STATE OF ILLINOIS)
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COUNTY OF COOK)

SUPREME COURT RULES COMMITTEE
PUBLIC HEARING

ILLINOIS SUPREME COURT
BOARD/COMMISSION/COMMITTEE/TASK FORCE

Report of videoconferenced proceedings had at the public hearing in the above-entitled cause before James Hansen, Committee Chairman, commencing at 10:38 a.m. on the 5th day of October, A.D., 2022.

CHAIRMAN HANSEN: Good morning, everyone, ladies and gentlemen. My name is Jim Hansen. I am the Chair of the Illinois Supreme Court Rules Committee. We are here today for public hearing. We had hoped to do this in person, but due to some building and technical issues, we had to convert it to Zoom.

We have a very heavy list this morning on our docket. We have six proposals. We have numerous speakers that have signed up to speak regarding various -- of various proposals.

For everyone's information, this is being streamed, and we have a court reporter taking down our spoken word. Therefore, when you are called to speak, it is important that we hear you and you enunciate, and if there's any issues, we may have to interrupt you. We're not trying to be rude, but we want a clean record for our court reporter. We have our committee members with us here today to hear these proposals and comments.

I will be keeping a very tight leash on the time, the reason being we have many proposals and many speakers. Everybody has been given five minutes to speak. I would recommend, as would the committee, that when you are called to speak, if you are one of many speaking on a proposal, please do not stand up and rehash

everything a person, or two people in front of you has already spoken to us about. If you have something new to add, wonderful. If it's what somebody said before you, please keep it short and sweet, and you can adopt your testimony.

We are going to be, again, keeping this time frame limited. If, for instance, I would use as an example, we have the Honorable Gene Doherty and Jacque Huddleston both listed to speak on Proposal 22-02 first. If you both are going to speak, we're going to keep it to, you know, 2 and-a-half minutes a piece. If one of you would stand up and say I'm going to speak for both of us, please let us know that, we'll give you the full five minutes.

So when you're done speaking, we may have questions for you. I will open it up to the committee as well and ask questions at the time before you sit down. If I hear none, then we'll move on to the next speaker.

So that being said with the background, we appreciate your tolerance of the Zoom as we are doing the best we can, and we will move forward. We've done this before, so we are experienced with it. That being said, let's get started.

Our first proposal is 22-02, which amends

Supreme Court Rule No. 9 regarding the electronic filing of documents. This has been offered by the Illinois Board of Admissions to the bar, and we have two speakers, as I said.

Judge Doherty, I see you. And Ms. Huddleson, I don't know if she's going to speak. But, Judge, I'll turn it over to you to start with your comments please.

JUDGE DOHERTY: Thank you. I think, just to correct the record though, we're here for 22-02, which is from the Supreme Court E-Business policy.

CHAIRMAN HANSEN: I'm sorry. Yes. 22-02, you are correct.

JUDGE DOHERTY: As I mentioned, I'm Gene Doherty. I'm chair of the Illinois E Advisory Board to the Illinois Supreme Court. Our proposal to amend this particular rule was actually under the guidance of former Chief Judge David Hylla when he was the chair of this group.

We were prompted to submit this proposal in a response to a similar proposal from the Appellate Lawyers Association, with which we agree in principle. But our Board being comprised not just of lawyers, but also judges and clerks, we had some different thoughts on the mechanics of implementation maybe because of the wider

experience base of our group.

Like Hylla's proposal, our proposal is designed to guard against fatal errors of untimeliness that might occur when an e-file document is rejected for technical, but curable reasons.

We want technical errors to be fixed, we don't want them to deprive somebody of their day in court when a deadline is not flexible.

We posed to create a middle ground between acceptance and rejection of a document, a grace period. Mechanically this would happen as follows: First, a clerk reviewing a document would flag it for error. Second, the filer would be notified of the error and given a limited period of time in which to correct it. And finally, if a corrected version is filed within the specified time, the later document is deemed filed as of the date of the earlier failed attempt.

The time period that we have suggested for the grace period is 48 hours, but we totally agree that that's something of an arbitrary number and we're actually revisiting it ourselves. We should pick the time that works best for all concerned, and that would include for the vendor, Tyler, which handles the e-filing system.

