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SUPREME COURT RULES COMMITTEE
PUBLIC HEARING

ILLINOIS SUPREME COURT
BOARD/COMMISSION/COMMITTEE/TASK FORCE

Report of proceedings had at the public hearing held at the Administrative Office of the Illinois Courts, 222 North LaSalle Street, 13th Floor, Chicago, Illinois 60601 in the above-entitled cause before James Hansen, Committee Chairman, commencing at 10:04 a.m. on the 17th day of July, A.D., 2024.

I N D E X

PAGE

SPEAKER:

CHAIRMAN HANSEN: This is Supreme Court Rules Committee Public Hearing, July 17th, 2024. Thank you to everybody that's here to speak today.

We have a quorum for our Committee. Our Supreme Court Justice Mary K. O'Brien is here. She is the liaison for our Committee with the Supreme Court, so welcome.

I will just advise everybody, I am not trying to be rude, but I will cut you off because we have many speakers. Each of you are given a certain time so we can move this along, and eventually we have a Committee meeting after this that we have to get to and attend to other business. Otherwise, we'd be here all day. So it's just part of the procedure. Again, not trying to be rude, but we do need to move it along.

So that being said, we will get started. The speaker order, I will call out your name and ask you to step to the podium for your information. This is being live streamed, so there is an audience.

My name is Jim Hansen. I'm the Chair of the Committee. We appreciate your willingness to be here today and want to speak on the proposals which we will then be considering and discussing after this morning's meeting.

So without any further delay, first up -- and, again, I apologize if I mispronounce anyone's name.

Kerry Peck, Chair of the Supreme Court Commission on Elder Law to discuss Proposal 23-05. 23-05 is amending the Rules of Professional Conduct, specifically 8.3, 5.1, 1.1, and 1.14.

So proceed. Thank you.

MR. KERRY PECK: Thank you.

Good morning, Ladies and gentlemen, Justice O'Brien, Chairman Hansen, and all of the other members of the Illinois Supreme Court Rules Committee. Thank you for your service to our profession.

My name is Kerry Peck. I'm honored to serve as Chair of the Supreme Court Elder Law Commission, and I appear here today in support of the Elder Law Commission's 23-05, which seeks changes to the Illinois Rules of Professional Conduct, and Proposal 24-07, which would create new Supreme Court Rule 1.11. That rule would provide requirements for education of guardians ad litem in guardianship cases.

As the managing partner of the law firm Peck Ritchey, where we concentrate on trust and estate litigation and planning, myself of over four decades, I've been appointed guardian ad litem in many complex

cases involving judicial determinations of end of life medical treatment issues and major life-threatening or lifesaving surgical procedures, often involving religious issues.

Today, regrettably, many guardianship cases involve massive financial exploitation of older adults. During my tenure as past president of the Chicago Bar Association, we often propose legislation to assist and protect older adults. Under Mayor Daley II, I was engaged by the City of Chicago Department of Aging to rewrite the Elder Abuse and Neglect Act and present that with much success before our General Assembly in Springfield.

I've personally observed impaired attorneys practicing law throughout northern Illinois. I've personally observed unqualified guardians ad litems, detrimentally impacting on our profession and the older adults in guardianship cases or litigants in other cases with impaired attorneys.

This morning, four prominent members of the Elder Law Commission will testify in support of our proposals. Each of them has worked diligently to research, craft, and ultimately draft the guardian ad litem proposal and the proposed revisions to the

Illinois Rules of Professional Conduct.

The proponent speakers today are Chief Judge Mike Chmiel of McHenry County, a former probate judge; presiding Probate Judge Dan Malone, who leads the probate division in the Circuit Court of Cook County; the long-time face of the Attorney Registration & Disciplinary Commission, Deputy Administrator and Chief Counsel Jim Grogan, now retired; and the current Cook County Public Guardian Chuck Golbert.

All of these gentlemen are deeply committed to improving our legal provision. Judges Malone and Chmiel will address the guardian ad litem proposal; Jim Grogan and Chuck Golbert will address the propose revisions of the Rules of Professional Conduct.

I want to thank the Rules Committee for your time today, for your service to our profession, and I also want to thank the staff of the AOIC, Nate Jensen and Scott Block, for all of their help in behind the scenes and making the Elder Law Commission operate efficiently.

Thank you, Mr. Chairman.

Thank you, members of the Commission.

Thank you, Justice O'Brien.

CHAIRMAN HANSEN: Thank you.

First up, Jim Grogan on Proposal 23-05.

MR. JIM GROGAN: Mr. Chair, Justice O'Brien, may it please the Committee. My name is Jim Grogan, and I am here to provide testimony in support of Proposal 23-05.

I am currently a member of the adjunct faculty of the Loyola University of Chicago School of Law, and I have taught legal ethics at either Loyola or DePaul since 1986. In addition, I was the court-appointed liaison between the ARDC and the Supreme Court's Commission on Professional Responsibility for decades until my retirement from the ARDC, where I worked for over 40 years. I currently serve as the chair on the Elder Commission's Ethics and Fitness to Practice Committee, the group that is responsible for formulating Proposal 23-05.

I will just briefly address four of the discreet rule changes that we proposed. I will defer discussion of what I think is really the most critical and important rule in the package, which is the rule that deals with the lawyer who represents a client with diminished capacity. It's Rule 1.14. I'm going to defer it to Mr. Golbert, my colleague, to handle that.

Two years ago this month, the Illinois Supreme

Court adopted a new Judicial Ethics Code effective January 1, 2023. That forward looking, thinking effort created a new provision in this state. It's Rule 2.14, entitled "Disability and Impairment."

The Supreme Court in adopting this Rule provided that a judge, having knowledge that a performance of a lawyer or another judge is impaired by drugs or alcohol or by a mental, emotional, or physical condition, shall take appropriate action, and it was with that addition in mind that the Elder Commission said, "Why not also amend the lawyer code to be consistent with what applies to judges?"

And as a result of that, the Committee has recommended that we adopt an almost identical provision, and that identical provision suggests that where a lawyer, having unprivileged knowledge that the performance of another lawyer or a judge may be impaired for any number of reasons, shall take appropriate action.

And what's appropriate action? That's defined in Proposed Comment 6, and I note that Proposed Comment 6 is almost a verbatim recitation of what's contained in the Judicial Code. "Appropriate action means action intended and reasonably likely to help the judge and

lawyer in question address the problem and prevent that person from doing damage to the judicial system." Not every problem needs to be referred to the ARDC. Not every problem should be referred to the ARDC. But doing nothing when a lawyer has a significant mental or behavioral health issue that is patently obvious was deemed untenable by the members of the Elder Commission.

Doing nothing ultimately harms clients, courts, and another other lawyers, and inevitably will lead to a situation where there will be a report made to the ARDC pursuant to the Himmel Rule. And speaking of Himmel, it was with that thought in mind that the Elder Commission decided to fine-tune 8.3, the existing Himmel Rule. It still mandates the reporting of unprivileged information about breaches that raise a substantial question of a lawyer's honesty and truthfulness, but Comment 6 provides as follows: "The reporting requirements do not apply when a lawyer believes a lawyer, judge may be impaired solely due to alcohol or substance use or for mental, cognitive, or psychological reasons. In such scenarios, a lawyer should consult with Rule 8.3(b)."

There are two other rules in this proposal that I would like to highlight. The first is Proposed Rule 5.1(d). It deals with the responsibility that firm

partners, managers, and supervisory lawyers have to everyone in the firm. What's critical to understand about this rule, a "firm" isn't just a private practice firm. It includes government. It would include the public defender's office. It would include the Cook County State's Attorney's Office. It would include corporate in-house of a large corporation. We are all firms pursuant to the Rule.

And this suggestion is that where a law firm partner or a lawyer with comparable managerial authority at the firm comes to know another firm lawyer may be impaired due to alcohol, substance use, mental, cognitive, emotional, or psychological reasons, that partner, manager, or supervisor shall take appropriate action. The wording for this derives from an old ABA opinion, and new Comment 4 provides some practical guidance to lawyers as to how they can deal with that situation.

Finally, Proposed Comment 9 to Rule 1.1, which is the competency rule provides that lawyers should be aware that changes in brain health that cause neurologic and psychiatric disorders and that substance abuse disorders and neurological and psychiatric conditions can have an impact upon a lawyer's practice. Mental

health is a professional matter.

Finally, I'd like to briefly respond just to two comments that were filed in the last couple of days about our proposal.

The first, there has been voiced a concern over civil liability if you were to recommend that this Rule be submitted to the Supreme Court. That's not really a viable suggestion because as a matter of professional responsibility law in Illinois, the Illinois Rules of Professional Conduct in the scope section specifically say that a violation of a rule does not give rise to a cause of action against a lawyer, nor should it create any presumption in such a case that a legal duty has been breached.

