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2 SUPREME COURT RULES COMMITTEE
3 PUBLIC HEARING
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7 Report of proceedings at the public
8 hearing of the above-entitled cause, before Tabitha
9 Watson, an Illinois Shorthand Reporter, on the 24th
10 day of June, 2020, at the hour of 10:55 a.m., via
11 Zoom videoconference.
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18 Reported by: Tabitha Watson, CSR, RPR
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1 COMMITTEE MEMBERS:
2 ANTONIO M. ROMANUCCI, Chair
3 JAMES D. GREEN, Vice Chair
4 PROF. KEITH H. BEYLER, Reporter
5 AMY S. BOWNE, Secretary
6 HON. JOHN C. ANDERSON
7 HON. CYNTHIA Y. COBBS
8 JAMES A. HANSEN
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12 STEVE H. KIM
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14 LARRY R. ROGERS, JR.
15 MICHAEL I. ROTHSTEIN
16 STEVEN M. RUFFALO
17 JONATHAN M. THOMAS
18 STANLEY L. TUCKER
19 HON. FRANKLIN U. VALDERRAMA
20 JULIE A. WEBB
21 JUSTICE THOMAS L. KILBRIDE
22
23
24

13 PROPONENTS:
14 HON. ROBERT MCLAREN
15 ROY C. DRIPPS
16 DONALD PATRICK ECKLER
17 HON. JAMES MURRAY, JR.
18 WILLIAM MCVISK
19 CLINT KRISLOV
20 DONALD RAMSELL
21 BENNA CRAWFORD
22 TIMOTHY EATON
23 SETH HORVATH
24 LAUREN RIDDICK
DUANE SCHUSTER
HON. JORGE ORTIZ
SAMIRA NAZEM
PAT WRONA
CONOR MALLOY
LAWRENCE WOOD

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1 CHAIRPERSON ANTONIO M. ROMANUCCI: Good
2 morning, everyone. I appreciate everyone's
3 patience. As you can see, we are all in new
4 territory. Not just today, but certainly during
5 this COVID and pandemic crisis. So we appreciate
6 your willingness to join this meeting via
7 electronic means as we're doing today. We're all
8 going to have to be patient because I think we may
9 all -- you know, I've had my own technical problems
10 and we may all face some today. So we are just
11 going to have to exercise extreme patience as we
12 get through this process today.
13 So my name is Tony Romanucci. I'm current
14 chair of the Illinois Supreme Court Rules
15 Committee. And we're about to begin.
16 We're going to do our best to very
17 strictly enforce the time limitations here. Not
18 only are we getting a late start, but we have a
19 very full agenda today. We have eight items that
20 we have to get through during the public hearing.
21 I believe we have 18 or 19 speakers. You know,
22 we're allowing you each ten minutes. Please use
23 your ten minutes wisely. You don't have to use all
24 of your time if you don't need to. You know, I'm

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1 not encouraging you to use less time, but if you
2 don't need to, that's okay too.
3 So we've got a long day. We're going to
4 try and power through this and get through this
5 without a break. Having said that, if anybody at
6 any time needs a break for any reason, either raise
7 your hand electronically or raise your hand so that
8 we can see you or send a chat and we will take a
9 break. Other than that, you know, the plan is to
10 try and get through this without.
11 So without anything else, unless anybody
12 has anything else that they want to add from the
13 Committee or Amy before we start, we're going to
14 begin with our first speaker on Proposal 19-14. So
15 this is a little bit out of order and that is the
16 Honorable Robert McLaren.
17 If you are on the Zoom, Judge McLaren, are
18 you available? Judge Robert McLaren?
19 AMY BOWNE: I believe he's having issues with
20 his sound possibly.
21 CHAIRPERSON ANTONIO M. ROMANUCCI: Do you see
22 any video of him, Amy?
23 AMY BOWNE: It's blank. It's dark. I see that
24 he's on.

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1 Justice McLaren, are you on? Are you on?
 2 I see him here listed. I don't see audio
 3 or video.
 4 HON. JOHN C. ANDERSON: You know, if he's
 5 having a hard time, it might be easier to just call
 6 him with a phone and not worry about the video end
 7 of it. Just pick up a regular phone.
 8 CHAIRPERSON ANTONIO M. ROMANUCCI: Well, what
 9 I'd like to do is maybe while Amy is connecting
 10 with his Honor, why don't we move onto the next
 11 proposal and the first speaker on 19-03 -- on
 12 Proposal 19-03 and then as soon as we get Judge
 13 McLaren on, we can fit him in either in between
 14 speakers or in between the proposal.
 15 So, Roy Dripps, are you on?
 16 ROY C. DRIPPS: I am.
 17 CHAIRPERSON ANTONIO M. ROMANUCCI: Okay. Roy,
 18 are you ready to begin?
 19 ROY C. DRIPPS: I am.
 20 CHAIRPERSON ANTONIO M. ROMANUCCI: Okay. Thank
 21 very much, Roy. The floor is yours.
 22 ROY C. DRIPPS: Chairman Romanucci and members
 23 of the Rules Committee, I am Roy Dripps and I'd
 24 like to thank you for allowing me to testify

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1 concerning Proposed Amendment 19-03.
 2 I wrote to identify for the Committee's
 3 attention potential issues concerning the use of
 4 depositions at trial in specific situations and
 5 proposed certain changes to Supreme Court Rule 212
 6 in light of amendments to other Supreme Court
 7 rules, as well as changes in the Federal Rules of
 8 Civil Procedure. These changes have created
 9 potential problems with the present language of
 10 Supreme Court Rule 212.
 11 The purpose of the amendment is to allow
 12 attorneys to predict accurately whether a
 13 particular deposition taken in the same case, but
 14 in a different court, will be admissible at trial.
 15 Differences in the ability to enforce trial
 16 subpoenas outside of the jurisdiction and
 17 differences in the definition of unavailable in
 18 Illinois is to allow a (audio feedback) in Illinois
 19 and in Federal Courts makes drafting a workable
 20 rule sort of like fitting a square peg into a round
 21 hole.
 22 with regard to cases previously filed in
 23 Illinois, dismissed, and refiled in Illinois, the
 24 requirement in present Rule 212(d) that the

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1 depositions be duly filed in the prior action is
 2 anachronistic.
 3 Rule 207(b)(1) no longer authorizes filing
 4 depositions. Rule 207(b)(2) forbids routine filing
 5 of depositions. But Rule 212(d) still requires
 6 that a deposition be duly filed in the original
 7 action before it may be used in the refiled matter.
 8 Although this requirement might be
 9 regarded as vestigial, the Supreme Court reminded
 10 us in Bright vs. Dicke that the rules are to be
 11 enforced as written. Eliminating the duly filed
 12 language from Supreme Court Rule 212(d) would
 13 conform the rule to the current versions of
 14 207(b)(1) and (b)(2).
 15 In a situation where depositions are taken
 16 in Federal Court after removal from an Illinois
 17 State Court, but are to be used in a State Court
 18 trial after remand, a similar problem is created.
 19 As in Illinois, depositions are rarely, if ever,
 20 duly filed in Federal Court before trial because
 21 Federal Rule 5(d)(1) says they must not be filed
 22 until they are used in the proceeding or the court
 23 orders filing.
 24 Because the deposition would not normally

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1 be used in the proceeding until trial and because a
 2 remand order would normally be entered well in
 3 advance of trial and because it's very rare for a
 4 judge to order a deposition to be filed, the vast
 5 majority of depositions would never be duly filed
 6 in a Federal proceedings before a remand. So
 7 Rule 212(d) would almost always preclude the use of
 8 depositions taken in Federal Court.
 9 The other potential problem with the rule
 10 is it doesn't answer the question whether a
 11 deposition taken in Federal Court or the court of
 12 another state is to be treated as an evidence or a
 13 discovery deposition under the Illinois rules.
 14 As a practical matter, this means that
 15 attorneys cannot predict with any accuracy before a
 16 ruling by the trial judge whether a deposition
 17 taken in Federal Court prior to remand will be
 18 admissible at trial. And one of the things I hope
 19 to avoid with the amendment is to confront a trial
 20 judge with a last minute decision about granting a
 21 continuance in order to take the evidence
 22 deposition of a witness or forcing the parties to
 23 proceed to trial without testimony that might be
 24 crucial.

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<p>1 Rule 212(a) addresses the circumstances in 2 which it doesn't matter whether the deposition is 3 evidence or discovery. Impeachment, an admission, 4 exception to the hearsay rule, an affidavit, or 5 because the witness is dead or infirm. 6 In other circumstances, whether the 7 deposition is discovery or evidence matters very 8 much. Both Illinois and the Federal rules 9 authorize use at trial of a deposition if the 10 witness is unavailable, but the Supreme Court rules 11 define a witness' unavailability differently than 12 do the Federal rules. 13 Rule 212(b)(2) generally allows use of an 14 evidence deposition if the deponent is out of the 15 county. Rule 212(b)(3) allows use of an evidence 16 deposition if you haven't been able to procure the 17 attendance of the witness with reasonable diligence 18 in the service of a subpoena. And Rule 212(b) 19 presumes that physicians and surgeons are 20 unavailable for trial. 21 The unavailability provision of Federal 22 Rule 32(a)(4) has some important differences. 23 Rule 32(a)(4) authorizes interstate service of a 24 trial subpoena if the witness is within 100 miles</p> <p style="text-align: right;">9</p>	<p>1 And while an Illinois trial subpoena lacks 2 extraterritorial effect, the Interstate Depositions 3 and Discovery Act will authorize issuance of a 4 subpoena for an evidence deposition in most states 5 other than Missouri. Missouri does have procedures 6 by statute and by rule for deposition subpoenas to 7 issue to aid in an action in another state. So 8 parties should be able to obtain an evidence 9 deposition of a witness if the deposition would not 10 be substantively admissible in Federal or the other 11 state's court. 12 Finally, a distinction between Illinois 13 actions that have been dismissed and refiled and 14 actions filed in other states and then refiled in 15 Illinois will be beneficial because Illinois is 16 unique in distinguishing between discovery and 17 evidence depositions. 18 A deposition taken in a case originally 19 filed and refiled in Illinois would necessarily be 20 labeled as either discovery or evidence at the time 21 it's taken. That is not so in other states or in 22 the Federal Courts. 23 With that in mind, I submit that it is 24 time to update Supreme Court Rule 212. Proposed</p> <p style="text-align: right;">11</p>
<p>1 of the Federal courthouse. 2 So for example, the deposition of a 3 witness in St. Louis could not be used at trial in 4 Federal Court in East St. Louis, but the same 5 witness could be valuably produced in court by 6 subpoena and, therefore, is not practically 7 unavailable. But an Illinois trial subpoena is 8 ineffective if served out of state. 9 So the same witness whose trial testimony 10 could have been procured by subpoena is now 11 unavailable to testify at trial in an Illinois 12 Court as a practical matter, but would be deemed 13 available by the Federal Courts. And physicians 14 are not deemed automatically unavailable under the 15 Federal rules. 16 So this brings into focus the difference 17 in the meaning of unavailable for the use of 18 Federal and Illinois depositions. The proposed 19 Rule 212(e) requires the trial court to determine 20 whether the deposition would have been admissible 21 in the jurisdiction in which it was taken. This 22 approach makes the unavailability provisions in 23 Rule 212(b) inapplicable to depositions sought to 24 be admitted under Rule 212(e).</p> <p style="text-align: right;">10</p>	<p>1 Amendment 19-03 is a neutral proposal that does not 2 favor either plaintiffs or defendants. It splits 3 into two categories the use of depositions after 4 substitution or refile, which remain in 5 Rule 212(d), and the use of depositions taken in 6 other jurisdictions, which the new Rule 212(e) 7 addresses. 8 Proposed Rule 212(e)'s provision for 9 pretrial orders to require reasonable notice of 10 intent to use the deposition is important because 11 determination of contested admissibility of a 12 deposition should be made far enough in advance of 13 trial so that an evidence deposition may be taken 14 if the deposition in the other jurisdiction is 15 deemed to be a discovery deposition. That will 16 also avoid preventable continuances. 17 I would just suggest that there is no 18 reason to turn the rule into a trap for the unwary 19 and thank you for permitting me to address the 20 Committee. 21 MICHAEL I. ROTHSTEIN: Is this an appropriate 22 time for questions by the Committee, Mr. Chairman? 23 Can you hear me? 24 CHAIRPERSON ANTONIO M. ROMANUCCI: I can hear</p> <p style="text-align: right;">12</p>



1 you. I was asking a question. I don't know if you
2 could -- if you heard mine or not.
3 MICHAEL I. ROTHSTEIN: Oh, I did not hear
4 yours.
5 CHAIRPERSON ANTONIO M. ROMANUCCI: Okay.
6 Mr. Dripps, can you hear me?
7 ROY C. DRIPPS: Yes, sir.
8 CHAIRPERSON ANTONIO M. ROMANUCCI: Okay. So my
9 question was, you are proposing an entire new
10 subparagraph under 212 and that's subparagraph (e),
11 is that correct?
12 ROY C. DRIPPS: Yes, sir.
13 CHAIRPERSON ANTONIO M. ROMANUCCI: All right.
14 Just so -- I want to understand procedurally.
15 Subparagraph (e), have you tested that paragraph to
16 ensure that there's no conflict with respect to the
17 laws of another state on how their depositions are
18 to be used when you're proposing (e)?
19 ROY C. DRIPPS: I'm a little lost about tested.
20 I think the rule says -- proposed rule says that
21 you have to determine whether it would be
22 admissible in the other jurisdiction, which will
23 require the trial judge to make a determination
24 after the proponent of the deposition demonstrates

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1 why it would be admissible in the other
2 jurisdiction.
3 I'm not hearing if anybody is talking.
4 JAMES A. HANSEN: Tony and Mike, you're both
5 talking, but no one can hear you.
6 MICHAEL I. ROTHSTEIN: Mr. Chairman, have you
7 concluded? If so, I have a question. If not, I
8 will wait.
9 STENOGRAPHER: Is anyone speaking right now? I
10 can't hear Mr. Romanucci, but it looks like he is
11 talking.
12 CHAIRPERSON ANTONIO M. ROMANUCCI: Mr. Dripps,
13 can you hear me now?
14 ROY C. DRIPPS: Yes, sir.
15 CHAIRPERSON ANTONIO M. ROMANUCCI: I apologize.
16 I don't know why -- my phone shows I'm not muted,
17 but it keeps telling me I'm muted. So I don't know
18 what is wrong. So I apologize.
19 My last question was, are you familiar
20 with any other states that have a similar proposal
21 as you do in subparagraph (e)?
22 ROY C. DRIPPS: No. And the reason for that is
23 I believe now Illinois is the last jurisdiction to
24 maintain a distinction between evidence and

