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Via E-Mail

Chairman James A. Hansen
RulesCommittee@illinoiscourts.gov

Re: Proposal 22-03: Support

Dear Chairman Hansen:

I am a professional responsibility attorney, legal ethicist, and commercial litigator at the law firm of Holland & Knight LLP. I also have the pleasure of currently serving as President of the Association of Professional Responsibility Lawyers (“APRL”), the nation’s largest bar association for lawyers who practice in the field of professional responsibility and legal ethics law. APRL has more than 400 members across the globe, and those members largely focus their practices in legal ethics, risk management, legal malpractice, disciplinary defense, and the law of lawyering. APRL includes many academics, professors, and judges in its membership. While I am a proud member of both APRL and Holland & Knight, I note both organizations only by way of background; my remarks here are on my own behalf.

I write in support of Proposal 22-03, which would add a Comment [4A] to Illinois Rule of Professional Conduct 1.5 to clarify that IRPC 1.5 allows for alternative fee arrangements so long as those fees are reasonable. The proposed Comment also urges lawyers to consider implementing such alternative fee arrangements, which help to provide transparent, predictable, and affordable representation to clients. As Illinois State Bar President Rory T. Weiler stated in his most recent President's Page, it is indeed "high time that we revisit the billable hour as the prevailing metric for production and performance of lawyers."¹ Indeed, as President Weiler stated in his column, focusing on billable hours as the sole metric for lawyer productivity and thus, usually, compensation, disadvantages both lawyers and clients, and often does not promote the best interests of clients.

As written, Comment [4A] is sensible, easy to understand, and will work to accomplish the goals as stated – providing transparency and predictability to clients. I fully support its adoption into IRPC 1.5.

In 2019 and 2020, I had the pleasure of serving on the Chicago Bar Association and Chicago Bar Foundation’s joint Task Force on the Sustainable Practice of Law & Innovation² (the “Task

¹ Illinois State Bar Journal President's Page, *Our Finest Hours*, September 2022.

² My comments here are not on behalf of the Task Force, but rather only myself.

Force”). At the end of many months of work, which included meeting with stakeholders all over Illinois, the Task Force issued the Task Force Report on September 28, 2020.³ Among the Task Force’s recommendation was Recommendation #4, which urged the Illinois Supreme Court to develop new or amended rules that provided for alternative fee arrangements and fee petitions.⁴ The Task Force noted in its report that:

One of the biggest impediments to affordable legal help in the consumer and small business market is that the market for legal services today is largely opaque when it comes to pricing. People who might be able to afford the legal help they need often do not even try to get a lawyer because they have no idea what it might cost.

This problem exists because the billable hour remains the primary means of pricing services in this market. In addition to lacking transparency and cost certainty for clients, the billable hour also misaligns incentives for efficiency, innovation, and value.

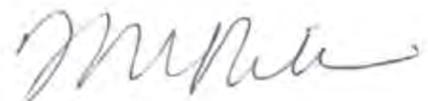
Task Force Report, pg. 64.

The Task Force went on to recommend a new Comment [4] that is substantially similar to the one provided in Proposal 22-03, although the Task Force's version was more robust and provides additional examples to readers that could be illustrative.

While I prefer the language proposed in the Task Force Report over the language in Proposal 22-03, I am at the stage in my career where I recognize that such Rules changes are often incremental and that letting the perfect get in the way of the good generally results in gridlock. Accordingly, I applaud the Rules Committee on a well-written proposed Comment [4A] and support its adoption in full.

To the extent that Illinois lawyers may object to the addition of such a comment in the Illinois Rules of Professional Conduct, I would note the following: (a) this is not a change to the Rule itself, but rather only to a Comment that is intended to provide guidance and clarity to Illinois lawyers and (b) it does not change any standards of assessing fees as "reasonable" under IRPC 1.5. Any suggestions to the contrary are not well founded.

Very truly yours,



Trisha M. Rich

Cc: Amy Bowne (abowne@illinoiscourts.gov)

³ Available at <https://chicagobarfoundation.org/pdf/advocacy/task-force-report.pdf>

⁴ Proposal 22-03 is silent on the issue of fee petition reform, so I do not address it here.