Our rule presumes the ability of Tyler technically to create the grace period, but that exists only on the drawing board at this point. Right now what we're proposing cannot be done, but there's a chicken or egg situation. We need the rule to tell Tyler what we want them to do.

What we'd like to ask the Committee is that if the rule is approved, that you please keep us in the loop on two things. First, the effective date because we need to correlate with what Tyler needs in terms of time to make this work. And, secondly, the length of the grace period, which may work in different formulations better or worse with what Tyler creates as the technical option.

I thank you for the opportunity to address you today. Jaque Huddleston and I are certainly here and ready to answer any questions you might have.

CHAIRMAN HANSEN: Thank you. So I had two questions, which you kind of hit on already.

So let's assume Tyler comes back and -- Well, Number 1 is, Tyler hasn't said they can do this yet, so that's Question 1. It's on the drawing board to them, correct?

JUDGE DOHERTY: Tyler assures us they can do this. It's just that it hasn't been built yet.

CHAIRMAN HANSEN: Okay. Have they told you how long it would take possibly to build it out?

JUDGE DOHERTY: I think we had talked with them about maybe a 90-day lead time. But it's my experience that those kind of deadlines are optimistic, and that we should be ready to be flexible about it.

CHAIRMAN HANSEN: And then my last question was regarding the 48 hours, which you kind of hit on as an arbitrary number. If Tyler comes back to you and says, Well, we can't do it within -- we need 72, or some -- I'm just picking that number. If we approve this, we're going to have to come back and adjust the rule again.

JUDGE DOHERTY: I don't anticipate that Tyler is going to have an issue with the amount of time.

CHAIRMAN HANSEN: Okay.

JUDGE DOHERTY: Whether it's expressed as 48 hours versus midnight on a certain day, that might fit better or worse depending on how that platform adjusts.

CHAIRMAN HANSEN: Okay. Thank you.

Other committee members with questions?

Okay. Thank you very much, Judge. Appreciate that.

Moving on to the next proposal, 22-01. Our speaker will be Nancy Vincent. This amends Supreme Court

Rule 706 specifically as to fees of new admissions to the bar. And as I perused that this morning, the fee goes from 1,250 to 1500.

Ms. Vincent, are you with us?

MS. VINCENT: Yes, I am. Thank you.

CHAIRMAN HANSEN: Okay. There you are. Okay. I have to go through my gallery and find the people. Go ahead, you have the floor.

MS. VINCENT: Thank you. Thank you for the introduction, and thank you for the opportunity to address this Committee.

I am the Director of Administration for the Illinois Board of Admissions. We are the independent Commission of the Supreme Court that is charged with the admissions rules for attorneys. So we conduct the bar exams, but we also conduct the other forms of admission. And what we are proposing today is to -- modest increases on the admissions fees for three categories of admissions.

So Rule 706, Subsection (e) and (g) were last amended in 2012 raising the fee to the current state that it's in. So the fee for admission on motion under Rule 705 and the fee for limited admission of house counsel were last raised in 2012, and it is now 1,250.

In 2018 the Illinois Supreme Court approved our transition to the Uniform Bar Exam and that involves, among other things, an ability to be admitted through a transferred UBE score. So UBE, Uniform Bar Exam. So someone who takes the exam in another jurisdiction, if they meet our cut score and other requirements, can transfer that score and be admitted in Illinois without taking the bar exam again. And that fee is also 1,250.

It shouldn't be a surprise to this committee or anyone that our costs have risen. And we are at the stage where we are unable to absorb any more of the fixed costs of conducting the bar exam. And inasmuch as these fees have not been raised in almost ten years, we would propose that the Committee approve the amendments to Rule 706 to raise the fees on those three categories of admission.

Rule 705, Admission on Motion, those are the individuals that are coming from another state and have some practice experience, then limited admission of house counsel, individuals who have jobs as in-house counsel, and then those transferring a Uniform Bar Exam score under Rule 704(a).

I'm prepared to address any questions that the committee may have.

CHAIRMAN HANSEN: Thank you.

I don't have any, so I'll open it up to any other committee members that may have a question.

Hearing no one.

Thank you for your time. We appreciate it. And thank you for being here today.