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1 discovery depositions. So almost every
2 jurisdiction has a rescript of the Federal rules
3 for their discovery provisions. There are some
4 that are a little bit different, but for the most
5 part they follow the Federal Rules. This is why I
6 believe they can be put together in one
7 subparagraph.
8 CHAIRPERSON ANTONIO M. ROMANUCCI: Thank you.
9 I have no further questions.
10 Mike, Member Rothstein, I know you had a
11 question.
12 MICHAEL I. ROTHSTEIN: Good morning,
13 Mr. Dripps.
14 ROY C. DRIPPS: Good morning.
15 MICHAEL I. ROTHSTEIN: Your original proposal
16 you submitted in January 2019 proposed language to
17 accomplish this amendment. The proposal that --
18 and we included your proposal in the materials that
19 were circulated. We took an attempt at trying to
20 maintain the spirit, but to simplify the language
21 in Proposal 19-03 and I'm curious whether you
22 reviewed the simplified language and do you have an
23 opinion as to whether or not it captures what you
24 were trying to capture in your original language

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1 and if not, how so?
2 ROY C. DRIPPS: First of all, yes, absolutely
3 I've reviewed it and my remarks today have been
4 directed to the subcommittee Proposal 19-03. I
5 think the subcommittee proposal is a significant
6 improvement on what I submitted. I think it
7 clarifies things and does maintain the spirit of my
8 original proposal, but brings more clarity to it
9 and focuses the trial judge on the task at hand,
10 which is determining what the -- how the deposition
11 would have been used in the other jurisdiction.
12 MICHAEL I. ROTHSTEIN: And so I'll take that as
13 your fervent support for the amended language as
14 proposed in 19-03.
15 ROY C. DRIPPS: Absolutely. I completely
16 endorse that. And particular -- I want to point
17 out, the provision for having the notice provision
18 in case management orders I think is really a
19 significant step. I think that will allow these
20 issues to be headed off well before trial so that
21 we don't have last minute continuances to go get a
22 late deposition of the witness.
23 MICHAEL I. ROTHSTEIN: Thank you. I have no
24 further questions.

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1 CHAIRPERSON ANTONIO M. ROMANUCCI: Any other
2 questions from any member?
3 Thank you, Mr. Dripps.
4 ROY C. DRIPPS: Thank you, Mr. Romanucci.
5 CHAIRPERSON ANTONIO M. ROMANUCCI: Mr. Eckler,
6 are you on the call?
7 DONALD P. ECKLER: I am, sir.
8 CHAIRPERSON ANTONIO M. ROMANUCCI: All right.
9 Your time is starting now. Thank you so much. You
10 may proceed.
11 DONALD P. ECKLER: Thank you, Mr. Romanucci.
12 Thank you to the members of the Committee for
13 allowing me to be heard today. I'm speaking on
14 behalf of the Illinois Association of Defense Trial
15 Counsel. My capacity is as legislative chair.
16 I'll be relatively brief, because as I
17 hope was clear in our statement, it is not an
18 opposition to the proposal that Mr. Dripps has made
19 and has been amended by the subcommittee. It's
20 rather dealing with the issue that Mr. Rothstein
21 asked about regarding notice.
22 The proposal in (e) is to require
23 reasonable notice of the intent to use the
24 deposition in order to give the trial judge an

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1 opportunity to deal with the issue in sufficient
2 time for the parties to prepare, whether it's
3 another discovery deposition, an evidence
4 deposition, subpoena, what have you in a given
5 situation.
6 In addition to the other issues that we've
7 laid forth in an order to try to move things along
8 out of respect for everyone's time, we suggest a
9 more specific time be put into the order by which
10 time a party has to propose that they're going to
11 use a deposition taken in another matter at least
12 60 days before the close of discovery so that the
13 trial court, opposing party, and everyone can
14 prepare appropriately for that, address the issues,
15 address perhaps whether the -- how the other court,
16 the foreign court, would deal with that issue,
17 whether it's Federal Court or a sister State Court
18 and allow the trial judge to get up to speed on
19 that while the parties brief that issue if it
20 requires briefing.
21 But giving the sufficient notice I think
22 needs to be made more specific with regard to when
23 that disclosure has to be made. The current
24 proposal is just reasonable and while reasonable is

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1 good, a specific time we think would be better.
2 with that, I'll yield.
3 CHAIRPERSON ANTONIO M. ROMANUCCI: Do you have
4 a specific proposal that you want to recommend?
5 DONALD P. ECKLER: As we put in our paper,
6 Mr. Romanucci, we would suggest at least 60 days
7 prior to the close of discovery. So that would be
8 at least 120 days prior to trial. Hopefully
9 under -- if 213 were done, it would be effective --
10 it would effectively be earlier so that parties
11 would have an idea and hopefully the parties would
12 be discussing the issue. But at least 60 days
13 before the close of discovery.
14 CHAIRPERSON ANTONIO M. ROMANUCCI: Thank you.
15 Any other questions or comments from any of the
16 committee members?
17 MICHAEL I. ROTHSTEIN: Michael Rothstein.
18 Mr. Eckler, I appreciate the benefit of what you
19 are suggesting with the 60-day period. Would you
20 be comfortable if in addition to the 60-day period,
21 language was added in the sense of unless the court
22 determines otherwise or absent leave of court to
23 allow for the possibility that a deposition could
24 come to light in a period less than 60 days, but

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1 under the circumstances the court believes it would
2 be fair to all the parties, you know, to use the
3 deposition?
4 DONALD P. ECKLER: I can imagine a circumstance
5 where that might happen, but it would be -- in a
6 case -- this is a case -- as Mr. Dripps pointed out
7 and the reason for the rule, this is a case that
8 either had been refiled in State Court, was refiled
9 in Federal Court, remanded. It's a case everyone
10 should be familiar with. There shouldn't be
11 surprises. Everyone should know where they're at.
12 I don't know why it would be that all of a sudden
13 we discover a deposition taken in a related case
14 between the parties and it not be known at least
15 60 days before the close of discovery.
16 I'm generally in favor -- we're generally
17 in favor of giving courts discretion to do justice
18 between the parties. And if that's the mood of the
19 Committee, we certainly understand. But I think
20 there shouldn't be surprises here. That's the
21 whole point that I think Mr. Dripps is making.
22 MICHAEL I. ROTHSTEIN: Thank you.
23 CHAIRPERSON ANTONIO M. ROMANUCCI: Anyone else
24 on the Committee have any questions?

20



1 Thank you, Mr. Eckler.
 2 DONALD P. ECKLER: Thank you.
 3 CHAIRPERSON ANTONIO M. ROMANUCCI: I would like
 4 to remind all the participants to please, please
 5 mute your phones if you are not speaking or not
 6 anticipating speaking. You know, we pick up
 7 background noise and it does interfere. So I would
 8 appreciate that out of respect for those who are
 9 speaking to please have your phone on mute.
 10 Amy, are you able to tell us whether or
 11 not Justice McLaren has been able to join?
 12 HON. ROBERT McLAREN: I'm online.
 13 AMY BOWNE: I did speak to Justice McLaren. He
 14 was going to call in.
 15 Are you there, Justice McLaren?
 16 HON. ROBERT McLAREN: Yes, I am. Can you hear
 17 me?
 18 AMY BOWNE: Yes.
 19 CHAIRPERSON ANTONIO M. ROMANUCCI: Justice
 20 McLaren, this is Tony Romanucci. Sorry we took you
 21 out of order, but you were having some difficulty.
 22 I think that's resolved now.
 23 HON. ROBERT McLAREN: Yes.
 24 CHAIRPERSON ANTONIO M. ROMANUCCI: So,

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1 judgment motion, but within 30 days of the final
 2 judgment order, which for most jurisdictions or
 3 most venues is a practical impossibility. But be
 4 that as it may, I think my dissent in Orahim,
 5 People v. Orahim, is self-explanatory.
 6 And so I would like to spend the time
 7 available to discuss the comments made by the
 8 Appellate Lawyer's Association. And there were
 9 three points that they made. One was maybe since
 10 this is a criminal case, the rule should be amended
 11 relative to Rules of Criminal Procedure and that's
 12 all well and good, except that the majority was
 13 interpreting 303(a)(2). It wasn't interpreting
 14 criminal rules of procedure and so I think it's
 15 kind of a deflection or a misdirection to suggest,
 16 as the ALA does, that we should maybe consider
 17 changing the rules relating to pleas or a vacation
 18 of pleas, et cetera, versus resolving or
 19 remediating the ruling or the holding of the
 20 majority in Orahim.
 21 They then suggest that my proposed
 22 language is somewhat ambiguous and possibly
 23 confusing and I can understand why, because I agree
 24 with the ALA that what is there is sufficient.

23

1 Justice McLaren, you'll be presenting. You're the
 2 proponent of Proposal 19-14. And I yield the floor
 3 to you, your Honor.
 4 HON. ROBERT McLAREN: Thank you.
 5 I thought about what might have caused
 6 this problem and I thought that probably what did
 7 it was the fact that when the rule was changed in
 8 1983, 330(a)(2) was changed in 1983, so
 9 approximately two years after the decision in Sears
 10 versus Sears, there was no commentary by the
 11 Committee as to the reason for the change and I can
 12 accept the rationale for that because I think, as
 13 the ALA has said in its comments, that it's
 14 self-evident and it doesn't take I think even a
 15 lawyer. I think a layman or a grammarian would
 16 understand what it was supposed to mean.
 17 And I interpreted that in a case called
 18 Augusten (phonetic), which was a marriage -- or a
 19 divorce case in the 80s I believe and it wasn't
 20 until 2019 where a panel that I was on decided that
 21 Sears versus Sears remains in violet and that,
 22 according to their timetable, a motion to
 23 reconsider a post judgment motion must be filed,
 24 not within 30 days of the denial order of the post

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1 It's appropriate. It doesn't need to be changed.
 2 But the thing is, what I'm not aware of or certain
 3 of is that a rule doesn't have to be amended, but
 4 can merely be clarified by a commentary added by
 5 the Rules Committee.
 6 If the Rules Committee can add a
 7 commentary saying that we have considered this and
 8 we leave the rule as it is because we believe that
 9 it is self-explanatory and that it was an attempt
 10 by the Rules Committee back in '83 to amend and
 11 ameliorate the conflict between the argument
 12 relating to a timely appeal and the ability of a
 13 trial court to remediate what it considers to be
 14 error.
 15 If committee comments can resolve that
 16 issue, then I don't see the need for any other
 17 language. I proposed the language because I was
 18 attempting to address the rather -- what I
 19 personally consider to be highly impractical, if
 20 not illogical, that one must file a motion to
 21 reconsider a post judgment motion within 30 days of
 22 an order that it doesn't address. It only
 23 addresses it tangentially or indirectly by
 24 addressing the denial of the post judgment motion.

24



1 So I would suggest that if somebody wishes
2 to amend what I've said and say something like, so
3 long as the court retains jurisdiction, I don't --
4 I have no problem, but something needs to be done
5 because it -- the rule has been nullified and Sears
6 versus Sears is back on table. And I also would
7 like to thank the ALA for agreeing with what I
8 perceive the rule to be, which is self-evident.
9 Other than that, I have nothing further to
10 say. Are there any questions?
11 CHAIRPERSON ANTONIO M. ROMANUCCI: Does anyone
12 from the Committee have any questions for
13 Justice McLaren?
14 My understanding, Justice McLaren, just so
15 we're clear, is that if the Committee were to
16 comment with respect to the rule as opposed to
17 amending the rule, that would be satisfactory.
18 HON. ROBERT MCLAREN: Yes. If it indicated
19 essentially what I said, which is Orahim was
20 wrongly decided and that trial courts do have the
21 ability, especially since the four or five cases
22 relating to subject matter jurisdiction, and those
23 being three, subject matter jurisdiction, personal
24 jurisdiction, and statutory authority granted to

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1 trial courts relating to administrative review.
2 Those are the three criteria upon which
3 jurisdiction is based.
4 It's not based upon the old jargon that if
5 you're over, say, 65 you may recall was
6 unauthorized at law is void. That is essentially
7 what Sears said because they basically said there's
8 no statute or no Supreme Court rule authorizing
9 these post judgment -- successive post judgment
10 motions and, therefore, they said it was
11 unauthorized at law, effectively, and the orders
12 were void. That doesn't -- that concept doesn't
13 exist anymore.
14 Does that answer your question?
15 CHAIRPERSON ANTONIO M. ROMANUCCI: It does.
16 HON. ROBERT MCLAREN: Thank you.
17 CHAIRPERSON ANTONIO M. ROMANUCCI: Anyone else
18 from the Committee with any questions or comments?
19 All right. Very well. Thank you,
20 Justice McLaren.
21 HON. ROBERT MCLAREN: Thank you.
22 CHAIRPERSON ANTONIO M. ROMANUCCI: We will now
23 move on to Proposal 19-11. Give me one moment,
24 please. And our first speaker on that proposal is

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1 the Honorable James Murray. I saw Judge Murray on
2 the line earlier.
3 Judge Murray, are you still there?
4 HON. JAMES MURRAY, JR.: Yes, I am. Thank you.
5 CHAIRPERSON ANTONIO M. ROMANUCCI: You may
6 begin.
7 HON. JAMES MURRAY, JR.: Thank you.
8 Good morning, members of the Illinois
9 Supreme Court Rules Committee. My name is James C.
10 Murray, Junior. I am a retired judge of the
11 Circuit Court of Cook County. I am now of counsel
12 to my brother's rather small law firm.
13 I think some of you already know that I am
14 related to, and who influenced me to become a
15 lawyer, my father who was a respected Circuit Court
16 judge and Appellate Court justice.
17 I start out with the Supreme Court Rule 23
18 was promulgated by the Supreme Court on January 31,
19 1972. Although over the years, there have been
20 slight modifications to the rule, the essence of
21 the rule has remained the same.
22 Interestingly, when I was attempting to
23 find out the rationale behind the adoption of the
24 rule, there was no commentary regarding it. So I

