually amended to refer to jurisdiction.

Again, a jurisdiction is a concept that's not often dealt with directly in the language of the rule and the rule proposal as currently phrased would utilize language that doesn't seem to have come from any other aspect of the rules or from any other case law that was cited. So to the extent this could be addressed in a comment, I think that could go quite a way's towards addressing the ALAs concern about unnecessarily injecting confusion into the written language of the rules.

The ALA is obviously cognizant of the fact that lots of practitioners don't do Appellate work on a regular basis. So we try to be mindful of proposals that change the status quo of the rules in some way and we try to think forward about how well-intentioned changes might complicate the rules in a way that would affect non-regular Appellate practitioners.

So the short answer to your question is addressing this issue in a comment may be something that the ALA would find appropriate under the

circumstances.

MICHAEL I. ROTHSTEIN: Following up on the basis for the objection is that the rules -- I have not surveyed them myself. You're suggesting they do not typically reference jurisdiction and I agree that Appellate jurisdiction can be a very complicated concept. But lawyers who apply the rules have to deal with the concept whether it's mentioned in the rule or not. So I guess I'm a little puzzled why the fact that the word jurisdiction would be in the rule would be not helpful to practitioners. That would certainly trigger to them that they would have to research how jurisdiction would apply in this circumstance and it avoids the confusion that two justices of the Second District Court of Appeals apparently experienced.

SETH HOVATH: It's certainly a possibility that adding language could have a clarifying effect and I submit it's also the possibility that it might not. It seems that this provision has caused a bit of consternation and depending on the viewpoint of the person looking at the provision, it seems to result in different interpretations.

I think that we, as an organization, are of a mindset that given the notion that jurisdiction is typically expressed or comments on it are typically expressed in case law rather than in rule. If there is a way to continue to observe that distinction, perhaps it's useful and consistent with practice.

And the rule, as we've reviewed it, as we've analyzed it in a civil context, it does not seem to bar the type of motion practice that Judge McLaren's proposal was concerned with. So it's a two-point critique of the proposal, which starts with the fact that the rule seems to allow what Justice McLaren would have it clarify, but moreover, a concern that by attempting to clarifying the rule, we would simply further confuse and the notion of address via comments has some appeal for those reasons.

CHAIRPERSON ANTONIO M. ROMANUCCI: Mike, do you have any other questions?

MICHAEL I. ROTHSTEIN: This is a little unfair, but we still have in the audience Mr. Eaton, one of the State's most imminent scholars of Appellate procedure and also a former president of the

Appellate Lawyer's Association although, he is not -- and many other of our associations. He's not here in that capacity today. I'm just curious as to whether or not Mr. Eaton has given thought to or has any thoughts or comments on Proposal 19-14 that I've been discussing with Mr. Horvath.

TIMOTHY EATON: No, I don't, Mr. Rothstein. Although, I think an addition to the comments may be appropriate because I can see how that would be clarifying because obviously if two justices of the Appellate Court believe it says something different, I think it's worthy of at least some comment as to what it means.

MICHAEL I. ROTHSTEIN: Thank you. I have no other questions.

HON. JAMES MURRAY, JR.: With all due respect, Mr. Chairman, can I comment since Mr. Horvath criticized my rule, my request to modify the rule and basically invoked something that was not part of the agenda on Rule 23? I'd like to make one point if I could. It will only take a minute.

CHAIRPERSON ANTONIO M. ROMANUCCI: One point, just one minute because we're --

HON. JAMES MURRAY, JR.: That's all I want.

One point. One minute.
CHAIRPERSON ANTONIO M. ROMANUCCI: Okay.
HON. JAMES MURRAY, JR.: He references the materials that were submitted. What he fails to -- fails to mention is that there was a letter dated December 7th, 2016 by Michael J. Tardy of the Director -- Director of the Administrator of the Office of Illinois Courts that basically in effect said, where the Appellate justices were surveyed on that particular proposal that the Illinois Appellate lawyers proposed in this regard, and they voted to make no changes in Rule 3 at that time. It has been four years. So he -- and he failed to mention that letter or that fact.
CHAIRPERSON ANTONIO M. ROMANUCCI: Thank you.
I have one other point and then I'm going to actually revise the agenda a little bit. I think it's unfair that we try and go through the entire agenda without a break, you know, given the fact that people have been on hold for a while and you don't have the accommodations that we typically have at the Thompson Center or the Illinois Supreme Court building.
So I do want -- I'm going to ask Amy

actually, does she have the letter that was referenced by Mr. Eaton so that we have the totality of everything when we are deliberating?
AMY BOWNE: I don't have it, but I can get it before the end of the hearing I think and I can get it out to the Committee. I can make a phone call if we're going to do a break.
CHAIRPERSON ANTONIO M. ROMANUCCI: Yeah. Then what I would like to do is to give everybody the benefit of a break. Right now I show it's 12:50. Why don't we reconvene at 1:00 o'clock? This is a good opportunity for a break.
We'll start a new proposal and that will be Ms. Riddick. We are behind schedule, obviously, because we had a few difficulties in the end [sic], but it looks like they're all ironed out now and we're proceeding well. I'm hoping to get through the rest of the schedule very smoothly. Don't touch your settings. Don't move anything. Don't click anything off. Let's stay where we're at. Maybe just mute your phones and we will reconvene at 1:00 p.m. sharp.
Thank you.
(A break was had.)

CHAIRPERSON ANTONIO M. ROMANUCCI: So hopefully we have everyone back on. We're about one minute past the hour right now. Are we ready to start with our next speaker? Lauren Riddick?
LAUREN RIDDICK: Yes, I'm here.
CHAIRPERSON ANTONIO M. ROMANUCCI: Very good. Ms. Riddick, you are a proponent of 19-10 and the floor is yours.
LAUREN RIDDICK: Thank you so much for having me. My name is Lauren Riddick. I'm with Codilis & Associates and I have two suggested changes to 113(f), which deals with mortgage foreclosure sale notices. I'll be brief.
First, the rule as it currently stands requires hardcopy mailing for mortgage foreclosures sale notices despite the electronic notice model update provided by 11(c). This appears to be an unintentional oversight. Therefore, the proposal permits electronic notice to those parties providing an e-mail address. Secondly, to avoid uncertainty and inconsistency, the proposal directly references the notice exception provided in 1507(c)(4) to those sales occurring within 60 days of a judgement.