And my last note is there was a critique about the numbering of the rules that we provided, and we defer to the experience of this panel to adjust the numbers in an appropriate way. But I'd like to thank you for giving me the opportunity to speak. Very much appreciated.

CHAIRMAN HANSEN: I have a few questions.

MR. JIM GROGAN: Oh, sure.

CHAIRMAN HANSEN: And for the speakers, we may have some questions, so bear with us.

If you reviewed the written comments, there was note also about the subjective nature of the rule and how are attorneys supposed to identify at what level rises to if I have knowledge or suspected knowledge of any of these listed impairments, if you will.

MR. JIM GROGAN: Right.

CHAIRMAN HANSEN: And the second part I'd like you to comment on is then what to do. What -- if they all don't need to be referred to the ARDC, do we open up to vagueness and a question on if I identify such a situation and I simply approach the attorney or the judge and say, "Hey, I think you need to get some help," is that enough? Is that -- is that appropriate action? Because there's really no guideline in the Rule as to what further steps I may need or not need to take.

So could you just address, A, the subjective nature and, B, the action.

MR. JIM GROGAN: That's a very good series of questions to ask that are necessary questions to answer.

In terms of the last element, I would say that appropriate action has to be interpreted reasonably after the fact and maybe just an approach to the person having the problem might be sufficient. That might be fine.

As to the first issue, both the judicial code and the lawyer's code explicitly provide that these are rules of reason and they have to be interpreted reasonably. And what we're trying to do in this scenario and recommend to the Court -- and the Court really has been in the forefront of dealing with these mental health issues -- is how do you protect the profession? How do you protect the public?

And the best way to do this is to say if someone sees the problem -- and quite honestly we're of an age, we all know it when we see it. We're not clinicians. We're not mental health experts. Although I will say that the Elder Commission has as its membership non-lawyer clinicians, doctors, and experts in gerontology to help with these rules.

And the suggestion is: Well, if a lawyer reasonably doesn't know that there's a problem, that's the end of it. If they do, maybe they should reach out to LAP or take some other action.

CHAIRMAN HANSEN: Okay. Thanks.

Does anybody else on the Committee have any further questions?

COMMITTEE MEMBER NAVARRO: Mr. Grogan, I guess I'd follow-up on that.

So I think maybe we've all experienced individuals who we -- whether it's our family or professional acquaintances, personal acquaintances, who we think maybe they're losing a step, and so then that's a difficult conversation to have when it's a family member. Right? So now we're going to have that conversation -- or rather attorneys are going to have that conversation with opposing counsel and say "I'm concerned you're losing a step."

How is that supposed to be received other than, "No, I'm not"? And then what then? I've taken appropriate -- as an attorney, I've taken appropriate action because I've approached, addressed it, it's been rebuffed, so all good?

MR. JIM GROGAN: All good questions.

I would say, Mr. Navarro, that what would typically happen is the range of what is appropriate action is dependent on the circumstance. It may be appropriate that I would reach out to the Lawyers' Assistance Program for guidance because they are experts in the field and say, "Help me with this. I have a situation on the other side of this house closing and this person is a disaster. How do I proceed?" There may be situations where you reach out to someone and say

"Maybe I should go to the chief judge." You know, if this person is walking in and trying to rack a jury, it's problematic.

So the one thing, again, is the Judicial Code outlines these same protocols as we would with the lawyer's code, and the hope is that the regulators, the Judicial Inquiry Board and the ARDC, will treat everything reasonably. And I think given the -- the history of the Himmel experience in Illinois, which has been here since 1988, they'll treat it reasonably.

COMMITTEE MEMBER SPESIA: I have a question for you.

MR. JIM GROGAN: Sure.

COMMITTEE MEMBER SPESIA: So this comment that, "Lawyers should be aware that changes in brain health that cause neurologic and psychiatric disorders may impact their ability," so what are you envisioning there? So lawyers should be aware of these changes?

And then it goes on to talk about how Alzheimer's and frontotemporal degeneration -- I mean, what -- what exactly are you envisioning?

MR. JIM GROGAN: Well, one thing to emphasize is this is a comment. This isn't a rule itself. And the comment suggests that one component of competent

practice is mental health. If a lawyer visits with her primary care physician and finds out that that person has the beginning phases of dementia or Alzheimer's, the suggestion would be "I have to deal with this. I have to accommodate this situation, that there may come a point where I can no longer practice."

So what that comment basically does is emphasizes the need for good mental health and to essentially makes sure that everyone still has the component of competent practice.

COMMITTEE MEMBER SPESIA: Right. And I guess my question is -- it seems that the scope of this though is not only the afflicted lawyer. This is we're broadening this out into managerial -- people with managerial capacity in law firms.

So what sort of training do you envision that all lawyers are going to have to be aware of changes in brain health? This is pretty -- this is pretty specific stuff that -- that it seems to me that we're suggesting that lawyers now have to have some baseline level of competency to be aware of these changes in brain health.

MR. JIM GROGAN: You know, I would suggest we look to Rule 5.1, the proposal dealing with firm management, because this has been done in the shadow for

years.

COMMITTEE MEMBER SPESIA: Well, that's why I have a question --

MR. JIM GROGAN: If you have a partner that can't do it anymore, what do you do? And you still have to adopt the respect factor. These people have practiced a long time and they've earned respect. What do you do?

There are some firms that literally they let someone come in, they give them a desk, they give them a window, they don't give them any files. They don't let them talk to the public. You preserve the respect. That's fine.

COMMITTEE MEMBER SPESIA: So just a follow-up question.

So the -- why is it that the existing rules don't already cover these kind of situations? And --

MR. JIM GROGAN: The existing --

COMMITTEE MEMBER SPESIA: Wait. One more thing.

MR. JIM GROGAN: Sure.

COMMITTEE MEMBER SPESIA: Thanks.

And specifically with respect to the LAP program, which seems to me to have been set up to deal with these kinds of situations.

So why is it that the existing rules don't adequately address this issue?

MR. JIM GROGAN: Unfortunately, the existing ethics rules just deal with the reporting of substantial moral turpitude like offenses. It doesn't deal with the affirmation to respond if the lawyer perceives this problem then could cause harm to the courts.

LAP is a vital part of our profession, not only for judges and lawyers, but law students. But this is an increased -- this will increase, if you will, sensitivity to that. There are still a lot of lawyers -- I'm sure you've talked to lawyers -- that really don't understand what LAP does until the need arises.

COMMITTEE MEMBER SPESIA: Thank you.

CHAIRMAN HANSEN: Okay. Thank you very much.

MR. JIM GROGAN Thank you. I appreciate it.

CHAIRMAN HANSEN: Next is Charles Golbert, again, on Rule 23-05.

MR. CHARLES P. GOLBERT: Good morning, and thank you for the opportunity to testify in favor of the changes to the Illinois Rules of Professional Conduct proposed by the Illinois Supreme Court Commission on Elder Law.

My name is Charles Golbert. I have the

privilege of serving as the Cook County Public Guardian. Our office has the privilege of giving voice to some 6,000 children in abuse and neglect cases in juvenile court and another 700 children in domestic relations cases.

We also serve as the last resort guardian for 700 primarily older adults with cognitive disabilities, such as Alzheimer's disease, who have no one in their lives to act as their guardian, and we manage more than $100 million in collective estate assets, including assets in our states and countries.

I'll focus my remarks on the Commission's proposed changes IRPC 1.14. This Rule addresses representations when a client might have diminished capacity. The proposed changes are the result of more than a year and a half of study by the Commission on Elder Law's Committee on Professional Responsibility and Fitness to Practice, which is an interdisciplinary committee that includes medical professionals, gerontologists, professional responsibility experts, elder law experts, and others.

Financial exploitation of older adults and people with disabilities is an exploding crisis in our society. According to National Council on Aging, the

loss to seniors from financial abuse is at least $36.5 billion every year. That's billion with a B. And such estimates are very low because elder financial abuse is one of the most underreported crimes.

A 2023 study by AARP concluded that an astounding 87.5 percent of cases of elder financial exploitation are never reported, and these statistics are consistent with the experience of our office. Close to half of our adult guardianship cases right now come to us with issues of abuse, including financial abuse, a problem so large that we have a specialized unit of three senior lawyers who focus their full-time practices on complex financial recovery litigation. Over the past 15 years, we've litigated more than 160 cases and recovered more than $41.2 million for the people we serve.

Most unfortunately, a significant number of our financial exploitation cases involve lawyers. To give a flavor of the extent over the past 14 years, we've reported at least 38 lawyers to the ARDC in such cases.