27

1 reflected back on my own experience and attempted
2 to provide what I thought was the reason the
3 Supreme Court adopted Supreme Court Rule 23.
4 I look back at my career as a lawyer. At
5 the time, some of you might remember this, opinions
6 from the Appellate Court that were issued would be
7 issued as Advance Sheets. These were paper back
8 volumes in some way with numbers anywhere from two,
9 three, four, 500, even a thousand pages in length.
10 And these types of books would stack up on a
11 lawyer's desk over a period of time when every
12 lawyer was responsible for basically, in effect,
13 making certain he knew the law and essentially had
14 to drive through and review these Advance Sheets.
15 Eventually, they would be -- these Advance
16 Sheets would be turned into hardcover volumes of
17 our Appellate Court decisions and then added to a
18 law firm's library.
19 The Appellate Court -- and there wasn't
20 reason for the -- this rule. Each Appellate Court
21 judge on a yearly basis was -- had to generate
22 certain written opinions that basically -- you can
23 only imagine given the number of Appellate Court
24 justices, the number of opinions that would emanate

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<p>1 on a yearly basis out of our various Appellate 2 Courts throughout the state. I believe in order to 3 control the number of such opinions that were to be 4 published in the Advance Sheets and resulted in to 5 being put into hardcover volumes, the Supreme Court 6 adopted Supreme Court Rule 23.</p> <p>7 Supreme Court Rule 23 currently consists 8 of three sections relating to this decision of the 9 Appellate Court. My first reason why the rules 10 should be abolished is technology. I do not have 11 to describe to this committee that the practice of 12 law has been radically changed and revolutionized 13 over the last 48 years by technology. Today is a 14 classic example of that. The advancement of 15 technology, both in software and computer 16 equipment, have radically changed the landscape of 17 legal research in the profession of law.</p> <p>18 The advent of such software such as 19 Westlaw and LexisNexis have placed what were 20 contained in the law libraries, the purpose of the 21 law, such software contains not only case law, it 22 contains statutes, regulations, court rules, 23 secondary source materials. These services can pay 24 both Federal and all the State laws of our country.</p> <p style="text-align: right;">29</p>	<p>1 Court -- I'm sorry. The Rule 23 opinions to 2 support a legal argument is a phony. You need 3 strike it as the Court of Appeals granted it as 4 being a violation of Rule 23.</p> <p>5 I have known -- I have known -- I have 6 been both an attorney and a judge. As a judge of 7 Cook County, I was responsible for entering 8 judgment of confessions for the entire county.</p> <p>9 In one particular case, a rule to vacate 10 the confession of judgment, I denied it, denied it, 11 and the matter was taken up -- my opinion was taken 12 up by the Appellate Court. I was affirmed on 13 appeal.</p> <p>14 Unfortunately, the opinion was affirmed 15 under Rule 23 as the case First Bank versus Kaiser, 16 2012 Illinois App 1st, 112 505U. If that opinion 17 was published, that would have relieved me of a 18 heavy burden because I handled all the confession 19 of judgments in Cook County and I could have 20 eliminated a lot of unnecessary motion practice as 21 it relates to it.</p> <p>22 The fact is this rule has deprived lawyers 23 and judges of valuable decisions that could be used 24 by the attorney or the judge for that matter to</p> <p style="text-align: right;">31</p>
<p>1 Today, I can carry my entire law library 2 on my cell phone. As a result of this advancement 3 in technology, law firms have eliminated their law 4 libraries. There is no need to be concerned by the 5 problem that existed and was confronted by our 6 Supreme Court in 1972. The problem has been 7 resolved by technology.</p> <p>8 There is no longer any reason why 9 Appellate Courts of this state should determine 10 whether an opinion from the court should be in the 11 major league of opinions or the minor league of 12 opinions.</p> <p>13 Supreme Court Rule 23 is an obstacle to 14 the practice of law. Supreme Court Rule 23, a 15 substantial number of the opinions by the Appellate 16 Court are designated under Rule 23 as orders so 17 that they cannot be cited to as precedent to either 18 the Appellate Court or to any other trial court. 19 Rule 23 is used more as a source when a litigant 20 cites a Rule 23 case.</p> <p>21 A classic example occurred on June 10th, 22 2020 in the case Moruzzi vs. CCC Services, Inc., 23 2020 Illinois App 2d 19 -- one thousand -- 24 199041 -- 411, paragraph 40. The Appellate</p> <p style="text-align: right;">30</p>	<p>1 support his or her legal argument or assist in 2 rendering a decision. The rule should be 3 abolished.</p> <p>4 Supreme Court Rule -- Supreme Court Rule 5 23 has problems in its structure. The only cases 6 that Rule 23 determines that are precedential are 7 cases which establish a new rule of law, modifies 8 an existing law, criticizes an existing rule of 9 law, prevents or absolves or avoids conflicts 10 within the Appellate Court Division.</p> <p>11 Supreme Court Rule 23(a), that section of 12 the rule seems to be that -- to ignore not only 13 that -- that only the law applies. Well, we all 14 know Appellate Court decisions can talk -- can hang 15 two aspects, fact and law. And I direct the 16 Committee's attention to the Illinois Supreme Court 17 decision in People ex rel. Hatrich versus 2010 18 Harley Davidson 2018 Illinois 121636. It was a 19 civil forfeiture case. And reading the majority's 20 opinion in that case and the dissent in that case, 21 which focused on the facts, we will see how and 22 what matters of fact in a particular case are 23 equally important.</p> <p>24 what about the lawyer that finds a Rule 23</p> <p style="text-align: right;">32</p>



1 case that has similar facts in his case, but he
2 can't cite it because of the fact that that Rule 23
3 precludes him.
4 Rule 23(b) is where the vast majority of
5 opinions are emanated out and they're called Rule
6 23 orders. For me, over the years, it has always
7 been difficult for me to determine why a Rule 23
8 order cannot be cited as precedent since many of
9 those orders cannot be considered distinguishable
10 from those that are classified as precedent.
11 Rule 23(c) entitled summary orders. I
12 must admit, I have looked for such orders. I have
13 been unable to find such decisions, decisions from
14 an Appellate Court. I'm just wondering whether or
15 not that -- that meet that standard. My impression
16 is that this section is not used or if it is used,
17 it's not invoked very often.
18 I want to thank the Committee for its
19 consideration of my proposal. I urge the Committee
20 to act favorably on it. I think technology
21 basically eliminates the rationale and reason and
22 it will open up an entire scope of opinions that
23 should be considered as precedent for the attorneys
24 and judges, even including Appellate judges, judges

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1 of the State.
2 I don't have to express how technology has
3 radically changed our laws. We no longer file
4 paper copies of our briefs, e-filing. Look at this
5 on Zoom. Our Illinois Supreme Court has issued our
6 orders as far as the commencement of trials to
7 basically consider off-site hearings of the
8 Appellate -- of court, bond hearings are conducted
9 by Zoom. And I think we should now -- Rule 23
10 should be basically done away with. Technology has
11 eliminated its reason.
12 Thank you very much for listening.
13 CHAIRPERSON ANTONIO M. ROMANUCCI: Justice
14 Murray, maybe I missed something. I just want to
15 make sure I have it. You said there are three
16 reasons to abolish Rule 23 and you said number one
17 is technology. Can you just tell us in the bullet
18 points, what is -- what is reason number two and
19 reason number three? I may have missed them.
20 HON. JAMES MURRAY, JR.: Maybe they're not --
21 CHAIRPERSON ANTONIO M. ROMANUCCI: One is
22 technology. Number two is what?
23 HON. JAMES MURRAY, JR.: Basically that rule --
24 Supreme Court rule represents an obstacle to the

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1 practice of law. What it does is it deprives
2 lawyers when they can -- when they're doing their
3 legal research, and this has occurred to me both as
4 a lawyer and as a trial judge, that I run across
5 Rule 23 opinions that I would like to cite, but I
6 know the rule prohibits it. So I don't do it
7 because the rule prohibits me.
8 So I think basically, in effect, there are
9 other lawyers in this state that are like me that
10 have come -- in their legal research, come across
11 Rule 23 opinions that they believe would be
12 favorable to legal positions, but recognize --
13 recognize they can't cite it to a court because of
14 Rule 23.
15 CHAIRPERSON ANTONIO M. ROMANUCCI: And what was
16 reason number three?
17 HON. JAMES MURRAY, JR.: The reason for number
18 three, I think if -- this is my opinion. I don't
19 know whether anyone wants to agree with me, but I
20 think the Supreme Court rule has problems in its
21 structure. If you look at Rule 23(a), it basically
22 focuses all attention on the law. That is, it has
23 to generate either new law, represents a change or
24 modification of the law, avoids conflict within

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1 judicial -- Appellate judicial districts.
2 Primarily, that would be in the First District
3 where we have five divisions. And I remember in
4 practicing law, I ended up with about two or three
5 cases on discovery that were directly opposite each
6 other.
7 So that's an admonishment there, but it
8 doesn't take into consideration that really, in
9 effect, there is a factual component to every case.
10 And if the facts are somewhat unique, then I think
11 that should be included in considering whether or
12 not it rises to a precedential value.
13 CHAIRPERSON ANTONIO M. ROMANUCCI: Thank you.
14 HON. JAMES MURRAY, JR.: And Rule 23(b) -- Rule
15 23(b), if you look at that, if you look at the vast
16 majority of Rule 23 cases, there is little to
17 distinguish those type -- they represent almost
18 full-blown opinions -- full-blown opinions. So
19 there's no distinguishing that, those Rule 23
20 orders, the actual opinions that are classified as
21 precedential. And Rule 23(c), I don't think is
22 used. I mean, you know, you have a rule there
23 that's just not used. At least, I haven't seen any
24 cases that use it.

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1 Those are my three points.

2 CHAIRPERSON ANTONIO M. ROMANUCCI: Thank you,

3 Judge. Are there any other questions or comments

4 from committee members?

5 HON. JAMES MURRAY, JR.: All right. Can I have

6 one -- can I add one remark, please?

7 CHAIRPERSON ANTONIO M. ROMANUCCI: Sure.

8 Brief.

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

10 First of all, I want everybody -- I don't

11 want -- I want to eliminate a couple of problems,

12 what might be a problem.

13 One, if you -- if the Committee adopts my

14 rule or position on this, I think it has to make

15 clear in the adoption that it has prospective

16 application. We're not, by virtue of this rule,

17 resurrecting everything that went in the past that

18 fell under Rule 23 that were not precedential,

19 we're not resurrecting them and considering them

20 precedential. I think that would be a problem.

21 The other thing is that in the

22 modification that I read, it talks about a full

23 opinion and, frankly, I think it could be expressed

24 as a full opinion.

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1 The last thing I want to do is impose any

2 further burden on our Appellate Court justices. I

3 don't know what full opinion means.

4 Take a look at Rule 23 opinions. Those

5 are full opinions. So I would ask for the deletion

6 of the words "as a full" out of the proposal one

7 and must be expressed in an opinion.

8 Thank you.

9 CHAIRPERSON ANTONIO M. ROMANUCCI: Thank you,

10 your Honor. Our next speaker is William McVisk.

11 HON. JOHN C. ANDERSON: Can I ask a quick

12 question?

13 CHAIRPERSON ANTONIO M. ROMANUCCI: Oh, of

14 course. Who is that?

15 HON. JOHN C. ANDERSON: Judge Anderson.

16 CHAIRPERSON ANTONIO M. ROMANUCCI: Thank you,

17 your Honor.

18 HON. JOHN C. ANDERSON: Sorry. Judge Murray,

19 are you of a -- do you have an opinion on whether

20 Rule 23 prohibits a judge from citing a Rule 23

21 case? I mean, if you're to be a strict

22 constructionist or a textualist, there's nothing in

23 Rule 23 that prohibits the court from citing a

24 Rule 23 ruling. Would you agree?

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1 HON. JAMES MURRAY, JR.: Judge, with all due

2 respect, if you take a look at the decisions under

3 Supreme Court Rule 23, I think there's an opinion

4 if my recollection serves me correct.

5 HON. JOHN C. ANDERSON: There's several and

6 they're split.

7 HON. JAMES MURRAY, JR.: Well, I'll tell you,

8 the Supreme Court has criticized judges of

9 basically, in effect, citing Supreme Court Rule 23.

10 I think I look to the Supreme Court for my guidance

11 as to what kind of practice -- how I should

12 determine my practice. And I rarely, rarely --

13 I've never used a Rule 23 opinion. I think it's a

14 violation of the rule. It applies to both lawyers

15 and judges.

16 HON. JOHN C. ANDERSON: If there's a Supreme

17 Court ruling on this, I'd sure appreciate it if

18 you'd send it to me. And there may be, but I

19 haven't seen it.

20 HON. JAMES MURRAY, JR.: Would you do me a

21 favor, Judge? I'd appreciate it if you would -- I

22 think that Amy has my e-mail address. If you

23 e-mail it, so I can basically get back to you on

24 it.

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1 HON. JOHN C. ANDERSON: I will do that. I

2 don't want to take up any more time. I would just

3 point out for the record though, there are

4 Appellate Court cases that go both ways on this.

5 I'm not aware of a Supreme Court case.

6 Thank you, Mr. Chairman.

7 CHAIRPERSON ANTONIO M. ROMANUCCI: Thank you.

8 Any other questions or comments before we

9 move on to Mr. McVisk?

10 All right. Mr. McVisk, the floor is

11 yours. Thank you.

12 WILLIAM MCVISK: Thank you. I hope everybody

13 can hear me. I'm using my speaker phone. If

14 there's a problem, please let me know.

15 CHAIRPERSON ANTONIO M. ROMANUCCI: We hear you

16 fine.