MS. VINCENT: Thank you very much.

CHAIRMAN HANSEN: Okay. Our next speaker is in regards to the third proposal, 21-04, which amends Supreme Court Rules 23 and 361, specifically 23(c), summary orders on disposition of cases in the Appellate Court. And then Rule 361(3), a motion from a reviewing court increasing the response time from five days to seven days.

Mr. Seth Horvath, are you with us?

MR. HORVATH: Yes, Mr. Chairman, thank you very much. And good morning to you and the committee members. Thank you.

Seth Horvath on behalf of the Appellate Lawyers' Association. I'm one of the Association's officers. I'm also the chair of its Rules Committee.

I'd like to use my time today to address actually three proposals. Two are from the ALA, one is from the Supreme Court's E-Business Policy Advisory

Board.

The ALA's proposals are both combined into Proposal 21-04, but they address separate rules. The first proposal deals with the Appellate Court's use of summary orders to address criminal and juvenile sentences under Rule 23(c). The second ALA proposal deals with extending the deadline for responding to motions under Rule 361(b).

Proposal 22-02 is the proposal from the E-Business Policy Advisory Board. The Committee heard about that proposal early this morning. The ALA endorses that proposal, I'll address that one last.

Turning to 22- --

COURT REPORTER: I'm sorry. The one that you're going to address last, repeat that, please.

MR HORVATH: I'm sorry. The one that I'm going to address last is Proposal 21-04, that's -- I'm sorry. 22-02. That's from the E-Business Policy Advisory Board, 22-02.

With respect to the ALA's Rule 23(c) proposal, Rule 23(c) addresses the use of summary orders by the Appellate Court. It says the summary order can be used when the disposition is clearly controlled by case law precedent, statute, or rules of court. That's the

language directly from the current version of the rule. The change has to do with allowing the Appellate Court to remand on sentencing issues while retaining jurisdiction over the merits. And this is intended to address situations where there's a clear sentencing error, and the error would be moot by the time the appeal is resolved.

The mootness issue arises when a sentence is completed during the appellate process. Common sentencing errors include applying the wrong statute, relying improperly on a prior conviction, or miscalculating the amount of sentencing credit. Under the ALA's proposal, those errors could be addressed on a more expedited basis and relief could be granted where appropriate while the Appellate Court works through more complicated issues related to the merits.

The Cook County Public Defender's Office and the Office of the State Appellate Defender have submitted written comments supporting the proposal. The ALA thinks that the proposal is a prudent extension of the use of summary orders and would ask the committee to adopt the proposal.

With respect to Rule 361(b). Rule 361 addresses motions in the reviewing court. The current

rule gives a responding party five days to respond to a motion when they're served by personal delivery or by e-mail. With e-filing, this is effectively the default response deadline. That is, for all intents and purposes, the five-day deadline is going to apply across all motions filed.

The ALA's proposal would provide seven, not five, days to respond to motions. It's a very small change, but it's designed to address the unfortunate situation where a motion gets filed on a Wednesday or Thursday, and the response deadline falls on a Monday or a Tuesday. That intervening weekend can make things like client communication and staff support much more difficult for the responding attorney.

Now, sometimes a Wednesday or a Thursday filing is tactical in nature, sometimes it's just a product of busy schedules; but regardless, a modest adjustment to the deadline would relieve some unnecessary pressure on busy practitioners.

In the experience of the ALA's members, clerk offices often don't calendar the five-day deadline and they instead allow more time upfront, but it would be helpful to have that additional time built in to the rule itself.

And I wanted to use my remaining time to just mention a brief word on Proposal No. 22-02 regarding Rule 9.

The ALA had the good fortune of being allowed to participate in some of the Policy Board's deliberations over that proposal. It's a much needed rule change that addresses delayed rejection notices in the e-filing system. I know I can speak for the ALA's members on this item. They will breathe a collective sigh of relief if the proposal is adopted. Delayed rejection notices can have very serious jurisdictional consequences when they involve a Notice of Appeal, a Motion to Reconsider, or a Petition for Rehearing, and this proposal would help address those issues.

The only added suggestion of the ALA, and I see my time is wrapping up here, is to perhaps build in more than just a 48-hour response deadline to address the notices issue pursuant to the rule.