Now, think about about that. I said over this period we've litigated about 160 cases. Almost a quarter of them there's involvement by a lawyer that rises to the level that we feel the responsibility to

report that lawyer to the ARDC, and that's just cases that, A, involve guardianship; that, B, involve guardianship that needs our office, the last resort guardian who has no one else to be their guardian; and, C, just Cook County cases.

So this is a huge problem. Sometimes the older person's lawyer is the actual exploiter, but in most cases, the lawyer's malfeasance enables the exploiter to steel from the client with diminished capacity. The Commission's proposed changes to Rule 1.14 are intended to reduce incidents of lawyer malfeasance that enables the client to be financially victimized.

The cases we see involving lawyers mostly fall into four categories. The first is a lawyer not understanding who their client is. For example, a daughter comes to a lawyer's office, brings her elderly father. Her father doesn't have capacity. The daughters tells the lawyer, "My father wants to change his will and make it much more beneficiary to me" or tells the lawyer, "My father wants to give me power of attorney to help with his finances," and then she uses that power of attorney to steel his money. Or she tells the lawyer, "My dad wants to deed his house over to me."

Sometimes, most remarkably, the lawyer does this

without any discussion at all with the older person who's actually the client. Sometimes the lawyer prepares these documents having never met the older person at all, just prepares the documents and gives them to the lawyer [sic]. Lord knows how they get executed.

The second common scenario we see is lawyers who ignore obvious red flags that the client has diminished capacity. I could give many, many examples. I'll give an example of somebody we served. Her name was Sarah, who had obvious severe developmental delays since birth, of a nature that they would be obvious to anybody who interacted with Sarah, even on a sacrificial level, much less about complex legal documents. Sarah could not read, write, or perform basic arithmetic, but a lawyer prepared complex legal documents and had her sign them.

The third fact pattern is when a lawyer represents a fiduciary, for example, a guardian or an agent under the power of attorney, and the fiduciary is not exercising undivided loyalty or is even stealing. In such cases, the client, the lawyer's client, the guardian or the agent, does not have diminished capacity, but the principal often does, which is why the agency exists in the first place.

And the final pattern we see a lot is lawyers who get personal injury settlements or judgements for an injured person with diminished capacity and then gives the proceeds directly over to the injured person with diminished capacity who's not able to manage it or to a family member without going through probate court. And this happens despite local court rules that require a fairness hearing and an opening of a guardianship estate with a bond and a duly appointed guardian in such cases.

This is often a subset of a lawyer not understanding who the client is, challenges in representing a fiduciary, or failing to recognize who your client is. The Commission's proposed changes to Rule 1.14 will reduce these types of incidents of elder financial exploitation involving lawyers.

I'm out of time. I did prepare summaries of two actual cases of ours that illustrate these problems, including how the rules would have -- that we're proposing would have prevented them. I'm happy to talk about those. Otherwise, I'll end here with my thanks to the Commission for your work and commitment and urge the Committee to adopt the Commission's proposed changes.

CHAIRMAN HANSEN: Thank you.

Do we have any further questions?

Okay. Thank you very much.

Next is Trisha Rich from the ISBA, CBA.

MS. TRISHA M. RICH: Hi, good morning to the Committee, to Chairman Hansen, to Justice O'Brien. Thank you all for your service, and thank you for giving me the opportunity to come here today.

My name is Trisha Rich. I'm a partner at Holland & Knight, and I am for about three more weeks the immediate past president of the Association of Professional Responsibility Lawyers, which is the International Bar Association for legal ethicists and professional responsibility attorneys.

However, I'm here in front of you today on behalf of the Chicago Bar Association where I'm the secretary of the Board of Managers and on behalf of the Illinois State Bar Association.

And on behalf of the CBA's 17,000 members and the ISBA's 28,000 members, we have serious concerns about Proposal 23-05. And for that reasons, our organizations have submitted a joint letter opposing the proposal.

And, you know, if you've been on this Committee for a while, you won't have seen a lot of joint letters between the CBA and ISBA. This is not something we do

very often. I ask you to take that as a sign of how seriously we think this changes the rules, what an important issue we think it is, and how strenuously our two bar organizations -- the two major bar organizations in the state of Illinois -- oppose this proposal.

By way of further introduction, I also want to mention that over half of my practice -- I've been practicing for almost 20 years -- I know I took too young for that; right? Over half of my practice is dedicated to legal ethics and professional responsibility law. I represent lawyers and law firms and government counsel and in-house legal departments and legal technology companies around the country and across the world.

I've served on numerous committees on the city, state, and national level, professional regulation issues, including lawyer and judicial regulation. I also regularly represent lawyers in ARDC proceedings and law students in front of character and fitness. I'm a legal ethics professor at NYU School of Law.

And, finally, because I think it's important for our purposes here, I serve on the state's Illinois Judicial Ethics Committee. I've done that for many years. I was part of the Committee that spent 14 years

rewriting the Illinois Judicial Code.

And because 2.14 has come up repeatedly already, I want to mention that that is part of my experience as well. One of the letters that you received opposing this proposal was from Dennis Rendelman, one of my colleagues, and Dennis is also one of the authors of the ABA Model Judicial Code.

So this is the background by way we come before you today and say that we think Proposal 23-05 is well-intentioned. We appreciate the work of the Court's Commission of Elder Law, and like everyone in this industry, we recognize that lawyer impairment is a significant and increasingly growing problem. However, as we outlined in our letter, we believe 23-05 does not present a viable path forward to address those issues.

To start, you may not know this or maybe you do, but the Rule 8.3 of the Himmel Standard that we have here in Illinois is already viewed and applied as the strictest one in the country. If you go to other states, they look at this issue differently.

And despite all that is written and said about our Himmel obligations as Illinois lawyers, I've found that there's an ongoing and significant confusion among Illinois lawyers about their obligation under Himmel and

Rule 8.3, and I know this because I do a lot of responses to ARDC letters -- not my own yet hopefully. But they all start with basically the same thing: "I'm writing to you because of my obligations under Himmel," and then they say something that is not actually an obligation under Himmel.

We already have a substantial amount of confusion about the way this is supposed to be applied in our state, and, respectfully, we think this proposal adds buckets of confusion to that, including the proposal as written we believe misstates and sort of attempts rewrite the Himmel -- the existing Himmel standard, which requires actual knowledge which is defined in the Rules. But the Proposal introduces words like "essentially" and "substantial questions," which makes it look a lot more like a reasonableness standard which we are frankly alarmed about.

The Proposal is repeatedly and permissibly vague, and it does not provide guidance on terms like "appropriate action," nor does it provide guidance on what lawyers should determine as an impairment, and some of your questions tell me you've already noted this issue as well.

And if a lawyer gets this wrong, again, not

necessarily under this actual knowledge standard but under a reasonableness standard, the sanction is professional discipline, right, which is a really stark contrast to what our sister states are doing.

The Proposal here also represents a radical departure from the ABA rules of -- the model rules of professional conduct. There is no other state in the union that has a rule that looks like the proposal in front of you. And the ABA model rules, as you know, are the de facto national code of ethics and what form the basis of our own rules.

One thing that's super interesting is in the ABA model judicial code, our version of 2.14 comes from that. In the ABA Model Rules of Professional Conduct, there is nothing that looks like the proposal that's in front of you. So the idea that we would look at the judicial code and apply it to the rules of professional conduct is not something ABA or any other state has done.

Additionally as my colleague Dennis Rendelman outlined and as Mr. Grogan talked about earlier, the numbering system is skewed, but obviously that is a logistical issue that could be fixed but provides significant problems for people like me that practice

this -- these issues across jurisdictions.

I don't want to simply stand here and summarize our letter. You've read it. But I do want to, again, underline that the CBA and ISBA feel very strongly about this. We're here on behalf of our, you know, 40,000-plus members asking you that -- telling you how strenuously we oppose it.

I want to close by touching on a question that somebody asked earlier. I was raised by my grandmother, who was my closest friend, and she died of COVID in 2020. And before that, she suffered from dementia, the kind that would be reportable under this rule had she been an Illinois lawyer.

I spoke to her every single day. I was raised by her. I lived in a house with her for nearly 20 years. I knew her my entire time. It took me over five years to figure out that she was cognitively declining. And so when my friend, who I have the greatest amount of respect for, Mr. Grogan, comes up here and says, "We know it when we see it," I respectfully submit I don't think we do.

We are not scientists. I last took a science class in 8th grade. I mean, I am not in a position to make these diagnoses, to report people like opposing

counsel.

Judges -- to the extent that we're looking at 2.14, I would almost submit to you judges are in a different position. They are in their courtrooms. When they see someone in their courtroom acting in a way that affects the case, their obligations are different. My obligations to report somebody as a bar association member, somebody in my office, somebody across the case from me, it should not be the same and are not the same anywhere else.