I'm happy to answer any questions. Thank you for your consideration.
CHAIRPERSON ANTONIO M. ROMANUCCI: Does anyone from the Committee have any questions?
It sounds like there are none. Ms. Riddick, thank you very much.
LAUREN RIDDICK: Thank you.
CHAIRPERSON ANTONIO M. ROMANUCCI: Before we begin with our next speaker, which is Duane Schuster speaking on Proposal 20-04, I want to remind everybody to please mute your phones if you are not speaking. Thank you.
Mr. Schuster, are you on the Zoom call?
DUANE SCHUSTER: Yes, I am. Can you hear me?
CHAIRPERSON ANTONIO M. ROMANUCCI: Faintly, but yes, I can hear you.
DUANE SCHUSTER: Let me see what I can do.
CHAIRPERSON ANTONIO M. ROMANUCCI: Yeah. I can't hear you. I don't know how everybody else is hearing you. But I know on my end, it's a little faint, so maybe if you can come closer to your speaker or your microphone I mean.
AMY BOWNE: It's very faint for me too.
CHAIRPERSON ANTONIO M. ROMANUCCI: Okay. I'd

ask if you could then please --
DUANE SCHUSTER: I have the program on my iPhone as well, but I don't -- I'm logged in, but I don't have any audio coming out of it. Can you hear me at this point?
CHAIRPERSON ANTONIO M. ROMANUCCI: It's a little bit better. It's not the best, but I think if that's what we can do, we will endeavor to do our best. So please proceed.
DUANE SCHUSTER: All right. I apologize for the glitch there. May it please the Chairman and the members of the Rules Committee. I want to thank the Rules Committee for the opportunity to address you today.
My name is Duane Schuster. I'm the staff attorney for the Illinois Board of Admissions to the Bar and I have been staff with the Board of Admissions since February of 2015. But just by way of background, I took the Bar exam in 1989 and I was admitted to the Illinois Bar in 1989 and I have been practicing law in Illinois for the better part of the past 30 years.
With advice and consent of the Board of Admissions, our director and administration and I

have drafted some proposals for amending Illinois Supreme Court Rule 705, which deals with admission on motion. Our proposals seek to resolve some recurring issues which potential applicants have raised with the Board with some frequency regarding the basic eligibility requirements for admission on motion.
Along those lines, I will start with just reciting briefly from the preamble of Rule 705 to -- as a sort of segue into exactly what we're discussing and what the potential problems are. Rule 705 states that any person who has been licensed to practice in the highest court of law in any United States state, territory, or the District of Columbia for no fewer than three years may be eligible for admission on motion on the following conditions.
That's a key point. Note that it is admission on motion, contingent on meeting certain conditions. We get many inquiries at the Board of Admissions, at least one a week and that's probably a very conservative estimate. We get phone inquiries or e-mail inquiries asking about reciprocity in Illinois or the ability to waive in

in Illinois and we don't really have that strictly speaking in Illinois. The term is admission on motion and it's subject to certain very strict requirements.
Along with the preamble, I'll just segue into Rule 705(m), in which the Supreme Court explicitly stated admission on motion is not a right and it's the applicant's burden to establish that he or she meets each of the foregoing requirements.
The proposed amendments to Rule 705 that we have drafted are intended to clarify some of those conditions and some of those requirements, which have been problematic as far as applicants understanding what the qualifications are and as far as the Board being able to apply the provisions of the rule to the specific facts and circumstances of each applicant's background and work history. And the first amendment we're proposing is basically adding language to Rule 705(d) to specifically define the term jurisdiction. And the reason we are proposing that is because the word jurisdiction is used to describe other basic, very essential requirements for admission on motion in

Illinois, but even though jurisdiction is used as a key factor, the term itself is not explicitly defined in the rule as it currently stands.
The reason we are proposing to add a definition of jurisdiction in Rule 705(d) is that subparagraph (d) is the first instance in Rule 705 in which the word jurisdiction occurs. Just to refresh the Committee's recollections, Rule 705(d) states the requirement that the applicant must be in good disciplinary standing before the highest court of every jurisdiction in whichever admitted and is at the time of application on active status in at least one such jurisdiction.
Another very important and crucial instance where jurisdiction is used to define a requirement of eligibility in Rule 705 is subparagraph I, Rule 705(i), which states that subject to certain specified exceptions, for purposes of this rule, the term lawfully shall mean the practice was performed physically without Illinois and either physically within a jurisdiction in which the applicant was licensed or physically within a jurisdiction in which a lawyer not admitted to the Bar is permitted to engage in

such practice.

That sentence that I just read to you has proven to be extremely problematic for potential applicants as far as understanding the eligibility requirements. It's been a thorny issue for the Board in determining how do you define where the practice was performed physically.

We believe that denying jurisdictions specifically, what it means for purposes of Rule 705 will add some clarification and what the Board of Admissions is proposing is that you basically take the language that is implicit in the preamble and you reiterate it explicitly in Rule 705(d). Note that the preamble talks about applicants who have been licensed to practice in any United States state, territory, or the District of Columbia for no fewer than three years.

What the Board is proposing is that in subparagraph (d), where it speaks of the applicant establishing good disciplinary standing in every jurisdiction in which he or she has ever been admitted, we are proposing that for purposes of this rule the term jurisdiction shall mean any United States state, territory, or the District of

Columbia. The reason we are proposing to make that definition explicit is because it is not uncommon, I would say it happens between half a dozen to a dozen times a year, potential applicants will insist that they are eligible for admission on motion under Rule 705 when they have practiced in a state jurisdiction that differs from the state jurisdiction where they actually hold a law license.