So I'll conclude my remarks with that subject to any questions from the committee, and I thank the committee for my time today.

CHAIRMAN HANSEN: Real quick. Do you have a number in mind other than the 48 hours?

MR. HORVATH: I think a good place to start,

Mr. Chairman, might be 48 business hours or two business days. I would be certainly open to even more than that. Again, getting back to the notion of having timelines that apply to weekends, I think it would be helpful to make it a business-day number rather than simply a straight number of days or hours.

CHAIRMAN HANSEN: Thank you. Any other committee members have any questions for Mr. Horvath?

Okay. We thank you for your time.

MR. HORVATH: Thank you very much.

CHAIRMAN HANSEN: Moving on. Our next proposal is 22-03. This amends professional -- Rule of Professional Conduct 1.5. In a nutshell it talks about some fee agreements. And as I read this again, it amends simply the comment section to the proposal.

Is Karen DeGrand with us this morning to tell us about it?

MS. DEGRAND: Good morning.

CHAIRMAN HANSEN: Hi. Go ahead. Thank you.

MS. DEGRAND: Thank you.

Karen DeGrand as Vice-Chair of the Supreme Circuit Court Committee on Professional Responsibility. And good morning to everyone again.

In the spring of 2021 then Chief Justice Birk

referred to our committee several recommendations contained in the CBA/CBF Task Force report on the Sustainable Practice of Law & Innovation. And our group reviewed Recommendation 4, among other items on, alternative fee petitions, which proposed adding language to Comment 4 of Rule 1.5 and adopting a new rule, Rule 300 entitled Attorneys' Fee Petitions.

We analyze the Task Force's thoughtful recommendation with its laudable goal in mind that is expanding justice -- access to justice by making clear to Illinois lawyers, and also importantly the judges who rule on fee petitioners, that alternative fee arrangements are acceptable to the Supreme Court if otherwise, of course, compliant with Rule 1.5.

Understanding the Task Force's goal of facilitating transparent, predictable, and affordable fee arrangements, we respectfully disagreed with including statements favoring one form of fee arrangement over others and concluded that assuming the Supreme Court wishes to implement the Task Force's objectives, a more neutral statement concerning fee arrangements would do the job of assuring our Illinois lawyers, and also the judges who rule on fee petitions, that alternative fee arrangements are acceptable to the Court and within the

Rules of Professional Responsibility. So for that reason we drafted a proposed Comment 4(a), which is the proposal before the committee today.

Comment 4(a) to Rule 1.5 states that alternative fee arrangements to deliver affordable representation should be considered where appropriate. This we thought would be a modest revision to the comment, yet achieves the goal of the Task Force.

We recognized the Task Force's suggestive comment to Rule 1.5 was tied to a new rule, a proposal that was intended to fix a problem the Task Force noted when lawyers seeking judicial approval of fee petitions. Evidently the Task Force felt that an amendment to the existing rule would help obtain Court approval of alternative fee arrangements. But we thought that this specific and appropriate goal could be achieved with an indication from the Court with the Committee's Comment 4(a), which simply states that alternative fee arrangements may properly be considered. We felt that our proposed Comment achieved the Task Force's goal without running into problems that could arise from the proposed new Rule 300, which we thought could be misinterpreted as establishing the legal standards for fee petitions rather than simply the ethical boundaries.

So I'd be happy to answer any questions.

CHAIRMAN HANSEN: Thank you, and thank you for your work.

Anybody have any questions regarding Proposal 22-03?

Okay. Thank you. And we will move to our next speakers. They are on the same proposal, 22-03. Trisha Rich and Roya -- I'm going to do my best -- Samarghandi?

MS. SAMARGHANDI: Very well, Judge.

CHAIRMAN HANSEN: Okay. Are you going, or is Trisha going to speak?

MS. SAMARGHANDI: I'll allow Trisha to start. Thank you.

CHAIRMAN HANSEN: Okay. Go ahead.

MS. RICH: Good morning. Thank you.

My name is Trisha Rich for those of you that don't know me. I am a partner at the law firm of Holland & Knight. I'm a legal ethicist and professional responsibility lawyer. And I'm currently the president of the Association of Professional Responsibility Lawyers, which is the national bar association for legal ethicist and professional responsibility lawyers and some academics that work in our field.