17 WILLIAM MCVISK: Great. Okay.

18 I am the immediate past president of the

19 Illinois Defense Counsel. Illinois Defense

20 Counsel, as most of you know, is an organization

21 made up of people -- civil litigators who represent

22 defendants and their insurance company. We

23 basically agree with almost everything Judge Murray

24 just said. I think we need to eliminate Rule 23,

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1 so I'm going to keep my comments brief.
2 As Judge Murray said, there's no need for
3 this rule anymore with additional case law. It was
4 one thing when the expense of printing volumes was
5 huge, the expense of purchasing libraries was huge.
6 That's not such a big deal anymore.
7 I guess what I would talk about is the
8 practical impact that this has had on litigators.
9 I can't tell you -- I think courts would be
10 surprised -- given the number of Rule 23 opinions I
11 see, I think courts would be surprised at how often
12 something that they have decided really does break
13 new ground, even if it's with respect to the
14 application of facts.
15 Most of my practice or a big huge part of
16 my practice is insurance coverage. And in
17 insurance coverage cases, the thing that is most
18 important in 90 percent of the cases is the
19 application of specific policy provisions.
20 I can't tell you how often I have found in
21 my research a Rule 23 decision which is the only
22 decision that is on point interpreting the policy
23 language that I've got. Now, if I can't cite that,
24 that means that I can't tell -- I can't use that

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1 for the judge and I -- basically, it's a
2 meaningless decision despite the fact that often,
3 as Judge Murray said, these Rule 23 orders are very
4 well written, they are well thought out, they
5 are -- sometimes they hurt me, sometimes they help
6 me, but at least I know which way I'm going to go.
7 But with Rule 23 being the way it is, we can't rely
8 on them. So I think both insurers and insured need
9 to be able to know how an Appellate Court has
10 interpreted this rule and be able to cite that in
11 the future.
12 Up until now, this has just not been the
13 case. And I can tell you, I've had a couple of
14 cases that I've been on when an Appellate Court
15 granted a decision, either in my favor or against
16 me on a Rule 23 order and then we've moved to have
17 it published and that has been great. Usually the
18 courts are pretty receptive to that if you can
19 explain why it is that the court needs to be
20 published.
21 But I think relying on the litigants to
22 make a motion to publish the case, that's probably
23 not the best thing either because sometimes
24 litigants don't want that result published. So

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1 they're not going to make the motion. Especially
2 when you lose a case, you're not going to have
3 something published. Insurance companies often
4 don't want even a win published, because then it's
5 going to be used against them. But I think it is
6 fair if they are published.
7 One thing I would also add is just, I
8 agree with Judge Murray's comment that it probably
9 needs to be done prospectively. We recognize that
10 a lot of the opinions or Rule 23 orders in the past
11 may have been written differently if the court was
12 aware they were going to be precedent. And I think
13 given that, it would be not appropriate to have
14 them be citable by litigants prior to the time the
15 rule changes. If the court is making its decision
16 being aware that its rule would be cited, I think
17 it might write its opinions somewhat differently.
18 And I think that is something that has to be borne
19 in mind by the Committee.
20 We have offered -- some members of our
21 task force who were looking at this thought there
22 might be some utility to Rule 23 insofar as maybe
23 some decision shouldn't be precedential, but we all
24 agree that even non-precedential opinions ought to

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1 be able to be cited just like you would cite the
2 law of a foreign jurisdiction as persuasive
3 authority. My personal opinion is I think we
4 should do away with Rule 23 all together and all
5 decisions should be something we can cite.
6 Thank you. Those are all the remarks that
7 I had.
8 CHAIRPERSON ANTONIO M. ROMANUCCI: Thank you,
9 Mr. McVisk.
10 Any questions from any members?
11 All right. Hearing none, our next speaker
12 on the same proposal is individual Clint Krislov.
13 Mr. Krislov, are you on?
14 CLINT KRISLOV: I am. Can you hear me?
15 CHAIRPERSON ANTONIO M. ROMANUCCI: We can. I
16 can hear you at least.
17 CLINT KRISLOV: Terrific. Okay. I have my
18 phone and my computer on and I'm hearing you on one
19 side and speaking on the other. Thank you,
20 Mr. Romanucci, and thank you, the Committee.
21 I come from the other side of the aisle.
22 We are an almost always plaintiff firm doing class
23 actions and public interest cases and I can tell
24 you that our experience over my 45 years of

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1 practice is that we have been -- we have had to
2 deal with Rule 23 again and again and again in
3 every different combination and permutation that
4 you can imagine.
5 The fact is, as the justice noted, the
6 rule's purpose has become obsolete. Although
7 you've got books behind me, the fact is most of the
8 record -- case recorder decision books have been
9 gotten rid of. And the fact is, you can cite
10 anything as persuasive authority. You can cite the
11 aphorisms of Ms. Piggy and Kermit and you can cite
12 Bob Dylan. Bob Dylan is -- in our submission,
13 we've cited a number of situations where either the
14 courts or the parties cite Ms. Piggy, Kermit, Bob
15 Dylan, Bruce Springsteen, you name it, because they
16 are persuasive authority, because they do ring true
17 in people's mind to support the proposition being
18 offered.
19 And if you can -- if you can cite Sesame
20 Street, the idea that you are prohibited from
21 citing the, hopefully, thoughtful opinion of
22 learned justices, that you're barred from citing
23 them, makes no sense whatsoever and indeed,
24 although we've struggled through this in the

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1 Federal Court, the Federal Rule of Appellate
2 Procedure 321 threw out this concept that there's
3 anything that you can't cite. You may have to
4 provide a copy of it. You may have to provide the
5 basis that you're quoting. That's fine and that's
6 what persuasive authority is all about. The fact
7 is the rule has always been ridiculously or
8 unevenly applied.
9 we have a retiree health care case that
10 has been going on for 30 years. We were apprised
11 of a case downstate where a district downstate had
12 rendered an Appellate decision that was a Rule 23
13 order. We had to move to intervene in that case to
14 move to have it published and, indeed, it was then
15 published. But the problem -- the amazing thing
16 about it, so now I'm cited as one of the attorneys
17 in the case if you go to look up Dell versus the
18 City of Streeter.
19 The fact is parties cite unpublished
20 rulings. And a couple of the comments that have
21 been made question does it apply to judges. Well,
22 if you go to Byrne against Hayes Beer Distributors,
23 2018 Illinois Appellate 172612, you see the
24 colloquy between my friends Justice Hymen and

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1 Justice Mason over whether the rule should continue
2 and whether it should apply to judges.
3 Now, if you can have a judge citing an
4 unpublished order, where does it come from? The
5 Judge pulls it out of the blue and nobody addresses
6 it in the briefs? That doesn't make any sense
7 either.
8 The other thing that is very bad about the
9 rule is that it suggests something that is -- that
10 cases are put into two tracks. The ones that we
11 care about and the ones that are perceived as
12 justices devoting significant attention to them and
13 all the rest of them.
14 And the fact is, the combination of
15 people's perception of our system is based on what
16 the justices do. And so if it is perceived that my
17 case has been sent to -- it's before a panel, that
18 these days getting oral argument is rather
19 challenging and then you get a decision that can't
20 be cited by anybody, the perception is that there
21 is a two-track system and justices really don't
22 care about these and that's a disservice because
23 people should not perceive that their cases have
24 been regarded as less than worthy of attention,

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1 less than -- who knows who actually dealt with
2 them.
3 And the justices don't get a pass on this.
4 The comments that the only decision that should be
5 now citable are those rendered after the rule
6 changes, we don't agree with that at all. The fact
7 of the matter is this is a part of the Illinois
8 justice system. These decisions have been made in
9 the past. We would support the order to digitize
10 all the old Rule 23 orders for whatever purpose can
11 be made of them, even if they are just to show that
12 there has been a whole series of bad decisions on
13 some area of the law because the bad decisions
14 eventually lead us, hopefully, to get to the right
15 decisions.
16 This has all been hashed out on the
17 Federal level and the Federal Rules of Appellate
18 Procedure 32.1 provide absolutely fine guidance.
19 You can cite whatever you want to cite for whatever
20 persuasive authority you think it has and the court
21 may agree or not, but that's how the system should
22 work. We don't give the justices a pass any more
23 than we give the lawyers a pass on doing a slipshod
24 job on occasion. We all err. But the fact is that

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1 all the cases should be made public and should be
2 accessible. Why not?
3 I mean, I can go into all of the facts and
4 the different situations where this has occurred,
5 but I think the fact is, harkening back to the
6 first speaker who talked about Illinois being the
7 last state to keep this distinction between
8 discovery and evidence depositions, there is a --
9 enough with the mother-may-I's for any number of
10 things.
11 The idea is to have the practice of law
12 and the rendering of decisions be fair, be open, be
13 essentially uniform, coming up with a bunch of
14 local things that make us a very unique
15 jurisdiction that's less efficient. It's not good
16 and it's not good for the perception of justice.
17 I really don't care, I suppose, about most
18 of Rule 23 because the only one that really affects
19 us all and the one that brings this on is 23(e),
20 the effective orders that you can't cite -- that
21 somebody can't cite them.
22 At the very least, we should get rid of
23 23(e). The rest of the rule, I don't know whether
24 we care or not, but the fact is that the next thing

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1 should be that we do digitize all the past
2 decisions so that we can see what the law of
3 Illinois has been. It is not secret. This is
4 public and transparency is an important aspect, an
5 important guide for justices to do in the future as
6 well.
7 I'm happy to answer any questions.
8 CHAIRPERSON ANTONIO M. ROMANUCCI: Does any
9 member of the Committee have any question or
10 comment for Mr. Krislov?
11 CLINT KRISLOV: Thank you for having me.
12 CHAIRPERSON ANTONIO M. ROMANUCCI: I appreciate
13 your time.
14 Next speaker on the same proposal is
15 Donald Ramsell. Are you on the line?
16 DONALD RAMSELL: Yes, I am and I would like to
17 thank the Committee for being given this
18 opportunity to speak.
19 I am the author of the DUI Law and
20 Practice Guidebook. So I spend a great amount of
21 time dealing with and reviewing Rule 23 decisions
22 as well as published decisions.
23 Bluntly, an opinion worth writing is an
24 opinion worth listening and Rule 23 should be

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1 appealed.
2 CHAIRPERSON ANTONIO M. ROMANUCCI: Mr. Ramsell,
3 I'm going to stop you for just one moment.
4 Please mute your phones, anyone, if you're
5 not speaking. Please mute your phones.
6 I apologize. Go ahead.
7 DONALD RAMSELL: No problem.
8 I know that one of the concerns with
9 Appellate justices, as I've spoken to them about
10 this rule before, is that they are worried that
11 they would add additional work and they would have
12 to write a different opinion, but having read many,
13 many Rule 23 decisions, I've certainly been
14 involved with more than 50 appeals myself across
15 35 years, I think that the judges take their work
16 seriously and they make every effort to ensure that
17 the outcome is fair, that the decisions are
18 logical, and that they do follow precedence.
19 So you don't -- I don't think they need to
20 change the manner in which they handle a case in
21 writing an opinion. Certainly they can -- any
22 opinion can be limited to its facts. It can be
23 noted to be fact specific. Justices can certainly
24 recognize that the opinion they write, without

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1 declaring it unpublished as we used to say, is of a
2 very limited value or very narrowly to be
3 construed. This is all a process that could be
4 used by the justices when they write an opinion.
5 There are many times, especially in my
6 world, I handle what would be considered smaller
7 cases where people may be paying \$1500 for a DUI
8 case. We appeal most of our cases pro bono because
9 there are issues that we feel will likely occur in
10 the future and we spent a great amount of time on a
11 very small case to take it up on appeal devoting
12 tens and perhaps even a hundred hours of work to
13 obtain an opinion at our cost, only to have it
14 issued as a Rule 23 order of no value for anyone.
15 Many of our cases involve suspensions where the
16 length of the suspension for the driver's license
17 is 6 months or 12 months. By the time we get the
18 decision, that suspension has already run its
19 course. Its only value is for the future, yet we
20 will get a Rule 23 order.
21 We file motions to publish frequently that
22 are denied and I, frankly, am at a loss for some of
23 the reasons that are offered. We have had cases
24 where they were dealt with issues of first

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1 impression that suddenly become a 23.
2 It is very difficult to sit in a law
3 office and have a client come into a law office
4 with a problem where we will tell them, there is an
5 Appellate decision right on point that favors you,
6 but guess what, we cannot use it. Someone else's
7 effort of one to two years is worthless to the next
8 client that walks into the office for really no
9 reason. And the public I think sees this as almost
10 a body of secret law before we had the internet.
11 There is a very great article that's
12 called Are Some Words Better Left Unpublished, a
13 law review article from the Journal of Appellate
14 Practice and Process, Volume 3, Issue 1 that was
15 written in 2001 after a decision of a Federal Court
16 in Anastasoff versus United States held that
17 unpublished opinions not being able to be cited as
18 precedent was an unconstitutional rule. Although
19 that opinion was vacated as moot, the decision
20 itself is very informative and this law review
21 article is very informative.
22 Obviously, we no longer worry about the
23 cost of publication. So the reasoning for -- the
24 two basic reasons for Rule 23, one being cost, is

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1 now irrelevant. The second being that the opinions
2 would have to be greater with greater attention to
3 detail. It would add work to an Appellate justice
4 already overworked or with a large caseload.
5 If you read the Rule 23 orders, frankly
6 they're just as good and are as well written in my
7 opinion as the published orders are. And Illinois
8 is in the minority insofar as having a rule where
9 not only is the decision not precedential, but it
10 is also not persuasive and not to be cited
11 whatsoever. There is a hybrid rule that is more
12 often used where these cases can be cited as
13 persuasive only. We don't even follow that.
14 I would suggest that Rule 23 has the
15 effect of discouraging lawyers, such as myself, or
16 those with public interests from pursuing appeals
17 on something that does matter because you can do
18 all that work and receive a Rule 23 order.
19 In my opinion, the basis for Rule 23,
20 which was primarily cost-saving, no longer exists.
21 You can still use, and frequently there are,
22 summary orders where cases can be remanded without
23 jurisdiction. There's no reason why we can't
24 continue to use summary orders in Appellate Courts,

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

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

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

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1 1970s when Appellate Courts started to employ the
2 concept of unpublished opinions.