The proposal suggests what I could not do with my own grandmother is something I could do to and with other lawyers in this state, and, respectfully, that's just not a very reasonable standard. So I ask today that you not put that burden on Illinois's 96,000 attorneys.

CHAIRMAN HANSEN: Thank you.

I have a question. You made a comment that said, "If a lawyer gets it wrong, they can be" -- as we heard from Mr. Grogan, there's no civil liability, so it's -- the punishment is a sanction. Give me an example of what you mean by "if a lawyer gets it wrong." Are you talking about nonreporting?

MS. TRISHA M. RICH: Yes. I'm talking about

disciplinary action under Rule 8.3 for not reporting. Although, I would respectfully suggest that the issue of defamation in civil liability is not quite as cut and dry as -- our position is that that's not quite as clear as Mr. Grogan thinks it is, but I understand that reasonable people could disagree on that issue.

CHAIRMAN HANSEN: So then the next step would be someone would have to report the lawyer for not reporting.

MS. TRISHA M. RICH: Sure. And --

CHAIRMAN HANSEN: So somebody has to come up with the idea that you or I can see this person has something wrong, you or opposing counsel, you --

MS. TRISHA M. RICH: Should you have known.

CHAIRMAN HANSEN: -- should have known or didn't, now some other lawyer or the judge would then have to take the next step and report the lawyer who didn't report to the ARDC?

MS. TRISHA M. RICH: Or, alternatively, the way I think it would be more likely to come up is a lawyer would be impaired and the regulators would work backwards as to who should -- who in the chain should have known; right?

And one of the issues with the proposal is it's

not actually triggered by a rule violation; right? It's not, "I was drunk and thus I did not meet my competence obligations under Rule 1.1." It's just "I was drunk"; right? So there's no -- there's no nexus to an actual rule violation. It's just the impairment that is, in fact, reportable.

And Illinois, by the way, can and does prosecute cases -- 8.3 cases for people not reporting things they should have reported.

CHAIRMAN HANSEN: So under your opposition or scenario, I guess, part of the other problem would be if we take the tracing back approach, does that then implicate every lawyer who had a case against the impaired lawyer down the chain who did not report the person, or could it?

MS. TRISHA M. RICH: So to be fair to my colleagues across the aisle on this issue, they would say these are rules of reason --

CHAIRMAN HANSEN: Yes. Right.

MS. TRISHA M. RICH: -- and that would not be reasonable; right?

But for us, there's nothing in the proposal that would prevent that from happening; right? And think about it. You know, there's 100 lawyers in my law

office. I know some of you are in law firms and even large firms.

So the question is: Okay. Let's say you have a lawyer next to you that has a cognitive impairment, that's not remembering things, but still doing their job fine, but you notice sometimes he forgets your name or she forgets your name; right? Is the person that sits next to that person -- should they have known? Right? What about the person two doors down? What about the person they get lunch with on Tuesdays? So there is a vagueness to this that makes it difficult.

And, again, I'd just leave you with: Nobody else is doing this. And comparing it to 2.14 I think is inappropriate because 2.14 comes from the model code. This does not. Again, for that reason, we oppose this proposal.

CHAIRMAN HANSEN: Thanks.

MS. TRISHA M. RICH: Any other questions?

COMMITTEE MEMBER NAVARRO: Ms. Rich.

MS. TRISHA M. RICH: Yes. Hi.

COMMITTEE MEMBER NAVARRO: Ms. Rich, your position -- we heard from the other side of the table from you that this Rule is needed, that there is this -- there's been a demonstrated need from the Elder Law

Committee. Your position is that this is a rule in search of a problem?

MS. TRISHA M. RICH: You know, I thought about putting in my remarks that this is a solution in search of a problem, but it's not. We don't think that's right. Because it is a problem; right? Lawyer impairment is a problem.

But as somebody touched on earlier, as I said to my colleague Charley, we should have a rule about competence. Oh, wait. We do. We put it first. 1.1, you have to be competent. 5.1, you have to manage the people underneath you. As somebody said already, we have existing rules that deal with this issue. We do think that this is a problem. We just don't think this is the solution.

I'm a proud commissioner on the Commission of Professionalism. I've been a commissioner on the Commission for seven or eight years now. I'm almost termed out. But I joined the Commission at the time we were recommending to the Supreme Court to add the educational requirement on mental health, impairment, and substance abuse.

And since then, we've had hundreds of thousands of hours of education on these issues in the state of

Illinois. We're one of the few states that have that requirement and it's really great. And so there's a lot to be said for things like lawyer education, LAP programs, those sorts of things, but there's no evidence that those aren't currently fixing the problems that come up. We have judges making reports to the ARDC and JIB. We have people going to LAP. So we're not going to say it's not a problem. It's a problem. This is not the solution though.

COMMITTEE MEMBER GRANT: I don't have a question but a comment and a concern.

We've had a lot of conversation about lawyers. I happen to be a lawyer that's in court almost every day, and my concern is about impairment of judges. In fact, I had a conversation just last week and I asked the public defender about a judge and I said, "What did you think about this judge?" And the public defender's response was, "He's like a child with a loaded gun that can go off at any second." I happen to agree with him.

Under this Rule, am I supposed to go to this judge with a murder case in front of him who I think is -- I think a lot of judges are impaired, but that's just a trial judge's -- a trial lawyer's perception of things. What am I supposed to do? Am I really supposed

to have a conversation with a judge who may be psychology or emotionally or cognitively impaired? "A child with a loaded gun." I'm supposed to go, "Hey, Judge, I think you need to get counseling before you rule on my motion"?

MS. TRISHA M. RICH: Mr. Grant --

COMMITTEE MEMBER GRANT: What do we do?

MS. TRISHA M. RICH: -- that's an excellent question, and a question that I am going to get paid to answer a lot if this proposal passes.

So to you what I would say is actually I think you have a professional obligation not to talk to the judge about it because I think it could prejudice your client; right? And that is of serious concern. And so I would say, like, can we -- I would -- you know, just as a practical matter, can you still do a substitution of judge? Right? Can you report anonymously to JIB? Is there somebody else that you can report on your behalf? Like, what are we going to do, because the last thing I would want you to do is go to that judge and say, "Hey, Judge, I know you are presiding over this case where I have a high stakes issue for a client, but by the way, I don't think you're very good at your job good." I would not tell you to do that as an ethics

lawyer.

CHAIRMAN HANSEN: I do have a quick question if you don't mind?

MS. TRISHA M. RICH: No. I don't mind.

CHAIRMAN HANSEN: I want to set aside 8.3B for a second and go back to 8.3A and in particular Comment 6, which is the comment that accepts impairment from the obligations of 8.3A and that you should look to 8.3B for further direction.

As a person who has personally seen and debated with other lawyers about potentially reporting someone to LAP, on many occasions, what often comes up in response to that is, "Well, I don't want to have to send this person through the ARDC because of what we are seeing and we don't want to ruin this person's career," and there's a hesitation amongst the profession to report to LAP because they think LAP and ARDC sort of are intertwined in that.

MS. TRISHA M. RICH: Right.

CHAIRMAN HANSEN: Do you see a benefit to having a comment or a limited scope rule that provides some clarity here so that more assistance can be provided to people with impairment without necessarily going full bore.

MS. TRISHA M. RICH: Well, one great thing about LAP is that the program is confidential. Right? So the thing is, I would suggest that it goes back to an educational issue of making sure our lawyers understand when somebody is referred to LAP, the referral is confidential. Right? The assistance programs are confidential, and that LAP is not, in fact, reporting those issues to the ARDC. I think that is the fix that we need, not necessarily more rules.

And by the way, I am not -- I -- there are -- respectfully I say there's lots of changes I would make to the RPCs. I'm not one of these people that's like no changes ever. But this change is not one that I think is well-advised.

CHAIRMAN HANSEN: Thank you.

MS. TRISHA M. RICH: Thank you so much.

CHAIRMAN HANSEN: Thank you. I appreciate it.

Alison Spanner to discuss Proposal -- now we're on 24-06. Thank you.

MS. ALISON SPANNER: Thank you.

Good morning, Justice O'Brien, Chair Hansen, Committee members.

Thank you for the opportunity to testify on behalf of the Illinois Supreme Court's Commission on

Access to Justice proposal to amend Rule 11, which has been docketed by the Committee as Proposal 24-06.

The chair of the Commission, Judge Jorge Ortiz, sends his regrets that he is unable to attend today's proceeding. He has asked that I step in and provide testimony and support of the commission's proposal. I am also available to answer any questions the committee may have.

My name is Alison Spanner. I serve as the Director of Access to Justice Division at the Administrative Office of the Illinois Courts. The Access to Justice Divisions staffs the Commission on Access to Justice, which was created by the Illinois Supreme Court in 2012, with the mission of reducing barriers to the civil court system for self-represented litigants. Going forward, I will refer to self-represented litigants as SRLs.