That causes problems as far as interpreting and implementing the requirement in Rule 705(i) that for purposes of this term -- of this rule, the term lawful, and what that means is lawful practice. The definition of lawful practice shall mean the practice was performed physically and without Illinois and either physically within a jurisdiction in which the applicant was licensed or physically within a jurisdiction in which a lawyer not admitted to the Bar is admitted to engage in such practice.

From time to time, we are contacted by potential applicants who assert that they practice exclusively Federal law, that they are patent lawyers, that they are Federal immigration lawyers,

that they are Federal income tax lawyers. However, they have worked for private firms, private entities. In some cases, they've hung out, they're single, and they're sole practitioners.

In some of these instances, the individuals attempting to apply under Rule 705 acknowledge that they've actually set up offices within the state of Illinois and their argument goes along the lines of, well, my jurisdiction is the jurisdiction of the Federal Courts or the jurisdiction of the U.S. Patent and Trademark Office or the jurisdiction of the various Federal Immigration Tribunals.

Even in cases when the individual is within Illinois, has an office within Illinois, they assert that, look, as far as my practice of law, I'm not really practicing in Illinois or I'm not really practicing in -- let's say the person bears a law license from the State of Missouri. The person will say I'm not really practicing law in Missouri. I'm practicing law in the Federal system.

It is the position of the Board of Admissions that that is not and cannot be what the

Illinois Supreme Court intended. Again, if one refers to the preamble, the very first words in Rule 705, it's clear that the Illinois Supreme Court was speaking of applicants who are licensed in the highest court of law in a United States state, territory, or the District of Columbia.

And as far as the argument that, well, my Federal practice comports with Rule 705(i), one of the specific exceptions that is already noted in Rule 705(i), basically an exception to the requirement that you have to show the practice was performed physically outside of Illinois and within a jurisdiction where you were licensed, is practice falling within subparagraph (g)(3) or (g)(6). If one goes -- if one refers to Rule 705(g)(3) and Rule 705(g)(6), those are provisions defining what the practice of law is and (g)(3) applies to attorneys who are employed by the Federal Courts.

Rule 705(g)(6) covers attorneys who work for the Federal government, Federal agency in some capacity, such as a United State's Attorney or, for example, a lawyer who works in the United States military as a judge advocate.

Those exceptions, the court would not have

put those specific exceptions for that particular specific kind of Federal practice into Rule 705(i) if it -- if the court had intended that as a general matter of practice, either physically within a jurisdiction in which you're licensed or physically within a jurisdiction in which you are admitted encompasses any Federal jurisdiction where you are admitted.

CHAIRPERSON ANTONIO M. ROMANUCCI: Mr. Schuster, I want to be fair. You know, you've gone a little bit over your time here. If you wouldn't mind being able to wrap it up for us please.

DUANE SCHUSTER: Okay. As I said, the Board just believes that adding that very simple language, it's basically adding one sentence to Rule 705(d), would clear up and resolve some of these difficulties. It would provide clarity for the applicants. It would provide clarity for the Board as well. We did suggest further amendments regarding applicants who engage in remote practice and giving those applicants some qualifying practice credit.

But I realize I've gone over my time and on behalf of the Illinois Board of Admissions, I

would respectfully request that the Committee and the Supreme Court consider the proposed amendment to Rule 705(d) and Rule 705(i). Thank you.

CHAIRPERSON ANTONIO M. ROMANUCCI: Thank you, Mr. Schuster, for the very thorough presentation. It's much appreciated.

Any member of the Committee have any questions or comments for Mr. Schuster?

I hear none. Thank you. Thank you very much.

DUANE SCHUSTER: Thank you, sir.

CHAIRPERSON ANTONIO M. ROMANUCCI: We move on to -- it appears this is our last proposal for the day. We have five speakers lined up. This is proposal 20-07. That is correct. And our first speaker is the Honorable Jorge Ortiz.

Are you on the Zoom call, your Honor? Judge Ortiz, before you start I'm going to ask you just to say a few words so that we can make sure that we can hear you well.

HON. JORGE ORTIZ: Good afternoon. Can you hear me?

CHAIRPERSON ANTONIO M. ROMANUCCI: Yes. We can hear you. It might be a little echoey. Are you on

speaker phone by any chance?

HON. JORGE ORTIZ: I am not. I'm in my chambers on my computer.

CHAIRPERSON ANTONIO M. ROMANUCCI: All right. It's a little bit better now. I think you might be closer to the microphone.

Amy, are you having any problem hearing?

AMY BOWNE: (Nonverbal response.)

CHAIRPERSON ANTONIO M. ROMANUCCI: Good. All right. Your Honor, if you'd like to proceed then, please.

HON. JORGE ORTIZ: Thank you, Mr. Chair, members of the Committee. On behalf of the Access to Justice Commission, I am pleased to present the Commission's proposal for a new Supreme Court Rule titled Practice and Procedure in Eviction Act Cases.

In a nutshell, this rule would require an eviction complaint to include a copy of the written eviction notice or demand and where applicable, the relevant portions of the lease. The rule is intended to supplement existing pleading requirements set forth in the Eviction Act.

Presently, a demand for possession or a

notice of termination is almost always a prerequisite to the filing of an eviction action.

An Eviction Act provides that an eviction complaint states that the plaintiff is entitled to possession of the premises and that the defendant unlawfully withholds the possession thereof. So the factual basis for a termination of tenancy or lease or authority for demand for possession is detailed in the notice of termination or demand for possession served on the tenant prior to the filing of the notice or rather prior to the filing of the eviction action.

Additionally, demands and notice must provide language indicating termination of tenancy and where applicable, provide for a clearer period. The notices and demand provide tenants with a basis for understanding why their landlords are seeking to go evict them and ways to cure the violations when applicable.

However, notice and demand documents frequently are not attached to eviction complaints. Similarly, although the breach of a lease term may form the basis for termination notice and eviction complaint, the lease or relevant portions of the

lease also are rarely attached to the eviction complaint.

Section 2-606 of the Code of Civil Procedures, as we know, requires the written instruments upon which a demand or claim or defense is founded to be attached to any pleading. This provision has almost never been applied to eviction cases in the past because Section 9-106 of the Eviction Act does not expressly require it.