3 CHAIRPERSON ANTONIO M. ROMANUCCI: Thank you,
4 Mr. Ramseil.

5 Anybody have any questions or comments?

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

10 Are you on the line?

11 BENNA CRAWFORD: I am.

12 CHAIRPERSON ANTONIO M. ROMANUCCI: The floor is
13 yours.

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

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

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<p>1 protective order cases prior to them being served 2 with summonses.</p> <p>3 Currently, Rule 7.3 regulates solicitation 4 letters sent to a prospective client, but the rule 5 does not address any risk of harm that such a 6 letter might cause to a prospective adverse party.</p> <p>7 In 2018, we discovered at least one law 8 firm had been sending solicitation letters 9 routinely to respondents in order of protection 10 cases. We believe this practice continues, having 11 seen a letter as recently as late 2019.</p> <p>12 Some solicitation letters arrived at the 13 respondent's home before they were served with the 14 petition for order of protection. In at least one 15 of our cases, the respondent was still living with 16 the petitioner when the solicitation letter arrived 17 in the mail.</p> <p>18 Sending solicitation letters to 19 respondents in order of protection cases before 20 they have been served with summons creates a high 21 risk of harm to petitioners and undercuts the very 22 purpose of allowing a party to seek an ex parte 23 court order.</p> <p>24 The most dangerous time for survivors of</p> <p style="text-align: right;">57</p>	<p>1 of its contact. Therefore, the time between 2 obtaining an order of protection and service upon 3 the respondent is a particularly vulnerable time 4 for petitioners. They have taken the steps of 5 separating and seeking legal protection from their 6 abuser, but they do not yet have the ability to 7 enforce the order.</p> <p>8 Because a judge only enters an emergency 9 protective order ex parte after a finding that 10 prior notice of the court proceeding would put 11 petitioner at a great risk of harm, attorneys 12 should be prevented from circumventing that 13 judicial finding. This proposed rule change 14 barring attorneys from soliciting respondents in 15 protective order cases prior to service of summons 16 is narrowly tailored to bar solicitation for a very 17 short period of time.</p> <p>18 The Illinois Domestic Violence Act and 19 similar protective order statutes provide for 20 expedited service of summons. Specifically, those 21 statutes mandate that these summons take precedence 22 over other summons and must be served at the 23 earliest possible time.</p> <p>24 This proposed rule change, therefore,</p> <p style="text-align: right;">59</p>
<p>1 domestic violence is when they leave the 2 relationship. According to the National Domestic 3 Violence Hotline, 75 percent of all serious 4 injuries in abusive relationships occur when the 5 survivor ends the relationship.</p> <p>6 In 2000, the Chicago Women's Health Risk 7 Study found that in 45 percent of the homicides in 8 which a man kills a woman, an immediate 9 precipitating factor of the fatal incident was the 10 woman leaving or trying to leave the relationship.</p> <p>11 That same study found that among women who 12 tried to leave their abusers, 69 percent suffered 13 severe abuse since the attempted departure. The 14 Illinois Domestic Violence Act and other laws which 15 allow for protective orders permit petitioners to 16 obtain those emergency protective orders ex parte 17 if they fear that prior notice would put them in 18 danger. Thus, every ex parte emergency protective 19 order is premised on the judicial finding that 20 prior notice would put the petitioner in danger.</p> <p>21 However, the enforcement of such ex parte 22 orders does not begin until the respondent is 23 served. A respondent can only be arrested for 24 violating the order after having actual knowledge</p> <p style="text-align: right;">58</p>	<p>1 appropriately balances the need to keep survivors 2 safe against private attorneys' interests in 3 soliciting business and respondents' interest in 4 obtaining an attorney.</p> <p>5 I would like to note that passage of 6 Public Act 101-0255 amending the Illinois Domestic 7 Violence Act, Stalking No Contact Order Act, and 8 Civil No Contact Order Act to keep emergency 9 protective orders out of the public record until 10 after service on respondent does not in any way 11 diminished the need for this rule change. The act 12 curbs the actions of clerks and other court 13 officials by prohibiting them from releasing court 14 records prior to service of summons.</p> <p>15 Protective order court proceedings, 16 however, remain open to the public. Nothing in the 17 act prevents attorneys or their employees from 18 systematically observing court proceedings where 19 these emergency proceedings are held and using the 20 information gained to solicit respondents.</p> <p>21 Emergency protective orders are a 22 necessary and critical tool meant to protect 23 petitioners who have made the decision to separate 24 from their abusers under extraordinary risk to</p> <p style="text-align: right;">60</p>



1 their physical safety. Amending Rule 7.3 of the
 2 Illinois Rules of Professional Conduct to bar
 3 solicitation of respondents prior to service
 4 safeguards that protection.
 5 Thank you.
 6 CHAIRPERSON ANTONIO M. ROMANUCCI: Thank you,
 7 Ms. Crawford.
 8 Does anyone on the Committee have any
 9 questions or comments for Ms. Crawford?
 10 I just want to confirm one thing,
 11 Ms. Crawford. I believe that when this went to the
 12 Committee, there was a recommendation for a
 13 comment. You have no issue with the comment, is
 14 that correct?
 15 BENNA CRAWFORD: That is correct.
 16 CHAIRPERSON ANTONIO M. ROMANUCCI: Okay.
 17 Anything else from anyone?
 18 Thank you, Ms. Crawford.
 19 BENNA CRAWFORD: Thank you.
 20 CHAIRPERSON ANTONIO M. ROMANUCCI: Next, we
 21 move on to Proposal 19-05 and the proponent of that
 22 is Mr. Eaton.
 23 Are you on the phone, Mr. Eaton?
 24 TIMOTHY EATON: Yes, I am, Mr. Chair. Thank

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1 presidents of the Appellate Lawyers Association.
 2 Not all, but most. And these are common issues or
 3 problems that they run into in practice and we
 4 would just like to have the rules modified to
 5 improve Appellate practice with these
 6 modifications.
 7 The first deals with 306, which the
 8 Committee knows are interlocutory appeals which are
 9 file by permission. So you file a petition with a
 10 supporting record and if the petition is granted by
 11 the Appellate Court, you can supplement the record
 12 or the court can order the entire record and the
 13 modification that we're asking is that the party
 14 can request the clerk to prepare the entire record.
 15 Right now, that's not done. The Clerk's
 16 Office does not believe they have the authority
 17 where a party requests the entire record and that
 18 just makes sense because the court should have the
 19 entire record whether they order it or not. It's
 20 much simpler if we pay for it ultimately. So we
 21 think that modification makes sense.
 22 315, when someone files a petition for
 23 leave to appeal, the time period for running is
 24 from the decision of the Appellate Court or the

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1 you.
 2 CHAIRPERSON ANTONIO M. ROMANUCCI: You may
 3 proceed.
 4 TIMOTHY EATON: I know you've heard a number of
 5 comments for Rule 23. There was a letter which we
 6 sent to the Supreme Court several years ago, which
 7 was signed by Mike Reagan and myself on behalf of
 8 the special committee that was comprised of the
 9 ISPA CPA representatives of the IJA and the
 10 Appellate Lawyers Association proposing a
 11 modification to Rule 23 and I believe it was
 12 submitted to this committee recently as an
 13 alternative to consider. I won't discuss anything
 14 further other than to say we prepared a report,
 15 looked at other jurisdictions, and I certainly
 16 support the revision or modification as we set
 17 forth in that letter. I would be happy to answer
 18 any questions on that as well.
 19 The other proposal that I have had to do
 20 with what was presented so far, somewhat mundane,
 21 but I'll proceed anyway because I think it will be
 22 helpful to Appellate practitioners. This comes
 23 from the Chicago Bar Association's committee on
 24 Appellate practice, which is comprised of all past

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1 denial of a petition for rehearing in 35 days from
 2 that point.
 3 Sometimes the Appellate Court files a
 4 corrected opinion after the initial opinion and the
 5 question comes up, does that also toll the time to
 6 file a petition for leave to appeal. The Clerk's
 7 Office says no and I think they're right and I know
 8 I get a lot of questions on this issue. We're just
 9 making it clear in the rule that if all the
 10 Appellate Court is doing is filing the corrected
 11 opinion where there has been no petition for
 12 rehearing, that does not toll the time for filing a
 13 petition.
 14 So that's just a clarification we think is
 15 important. It does arise more often than you would
 16 think and we will encourage the Appellate Court to
 17 file correct opinions, but that has no impact on
 18 whether or not the time for filing a petition for
 19 leave to appeal is affected.
 20 Rule 316 is the next rule that we wanted
 21 to address and that is a petition to the Appellate
 22 Court to certify the question to the Supreme Court.
 23 For whatever reason, 316 has no page limits. I
 24 don't think the court ever intended that. So what

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1 we're asking is that the page limits be the same as
2 in the Supreme Court Rule 367, which is a petition
3 for rehearing, which I believe is 8100 words or
4 27 pages. So we would simply ask that that be
5 amended.
6 Since we've submitted this package, we've
7 received some requests for filing amendments and
8 there is one I would like to just mention to you
9 and I can follow up in writing on this. What we've
10 added is the length of the application should be
11 governed by Supreme Court Rule 367. We'd like to
12 add the length of the application and answer.
13 Because I think the rule should indicate that if an
14 answer is requested by the court, it be limited to
15 the same number of pages, which is 8100. So I will
16 follow up in writing just to amend our proposal to
17 include both the application and the answer.
18 The next rule is 341. In Federal Court,
19 it is Appellate procedure, parties file table of
20 contents and table of cases. Most Appellate
21 practitioners, and I believe the court does as
22 well, likes points of authorities, but many of us
23 also file a table of contents just for the
24 cleanness of the court. It's not permitted in the

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1 rule and the only reason why one would not do it,
2 even though it would be more convenient, is if it
3 would not -- it would count towards the word count
4 because it's not specifically excluded in the Rule
5 341.
6 So we would, one, propose a table of
7 contents and, two, any words in the table of
8 contents would be excluded, or pages, from the
9 limit that one would be allowed. And then also
10 with respect to the rule itself under H, we would
11 have as the first point, table of contents.
12 And then since we have proposed this,
13 there has been a proposed amendment and I'd leave
14 this up to the Committee for how they want to
15 handle it. I don't think we ever intended that the
16 table of contents would include the points and
17 authorities followed by an additional section of
18 points of authority. That would be too repetitive.
19 So it seems to me the points of
20 authorities would go into the table of contents and
21 then you eliminate the second item in that rule,
22 which is points of authorities, or you can just
23 simply have a reference to the table of contents to
24 the points and authority and what pages they start

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1 and then it could be filed by points of authority.
2 So that's a minor amendment. Again, I'll
3 follow up on writing in that. We think it will be
4 helpful to practitioners to be able to have a table
5 of contents because points and authorities only
6 covers argument and this would allow the court to
7 look to the jurisdictional statement or nature of
8 the case or other items which are not currently
9 included in the points of authority.
10 Finally, Supreme Court Rule 368, just to
11 be consistent with our prior proposal, under 315,
12 if a corrected opinion was filed, it should not
13 have any bearing on the transmission of the
14 mandate. It shouldn't delay it. So if the court,
15 two weeks after the opinion the Appellate Court has
16 issued, wants to file a corrected opinion, it does
17 not have any impact on when the mandate would be
18 returned.
19 And that's all I have, Mr. Chair, and
20 would welcome any questions.
21 CHAIRPERSON ANTONIO M. ROMANUCCI: Mr. Eaton, I
22 want to confirm that you're going to follow up with
23 us on 318(c) and 341, true?
24 TIMOTHY EATON: That's correct.

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1 CHAIRPERSON ANTONIO M. ROMANUCCI: The proposal
2 that you have -- are requesting amendments, they
3 are to be taken individually and not in their
4 entirety so if one fails or one goes, not -- so
5 goes the other one also, is that correct?
6 TIMOTHY EATON: Yes. The proposed
7 amendments -- by the way, Mr. Chair, I believe you
8 said 316. That's what I intended.
9 CHAIRPERSON ANTONIO M. ROMANUCCI: No. I have
10 318(c) --
11 TIMOTHY EATON: No. It's -- sorry. It's 316.
12 The proposed amendment would have the application
13 under 316 be the same thing as under 367 and we
14 would propose amending it to include the answer
15 would be the same length as under 367 as well.
16 CHAIRPERSON ANTONIO M. ROMANUCCI: All right.
17 So you're going to follow up on 316 and 341?
18 TIMOTHY EATON: Yes, I will.
19 CHAIRPERSON ANTONIO M. ROMANUCCI: Thank you.
20 Thank you for that clarification.
21 Anyone else, questions for Mr. Eaton?
22 Thank you very much.
23 TIMOTHY EATON: Thank you.
24 CHAIRPERSON ANTONIO M. ROMANUCCI: Our next

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1 speaker, Seth Horvath.
2 Seth, you are speaking on two proposals.
3 Are you on the phone or on Zoom?
4 SETH HORVATH: I am, Mr. Chair. Are you able
5 to hear me okay?
6 CHAIRPERSON ANTONIO M. ROMANUCCI: Yeah. I can
7 hear you fine.
8 Just so I understand, how -- are you going
9 to use up your ten minutes for both, do you need
10 ten minutes apiece? Just so I can kind of set my
11 time limit.
12 SETH HOVATH: I think I can cover what I had
13 planned to say within one ten-minute block, so I'll
14 try to address both within that ten minutes. I
15 would also like to, if the Committee would indulge
16 me, on behalf of Proposal 19-11 as well on behalf
17 of the Appellate Lawyer's Association. That's the
18 Rule 23 proposal. So I would propose commenting on
19 three proposals during my ten-minute allotment.
20 CHAIRPERSON ANTONIO M. ROMANUCCI: That's fine.
21 If you go a little bit over, that's okay. You're
22 speaking on at least two and now you want to
23 comment on 19-11. So go ahead. Thank you so much.
24 SETH HOVATH: Much appreciated. Thank you and

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1 thank you, other members for the Committee, for
2 allowing us an opportunity to speak today. The
3 Appellate Lawyers Association is always very
4 enthusiastic about having a chance to present to
5 the Illinois Supreme Court Rules Committee and
6 offer the thoughts of our organization on various
7 pending proposals.
8 Today we are not presenting any of our own
9 proposals. We are simply here as a commentator on
10 the three proposals I just discussed with the
11 chair. That's Proposal 19-14, which has a
12 jurisdictional component to it; Proposal 19-11,
13 which pertains to Rule 23; and Proposal 19-05,
14 which Mr. Eaton just walked through in some detail
15 that contains various technical amendments to the
16 Appellate rules. I will do my best to get through
17 those in the remainder of my ten-minute allotment.
18 We have submitted to the Committee a
19 letter that articulates the ALA's position on
20 Proposals 19-14 and 19-05 that is in the public
21 comment section of the Supreme Court's website. It
22 was submitted on 6-16 -- I'm sorry, submitted on
23 6-10. So my comments are designed to hit some of
24 the high points, if you will, of our written

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

4 So without further ado, I want to turn,
5 first, to Proposal Number 19-14, which has a
6 jurisdictional element to it. That involves
7 303(a)(2). The rule is the rule that says a motion
8 to reconsider a ruling on a post judgment motion
9 does not toll the time for filing a notice of
10 appeal. This proposal was put forward by Judge
11 McLaren. He spoke earlier today regarding his
12 thoughts for the need for it.