One aspect of the Commission's work includes analyzing Illinois Supreme Court rules to determine if the application of the rules result in processes that unfairly disadvantage SRLs or are unnecessarily complex and onerous to follow and then to recommend clarification or simplification of the wording of a rule. Rule 11 is one such example.

Illinois Supreme Court Rule 11 addresses how litigants, including SRLs and attorneys, must serve documents other than the process -- other than process and complaint on parties not in default. Rule 11B provides that an SRL who has an email address must include it on appearances and pleadings filed in court. Rule 11C-1 goes on to state that electronic service may be made in one of two methods: Through an approved electronic filing service provider or to the email addresses Identified in a party's appearance in the matter.

However, advocates alerted the commission to an electronic service practice that has negatively impacted SRLs. Some lawyers are electronically serving SRLs court documents, including -- for example, request to omit and other motions on email addresses gathered in pre-litigation or informally, during litigation. The lawyers are either entering these email addresses into the electronic filing service provider or emailing court documents directly to these email addresses, which have not been provided by the SRL in their filed pleadings or appearances.

This practice has been detrimental to SRLs who may lack sophistication in using email for important

documents, may lack regular access to email, and may use other people's email addresses to communicate.

Further, most SRLs are unfamiliar with the electronic filing system and how to navigate it. As such, the commission has proposed clarifying amendments to the language of Rule 11C-1 and the comments to make clear that electronic service must be made to an email address entered by a party into the electronic filing service provider on a party's filed appearance or orally in court.

The Commission has reviewed the comments submitted by Justice Eugene Doherty, chair of the business policy advisory board, and is in agreement with his suggested edits, including requiring that an email provided orally in court must be made part of court order and part of the record.

The Commission believes these amendments will reduce detrimental practice mentioned above and ensure all parties can meaningfully receive notice of important court documents. Thank you.

CHAIRMAN HANSEN: Thank you. And thanks for addressing Justice Doherty's comments. I appreciate that.

Anybody else have any questions from the

committee?

Okay. Thank you very much.

MS. ALISON SPANNER: Thank you.

CHAIRMAN HANSEN: Next up, Jonathan Raffensperger.

MR. JONATHAN RAFFENSPERGER: You got it.

CHAIRMAN HANSEN: Okay. Good. I'm glad I said that right.

MR. JONATHAN RAFFENSPERGER: Good morning, and thank you all for the opportunity to speak before this Committee in support of the proposed amendments to Rule 11.

My name is Jon Raffensperger. I'm a supervising attorney with Law Center for Better Housing. LCH is a nonprofit legal aid law firm serving low and moderate income renters in Chicago and suburban Cook County.

As a service provider for the Cook County Court Early Resolution Program, and the lead agency for Chicago's right to counsel pilot project, we advise, counsel, and represent thousands of low income tenants in eviction proceedings who would otherwise be self-represented.

In the course of our work in eviction court, we have on end that while the expanded use of E-filing and

service of court documents by email has been efficient and beneficial for the courts and for us as attorneys, it has created unforeseen pitfalls for the low income self-represented tenants that we advise.

Most of the self-represented litigants we encounter do have email addresses, but many don't use their email for business purposes and do not expect to receive important court documents via email. They may have created the account for personal correspondence or for online commerce, but don't regularly check it, and emails relating to court proceedings can easily get buried under, or mistaken for spam or junk messages.

We also work with many individuals who are seniors or persons with disabilities and are not comfortable using email, even though they may have an account. We regularly hear that while a client does have email, they only use it with outside assistance or that they may even no longer know how to access the account that they created.

For this reason, while we do communicate with some clients via email, we also call and text to ensure that the emails are while we do communicate with some clients via emails received and read. Unfortunately in recent years, we have observed multiple instances in

eviction court where attorneys have, whether intentionally or not, taken advantage of self-represented litigants' lack of sophistication in using their email to prejudice the litigant's defense.

Specifically, some counsel purport to serve court documents to self-represented litigants by emailing them to addresses that they've obtained informally or outside the context of that litigation. These may include potentially dispositive filings for discovery like motion for summary judgment, or rule 216 request to admit.

In eviction cases, these email addresses could be obtained from old leases that are a year or more out of date from prior correspondence with the landlord or through out of court communications that don't make clear the purposes for which the address would be used.

Because most defendants in Chicago eviction cases don't file their own appearances, the existing requirement of Rule 11C-1-2, that email service lead to the address identified by the party's appearance does not adequately address this problem. Neither has the existing language of rule 11C-11 which provides for service through an approved electronic filing service provider.

Without an email address included in the E-filing system from the defendant's own appearance, opposing attorneys can simply create a service contact and enter one themselves. The proposed amendments and comments under consideration today make clear that electronic service may only properly be made to an email address that is identified in the party's filed appearance, entered by the party themselves into the E-filing system, or identified in open court as the address designated for service of legal documents.

These changes will help ensure that self-represented litigants are aware that they may be served with documents electronically, and have the opportunity to designate an appropriate address to receive them or alert the Court of any reasons email service would be inappropriate in their case.

I'd like to briefly share the facts of a specific case that I believe exemplifies the need for the proposed changes that are before the committee.

In the summer of 2023, our office counseled a self-represented litigant, who was the defendant in an eviction case. She was 70 years old. She's a senior. She's disabled, and she was living on Social Security income. While she did have an email address, she was

not comfortable using it herself and could only access her email with her granddaughter's help. Like most tenants in eviction court, she did not file her own appearance.

Nonetheless, two days after the initial court date, the landlord's attorney served her by email with a cited rule 216 request to admit, using and address that she had previously provided to the landlord for the purpose of seeking rental assistance. The requests were not served by any other means.

Unsurprisingly, the tenant did not receive the email or the attachment, and the landlord's attorney then filed a motion for summary judgment premised on the rule 216 request, which he asserted were now deemed admitted due to the tenant's failure to respond to them. Despite our appearance and argument on the tenant's behalf, the motion was granted by the Court and the tenant was evicted from her home and subjected to a significant money judgment all without trial.

In part, due to our client's experience in that case, LCBH reached out to the commissioner on access to justice and the AOIC, about the beneficial impact that amendment and clarification of Rule 11 could have for self-represented litigants, and we're thrilled to see

the excellent changes that the commission has proposed and we urge that they be adopted.

Thank you, again, for the opportunity to speak this morning, and I'm happy to address any questions the Committee may have.

CHAIRMAN HANSEN: I do have a question.

And I forgot to ask Ms. Spanner, so she got off.

I have a question on the language. After you had mentioned the three means and methods now for the electronic service in C1 and then Roman numeral 1 through 3. However, the language then says, "Nothing in this rule prevents a judge presiding over a case from assigning a different email address for the purposes of securing electronic service."

My concern or question on that is: Okay, who -- who obtains that email? Who is in charge of checking it? Who is in charge of -- so, for instance, under the example you just gave, your 70-year-old client, the presiding judge, he or she says, "Well, I'm going to get you a different email address." Where? I mean, is it just a Gmail account? Is it set up from somebody else?

And then it's still the onus is going to be on that litigant to make sure they check it and, you know, obviously if they don't then the Court has assigned it

and its in open court. But I'm just trying to grasp how is this going to be that throughout the state of Illinois, judges are going to be assigning email addresses?

MR. RAFFENSPERGER: I mean, I would like to preface this -- I did not take part in the drafting of --

CHAIRMAN HANSEN: Yeah. I know. And I should have asked -- sorry. Did you have any thoughts or comments?

MR. RAFFENSPERGER: I -- I believe that the intention here is that if a self-represented litigant were to identify an email address just because it's, you know, part of the appearance form but then were to later clarify that they don't check the email or don't have access to it, that another email could be substituted by the judge. But, again, Ms. Spanner would be better qualified to answer that question than myself.

CHAIRMAN HANSEN: Yeah. Okay.

Does anybody else have any questions for Mr. Raffensperger? If not, I'm going to ask Ms. Spanner to come back up and answer that question for me. That's kind of not normally the way we do things, but I'm the chair so I guess I can say go ahead.

So what do you think about that?

MS. ALISON SPANNER: That language was added simply to provide the Judge's discretion to step in in a situation where they feel it's appropriate to either assign a different email address or to essentially prevent bad actors from taking advantage of the email addresses previously been provided by the self-represented litigant or party to the case. Again, it's just to allow the Judge to have that leeway, that discretion to be able to in if appropriate.

CHAIRMAN HANSEN: Okay. And is it assigning a different email address provided by the litigant or...