I was able to find one rare exception. There's a Rule 23 order written by Justice Neville in 2012, the Zachman case, Z-A-C-H-M-A-N. Citation is 2012 Ill App. 1st 120837. In that case, Justice Neville affirmed dismissal of an eviction complaint due to the plaintiff who attached a copy of the lease to the complaint. And we've all heard a lot about Rule 23 and its limitations.

So the benefits of the proposed rule are that section -- that the rule would bring the Eviction Act in line with Section 2-606. This would also increase efficiency and transparency in the Eviction Courts in that it would allow the parties to assess initially the basis for the termination and the adequacy of the service of

notice or demands prior to a court appearance.

The rule would also reduce the need for discovery of these crucial documents, although the rule is not intended in any way to preclude discovery in these cases.

The benefit to the attorneys is that they would be able to review the demand, notice, or lease at the outset and would allow them, both private and legal aid attorneys, to better evaluate the eviction case and determine whether to accept the matter for representation or advise landlords and tenants on how to proceed.

The rule would assist self-represented landlords in the presentation of their cases. Many come to court without these documents. The cases are delayed or dismissed as a result. Under the new rule, the landlord would have these documents available at every court date and would be better prepared to present those cases at trial.

The benefits for self-represented tenants is that they would presumably be better positioned to present their cases and they would better understand the basis for the action and could, again, be better prepared to assert timely

defenses.

Also, this would certainly improve efficiency and enhance access to justice in our courts, again, by reducing continuances and generally expediting matters.

So in light of the current health and economic crises facing our communities and the anticipated increase in eviction filings, the commission feels the proposed rule may be particularly timely and perhaps even urgent.

And so, therefore, on behalf of the submission, I thank you very much for your consideration of this proposal.

CHAIRPERSON ANTONIO M. ROMANUCCI: Thank you very much, Judge Ortiz.

Any questions or comments for his Honor?

Maybe I just -- just anecdotally, if you could share some examples, maybe some better everyday examples of where the problems come in, not only for on behalf of the litigants, but for the judges when all the documents are not attached. That's what it sounds like we're talking about here. A little more transparency, having everything available to everyone at the outset. Is

that pretty much the goal here?

HON. JORGE ORTIZ: Absolutely. Everyone would know what is expected of them, what's required. This is the basis for the action. Here's the documents. Here's the evidence. This would reduce the number of continuances. This would reduce the number of dismissals I think also due to a failure to have the required documentation.

I can't tell you -- I mean, I heard eviction cases years ago, but I have judges in Lake County who presently hear eviction cases tell me that they constantly have to continue cases because of the lack of documentary evidence.

CHAIRPERSON ANTONIO M. ROMANUCCI: I mean, really, there's no prejudice to anyone here because we are talking about documents that exist. You would assume that a tenant has a lease and the landlord was in performance of a contract at the time. So I don't see, unless I'm missing something, is there any prejudice to anybody in being transparent and having the documents available?

HON. JORGE ORTIZ: I don't see any prejudice to it. In fact, I think this would also allow for a

better practice and, as I said earlier, bring the Eviction Act in synch with Section 2-606 of the Code of Civil Procedure.

CHAIRPERSON ANTONIO M. ROMANUCCI: Anyone have any questions or comments, follow-up?

Thank you very much, Judge Ortiz.

HON. JORGE ORTIZ: Thank you.

CHAIRPERSON ANTONIO M. ROMANUCCI: Next up, we have presenting on the same topic is Samira Nazem. Are you on the Zoom call?

SAMIRA NAZEM: Yes, I am. Can you hear me?

CHAIRPERSON ANTONIO M. ROMANUCCI: We can hear you just fine. Thank you.

SAMIRA NAZEM: Great. Thank you.

Good afternoon, everyone, and thank you for the honor of speaking in support of Proposal 20-07. I will try to keep my remarks brief because I know many other people are speaking about the same rule and it's getting quite late.

My name is Samira Nazem. I'm the director of Pro Bono and Court Advocacy with the Chicago Bar Foundation. I wanted to just add a little bit of background about how this rule proposal originated and to echo some of the points made by Judge Ortiz

just a moment ago.

The idea for this rule originates the from the Circuit Court of Cook County's Pro Se Advisory Committee. That committee is a coalition of representatives from the judiciary, the court, the Clerk's Office, the Sheriff's Office, the private Bar and legal aid community, and other stakeholders who are interested in Access to Justice and improving experience of people about lawyers in the Circuit Court.

Several committee members expressed concerns about some of the challenges they were seeing amongst self-represented litigants, both tenants and landlords in the eviction courtrooms in Cook County. And those challenges, some of which Judge Ortiz outlined a moment ago, included tenants would arrive at court without having a clear understanding of the allegations against them that gave rise to the eviction case; landlords would arrive at court only to find their cases were continued or dismissed because they didn't have the required notices to establish their case and move forward; tenants and landlords both were unable to get assistance from legal aid organizations, rental

assistance programs, or other services because they did not have the documentation necessary to be reviewed and screened by those programs; and some cases just being slowed down and delayed because of the lack of basic information core to the case.

So identifying the common theme in all of this was that the case files were missing the basic foundational information, including the eviction notices and the lease.

The Committee drafted a rule proposal and then shared it with the Access to Justice Commissions that would rectify this issue by requiring the landlord produce this basic documentation along with the eviction complaint.

As Judge Ortiz noted, this does not create a significant burden for the landlord since these are documents that already exist and should be in the landlord's control and are documents that are necessary to establish the case and will need to be provided eventually anyway. But by producing this information from the get-go, the result of the complete case file will allow for greater efficiency and a more transparent process with all of the stakeholders.

I do also want to stress that this proposal is even more timely now because many of our courts are anticipating an increase in eviction filings in the coming months as a direct result of the COVIC-19 pandemic. Many of these courtrooms which are already high volume and underresourced will be stretched even further as we see more cases coming through the court system.