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

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

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

7 Motion two was then filed within the
8 30-day window prior to the time of filing notice of
9 appeal. The majority and concurrence in Orahim had
10 a very extensive disagreement and discussion over
11 whether the Circuit Court retained jurisdiction to
12 hear the second motion and the proposal is an
13 attempt to clarify the scope of Rule 303(a)(2) and
14 set forth in writing that the Circuit Court does,
15 in fact, maintain jurisdiction to hear motions to
16 reconsider the denial of post judgment motions.

17 The ALA respectfully opposes the proposed
18 amendment to Rule 303(a)(2). It seems to the ALA
19 that this proposal is perhaps better targeted to
20 the criminal rules than the civil rules. Rule
21 606(b) is a criminal rule of Appellate procedure
22 that addresses the effect of the post judgment
23 motion on the time for filing a notice of appeal in
24 a criminal case.

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

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

14 So with those considerations in mind, the
15 ALA respectfully opposes the proposed amendment of
16 303(a)(2) and suggests that perhaps the concept of
17 an amendment to address this criminal sentencing
18 issue is better taken up in the framework of Rule
19 606.

20 I'm going to turn now quickly to the Rule
21 23 proposal. That's number 19-11. Just to offer
22 up some comments that I hope encapsulate and echo
23 the position the ALA has historically taken on this
24 rule. The ALA continues to support the position of

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

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

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

20 As that letter points out, in the early
21 2000s, the Rule 23 limit on opinion length was
22 abolished eliminating hybrid Rule 23 and published
23 orders and at the same time, Rule 23 orders were
24 made available electronically for public

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1 consumption and for use by members of the Bar.

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

8 I'll use my time now to address some of
9 the points that were brought up with respect to
10 Proposal Number 19-05. The Rule 306 component of
11 19-05 was discussed by Mr. Eaton. The current
12 version of Rule 306, which involves expedited
13 interlocutory appeals, states that a court may
14 order the appellants to file additional portions of
15 the record on appeal in an expedited interlocutory
16 appeal under Rule 306.

17 Under the proposal, any party would be
18 able to ask the Circuit Court to file additional
19 portions of the record. We submit that the rule
20 already appears to allow what the proposal is
21 suggesting insofar as it allows either party, after
22 a Rule 306 petition has been granted, to request
23 preparation of the record in accordance with Rule
24 321 and related rules. So the rule already seems

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

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

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

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

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

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

15 SETH HOVATH: Thank you.

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

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

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

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

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

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

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

19 CHAIRPERSON ANTONIO M. ROMANUCCI: Thank you.

20 Are there any questions for Mr. Horvath?

21 MICHAEL I. ROTHSTEIN: I have one.

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

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

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

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

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

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1 which are premised on the notion that an amendment
2 of the rule could cause a bit of confusion if it's
3 textually amended to refer to jurisdiction.
4 Again, a jurisdiction is a concept that's
5 not often dealt with directly in the language of
6 the rule and the rule proposal as currently phrased
7 would utilize language that doesn't seem to have
8 come from any other aspect of the rules or from any
9 other case law that was cited. So to the extent
10 this could be addressed in a comment, I think that
11 could go quite a way's towards addressing the ALAs
12 concern about unnecessarily injecting confusion
13 into the written language of the rules.
14 The ALA is obviously cognizant of the fact
15 that lots of practitioners don't do Appellate work
16 on a regular basis. So we try to be mindful of
17 proposals that change the status quo of the rules
18 in some way and we try to think forward about how
19 well-intentioned changes might complicate the rules
20 in a way that would affect non-regular Appellate
21 practitioners.
22 So the short answer to your question is
23 addressing this issue in a comment may be something
24 that the ALA would find appropriate under the

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1 circumstances.
2 MICHAEL I. ROTHSTEIN: Following up on the
3 basis for the objection is that the rules -- I have
4 not surveyed them myself. You're suggesting they
5 do not typically reference jurisdiction and I agree
6 that Appellate jurisdiction can be a very
7 complicated concept. But lawyers who apply the
8 rules have to deal with the concept whether it's
9 mentioned in the rule or not. So I guess I'm a
10 little puzzled why the fact that the word
11 jurisdiction would be in the rule would be not
12 helpful to practitioners. That would certainly
13 trigger to them that they would have to research
14 how jurisdiction would apply in this circumstance
15 and it avoids the confusion that two justices of
16 the Second District Court of Appeals apparently
17 experienced.
18 SETH HOVATH: It's certainly a possibility that
19 adding language could have a clarifying effect and
20 I submit it's also the possibility that it might
21 not. It seems that this provision has caused a bit
22 of consternation and depending on the viewpoint of
23 the person looking at the provision, it seems to
24 result in different interpretations.

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1 I think that we, as an organization, are
2 of a mindset that given the notion that
3 jurisdiction is typically expressed or comments on
4 it are typically expressed in case law rather than
5 in rule. If there is a way to continue to observe
6 that distinction, perhaps it's useful and
7 consistent with practice.
8 And the rule, as we've reviewed it, as
9 we've analyzed it in a civil context, it does not
10 seem to bar the type of motion practice that Judge
11 McLaren's proposal was concerned with. So it's a
12 two-point critique of the proposal, which starts
13 with the fact that the rule seems to allow what
14 Justice McLaren would have it clarify, but
15 moreover, a concern that by attempting to
16 clarifying the rule, we would simply further
17 confuse and the notion of address via comments has
18 some appeal for those reasons.
19 CHAIRPERSON ANTONIO M. ROMANUCCI: Mike, do you
20 have any other questions?
21 MICHAEL I. ROTHSTEIN: This is a little unfair,
22 but we still have in the audience Mr. Eaton, one of
23 the State's most imminent scholars of Appellate
24 procedure and also a former president of the

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1 Appellate Lawyer's Association although, he is
2 not -- and many other of our associations. He's
3 not here in that capacity today. I'm just curious
4 as to whether or not Mr. Eaton has given thought to
5 or has any thoughts or comments on Proposal 19-14
6 that I've been discussing with Mr. Horvath.
7 TIMOTHY EATON: No, I don't, Mr. Rothstein.
8 Although, I think an addition to the comments may
9 be appropriate because I can see how that would be
10 clarifying because obviously if two justices of the
11 Appellate Court believe it says something
12 different, I think it's worthy of at least some
13 comment as to what it means.
14 MICHAEL I. ROTHSTEIN: Thank you. I have no
15 other questions.
16 HON. JAMES MURRAY, JR.: With all due respect,
17 Mr. Chairman, can I comment since Mr. Horvath
18 criticized my rule, my request to modify the rule
19 and basically invoked something that was not part
20 of the agenda on Rule 23? I'd like to make one
21 point if I could. It will only take a minute.
22 CHAIRPERSON ANTONIO M. ROMANUCCI: One point,
23 just one minute because we're --
24 HON. JAMES MURRAY, JR.: That's all I want.

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

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

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1 CHAIRPERSON ANTONIO M. ROMANUCCI: So hopefully
2 we have everyone back on. We're about one minute
3 past the hour right now. Are we ready to start
4 with our next speaker? Lauren Riddick?
5 LAUREN RIDDICK: Yes, I'm here.
6 CHAIRPERSON ANTONIO M. ROMANUCCI: Very good.
7 Ms. Riddick, you are a proponent of 19-10 and the
8 floor is yours.
9 LAUREN RIDDICK: Thank you so much for having
10 me. My name is Lauren Riddick. I'm with Codilis &
11 Associates and I have two suggested changes to
12 113(f), which deals with mortgage foreclosure sale
13 notices. I'll be brief.
14 First, the rule as it currently stands
15 requires hardcopy mailing for mortgage foreclosures
16 sale notices despite the electronic notice model
17 update provided by 11(c). This appears to be an
18 unintentional oversight. Therefore, the proposal
19 permits electronic notice to those parties
20 providing an e-mail address. Secondly, to avoid
21 uncertainty and inconsistency, the proposal
22 directly references the notice exception provided
23 in 1507(c)(4) to those sales occurring within
24 60 days of a judgement.

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

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

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

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

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

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1 such practice.
2 That sentence that I just read to you has
3 proven to be extremely problematic for potential
4 applicants as far as understanding the eligibility
5 requirements. It's been a thorny issue for the
6 Board in determining how do you define where the
7 practice was performed physically.
8 We believe that denying jurisdictions
9 specifically, what it means for purposes of Rule
10 705 will add some clarification and what the Board
11 of Admissions is proposing is that you basically
12 take the language that is implicit in the preamble
13 and you reiterate it explicitly in Rule 705(d).
14 Note that the preamble talks about applicants who
15 have been licensed to practice in any United States
16 state, territory, or the District of Columbia for
17 no fewer than three years.
18 What the Board is proposing is that in
19 subparagraph (d), where it speaks of the applicant
20 establishing good disciplinary standing in every
21 jurisdiction in which he or she has ever been
22 admitted, we are proposing that for purposes of
23 this rule the term jurisdiction shall mean any
24 United States state, territory, or the District of

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1 Columbia. The reason we are proposing to make that
2 definition explicit is because it is not uncommon,
3 I would say it happens between half a dozen to a
4 dozen times a year, potential applicants will
5 insist that they are eligible for admission on a
6 motion under Rule 705 when they have practiced in a
7 state jurisdiction that differs from the state
8 jurisdiction where they actually hold a law
9 license.
10 That causes problems as far as
11 interpreting and implementing the requirement in
12 Rule 705(i) that for purposes of this term -- of
13 this rule, the term lawful, and what that means is
14 lawful practice. The definition of lawful practice
15 shall mean the practice was performed physically
16 and without Illinois and either physically within a
17 jurisdiction in which the applicant was licensed or
18 physically within a jurisdiction in which a lawyer
19 not admitted to the Bar is admitted to engage in
20 such practice.
21 From time to time, we are contacted by
22 potential applicants who assert that they practice
23 exclusively Federal law, that they are patent
24 lawyers, that they are Federal immigration lawyers,

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1 that they are Federal income tax lawyers. However,
2 they have worked for private firms, private
3 entities. In some cases, they've hung out, they're
4 single, and they're sole practitioners.
5 In some of these instances, the
6 individuals attempting to apply under Rule 705
7 acknowledge that they've actually set up offices
8 within the state of Illinois and their argument
9 goes along the lines of, well, my jurisdiction is
10 the jurisdiction of the Federal Courts or the
11 jurisdiction of the U.S. Patent and Trademark
12 Office or the jurisdiction of the various Federal
13 Immigration Tribunals.
14 Even in cases when the individual is
15 within Illinois, has an office within Illinois,
16 they assert that, look, as far as my practice of
17 law, I'm not really practicing in Illinois or I'm
18 not really practicing in -- let's say the person
19 bears a law license from the State of Missouri.
20 The person will say I'm not really practicing law
21 in Missouri. I'm practicing law in the Federal
22 system.
23 It is the position of the Board of
24 Admissions that that is not and cannot be what the

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1 Illinois Supreme Court intended. Again, if one
2 refers to the preamble, the very first words in
3 Rule 705, it's clear that the Illinois Supreme
4 Court was speaking of applicants who are licensed
5 in the highest court of law in a United States
6 state, territory, or the District of Columbia.
7 And as far as the argument that, well, my
8 Federal practice comports with Rule 705(i), one of
9 the specific exceptions that is already noted in
10 Rule 705(i), basically an exception to the
11 requirement that you have to show the practice was
12 performed physically outside of Illinois and within
13 a jurisdiction where you were licensed, is practice
14 falling within subparagraph (g)(3) or (g)(6). If
15 one goes -- if one refers to Rule 705(g)(3) and
16 Rule 705(g)(6), those are provisions defining what
17 the practice of law is and (g)(3) applies to
18 attorneys who are employed by the Federal Courts.
19 Rule 705(g)(6) covers attorneys who work
20 for the Federal government, Federal agency in some
21 capacity, such as a United State's Attorney or, for
22 example, a lawyer who works in the United States
23 military as a judge advocate.
24 Those exceptions, the court would not have

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

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

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

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

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

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

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

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

11 DUANE SCHUSTER: Thank you, sir.

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

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

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

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

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1 speaker phone by any chance?

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

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

7 Amy, are you having any problem hearing?
 8 AMY BOWNE: (Nonverbal response.)

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

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

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

24 Presently, a demand for possession or a

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

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

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

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

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1 lease also are rarely attached to the eviction
 2 complaint.

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

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

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

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1 notice or demands prior to a court appearance.
 2 The rule would also reduce the need for
 3 discovery of these crucial documents, although the
 4 rule is not intended in any way to preclude
 5 discovery in these cases.

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

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

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

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1 defenses.

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

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

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

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

16 Any questions or comments for his Honor?
 17 Maybe I just -- just anecdotally, if you
 18 could share some examples, maybe some better
 19 everyday examples of where the problems come in,
 20 not only for on behalf of the litigants, but for
 21 the judges when all the documents are not attached.
 22 That's what it sounds like we're talking about
 23 here. A little more transparency, having
 24 everything available to everyone at the outset. Is

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1 that pretty much the goal here?
 2 HON. JORGE ORTIZ: Absolutely. Everyone would
 3 know what is expected of them, what's required.
 4 This is the basis for the action. Here's the
 5 documents. Here's the evidence. This would reduce
 6 the number of continuances. This would reduce the
 7 number of dismissals I think also due to a failure
 8 to have the required documentation.