I'm not here today on behalf of either Holland

& Knight or April, but rather as a representative of the Chicago Bar Association and Chicago Bar Foundations Task Force on the Sustainable Practice of Law & Innovation. And we are appearing today in support of Proposal 22-03.

First, I'd like to thank Ms. DeGrand for her comments, and I will not repeat those here. I intend on being brief. But I want to adopt the written comments that I submitted, and I want to note that I have read the other comments that came in on this proposal. And I want to reiterate that the proposed comment on 4(a) makes no changes to either the black letter language of Rule 1.5 or Rule 1.5 standard of reasonableness. Rather, the comment provides additional context for attorneys that will assist them in helping to understand the rules and how they're applied. And that's frankly exactly what comments are supposed to do, they're supposed to help practicing lawyers be able to pick up the rules, read them, and understand how they're applied.

I want to make another point that wasn't in my letter, which is that we do have evidence that pricing, certainty, and transpirity makes a difference to consumers in the legal market and increases their ability to meaningfully access legal services. In a recently published study out of the United Kingdom, more than half

of respondents surveyed, a five-year study that surveyed thousands of people, more than half of them began a search for legal servicing believing and assuming that accessing legal services in the way that they needed would be prohibitively expensive. And 77 percent of that survey group later surveyed believed that having availability to pricing information as part of their search as they did in the study helped them make better choices in retaining counsel.

So I think the proposal as written is clear and easy to understand. I commend the drafters. I thank you for your work. And I think the proposal will do exactly what it's intended to do, provide transparency and predictability to consumers of legal services. I thank both of the committees for their work, and I ask that the proposal be adopted as it is.

And I'm glad to take any questions. I thank you for your time in letting me speak. And otherwise we'll turn it over to my colleague to add some additional commentary.

CHAIRMAN HANSEN: Roya, why don't you go ahead.

MS. SAMARGHANDI: Thank you. I thank you again for the opportunity of appearing this morning. As the Chairman indicated, my name or Roya Samarghandi. I am

solo practitioner and also a member of the Chicago Bar Association and Chicago Bar Foundation Joint Task Force on the Sustainable Practice of Law & Innovation.

When I began my firm in 2015, I was part of the Chicago Bar Foundation's incubator program, the Justice Entrepreneurs Project. The JEP program is one to which I personally feel indebted to and honored to be a part of, and I continue to serve on its Advisory Board.

For those of you that do not know, the Justice Entrepreneurs Project is an incubator program that helps lawyers launch socially conscious and innovative law firms, focus on serving that middle market of people consumers. A cornerstone of that innovation is the implementation of set or fixed fee pricing because as you've heard, it offers price predictability and certainty to legal consumers in what is traditionally a very opaque market.

So as I sit here before you today, I do so as a practitioner who has successfully built a practice, or an alternative building of it. And I serve clients from all economic backgrounds from doctors, and business owners, cops, bus drivers, to retired and disabled individuals. All of them benefit from the predictability of my prices. Those have included the fixed flat fees, recurring

monthly fees, and most routinely a hybrid of the two.

It is this experience that is the basis of my support of Proposal 22-03, which as you've heard, is an amendment to Rule 1.5 simply to introduce Comment 4(a), explicitly allowing for alternative fee arrangements beyond the billable hour provided that such arrangements are indeed reasonable. And it further encourages attorneys to consider alternative fee arrangements in an effort to deliver affordable, transparent, and predictable representation.

I personally think this amendment is an important albeit a first step in moving the conversation forward as a profession detaching ourselves from the hourly rate. It's my firm belief that alternative billing arrangements, whether they be flat fees, contingency fees, or subscription fees, these alternative fee arrangements allow lawyers to focus on the value that we're providing to our clients as opposed to merely our time. And further it allows our incentives as attorneys to align more closely with those of our clients leading to more efficient and effective outcomes, and thereby reducing the burden.

So I thank you again for the opportunity to speak today and would be happy to answer any questions

that you may have.

CHAIRMAN HANSEN: Thank you. I don't have any.

The committee members, does anyone have any further questions?