Our legal aid mediation rental system programs and others will also be stretched very thin and we'll see a lot of stresses on our court system and our legal system and legal aid support system in the coming months and it's more critical than ever that we look for ways to streamline this process and increase efficiency for the courts and for all of the stakeholders.

As Judge Ortiz noted, this rule is intended simply to provide greater transparency and efficiency and not to create any additional burdens or work for any of the stakeholders. It will allow tenants to have a clearer understanding from the time they receive the eviction complaint of what the allegations against them are so that they can adequately prepare or seek appropriate help from

legal aid or other organizations.

It will ensure that landlords have their paperwork in order so cases won't be delayed or dismissed creating a burden on the court system and potentially requiring more court dates at a time when we're all trying to keep the number of people in the building to a minimum and it will allow legal aid organizations and mediation programs and other support systems to more effectively triage cases and provide much needed assistance to self-represented litigants to help negotiate settlements and to ultimately reduce the burden on the court and to reduce the harm of eviction in our community by allowing for the best possible outcomes in these situations.

And judges will have access to more complete case information with a predicate notice and release provisions are included as part of the case file, rather than having to wait until potentially the date of trial to see those documents for the first time.

I don't want to take up too much time. I know it's late and I have other colleagues who will be speaking more specifically about how the rule

will impact their practices and, again, create better outcomes and efficiency for everyone.

But I want to thank everyone for the opportunity to speak and to encourage you to adopt this proposal because it will make the court system more fair, efficient, and transparent for everyone.

CHAIRPERSON ANTONIO M. ROMANUCCI: Thank you.

SAMIRA NAZEM: Thank you.

CHAIRPERSON ANTONIO M. ROMANUCCI: Does anyone have any questions or comments for Ms. Nazem?

Okay. Hearing none, Mr. Wrona [sic] are you on the Zoom call?

PATRICIA WRONA: Yes. This is Patricia Wrona. Thank you very much, Mr. Chairman.

Distinguished members of the Committee, I'm Pat Wrona. I'm the director of legal services at CARPLS Legal Aid in Chicago and it's my pleasure to be before the Committee today to speak in favor of proposal 20-07, this proposed new rule on eviction pleadings.

So CARPLS runs Cook County's legal aid hotline as well as the state-wide Illinois Armed Forces Legal Aid -- Legal Aid Network hotline. We also operate four court-based advice desks,

including one where we see a very high volume of eviction cases. Every year we conduct about 65,000 legal consultations with clients in all legal subjects with evictions being our highest volume issue. In a year, we advise pro se litigants in usually over 6,000 landlord-tenant matters.

So like the other legal aid agencies that are involved in our discussion today, CARPLS advises pro se tenants in evictions, but unlike our colleagues, CARPLS also helps pro se landlords as well, such as a senior citizen who owns a two-flat, lives in one of the units and rents out the other.

CARPLS advises on both sides of this eviction equation and before my current role at CARPLS, I actually practiced in the Cook County eviction courts on behalf of private and public landlords, so I really understand the perspective of the landlords, so today I'd like to speak on why the proposed rule is a much needed improvement from both sides' perspective.

So first, as to the tenants, requiring attachment of the 5, 10, or 30-day notice to the eviction complaint will really help identify to the tenant and his counsel, if he has one, any initial

defenses of notice defects or service defects. Many tenants report to us that they never got any notice, but the landlord is always going to have something to hand up as part of their case in chief and they often do so very quickly, never showing it to the tenant, their opponent. The tenant may not know to ask to review the exhibit before it's received by the court. Some judges don't raise the issue, asking the tenant, did you receive this notice? How did you receive it? So at trial, the tenant has not seen, nor is even really allowed to lay eyes on this proffered notice and affidavit of service.

Attaching this notice to the complaint will give the tenant a reasonable opportunity to review and fashion a defense based on that notice. As the correct notice in a proper form that has been properly served is a jurisdictional prerequisite in most eviction actions, it is reasonable to give the tenants and their attorneys the fullest opportunity to review this important exhibit.

Service of that notice is also a problem. If the notice and its affidavit of service were

attached to the complaint, the tenant would have a meaningful opportunity to review defects on how the notice was served.

Many landlords just shove the notice under the door, they stick it in a mailbox and yet, they fill out in the affidavit the tenant was personally served. The tenant may not ever have even actually received it.

Our permitted manners for the service of notices are in place to protect the due process of tenants. Landlords should be required to forward those specifics with the complaint so the tenants can review and formulate any objections or defenses that they have to the service of the notice.

Similarly, attaching the lease and its provisions alleged to be breached is important in formulating the tenant's substantive defenses. As tenants often -- often don't even have a copy of their lease. Tenants very often say, well, I signed the lease, I gave it to the landlord and he never gave me a final signed copy back. So I really have no idea what provision of the lease I may have violated because I've never read the lease because I don't have it.

Particularly in eviction, which is an expedited proceeding, there's usually no document discovery, in a nonjury case of course, and the first court date is usually the day of trial. So some notice of what the tenant is alleged to have had done wrong would be helpful. The proposed rule will give tenants the important opportunity to prepare their defense.

Under our current eviction court trial system, it's all too often trial by surprise and it's very difficult for a pro se tenant to frame defenses based on a written notice or written lease on their feet Perry Mason style. That's hard for even lawyers to do. So the proposal of these required attachments will provide some advance warning to the tenants of what the eviction claim is actually about.

Further, there are some landlords, specifically those who are proceeding pro se who do file baseless, or at least procedurally defective, eviction cases. Having these important documents served on the tenant as part of the complaint would be very helpful in determining the actual merits of the case against the tenant.

Finally, as to tenants, improperly filed cases are no small matter. Many future landlords are not interested in the details of whether a past eviction was well based, procedurally defective, or otherwise. They just do a court record search, they find an eviction case on this applicant's record, and the applicant just doesn't get the new apartment.

Because an eviction matter is such a negative mark on the tenant's record, this rule will assure that eviction cases that are well supported with proper notices and lease provisions are filed.