MS. ALISON SPANNER: I think it would have to -- yes. I mean, the intention is that they would work with the litigant -- to identify an appropriate email address that they would be responsible for checking.

CHAIRMAN HANSEN: Okay. All right.

COMMITTEE MEMBER NAVARRO: Right. Maybe they would say, "Well, does your son have an email address that we could use" --

MS. ALISON SPANNER: Yes.

COMMITTEE MEMBER NAVARRO: -- or some -- another family member?

MS. ALISON SPANNER: Yes. And then officially

identify that email address as the one to receive.

COMMITTEE MEMBER NAVARRO: Versus just coming up with one, like, clienta@gmail.com.

CHAIRMAN HANSEN: Right. Okay.

COMMITTEE MEMBER NAVARRO: Thank you.

MS. ALISON SPANNER: Thank you.

CHAIRMAN HANSEN: Okay. I appreciate that.

Next, Chief Judge Michael Chmiel, you're here to speak today on Proposal 24-07. We will turn the floor over to you.

CHIEF JUDGE MICHAEL CHMIEL: Good morning, thank you for the opportunity to offer comments in support for Proposal 24-07, which proposes a rule which support or provide for qualifications for guardians ad litem in guardianship cases in Illinois.

My name is Michael Chmiel, and I am somehow the chief judge of the 22nd judicial circuit of the state of Illinois, which governs the sixth largest county in Illinois, McHenry County. I have served as circuit judge for more than 19 1/2 years before becoming chief on December 1, 2022. I handled the probate call in McHenry County for 10 years, including guardianship cases. I also lectured on guardianship matters for Ed Con or at Ed Con, the Biannual Education Conference for

judges of our state.

Previously I served as the presiding judge of our family division, which handles matters involving children. In that context, I appointed GAL who served as the eyes and ears of the Court for children in cases involved in dissolution marriage, parentage, and child protection for the Illinois State Bar Association and its mentioned bar section. I inherited a franchise which provided education for those who represented or worked with children, including GALs.

When I was assigned to handle the probate call and guardianship cases arising under the probate act of 1975, I found it odd that there was -- that there were no qualifications for those who represented wards of The Court, that is adults with disabilities and minors who were the subject of guardianship proceedings.

Under the Probate Act, there is little guidance and not a comprehensive structure directed under Supreme Court rule 906, which works to govern GALs in cases arising under the Illinois Dissolution of Marriage Act and the Juvenile Court Act of 1987. As well, there were a few offerings in terms of training with miscellaneous ad hoc offerings provided throughout the state. In McHenry County I have coordinated training to provide

those who served as GALs with what they might need to handle a guardianship case. Thus in part -- that in part, inspired work on this proposal.

Our proposal simply works to replicate that which has provided under Rule 906 for cases arriving under the Probate Act. As with Rule 906, it puts to each judicial circuit through its chief judge the requirement to establish a plan for qualifications of GALs in their respective circuits. This is critical in that each of the 25 judicial circuits in the state presents different situations in terms of available personnel to handle appointments as GALs and related resources.

This proposed rule, however, only requires six hours of training and that some of the needs of those who are involved with children are not present in guardianship arising under the Probate Act as with custody issues and parenting time. This proposal also clarifies that six hours of training would be required every two years, encourages pro bono work and enables government agencies to provide training in-house.

This proposal has been vetted through various groups, including the Conference of Chief Judges and pertinent sections of the Illinois State Bar

Association. We also appreciate CBA president John Sciacotta's writing in support of this. That vetting and other logistics delayed our presentation to this committee, resulting in a timeline for the establishment of a plan which is a bit challenging at this point.

The proposed rule provides for the adoption of a plan in each circuit by January 1, 2025. Instead, that should probably be January 1, 2026, to provide for roughly a full year or so for a plan to be crafted and put in place.

Lastly -- but perhaps firstly -- I will explain that this proposal rises through one of the core directives of the Supreme Court of Illinois in establishing the Commission on Elder Law. Since its establishment, the Commission has had a GAL committee, which I've had the privilege to chair. The Committee is comprised of judges and lawyers, including lawyers who are not on the commission, but who bring experiences from different areas of the state.

Hoping this rule will be adopted, among other items, the Committee will draft -- our Committee will draft and provide templates for the circuits to arrive at plans which would meet the spirit and substance of the rule. We welcome questions, comments, and other

input as we truly see a need for and want this rule to be established.

It will provide a baseline of qualifications throughout the state, along with consistency. It will also work to help the Illinois judicial college and its provision of education for GALs. For more than two years, the college has worked to strive an education for GALs, among other participants in the court system. This will -- this rule will provide guidance for that endeavor.

So thank you for your consideration.

CHAIRMAN HANSEN: Thank you, Judge.

You answered my one question already in your presentation, and that is would you and your group and the proponents be okay with the edit on the change in date --

CHIEF JUDGE MICHAEL CHMIEL: Yes.

CHAIRMAN HANSEN: -- to January 1, 2026?

CHIEF JUDGE MICHAEL CHMIEL: Absolutely.

CHAIRMAN HANSEN: Based on the timeline?

CHIEF JUDGE MICHAEL CHMIEL: Absolutely.

CHAIRMAN HANSEN: Okay. Thank you.

COMMITTEE MEMBER SPESIA: I have a question. You mentioned providing templates.

CHIEF JUDGE MICHAEL CHMIEL: Yes.

COMMITTEE MEMBER SPESIA: For -- so, I assume that you're -- or the way I understand what you said -- that the templates would be provided to the chief judges of each circuit that would be responsible in the creation of the qualifications in the plan.

CHIEF JUDGE MICHAEL CHMIEL: Yes.

COMMITTEE MEMBER SPESIA: So my question is if the timeline is January 1st of 2026, for implementation of this, is there -- is there some kind of a deadline for these templates to be provided so that the chief judges have sufficient time to see what the template is and then decide what changes they want to make to the circumstance of their particular circuit?

CHIEF JUDGE MICHAEL CHMIEL: We didn't want to jump any gun and as soon as -- if this rule is adopted, it's been on our agenda. We have it on our agenda. We have a number of things, but this is on first and foremost on our agenda. We'll Have it done within a month to publish and we'll have them at the next conference, meaning, not this Friday, but I don't think you'll act that quickly. You have work to do.

But by all means, and just a little add-on, when Mr. Peck and I went to the conference about a year ago,

and I'm a part of this body, we had questions and we had challenges because there are what we have come to term "GAL deserts." We see this need for a baseline and consistency and those are among the other things we're working on, so we envision having a variety, or at least a couple very short, very elaborate -- I'll pick on my friend, Bob, Bob Villa, from Kane County. They have a very great plan for their 906 stuff, if you will, and actually for this stuff as well.

But, by all means, we plan to have those templates immediately, I'd say within a month, and we'll work with anybody that needs the help. I will and other staff.

COMMITTEE MEMBER SPESIA: I mean, I think it makes perfect sense that you're going to provide a template so that there's consistency and that people can vary, you know, whatever aspects of it they think they need to be varied.

CHIEF JUDGE MICHAEL CHMIEL: Absolutely. And not to give away any secrets of the conference, but my first experience with the conference was Rule 45. Chief Judge Gorman, she worked on that, and we all worked off of her template. So following that lead, I'd like to do the same with this rule, if given that opportunity.

COMMITTEE MEMBER SOUCIE: I have a follow-up question about the GAL deserts.

I practice in mostly central Illinois, and I can flag 10 counties right now that I practice in that are GAL deserts. We do have lists in most of those counties. They may include one to five attorneys, and .

Then I will add a sort of secondary problem to that, the GAL desert that I see in those -- in my cases, is from a personal injury perspective. Those that are on those lists often refuse appointments because they do not want to be involved in a minor settlement because they've never handled a personal injury case and do not feel that they are qualified.

So when I look at this rule, I wonder if that is going to create further issues of GAL deserts with respect to not only counties with limited attorneys, but then that specific practice area, because it seems to me in reviewing the rule as proposed, that there's no discretion left to judges to appoint people that are not meeting the qualifications from a educational standpoint, but may have the experience in a more niche case.

Have you thought about those issues and how would we address those?

CHIEF JUDGE MICHAEL CHMIEL: Wow. So much to unpack. Thanks for the opportunity. How much time do we have? And I'm sincere.

One of my ideas, and people think I'm nuts, I -- well, excuse me. That's not for the record. I worked on remote proceedings at our last Ed Con, which was Riverside, Chicago, and one of my ideas is we have 20 GALs on our list in probate. I think Judge Malone will see it next, I hope. I think he has 200. Perhaps -- like we do with court reporters, there's a shortage. I think we can maybe Zoom them in to help.