Okay. Thank you very much. We appreciate your time.

We will now move on to our next proposal, Proposal 22-08, which seeks to amend Rule 434(d), Jury Selection and Peremptory Challenges. And we will begin with our first two speakers listed. We have Judge Joseph McGraw and Justice George Bridges. So I thought I saw Judge McGraw's name on there.

Please, one of you go ahead.

JUDGE MCGRAW: Thank you, Mr. Chairman. I'll begin, and Justice Bridges will follow up with some comments as well.

Supreme Court Rule 434, the amendment, has two primary purposes. Number 1, it reallocates the burden of justifying a peremptory strike to the striking party instead of the objecting party, and it accounts for unconscious bias instead of requiring proof of intentional discrimination as is currently the Batson standard.

One of the difficulties with Batson practice is

that it front loads the factual inquiry by requiring the party objecting to a strike to make a host of prima facie showings before the Court then shifts to a determination of whether or not there's been proof of purposeful bias.

Under the proposed rule change or amendment, it shifts the burden -- reallocates the burden to the striking party to immediately explain or justify a status neutral reason for the strike. The trial court can then undertake its traditional analysis and use its discretion in determining whether or not that strike should be permitted based on the additional information provided by the amendment to the rule.

So what this does is it gives the trial judge additional tools to conduct an evidentiary hearing to establish whether or not the peremptory challenge has been influenced by implicit bias. It helps the trial judge and the parties to think about the particular peremptory challenge and whether or not implicit bias is operational in that strike. Furthermore, it requires the striking party to provide status neutral reasons and shifts the burden to that party.

Currently the striking party evades any justification for the use of a strike. This rule requires more and provides structure for the trial judge

to conduct an informed observer analysis. Additional voir dire by the Court and counsel will assist in determining if implicit bias is operational before the strike is granted.

The rule attempts to address Batson shortcomings without depriving the parties the opportunity to exercise status neutral strikes. Parties objecting to potentially discriminatory peremptory challenge should not have to bear the burden of showing purposeful discrimination, nor should they have to do so before the striking party ever justifies themselves.

Fronting the justification and expressly defining reasons that are facially inappropriate will create a factual record to ensure a meaningful first review in the trial court and a meaningful record for review on appeal. The Rule does not predetermine a specific outcome, rather it provides a procedural structure to evaluate peremptory challenges in the context of a particular case. It ensures procedural fairness rather than letting implicit bias continue to hide in the shadows of peremptory challenges.

I'll defer the rest of my time to Justice Bridges.

CHAIRMAN HANSEN: Justice Bridges, you're on mute.

JUSTICE BRIDGES: Let me just say this, Batson has proven to be powerless at eliminating discrimination in jury selection, and this proposed rule by our committee is one to address that. And I won't even get into the differential standard of review for us at the Appellate Court as to why we believe this rule is important.

Our Supreme Court said this in a broad statement on this issue of implicit bias and racial injustice. They said, The Courts have the ability to nullify and set right, and they said that when addressing the freedom from racial discrimination.

Our committee agrees that the best solution to end this practice, this evil that we know in jury selection, is in this proposed rule to eliminate the bias in jury selection, so we proposed this rule for this committee.

We do not share the concerns of some of the objectors when they talk about the objective observer standard. We believe this proposed rule still requires that the judge apply the traditional Batson inquiry into a challenge, a Batson challenge. One, the judge is still considered the level of representation of the suspect -- suspected class in the venire versus the empaneled jury, the content of the striking party's

question, and whether the member is a protective class, nor do we agree that implicit bias is too nebulous of a concept to understand the jury selection.

We know because of our time constraints we can't really get into all of the things that are needed here, but this committee was formed for this very purpose. The Supreme Court called this committee to eliminate the evil bias in our courtroom. And we submit to you that this proposed rule change is a step in the right direction. Thank you.

CHAIRMAN HANSEN: Thank you. I do have a question. I'll start out, and then turn it over to the committee.

So I'm looking at Section 5 under the circumstances considered. When the Court should consider the following, which obviously they're not limited to by the language in the change. Under Roman Numeral i -- (iii), the language, it says, the Court can consider a disproportionate use of strikes against members of the identified suspect class.