So now turning to why the changes are also good from the landlord's perspective. Because the 5, 10, and 30-day notice is a required exhibit at an eviction trial, assuring early on that the landlord even has documents is a very good idea. This will keep pro se landlords from suing without the required notice, which all too often occurs. They don't know that they have this jurisdictional prerequisite of serving written notice. They just know they haven't been paid their rent. They jump ahead, they go to the courthouse, they file an

eviction case, they pay a filing fee, and they go to their court date thinking they're getting an eviction that day of their tenant, only to have their case dismissed for lack of a statutory notice that confers jurisdiction. So attaching that notice will prevent wasted time and resources for all concerned, as Samira pointed out.

Further, the attachment of the notice may prevent pro se landlords from proceeding on a defective notice. Is this the right type of notice, is it dated, was it served properly, has the requisite number of days passed before the case is being filed with the court?

When you make the document part of the pleading, it will give the landlords pause to ask, is this document correct? Have I done the right things with it? This kind of scrutiny should be given to the notice before the landlord is offering their notice in court.

The attachment of the exhibits to a pleading that is filed under Rule 137 has to raise the scrutiny of this exhibit. Unfortunately, I have seen perjured false notices in my years of eviction practice. So the requirement that notice

be attached will give any unscrupulous landlord pause before proceeding on a fabricated notice.

Further, for the landlord that is not a bad actor, but just is not that well informed on the law of eviction, if he can scrutinize his own evidence and see that the notice was defective on its face or wasn't served properly, it's better for the landlord, for tenant, and the court that that's known early on and this requirement of it being attached to the complaint could provide that benefit.

If this facilitates a chance for discussion between the parties or their counsel, then I think we'll have more amicable resolutions that will be more likely if these documents can be reviewed before trial and thereby will save everyone time and allow for better outcomes for all sides.

As Judge Ortiz has noted, by requiring the attachment of the lease provision that is alleged to be violated, this proposed rule will be consistent with our civil practice statute of 735 Illinois Compiled Statute Section 5/2-606, which requires a claim based on a writing must attach

such writing to the complaint or plead why it cannot be attached. These documents must be produced at trial anyway. They exist at the time the complaint is drafted.

I always have felt that the lease or at least the pertinent provisions should be attached under Rule 606 in an eviction case, but they seldom are as the judge points out.

This new rule will make the breach of lease eviction matters like all other matters in the Illinois courts that are based upon a written contract. Lease contracts go to the very heart of the landlord's claim and the complaint should fully set for those provision.

The proposed rules will help the pro se landlord organize his evidentiary case. Being required to attach the lease provisions that substantiate the landlord's position assures that he even has that lease agreement, that he has read it, that he has given the notice that references the pertinent provisions violated. Again, that will all go a long way to having evidentiary evidence prepared -- his document or evidence prepared as he needs to have it at trial.

At CARPLS, we would really prefer that a pro se landlord go away from one of our desks with a well pleaded eviction complaint that has all the critical evidentiary attachments and that we would know then that the main pillars of the pro se landlord's claim are all in the paper pleading. This is superior to just hoping that that pro se landlord will remember to bring the lease to court, remember the notice, the affidavit of service, and will know or remember how to offer them up to court, be able to properly quote from them while arguing before the bench of how the lease was violated. That's a real stretch for most pro se landlords, so it would be helpful to both the Bar and the bench if the written complaint's attachment told most of the landlord's story.

I believe that the proposal will allow us to be assistant in organizing landlord's counsel as well. In what is usually a very high volume of practice representing landlords, I know that these requirements would have helped me to be better prepared to present my eviction cases in court, as there was at least one occasion when a client delayed in getting such documents to me and I got

the five-day notice and the lease the night and before -- before the hearing, only to find that the notice was somehow defective or the lease didn't quite say what my client thought that it did.

So in closing, in a world where the average nonjury eviction trial lasts about two minutes, it's essential that the court have most of the pertinent evidence attached to the complaint. Eviction is a very summary proceeding and for the record to include these critical documents of the statutory notice, the lease, and the applicable provisions, that would be an important step toward ensuring that justice is done in the cases.

Eviction has always been an important legal proceeding and it's even more so now, as Samira said, as we as a legal system face and anticipate an onset of evictions due to COVID-19, our mass unemployment, and the economic downturn.

So we have an opportunity here to ensure that evictions are done lawfully in meritorious situations with required due process being afforded to the tenant. So this proposed rule will take us further toward that goal.

I'm happy to address any questions from

the Committee and I really appreciate your time and attention to this issue.

CHAIRPERSON ANTONIO M. ROMANUCCI: Thank you very much for that explanation. I appreciated hearing the perspective from both sides, both from landlord and tenant.

Does anyone have any questions for Ms. Wrona? Comments?

Thank you.

PATRICIA WRONA: Thank you.

CHAIRPERSON ANTONIO M. ROMANUCCI: Next up, we have Conor Malloy. Are you on the Zoom?

CONOR MALLOY: I am.

CHAIRPERSON ANTONIO M. ROMANUCCI: Mr. Malloy, the floor is yours.

CONOR MALLOY: Thank you, everybody. My name is Conor Malloy. I'm from Lawyers' Committee for Better Housing. Thanks to the Chair, the Committee, and my colleagues for attending this.

My current role at Lawyers' Committee is I run a project called Rentervention, which is a 24-hour chat box that helps Chicago tenants deal with eviction issues. Before I was involved in this project, I was helping a lot of these

landlords Pat was just talking about with your small and medium-sized landlords throughout Chicago who may just have one unit to rent out or just a small operation and I can tell you that a lot of these landlords in my experience have issues with the notice or various procedural elements and I think one of the things this rule will work for will be to try to be able to create the types of forms for pro ses to be able to effectively prosecute their case.

So when they couldn't, and that was something that I experienced commonly, because about one in five evictions that are filed in Cook County are by a pro se landlord, that's when we would get the phone calls because I knew to solicit those landlords that were filing pro se because they were bound to botch something up along the way.

So having the notice requirement, having -- and all notices are not created equal. I've seen some notices out there that aren't too hot, allows the landlord to have that type of self-scrutiny that Pat was just talking about.