But the most important thing -- and I put this in my commentary last -- we want a baseline of consistency. It's the person that's the subject of the proceeding that needs this work. Kerry Peck and I addressed that to the chiefs, and their concern is in a county in which they might have only three and they're each in their 70s and they're doing it to help.

But this work is mandated under the Probate Act of 1975, and because of that -- and I hear what you're saying, and that's an issue -- we needing baseline and consistency. And then the beauty of the design, like with 906, we're going to leave it to the respective circuits, the 25 circuits, to develop a plan that meets

their needs. Maybe the short version for some of those, maybe a very elongated version of Kane County for McHenry and Cook and wherever else. That's a challenge.

If you look at the comments -- I did. I didn't address them, because I didn't think the comments were opposed to what we're envisioning here -- but one of the comments is a judge picking a buddy of his or hers, right, but that child or that adults still needs to have eyes and ears with the Court. So somehow -- and this is on our list. Let me show you our agenda. It's on our list to address the GAL deserts.

My current best idea is to maybe Zoom some of us in from up north -- not me -- but friends of the Court that are on this list. I still think we need that baseline and consistency, and given the autonomy and the flexibility for each circuit to address its own respective plan, I think, hopefully, that will provide for that, that will not create a bigger desert and hopefully it will provide, again, I think, baseline and consistency.

And by the way, the Illinois Judicial College -- I don't want to speak ahead -- but they've literally been working on this, because I lost contact about a year or two ago -- hey, we're doing this over there.

They're trying to provide this training, and to the best of my knowledge -- but that training for GALs throughout this state is going to be for free. I mean, when I say McHenry, I think -- the least we can do is provide training if we're mandating all of this.

So I don't think this would require a burden. I think you can get this training for free. You can probably get it all remotely. I think we got to have it and hopefully it will help and I'll commit to you I think -- I don't want to speak for Carrie -- but we want to see it work. That's why it's here. That's why the commission is in place is to make it work throughout the state properly, elder law.

COMMITTEE MEMBER SOUCIE: And maybe I'll just follow-up on that, and I appreciate all you're saying. I think the Rule makes sense.

Where I have a philosophical, practical issue with it is, we have situations where a GAL would be appointed -- let's say, again, in a minor's personal injury case -- and they may only get that appointment once every two, three, four years. Does it make sense for that practitioner to go through this level of training if that appointment is only going to happen that often and they get paid $200.

I think it's going to create a problem in a niche area, and I just wonder how much consideration is being put into there, and maybe it's a coding problem in terms of E-filing and accepting those cases from guardianship and putting them back into minor settlement, which used to happen, and so there may be a practical consideration we need to think about there.

CHIEF JUDGE MICHAEL CHMIEL: And there are some laws or allowances and then rules and we have a rule that allows for expeditious handling.

And candidly, I talked to my colleagues in Cook, usually, on this subject, and we appoint a GAL in every case involving a minor, there's no mandate for that, unlike for disabled or alleged disabled adult. So that might be a way to address it, the autonomy given to the respect of circuits could perhaps address it as well, through a flavor of the type of training that would be required or otherwise mandated.

But FYI, be by the way, the Supreme Court is mandating the training for GALs. I don't know what they're ultimately going to do. Hopefully we're trying to help with this rule, because it exists for the kids, those who represent kids, we believe it should exist here as well.

But, that's a great point. I appreciate that. And that's the best way I can answer it.

CHAIRMAN HANSEN: Thank you, Judge. I appreciate it.

Any other questions?

CHIEF JUDGE MICHAEL CHMIEL: Thank you. Good to see you all. Thank you for your work on this.

CHAIRMAN HANSEN: Next up is Judge Malone on the same proposal, 24-07.

JUDGE DANIEL MALONE: Good morning, ladies and gentlemen. Justice O'Brien, Chairman Henson. I'm happy to be here today to request that the Committee, Rules Committee, accept and approve Rule -- proposed Rule 1.11 that Chief Judge Chmiel just discussed.

I'd like to get focused more on the Cook County perspective and to correct the chief in which I wouldn't rarely do, but we only have about 130 GALs in Cook at the present time. There is no statute. There is no circuit court rule. There is no Supreme Court rule currently that deals with attorneys. All of the GALs in Cook County are attorneys. But there's no rule for training and qualifications for education for them.

The current custom and practice in Cook is run through an organization called CVLS, which I think most

people here are familiar with. They have a program where if someone is interested in becoming a GAL in Cook County, you have to go there, we send them there, and they get five cases to work on with a supervised attorney.

After they complete the training under the supervision of the experienced attorney at CVLS, I receive a letter that this person has completed the training and is now eligible to be appointed by our guardianship -- seven guardianship judges. So I send a letter then to the judges and advise them that this person is now requesting to be a GAL, and we usually get about three or four per year, new ones. And we usually have at least about five or six retiring, so it balances out pretty well.

But to give you the statutory authority real quick, for minor guardianship cases, it's 11-10.1B, and that provides that the Court may appoint a GAL to represent a minor in guardianship proceedings. Frequently we don't, unless there's cross petition by another relative that comes forwards and wants to also be the guardian, then we have to have a GAL go out and find what the circumstances are outside the Court and come back and report on who they think is most suitable

to be the guardian.

And for disabled adults, it comes under 11A-10, which, as the chief mentioned, mandates and requires that the judges shall appoint GALs in disabled adult guardianship cases, except when the Court determines an appointment is not necessary for the petition of the despondent, which is the alleged disabled person, or a reasonably informed decision on the petition.

An example of this is where you have people who are -- reached their majority at the age of 18 and they are develop mentally disabled with An affliction like Down's Syndrome or cerebral palsy, autism. In those cases, a GAL is not necessary. We get the medical records, we get a report, and we have an observation to observe them.

I've served in the probate division since 2013, and I sat on a guardianship disabled call for three years during that time. And you observe these people and now the nice thing about Zoom is that we don't require them to come in. There's no reason for these young adults to come in. We're able to see them on Zoom. We have their medical and we can appoint -- usually it's the parent who they've lived with since they were born with this. So those are pretty

straightforward cases that you don't need a GAL for.

However, GALs are used in many, many other cases involving minor guardianship and disabled adult guardianship, and the work they do is invaluable to the judiciary. They've been described in cases as the eyes and ears of the Court. They've also been called the arm of the Court. And after they conduct their interviews with the minors or alleged disabled person, they submit reports.

And in their reports they make recommendations to the judge that's very important for us to do our job properly as to whether guardianship is needed, the type, of guardianship, limited or complete, we call it plenary guardianship, and if it is needed, who's the most appropriate person to serve as the guardian. And I strongly agree with Chief Judge Camille that in Illinois, we need a baseline. We need consistency and to get training.

We're lucky in Cook County that we have CVLS training and educating the attorneys for minors and disabled adults guardians. Also, CVLS enlists many volunteer GALs from the law firms downtown that provide a lot of pro bono work that you don't get in probably Southern Illinois or Central Illinois, so we're

fortunately there.

But in conclusion, I want to address your point about the lawyer, and I think the case that illustrates it best is this Nichols v. Fahrenkamp. It's a 2019 Supreme Court decision. And in that case, the PI case, the 11-year-old, who was a victim of a motor vehicle accident, had a $600,000 recovery and a personal injury settlement and her mother was appointed as guardian, was a GAL. Mr. Fahrenkamp was appointed as GAL.

And when Alexis Nichols turned 18, she filed a lawsuit against her mother because her mother spent 80 -- she alleged her mother spent 80,000 of her funds for the mother's benefit. She also filed a malpractice cases against the GAL, and the trial court granted summary judgment in favor of the GAL. They found that for the first time that a GAL has quasi-judicial immunity. The appellate court reserved. Supreme Court reversed the appellate court and found that, in fact, for the first time in Illinois, GALs do have quasi-judicial immunity.

And how that ties into this rule is that it's so important to have education and training for judges to feel confident when they appoint someone, that this person has that minimum baseline that they're going to

do the job properly in the entire state of Illinois, not just in Cook County. We feel pretty comfortable because we know that our GALs have been trained, but I think for the whole state it's important to have baseline requirements.

And to your point directly, if someone takes on a case once every two years or once every -- with 130 sometimes an attorney may only get one or two cases a year, if that. With us, too.

But if they do take on a case and they don't feel comfortable, they should let that person know up front, this is not something I do regularly. There may be other lawyers that are better qualified. But having education to educate that lawyer, and since you have to get your CLE requirements anyway as a lawyer, what better way than to have this training and education requirement that is -- it's a minimum six hours, and they get that easily in Cook County with the CVLS training and periodic training afterwards. They're a going to get it anyway.

So I would just submit that anyone who is interested in being a GAL should also take the time to become educated before they accept an appointment.

That's all I have unless anybody has any

questions.

CHAIRMAN HANSEN: No, I don't. Thanks.