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

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

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

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1 better practice and, as I said earlier, bring the
 2 Eviction Act in synch with Section 2-606 of the
 3 Code of Civil Procedure.
 4 CHAIRPERSON ANTONIO M. ROMANUCCI: Anyone have
 5 any questions or comments, follow-up?
 6 Thank you very much, Judge Ortiz.
 7 HON. JORGE ORTIZ: Thank you.
 8 CHAIRPERSON ANTONIO M. ROMANUCCI: Next up, we
 9 have presenting on the same topic is Samira Nazem.
 10 Are you on the Zoom call?
 11 SAMIRA NAZEM: Yes, I am. Can you hear me?
 12 CHAIRPERSON ANTONIO M. ROMANUCCI: We can hear
 13 you just fine. Thank you.
 14 SAMIRA NAZEM: Great. Thank you.
 15 Good afternoon, everyone, and thank you
 16 for the honor of speaking in support of Proposal
 17 20-07. I will try to keep my remarks brief because
 18 I know many other people are speaking about the
 19 same rule and it's getting quite late.
 20 My name is Samira Nazem. I'm the director
 21 of Pro Bono and Court Advocacy with the Chicago Bar
 22 Foundation. I wanted to just add a little bit of
 23 background about how this rule proposal originated
 24 and to echo some of the points made by Judge Ortiz

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1 assistance programs, or other services because they
 2 did not have the documentation necessary to be
 3 reviewed and screened by those programs; and some
 4 cases just being slowed down and delayed because of
 5 the lack of basic information core to the case.
 6 So identifying the common theme in all of
 7 this was that the case files were missing the basic
 8 foundational information, including the eviction
 9 notices and the lease.
 10 The Committee drafted a rule proposal and
 11 then shared it with the Access to Justice
 12 Commissions that would rectify this issue by
 13 requiring the landlord produce this basic
 14 documentation along with the eviction complaint.
 15 As Judge Ortiz noted, this does not create
 16 a significant burden for the landlord since these
 17 are documents that already exist and should be in
 18 the landlord's control and are documents that are
 19 necessary to establish the case and will need to be
 20 provided eventually anyway. But by producing this
 21 information from the get-go, the result of the
 22 complete case file will allow for greater
 23 efficiency and a more transparent process with all
 24 of the stakeholders.

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1 just a moment ago.
 2 The idea for this rule originates the from
 3 the Circuit Court of Cook County's Pro Se Advisory
 4 Committee. That committee is a coalition of
 5 representatives from the judiciary, the court, the
 6 Clerk's office, the Sheriff's office, the private
 7 Bar and legal aid community, and other stakeholders
 8 who are interested in Access to Justice and
 9 improving experience of people about lawyers in the
 10 Circuit Court.
 11 Several committee members expressed
 12 concerns about some of the challenges they were
 13 seeing amongst self-represented litigants, both
 14 tenants and landlords in the eviction courtrooms in
 15 Cook County. And those challenges, some of which
 16 Judge Ortiz outlined a moment ago, included tenants
 17 would arrive at court without having a clear
 18 understanding of the allegations against them that
 19 gave rise to the eviction case; landlords would
 20 arrive at court only to find their cases were
 21 continued or dismissed because they didn't have the
 22 required notices to establish their case and move
 23 forward; tenants and landlords both were unable to
 24 get assistance from legal aid organizations, rental

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1 I do also want to stress that this
 2 proposal is even more timely now because many of
 3 our courts are anticipating an increase in eviction
 4 filings in the coming months as a direct result of
 5 the COVIC-19 pandemic. Many of these courtrooms
 6 which are already high volume and underresourced
 7 will be stretched even further as we see more cases
 8 coming through the court system.
 9 Our legal aid mediation rental system
 10 programs and others will also be stretched very
 11 thin and we'll see a lot of stresses on our court
 12 system and our legal system and legal aid support
 13 system in the coming months and it's more critical
 14 than ever that we look for ways to streamline this
 15 process and increase efficiency for the courts and
 16 for all of the stakeholders.
 17 As Judge Ortiz noted, this rule is
 18 intended simply to provide greater transparency and
 19 efficiency and not to create any additional burdens
 20 or work for any of the stakeholders. It will allow
 21 tenants to have a clearer understanding from the
 22 time they receive the eviction complaint of what
 23 the allegations against them are so that they can
 24 adequately prepare or seek appropriate help from

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1 legal aid or other organizations.
 2 It will ensure that landlords have their
 3 paperwork in order so cases won't be delayed or
 4 dismissed creating a burden on the court system and
 5 potentially requiring more court dates at a time
 6 when we're all trying to keep the number of people
 7 in the building to a minimum and it will allow
 8 legal aid organizations and mediation programs and
 9 other support systems to more effectively triage
 10 cases and provide much needed assistance to
 11 self-represented litigants to help negotiate
 12 settlements and to ultimately reduce the burden on
 13 the court and to reduce the harm of eviction in our
 14 community by allowing for the best possible
 15 outcomes in these situations.
 16 And judges will have access to more
 17 complete case information with a predicate notice
 18 and release provisions are included as part of the
 19 case file, rather than having to wait until
 20 potentially the date of trial to see those
 21 documents for the first time.
 22 I don't want to take up too much time. I
 23 know it's late and I have other colleagues who will
 24 be speaking more specifically about how the rule

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1 including one where we see a very high volume of
 2 eviction cases. Every year we conduct about 65,000
 3 legal consultations with clients in all legal
 4 subjects with evictions being our highest volume
 5 issue. In a year, we advise pro se litigants in
 6 usually over 6,000 landlord-tenant matters.
 7 So like the other legal aid agencies that
 8 are involved in our discussion today, CARPLS
 9 advises pro se tenants in evictions, but unlike our
 10 colleagues, CARPLS also helps pro se landlords as
 11 well, such as a senior citizen who owns a two-flat,
 12 lives in one of the units and rents out the other.
 13 CARPLS advises on both sides of this
 14 eviction equation and before my current role at
 15 CARPLS, I actually practiced in the Cook County
 16 eviction courts on behalf of private and public
 17 landlords, so I really understand the perspective
 18 of the landlords, so today I'd like to speak on why
 19 the proposed rule is a much needed improvement from
 20 both sides' perspective.
 21 So first, as to the tenants, requiring
 22 attachment of the 5, 10, or 30-day notice to the
 23 eviction complaint will really help identify to the
 24 tenant and his counsel, if he has one, any initial

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1 will impact their practices and, again, create
 2 better outcomes and efficiency for everyone.
 3 But I want to thank everyone for the
 4 opportunity to speak and to encourage you to adopt
 5 this proposal because it will make the court system
 6 more fair, efficient, and transparent for everyone.
 7 CHAIRPERSON ANTONIO M. ROMANUCCI: Thank you.
 8 SAMIRA NAZEM: Thank you.
 9 CHAIRPERSON ANTONIO M. ROMANUCCI: Does anyone
 10 have any questions or comments for Ms. Nazem?
 11 Okay. Hearing none, Mr. Wrona [sic] are
 12 you on the Zoom call?
 13 PATRICIA WRONA: Yes. This is Patricia Wrona.
 14 Thank you very much, Mr. Chairman.
 15 Distinguished members of the Committee,
 16 I'm Pat Wrona. I'm the director of legal services
 17 at CARPLS Legal Aid in Chicago and it's my pleasure
 18 to be before the Committee today to speak in favor
 19 of proposal 20-07, this proposed new rule on
 20 eviction pleadings.
 21 So CARPLS runs Cook County's legal aid
 22 hotline as well as the state-wide Illinois Armed
 23 Forces Legal Aid -- Legal Aid Network hotline. We
 24 also operate four court-based advice desks,

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1 defenses of notice defects or service defects.
 2 Many tenants report to us that they never got any
 3 notice, but the landlord is always going to have
 4 something to hand up as part of their case in chief
 5 and they often do so very quickly, never showing it
 6 to the tenant, their opponent. The tenant may not
 7 know to ask to review the exhibit before it's
 8 received by the court. Some judges don't raise the
 9 issue, asking the tenant, did you receive this
 10 notice? How did you receive it? So at trial, the
 11 tenant has not seen, nor is even really allowed to
 12 lay eyes on this proffered notice and affidavit of
 13 service.
 14 Attaching this notice to the complaint
 15 will give the tenant a reasonable opportunity to
 16 review and fashion a defense based on that notice.
 17 As the correct notice in a proper form that has
 18 been properly served is a jurisdictional
 19 prerequisite in most eviction actions, it is
 20 reasonable to give the tenants and their attorneys
 21 the fullest opportunity to review this important
 22 exhibit.
 23 Service of that notice is also a problem.
 24 If the notice and its affidavit of service were

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1 attached to the complaint, the tenant would have a
 2 meaningful opportunity to review defects on how the
 3 notice was served.
 4 Many landlords just shove the notice under
 5 the door, they stick it in a mailbox and yet, they
 6 fill out in the affidavit the tenant was personally
 7 served. The tenant may not ever have even actually
 8 received it.
 9 Our permitted manners for the service of
 10 notices are in place to protect the due process of
 11 tenants. Landlords should be required to forward
 12 those specifics with the complaint so the tenants
 13 can review and formulate any objections or defenses
 14 that they have to the service of the notice.
 15 Similarly, attaching the lease and its
 16 provisions alleged to be breached is important in
 17 formulating the tenant's substantive defenses. As
 18 tenants often -- often don't even have a copy of
 19 their lease. Tenants very often say, well, I
 20 signed the lease, I gave it to the landlord and he
 21 never gave me a final signed copy back. So I
 22 really have no idea what provision of the lease I
 23 may have violated because I've never read the lease
 24 because I don't have it.

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1 Particularly in eviction, which is an
 2 expedited proceeding, there's usually no document
 3 discovery, in a nonjury case of course, and the
 4 first court date is usually the day of trial. So
 5 some notice of what the tenant is alleged to have
 6 had done wrong would be helpful. The proposed rule
 7 will give tenants the important opportunity to
 8 prepare their defense.
 9 Under our current eviction court trial
 10 system, it's all too often trial by surprise and
 11 it's very difficult for a pro se tenant to frame
 12 defenses based on a written notice or written lease
 13 on their feet Perry Mason style. That's hard for
 14 even lawyers to do. So the proposal of these
 15 required attachments will provide some advance
 16 warning to the tenants of what the eviction claim
 17 is actually about.
 18 Further, there are some landlords,
 19 specifically those who are proceeding pro se who do
 20 file baseless, or at least procedurally defective,
 21 eviction cases. Having these important documents
 22 served on the tenant as part of the complaint would
 23 be very helpful in determining the actual merits of
 24 the case against the tenant.

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1 Finally, as to tenants, improperly filed
 2 cases are no small matter. Many future landlords
 3 are not interested in the details of whether a past
 4 eviction was well based, procedurally defective, or
 5 otherwise. They just do a court record search,
 6 they find an eviction case on this applicant's
 7 record, and the applicant just doesn't get the new
 8 apartment.
 9 Because an eviction matter is such a
 10 negative mark on the tenant's record, this rule
 11 will assure that eviction cases that are well
 12 supported with proper notices and lease provisions
 13 are filed.
 14 So now turning to why the changes are also
 15 good from the landlord's perspective. Because the
 16 5, 10, and 30-day notice is a required exhibit at
 17 an eviction trial, assuring early on that the
 18 landlord even has documents is a very good idea.
 19 This will keep pro se landlords from suing without
 20 the required notice, which all too often occurs.
 21 They don't know that they have this jurisdictional
 22 prerequisite of serving written notice. They just
 23 know they haven't been paid their rent. They jump
 24 ahead, they go to the courthouse, they file an

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1 eviction case, they pay a filing fee, and they go
 2 to their court date thinking they're getting an
 3 eviction that day of their tenant, only to have
 4 their case dismissed for lack of a statutory notice
 5 that confers jurisdiction. So attaching that
 6 notice will prevent wasted time and resources for
 7 all concerned, as Samira pointed out.
 8 Further, the attachment of the notice may
 9 prevent pro se landlords from proceeding on a
 10 defective notice. Is this the right type of
 11 notice, is it dated, was it served properly, has
 12 the requisite number of days passed before the case
 13 is being filed with the court?
 14 When you make the document part of the
 15 pleading, it will give the landlords pause to ask,
 16 is this document correct? Have I done the right
 17 things with it? This kind of scrutiny should be
 18 given to the notice before the landlord is offering
 19 their notice in court.
 20 The attachment of the exhibits to a
 21 pleading that is filed under Rule 137 has to raise
 22 the scrutiny of this exhibit. Unfortunately, I
 23 have seen perjured false notices in my years of
 24 eviction practice. So the requirement that notice

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1 be attached will give any unscrupulous landlord
 2 pause before proceeding on a fabricated notice.
 3 Further, for the landlord that is not a
 4 bad actor, but just is not that well informed on
 5 the law of eviction, if he can scrutinize his own
 6 evidence and see that the notice was defective on
 7 its face or wasn't served properly, it's better for
 8 the landlord, for tenant, and the court that that's
 9 known early on and this requirement of it being
 10 attached to the complaint could provide that
 11 benefit.
 12 If this facilitates a chance for
 13 discussion between the parties or their counsel,
 14 then I think we'll have more amicable resolutions
 15 that will be more likely if these documents can be
 16 reviewed before trial and thereby will save
 17 everyone time and allow for better outcomes for all
 18 sides.
 19 As Judge Ortiz has noted, by requiring the
 20 attachment of the lease provision that is alleged
 21 to be violated, this proposed rule will be
 22 consistent with our civil practice statute of 735
 23 Illinois Compiled Statute Section 5/2-606, which
 24 requires a claim based on a writing must attach

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1 At CARPLS, we would really prefer that a
 2 pro se landlord go away from one of our desks with
 3 a well pleaded eviction complaint that has all the
 4 critical evidentiary attachments and that we would
 5 know then that the main pillars of the pro se
 6 landlord's claim are all in the paper pleading.
 7 This is superior to just hoping that that pro se
 8 landlord will remember to bring the lease to court,
 9 remember the notice, the affidavit of service, and
 10 will know or remember how to offer them up to
 11 court, be able to properly quote from them while
 12 arguing before the bench of how the lease was
 13 violated. That's a real stretch for most pro se
 14 landlords, so it would be helpful to both the Bar
 15 and the bench if the written complaint's attachment
 16 told most of the landlord's story.
 17 I believe that the proposal will allow us
 18 to be assistant in organizing landlord's counsel as
 19 well. In what is usually a very high volume of
 20 practice representing landlords, I know that these
 21 requirements would have helped me to be better
 22 prepared to present my eviction cases in court, as
 23 there was at least one occasion when a client
 24 delayed in getting such documents to me and I got

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1 such writing to the complaint or plead why it
 2 cannot be attached. These documents must be
 3 produced at trial anyway. They exist at the time
 4 the complaint is drafted.
 5 I always have felt that the lease or at
 6 least the pertinent provisions should be attached
 7 under Rule 606 in an eviction case, but they seldom
 8 are as the judge points out.
 9 This new rule will make the breach of
 10 lease eviction matters like all other matters in
 11 the Illinois courts that are based upon a written
 12 contract. Lease contracts go to the very heart of
 13 the landlord's claim and the complaint should fully
 14 set for those provision.
 15 The proposed rules will help the pro se
 16 landlord organize his evidentiary case. Being
 17 required to attach the lease provisions that
 18 substantiate the landlord's position assures that
 19 he even has that lease agreement, that he has read
 20 it, that he has given the notice that references
 21 the pertinent provisions violated. Again, that
 22 will all go a long way to having evidentiary
 23 evidence prepared -- his document or evidence
 24 prepared as he needs to have it at trial.