The other part of this is there's two

types of -- not two types -- categories of notices that we're talking about here. You have your nonpayment of rent and what this is asking for is that you just provide the notice. There is in your lease some talk about how much is owed per month or per week, which is not being asked to be able to put into the pleading. It's just for those types of evictions that are proceeding on a default, couldn't have a dog in your apartment and suddenly woof woof.

So that's when we talk about the prejudices or the burdens on landlords, it's a very small percentage of cases in my experience. And not to get in too much of an exaggeration here, it's probably about one out of every hundred cases that I dealt with were based upon a 10-day notice for some sort of a breach of the lease. A lot of them were otherwise a 5-day or 30-day notice for no cause.

Again, these types of proceedings that we're looking at are summary proceedings. So, you know, for a lot of my former clients, it is always time and money. Why is this case dragging on so long? So when they find themselves in court

without a notice and the judge sends them packing, they're starting to shoot themselves in the foot on prosecuting their own case and we would commonly have to refile for them. A, because there was no notice. B, because the notice was deficient. Or, you know, C, for a variety of reasons that landlords or just pro se litigants in general can find them stumbling in this type of proceeding.

So I want to keep this super-duper brief, but the -- this notice provision goes a whole -- goes the distance in being able to provide advocates on both sides of the equation with the ability to have everything in front of them. You're showing your hand to be able to come to a resolution if everything is on the up and up. And I know that there's a whole lot of discovery that can be done in eviction cases. Really, the meat and potatoes of the discovery is going to be in that notice and those lease provisions. That's going to be your issue there.

And thank you again.

CHAIRPERSON ANTONIO M. ROMANUCCI: I guess I do have a question. It could have been addressed earlier and excuse my ignorance for asking. I

understand that we had one perspective that gave us -- you know, Ms. Wrona gave us the landlord and tenant perspective and we have the judicial perspective from Judge Ortiz. Is there an organization out there that represents landlords that should be on this call or should be aware of that? I mean, I'm assuming they've been given notice and would have had a chance to comment. Is that something that anybody has -- anybody that spoke earlier wants to comment on?

CONOR MALLOY: I wouldn't be able to speak to that myself. Sorry.

PATRICIA WRONA: Mr. Chairman, at CARPLS, we do address pro se landlords. So as Conor was saying, it's not the most common thing that comes to legal aid, but we do represent probably several hundred in terms of helping them with how to draft and proceed on their matter.

But in the legal aid community, there's really no other legal aid organization that represents landlords in residential eviction. Of course, there is a private Bar that certainly covers that area.

CHAIRPERSON ANTONIO M. ROMANUCCI: All right.

Thanks. Any other questions before we move on to Mr. Lawrence Wood? Are you on Zoom?

LAWRENCE WOOD: I am. Can you hear me?

CHAIRPERSON ANTONIO M. ROMANUCCI: Have you been on the call since the start?

LAWRENCE WOOD: I have. Yes.

CHAIRPERSON ANTONIO M. ROMANUCCI: All right. You get 30 minutes to finish. Just kidding.

LAWRENCE WOOD: I can do that.

CHAIRPERSON ANTONIO M. ROMANUCCI: You are our last speaker and thank you very much for your patience. You have the floor. Your time is set.

LAWRENCE WOOD: Thank you. And to address the last question directed to Mr. Malloy regarding landlords, I don't think that we have any landlord representatives besides Ms. Wrona on the call, but I have had several meetings with landlord representatives and judges and Samira and I have heard their arguments regarding this proposed rule and I do want to address some of those. Although, I know no landlord wants me as their representative.

I am a supervisory attorney with the Housing Practice Group at Legal Aid Chicago,

formally Legal Assistance Foundation of Chicago and Legal Aid Chicago is Midwest's largest provider of free civil legal services to people who are living in poverty or otherwise vulnerable. And the Housing Practice Group focuses a lot of its work on preventing unwarranted evictions. We also focus on subsidized residents for reasons that I'll get to later.

I also, for the last 20 years, have taught a class, a clinical course on poverty and housing law at the University of Chicago Law School and I've been at Legal Aid Chicago for 30 years. So I've been in the eviction courtrooms for the past 30 years and I think it's important to note that there are more than 30,000 eviction actions filed every year in Cook County and as Pat noted, a typical trial lasts about two minutes.

Because these are summary proceedings, there is a common misconception that eviction actions are simple routine matters involving relatively low stakes. Nothing could be further from the truth, especially in the subsidized housing context where low-income residents are facing eviction from the only piece of housing that

they can afford. But the misconception that I just mentioned has led some to conclude, and I'm seeing this over and over again in the past three decades, that eviction actions may be resolved without adherence to the basic rule of civil procedure and the most commonly ignored rule is the one requiring a plaintiff to attach to its complaint, all the reading instruments upon which the complaint is founded.

The proposal that we're considering now and that I urge you to adopt solves this problem by mandating that every eviction complaint includes the termination notice and the relevant portions of the lease agreement. This proposal is vitally important for four reasons and Judge Ortiz, Samira, Pat, Connor have already touched on some of these and I don't want to just repeat what they said.

But the first reason is that requiring the plaintiff to attach the termination and relevant lease to the complaint would ensure that these documents are always available to the judge, who can then quickly focus on the relevant issues and determine whether the plaintiff is confined with some essential elements of the prima facia case.

And this would be an enormous benefit, as Judge Ortiz mentioned, in high-volume courtrooms where the vast majority of defendants are unrepresented and where many plaintiffs also appear pro se.

Second, this proposal would help tenant advocates like myself and my colleagues properly assess each case and decide whether it warrants our involvement, a decision that we have to make quickly in summary proceedings like eviction actions.

Our clients are, as I noted before, for the most part, subsidized housing residents who are facing eviction from the only piece of housing they can afford. These tenants generally have copies of their landlord's complaints and these complaints allege only that the defendant unlawfully withholds possession of premises to which the plaintiff has the superior right of possession. But they frequently do not have copies of their termination notices and lease agreement. They may have never been given the lease agreement. They may have signed it and never gotten a copy.