JUDGE DANIEL MALONE: Okay.

CHAIRMAN HANSEN: Thank you very much.

JUDGE DANIEL MALONE: Appreciate your support.

CHAIRMAN HANSEN: Next up John Chatz to discuss proposal 24-09, which is Rule 9 on the electronic filing documents.

MR. JOHN CHATZ: Good morning. Good morning, Justice O'Brien, members of the Committee.

My name is John Chatz, I'm the chief of staff with the Administrative Office of Illinois Courts, and I am speaking in support of Proposal 24-09 as an ex-officio member of the E business policy advisory board. Proposal 24-09 would amend Supreme Court rule 9C to eliminate email as an authorized method for filing a certification of exemption from E-filing.

Supreme Court rule 9 governs the electronic filing of documents in civil cases in Illinois courts, the amendment being proposed is very simple and has little, if any, impact on the remaining substantive provisions found in rule 9.

Specifically, this proposal addresses how a party can file a certificate -- certification for

exemption from E-filing and rule 9 lists five types of documents that are exempt from electronic filing. In order to exercise the exemption, a certification of exemption from E-filing must be filed with the Court. 9C, as currently written, would permit one of the methods for filing the certification for exemption to be via email. Proposal 24-09 seeks to strike the term "via email" from the rule.

In January 2024, Supreme Court rule 9C was amended at the request of the Illinois Appellate Lawyers Association, the ALA, and among other things, the change to the rule authorized the certifications to be submitted to the clerk on the Court for filing by email. The rule previously allowed the certification to be filed by mail or in person on paper or electronically via E-filing Illinois.

Later, at the February 23rd, 2024, meeting of the E business policy board, circuit clerks and appellate clerk, members of the board, expressed concern about email as a method of filing documents with the Court. The board discussed the issue and reached out to the ALA and learned that the inclusion of email as a method of filing, in their proposal to change rule C, was almost an afterthought and certainly not a driving

force behind the request for amendment.

The ALA's representative on our board said the ALA's main intention was to expand the filing options under rule 373B, to include third party commercial carries.

The ALA confirmed there was no intention to create difficulties or procedural awkwardness, at the administrative level of the courts, and as proposed today, and in this proposal, the filer will be able to file the certification of -- for exemption from E-filing, either electronically through E-file Illinois, by email, or third party commercial carrier, or in person at the clerk's office.

Before concluding, I would point out -- and this was -- I don't think this was in the written proposal that you received, that comment B to rule 9C does provide that parties may also file by their other means, such as email, so there may be some -- a desire to go ahead and amend comment B as well.

Thank you for your consideration. If you have any questions, I'd be happy to try to answer them.

CHAIRMAN HANSEN: Well, I'll let you try to answer mine.

Why not just leave it? What is the harm that's

being created right now by the words "by email" as it's written?

MR. JOHN CHATZ: The problem is that circuit clerks around Illinois don't necessarily monitor their email all day long. Instead, they have staff that monitors the E-file queues or is at the counter to take in a document being E-filed in person. Email is not a prescribed method of E-filing otherwise, but this is what is included as an exception.

So if you talk about, you know, necessarily some down state communities and some down state clerks who have issues with the technology already, while there are -- while we are working to try to provide them as much as and to equal things out, checking their email all day is one of the last priorities on their list as opposed to making sure that the filing queues are managed, that files that are being E-filed are being accepted and/or rejected if necessary.

So the concern that was raised at the policy board level by the clerks was, I don't know how I can manage email as well as everything else and then a filer submits something via email, it's not addressed, and what the ramifications would be if that were to happen.

CHAIRMAN HANSEN: Okay. Thanks.

MR. JOHN CHATZ: All right. Thank you very much.

CHAIRMAN HANSEN: Next, Patrick Heckler, as to Proposal 24-09.

MR. PATRICK HECKLER: Thank you, Justice O'Brien and members of the Committee. Thank you very much for the opportunity to speak with you today.

My name is Pat Heckler. Like my written comment, I am here in my personal capacity, not on behalf of any organization.

The issue I want to address is Proposal 24-09, which concerns a change to Rule 9C that was just discussed. But that's only because this is the only forum to address this Committee on issues more broadly related to Rule 9.

Like my comment, I'm going to speak to issues related to rule 92 and Rule 9F and the process, or lack of is it, with respect to the handling of these rules in the wake of the decision in Kilpatrick versus Baxter. Rule 9F was adopted without hearing or comment from the bar.

It was then further amended without notice of the further change that was made. The text of the rule does not even reference the additional modification that

was made after it was originally filed. The rejection standards that are referenced in the current version of Rule 9F have not been subject to any notice or comment.

Proposal 24-01, which would have -- which would adopt Federal Rule 5D-4, submitted by Bruce Pfaff [phonetic] was rejected without even a hearing. It took my column from the Chicago Daily Law Bulletin on June 20, 2024, to even find out that Justice -- the response that was submitted by Justice Doherty in his letter to the editor of June 24th of 2024, that there was a grace period that has been agreed to by this Committee. No information on what that grace period is or how it would operate has been disclosed, much less his comment been allowed from the bar.

To be sure, the Supreme Court has the ability to adopt these rules without consultation with anyone, it need not even have this committee. But especially on an issue as important as electronic filing, which, with narrow Exception, is required to be used by the Illinois lawyers under Rule 9A, the Court should not operate in that fashion.

As the examples in my written comment illustrate, the problems with electronic filing are -- and the rejection standards do not address these

problems. Instead, the rejection standards reinforce that clerks will be able to reject submissions for any reason or no reason at all. Prejudicing the parties and more -- justice itself.

Indiana rule trial -- Indiana Trial Rule 88, without the labyrinthine rejection standards that Illinois lawyers will be subject to come September 1, provides clear rules for the bench, bar, and clerks with a three-day business -- three business day grace period for rejected submissions.

Why do I mention Indiana? First, they use Tyler Technologies, the same company that Illinois is contracted with and yet Indiana has a far superior system as it is a statewide electronic system that includes every county and the reviewing courts.

The search access across that system is available from the lowest town court to the Indiana Supreme Court, civil and criminal alike for anyone and is searchable by any court number, which are all unique to a particular case, name, attorney, or a number of other criteria.

In other words, you can get anything that isn't under seal or otherwise protected, briefs, everything, from any court in the state of Indiana, with the click

of a button. Try doing that in Illinois. You can't do it. You can't get briefs in the appellate court. You can't find out what is going on in a matter but for the grace of calling clerks sometimes if you want to find out what is going on in the Supreme Court, you can't find out what issues the Court granted PLA on.

Second, I practice in Indiana extensively, something approaching 50 percent of my currently litigated matters are in Indiana. My staff and I have had nothing resembling the problems we have experienced with electronic filing in Indiana -- or Illinois rather. I've spoken here and in my written comment through -- and that is obviously not the best kind of evidence.

Without publicly available information, however, empirical data is not available to determine how extensive or not the problems with electronic filing are. Again, it took Justice Doherty's letter to the editor to find out there were 429,000 or so rejections since 2020 -- or in 2021. We don't know the particulars of those, and that's part of the problem.

What I am requesting is for the ability of the members of the bar to be involved in the process of amending rule 9 with respect to issues related to the rejection of electronically submitted documents and the

bar to be heard and have the concerns of the bar addressed. The current electronic filing system and the rules that go in effect on September 1 do not serve the ends of justice or the people of Illinois.

Instead, the -- instead of hearing Rule 9C, a noncontroversial and minuscule change in the rule, I ask the Committee to hear comment on electronic filing issues so that the members of the bar can be -- can fully present their concerns. In this -- and ultimately the Court can decide from that input that with the benefit of their insights and experiences.

Thank you very much for your consideration.

CHAIRMAN HANSEN: Thank you. Any further questions?

Okay. Thank you.

Next, Aaron Bryant. Okay. Mr. Bryant elected not to participate.

That would be the last speaker that we have for sure today.

So I want to thank all of our speakers for your time. Thank you for your presentations. We appreciate it, and the public hearing is now adjourned. Thank you.

(11:37 a.m., proceedings concluded.)

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

Isaiah P. Roberts, being first duly sworn, on oath says that he is a Certified Shorthand Reporter and Registered Professional Reporter doing business in the City of Chicago, County of Cook, and the State of Illinois;

That he reported in shorthand the proceedings had at the foregoing public hearing;

And that the foregoing is a true and accurate excerpt of the proceedings had at the said public hearing.

Isaiah P. Roberts, CSR, RPR
CSR No. 084-004890

SUBSCRIBED AND SWORN TO
before me this 19th
of September, 2024.

OFFICIAL SEAL
ALLISON L. SEDAKIS
Notary Public - State of Illinois
My Commission Expires 3/21/2027

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