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1 the five-day notice and the lease the night and
 2 before -- before the hearing, only to find that the
 3 notice was somehow defective or the lease didn't
 4 quite say what my client thought that it did.
 5 So in closing, in a world where the
 6 average nonjury eviction trial lasts about two
 7 minutes, it's essential that the court have most of
 8 the pertinent evidence attached to the complaint.
 9 Eviction is a very summary proceeding and for the
 10 record to include these critical documents of the
 11 statutory notice, the lease, and the applicable
 12 provisions, that would be an important step toward
 13 ensuring that justice is done in the cases.
 14 Eviction has always been an important
 15 legal proceeding and it's even more so now, as
 16 Samira said, as we as a legal system face and
 17 anticipate an onset of evictions due to COVID-19,
 18 our mass unemployment, and the economic downturn.
 19 So we have an opportunity here to ensure
 20 that evictions are done lawfully in meritorious
 21 situations with required due process being afforded
 22 to the tenant. So this proposed rule will take us
 23 further toward that goal.
 24 I'm happy to address any questions from

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

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

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

9 Thank you.

10 PATRICIA WRONA: Thank you.

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

13 CONOR MALLOY: I am.

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

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

20 My current role at Lawyers' Committee is I
 21 run a project called Rentervention, which is a
 22 24-hour chat box that helps Chicago tenants deal
 23 with eviction issues. Before I was involved in
 24 this project, I was helping a lot of these

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

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

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

24 The other part of this is there's two

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

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

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

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

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

21 And thank you again.

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

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1 understand that we had one perspective that gave
2 us -- you know, Ms. Wrona gave us the landlord and
3 tenant perspective and we have the judicial
4 perspective from Judge Ortiz. Is there an
5 organization out there that represents landlords
6 that should be on this call or should be aware of
7 that? I mean, I'm assuming they've been given
8 notice and would have had a chance to comment. Is
9 that something that anybody has -- anybody that
10 spoke earlier wants to comment on?
11 CONOR MALLOY: I wouldn't be able to speak to
12 that myself. Sorry.
13 PATRICIA WRONA: Mr. Chairman, at CARPLS, we do
14 address pro se landlords. So as Conor was saying,
15 it's not the most common thing that comes to legal
16 aid, but we do represent probably several hundred
17 in terms of helping them with how to draft and
18 proceed on their matter.
19 But in the legal aid community, there's
20 really no other legal aid organization that
21 represents landlords in residential eviction. Of
22 course, there is a private Bar that certainly
23 covers that area.
24 CHAIRPERSON ANTONIO M. ROMANUCCI: All right.

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1 Thanks. Any other questions before we move on to
2 Mr. Lawrence Wood? Are you on Zoom?
3 LAWRENCE WOOD: I am. Can you hear me?
4 CHAIRPERSON ANTONIO M. ROMANUCCI: Have you
5 been on the call since the start?
6 LAWRENCE WOOD: I have. Yes.
7 CHAIRPERSON ANTONIO M. ROMANUCCI: All right.
8 You get 30 minutes to finish. Just kidding.
9 LAWRENCE WOOD: I can do that.
10 CHAIRPERSON ANTONIO M. ROMANUCCI: You are our
11 last speaker and thank you very much for your
12 patience. You have the floor. Your time is set.
13 LAWRENCE WOOD: Thank you. And to address the
14 last question directed to Mr. Malloy regarding
15 landlords, I don't think that we have any landlord
16 representatives besides Ms. Wrona on the call, but
17 I have had several meetings with landlord
18 representatives and judges and Samira and I have
19 heard their arguments regarding this proposed rule
20 and I do want to address some of those. Although,
21 I know no landlord wants me as their
22 representative.
23 I am a supervisory attorney with the
24 Housing Practice Group at Legal Aid Chicago,

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1 formally Legal Assistance Foundation of Chicago and
2 Legal Aid Chicago is Midwest's largest provider of
3 free civil legal services to people who are living
4 in poverty or otherwise vulnerable. And the
5 Housing Practice Group focuses a lot of its work on
6 preventing unwarranted evictions. We also focus on
7 subsidized residents for reasons that I'll get to
8 later.
9 I also, for the last 20 years, have taught
10 a class, a clinical course on poverty and housing
11 law at the University of Chicago Law School and
12 I've been at Legal Aid Chicago for 30 years. So
13 I've been in the eviction courtrooms for the past
14 30 years and I think it's important to note that
15 there are more than 30,000 eviction actions filed
16 every year in Cook County and as Pat noted, a
17 typical trial lasts about two minutes.
18 Because these are summary proceedings,
19 there is a common misconception that eviction
20 actions are simple routine matters involving
21 relatively low stakes. Nothing could be further
22 from the truth, especially in the subsidized
23 housing context where low-income residents are
24 facing eviction from the only piece of housing that

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1 they can afford. But the misconception that I just
2 mentioned has led some to conclude, and I'm seeing
3 this over and over again in the past three decades,
4 that eviction actions may be resolved without
5 adherence to the basic rule of civil procedure and
6 the most commonly ignored rule is the one requiring
7 a plaintiff to attach to its complaint, all the
8 reading instruments upon which the complaint is
9 founded.
10 The proposal that we're considering now
11 and that I urge you to adopt solves this problem by
12 mandating that every eviction complaint includes
13 the termination notice and the relevant portions of
14 the lease agreement. This proposal is vitally
15 important for four reasons and Judge Ortiz, Samira,
16 Pat, Connor have already touched on some of these
17 and I don't want to just repeat what they said.
18 But the first reason is that requiring the
19 plaintiff to attach the termination and relevant
20 lease to the complaint would ensure that these
21 documents are always available to the judge, who
22 can then quickly focus on the relevant issues and
23 determine whether the plaintiff is confined with
24 some essential elements of the prima facie case.

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1 And this would be an enormous benefit, as Judge
 2 Ortiz mentioned, in high-volume courtrooms where
 3 the vast majority of defendants are unrepresented
 4 and where many plaintiffs also appear pro se.
 5 Second, this proposal would help tenant
 6 advocates like myself and my colleagues properly
 7 assess each case and decide whether it warrants our
 8 involvement, a decision that we have to make
 9 quickly in summary proceedings like eviction
 10 actions.
 11 Our clients are, as I noted before, for
 12 the most part, subsidized housing residents who are
 13 facing eviction from the only piece of housing they
 14 can afford. These tenants generally have copies of
 15 their landlord's complaints and these complaints
 16 allege only that the defendant unlawfully withholds
 17 possession of premises to which the plaintiff has
 18 the superior right of possession. But they
 19 frequently do not have copies of their termination
 20 notices and lease agreement. They may have never
 21 been given the lease agreement. They may have
 22 signed it and never gotten a copy.
 23 As Pat noted, many tenants state that they
 24 never even received a termination notice. That

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1 have had the experience over and over again of
 2 calling the landlord's attorney and requesting the
 3 termination of the lease agreement and the
 4 landlord's attorney will say, you'll get that
 5 through the discovery process, we're not going to
 6 give that to you now. So it makes it, again, very
 7 hard for us to determine what the relevant law is
 8 and whether the case warrants our involvement.
 9 Third, and Sam and Judge Ortiz noted this
 10 and Pat as well, the benefits of complying with the
 11 proposed rule far outweighs the cost. It's
 12 difficult for me to imagine how a plaintiff would
 13 lack a copy of the termination notice that is
 14 required to be served before filing or the
 15 governing lease and the relevant portions of these
 16 documents run no more than a few pages. The
 17 termination notice is just going to be one page.
 18 Landlord advocates in the subsidized
 19 housing context will point to the fact that public
 20 housing leases or HUD model leases can run 27, 30
 21 pages, but they do not have to attach the entire
 22 lease under this proposed rule. They only have to
 23 attach the relevant provisions, which would be the
 24 cover page that we can tell what kind of housing is

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1 makes it difficult for tenants' advocates like
 2 myself to determine why the tenant is facing
 3 eviction and in the subsidized housing context, it
 4 makes it difficult for us to identify the Federal
 5 statutes and regulations, HUD guidance, and other
 6 policies that govern their tenancies.
 7 And in the subsidized context, I cannot
 8 tell you how complicated this can get. There are
 9 many different subsidized housing programs. Public
 10 housing, Section 8 project-base program, the
 11 housing choice voucher program, many others all
 12 governed by different sets of Federal statutes and
 13 regulations and we need to know which of these
 14 provisions and statutes and regulations apply and
 15 we can gather that information only if we have a
 16 copy of the termination notice or the lease
 17 agreement.
 18 Landlords' advocates will argue that we
 19 can always obtain the necessary information through
 20 discovery, but unless we are going to represent
 21 every tenant who requests our assistance, we need
 22 the information before the discovery process
 23 begins.
 24 I will also note that my colleagues and I

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1 involved and then the lease provisions that the
 2 tenant allegedly violated. So we're asking the
 3 landlords to attach no more than maybe three pages
 4 to the complaint.
 5 Fourth, the proposed rule will resolve
 6 what has been a surprisingly contentious issue in
 7 the trial courts and the Illinois Appellate Court
 8 will never address this, although, Judge Ortiz
 9 noted that Judge Neville had issued a Rule 23 order
 10 on this issue, which of course cannot be cited.
 11 It is difficult to get this issue to the
 12 Illinois Appellate Court for a couple reasons.
 13 First, not to brag, but my Housing Practice Group
 14 has a success rate of well over 90 percent. And so
 15 we don't appeal on most decisions.
 16 Furthermore, we're going to try to get
 17 this issue up to the Appellate Court and anticipate
 18 that this might be a case we lose in a trial court
 19 and want to appeal, then we have to make sure we
 20 bring a motion to dismiss based on the fact that
 21 the complaint does not comply with Rule 606 of the
 22 Code of Civil Procedure.
 23 You know, it -- it's not reasonable to
 24 require us to bring these motions to dismiss in

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<p>1 every single case. I have, myself, tried to get 2 this issue up to the Appellate Court on an 3 interlocutory appeal and I have had the trial court 4 say yes, this is an issue that should go up to the 5 Appellate Court, certify the question, but as you 6 know, such appeals must, and I'm quoting now from 7 Supreme Court Rule 308, materially advance the 8 ultimate termination of litigation.</p> <p>9 Reviewing a trial court's ruling on a 10 motion to dismiss will not be assumed at the end of 11 litigation in a summary proceeding like an eviction 12 action, so we cannot reasonably expect the 13 Appellate Court to breach this issue. The best way 14 to resolve it, therefore, is through the adoption 15 of this proposed rule.</p> <p>16 Finally, landlords' advocates will argue 17 that the eviction act simply requires the landlord 18 to allege in its eviction complaint the defendant 19 unlawfully withholds possession of premises to 20 which plaintiff has the superior right of 21 possession. That requirement addresses only the 22 sufficiency of the complaint's allegation. It does 23 not release plaintiff in an eviction action of its 24 duty to comply with Rule 2-606 of the Illinois Code</p> <p style="text-align: right;">133</p>	<p>1 we have to ensure, you know, the fairness doctrine, 2 that it is fair to both sides. And, you know, that 3 was the point of my question. I hope you 4 understand that.</p> <p>5 LAWRENCE WOOD: Oh, I absolutely do and I think 6 it's important. And I think, again, landlord 7 advocates I'm sure would disagree with me, but I 8 that I have fairly set forth their main objections 9 to the rule and then tried to address those 10 objections.</p> <p>11 Also, I would say this. This is not 12 really the adoption of a new rule in one sense. 13 The rule already exists. It's already Section 14 2-606 of the Illinois Code of Civil Procedure. The 15 rule that we're supporting merely clarifies the 16 fact that plaintiffs in eviction actions must, like 17 all other civil plaintiffs, comply with this rule, 18 the Illinois Code of Civil Procedure, that is 19 already on the books.</p> <p>20 CHAIRPERSON ANTONIO M. ROMANUCCI: Do any 21 members of the Committee have any questions for 22 Mr. Wood or any of the other members of -- speaking 23 on 20-07 that are still on? 24 well, congratulations to those who have</p> <p style="text-align: right;">135</p>
<p>1 of Civil Procedure, which every civil plaintiff has 2 to follow and they follow it by attaching to the 3 complaint the written instruments on which the 4 pleadings face.</p> <p>5 As I said, the question of attachment has 6 caused needless confusion in eviction courts. The 7 proposed rule clarifies the issue and it makes 8 sense. Legal Aid Chicago, therefore, urges its 9 adoption.</p> <p>10 Also, we urge that it be adopted 11 immediately, because as Judge Ortiz and Samira and 12 Pat mentioned already, we are about to face a flood 13 of eviction cases because the eviction moratorium 14 that has been in place for a few months is about to 15 be lifted. It is not only important to adopt this 16 rule, but to adopt it as quickly as possible.</p> <p>17 Thank you for your consideration and 18 listening to my comments and I'm happy to take 19 questions.</p> <p>20 CHAIRPERSON ANTONIO M. ROMANUCCI: Are there 21 any questions? 22 You know, I just want you to understand, 23 you know, my concern is when you're asking for the 24 adoption for an entirely new rule that, you know,</p> <p style="text-align: right;">134</p>	<p>1 stayed on the call the whole day. Thank you very 2 much. I appreciate your patience. This is our 3 first, you know, Zoom public hearing for the 4 Illinois Supreme Court Rules Committee and I think 5 it has gone pretty well after we got over that 6 initial glitch. Thank you for participating, 7 everybody. Have a good day and hopefully you'll be 8 hearing from us very soon.</p> <p>9 (which were all the proceedings 10 had in the above-entitled 11 cause.)</p> <p style="text-align: right;">136</p>



1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF C O O K)

4
5 Tabitha Watson, being first duly sworn, on
6 oath says that she is a court reporter doing
7 business in the State of Illinois and that she
8 reported in shorthand the proceedings of said
9 public hearing via Zoom videoconference and that
10 the foregoing is a true and correct transcript of
11 her shorthand notes so taken as aforesaid and
12 contains the proceedings given at said public
13 hearing on said date.

14 

15 _____
16 Certified Shorthand Reporter

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