As Pat noted, many tenants state that they never even received a termination notice. That

makes it difficult for tenants' advocates like myself to determine why the tenant is facing eviction and in the subsidized housing context, it makes it difficult for us to identify the Federal statutes and regulations, HUD guidance, and other policies that govern their tenancies.

And in the subsidized context, I cannot tell you how complicated this can get. There are many different subsidized housing programs. Public housing, Section 8 project-base program, the housing choice voucher program, many others all governed by different sets of Federal statutes and regulations and we need to know which of these provisions and statutes and regulations apply and we can gather that information only if we have a copy of the termination notice or the lease agreement.

Landlords' advocates will argue that we can always obtain the necessary information through discovery, but unless we are going to represent every tenant who requests our assistance, we need the information before the discovery process begins.

I will also note that my colleagues and I

have had the experience over and over again of calling the landlord's attorney and requesting the termination of the lease agreement and the landlord's attorney will say, you'll get that through the discovery process, we're not going to give that to you now. So it makes it, again, very hard for us to determine what the relevant law is and whether the case warrants our involvement.

Third, and Sam and Judge Ortiz noted this and Pat as well, the benefits of complying with the proposed rule far outweighs the cost. It's difficult for me to imagine how a plaintiff would lack a copy of the termination notice that is required to be served before filing or the governing lease and the relevant portions of these documents run no more than a few pages. The termination notice is just going to be one page.

Landlord advocates in the subsidized housing context will point to the fact that public housing leases or HUD model leases can run 27, 30 pages, but they do not have to attach the entire lease under this proposed rule. They only have to attach the relevant provisions, which would be the cover page that we can tell what kind of housing is

involved and then the lease provisions that the tenant allegedly violated. So we're asking the landlords to attach no more than maybe three pages to the complaint.

Fourth, the proposed rule will resolve what has been a surprisingly contentious issue in the trial courts and the Illinois Appellate Court will never address this, although, Judge Ortiz noted that Judge Neville had issued a Rule 23 order on this issue, which of course cannot be cited.

It is difficult to get this issue to the Illinois Appellate Court for a couple reasons. First, not to brag, but my Housing Practice Group has a success rate of well over 90 percent. And so we don't appeal on most decisions.

Furthermore, we're going to try to get this issue up to the Appellate Court and anticipate that this might be a case we lose in a trial court and want to appeal, then we have to make sure we bring a motion to dismiss based on the fact that the complaint does not comply with Rule 606 of the Code of Civil Procedure.

You know, it -- it's not reasonable to require us to bring these motions to dismiss in

every single case. I have, myself, tried to get this issue up to the Appellate Court on an interlocutory appeal and I have had the trial court say yes, this is an issue that should go up to the Appellate Court, certify the question, but as you know, such appeals must, and I'm quoting now from Supreme Court Rule 308, materially advance the ultimate termination of litigation.

Reviewing a trial court's ruling on a motion to dismiss will not be assumed at the end of litigation in a summary proceeding like an eviction action, so we cannot reasonably expect the Appellate Court to breach this issue. The best way to resolve it, therefore, is through the adoption of this proposed rule.

Finally, landlords' advocates will argue that the eviction act simply requires the landlord to allege in its eviction complaint the defendant unlawfully withholds possession of premises to which plaintiff has the superior right of possession. That requirement addresses only the sufficiency of the complaint's allegation. It does not release plaintiff in an eviction action of its duty to comply with Rule 2-606 of the Illinois Code

of Civil Procedure, which every civil plaintiff has to follow and they follow it by attaching to the complaint the written instruments on which the pleadings face.

As I said, the question of attachment has caused needless confusion in eviction courts. The proposed rule clarifies the issue and it makes sense. Legal Aid Chicago, therefore, urges its adoption.

Also, we urge that it be adopted immediately, because as Judge Ortiz and Samira and Pat mentioned already, we are about to face a flood of eviction cases because the eviction moratorium that has been in place for a few months is about to be lifted. It is not only important to adopt this rule, but to adopt it as quickly as possible.

Thank you for your consideration and listening to my comments and I'm happy to take questions.

CHAIRPERSON ANTONIO M. ROMANUCCI: Are there any questions?

You know, I just want you to understand, you know, my concern is when you're asking for the adoption for an entirely new rule that, you know,

we have to ensure, you know, the fairness doctrine, that it is fair to both sides. And, you know, that was the point of my question. I hope you understand that.

LAWRENCE WOOD: Oh, I absolutely do and I think it's important. And I think, again, landlord advocates I'm sure would disagree with me, but I that I have fairly set forth their main objections to the rule and then tried to address those objections.

Also, I would say this. This is not really the adoption of a new rule in one sense. The rule already exists. It's already Section 2-606 of the Illinois Code of Civil Procedure. The rule that we're supporting merely clarifies the fact that plaintiffs in eviction actions must, like all other civil plaintiffs, comply with this rule, the Illinois Code of Civil Procedure, that is already on the books.

CHAIRPERSON ANTONIO M. ROMANUCCI: Do any members of the Committee have any questions for Mr. Wood or any of the other members of -- speaking on 20-07 that are still on?

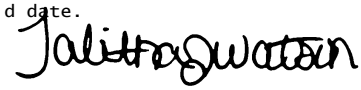
Well, congratulations to those who have

stayed on the call the whole day. Thank you very much. I appreciate your patience. This is our first, you know, Zoom public hearing for the Illinois Supreme Court Rules Committee and I think it has gone pretty well after we got over that initial glitch. Thank you for participating, everybody. Have a good day and hopefully you'll be hearing from us very soon.

(Which were all the proceedings had in the above-entitled cause.)

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

Tabitha Watson, being first duly sworn, on oath says that she is a court reporter doing business in the State of Illinois and that she reported in shorthand the proceedings of said public hearing via Zoom videoconference and that the foregoing is a true and correct transcript of her shorthand notes so taken as aforesaid and contains the proceedings given at said public hearing on said date.



Certified Shorthand Reporter

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