So my question is, first of all, under that language you have to come to an understanding as to what the identified suspect class is. And assuming there's more than two individuals in that class in the venire, I'm having a hard time understanding what is going to be

considered disproportionate because if I have two people and you I use one strike on them, is that considered disproportionate? If there's four people and I use one or two, is that considered disproportionate? Can you maybe touch on that language a little bit here?

JUDGE MCGRAW: I can. That's where I think the informed observer standard comes in. In other words, the Court has experience that exists outside the jury selection that's being conducted at that moment in time. And so the Court through its observations over time has seen certain patterns or trends or behaviors in the -- so that provides the informed observer context in evaluating whether this person is a member of a protected or suspect class. And then in the large -- writ large whether or not there is a disproportionate attempt to eliminate members of that class. In other words, that's one of the challenges with Batson, is that it's so narrowly focused that it's -- it actually has the weaknesses that you've identified, Chairman. It makes it almost impossible to make that case based on the set of facts such as the ones you've advanced in your hypothetical.

CHAIRMAN HANSEN: Okay. Committee members, I will open it up for additional questions.

MR. SPESIA: I have a question. I'm just curious.

So the way that I read the materials, this rule would alter the decision in Davis? Did I read that correctly?

JUDGE MCGRAW: Can you elaborate?

MR. SPESIA: Sure. When I -- I went and took a look at Davis real quickly, and it appears that the Court in Davis adopted the burden shifting that this rule would alters.

JUDGE MCGRAW: It does alter burden. It's clearly on the party making the peremptory strike. That's an initial threshold responsibility of the party making the peremptory strike. It doesn't have to -- In other words, it doesn't have to result in the one making the objection establishing a prima facie case for purposeful discrimination or impermissible use of peremptory challenges because oftentimes it's impossible based on such a snapshot of a given case to make that showing. And then as it currently exists, the burden is to show the purposeful discrimination. And so those are burdens that just cannot be met on a day-to-day basis in a trial court.

MR. SPESIA: So I guess my question is, why is this -- why is this an issue for the committee -- the Illinois Supreme Rules Committee instead of an issue that should be decided by the Courts as they say fired in

the -- with the fire of adversarial where we have, you know, things briefed, both sides present their case. Why is this something that should be -- Why is it within the authority of the Illinois Supreme Court Rules Committee, would be my question?

JUDGE MCGRAW: Well, what it does is it recognizes the fundamental drawback -- fundamental shortcoming of the traditional Batson analysis because it puts an impossible burden on the objecting party because of the paucity of information often available on a particular trial at a particular time. So what it does is it equips the trial judge to conduct a more fact-intensive inquiry without requiring the objecting party to meet this prima facie burden, which they can almost never meet, therefore it never really reaches the reviewing courts because there's never really a record created. So what this does is it gives a trial judge the tool to ferret out the implicit bias, if it exists, through a more aggressive inquiry and into an explanation justification that's status neutral, and then the record exists. Under Batson it's impossible to create the record, which would then be -- not impossible, but it's improbable and difficult resulting in ultimate review by the higher court.

MR. GRANT: Mr. Chairman.

CHAIRMAN HANSEN: Yes, go ahead.

MR. GRANT: Andre Grant.

I don't have a question, but certainly a comment. Being a criminal practitioner for close to 30 years both in state court and federal court, it's almost impossible to put forth a successful Batson challenge. Notwithstanding that, the overwhelming sense of injustice and unfairness, when it comes to the exclusion of African-Americans from jurors -- from juries, it's startling. It's absolutely startling.

The perception that a defendant cannot get a fair trial because he or she -- particularly the defendant is black -- because he or she cannot get jurors that look like them, come from a similar background, have similar experiences, this is one of the fundamental problems of our criminal justice system.

And one of the things I recognize, I believe this is in Section 6, reasons presumptively invalid. These reasons have been used for years: prior contact with law enforcement, expressing a distrustful law enforcement, having a close relationship with a person that had been stopped. These reasons have been used to keep black people off juries. And I have to be candid, not just the perception, but the reality of the inability

to get a fair trial because you're not being judged by a jury of your peers.

There are some fine lines in terms of -- as evidence comes in, simple things like in a case of having a nickname. For instance, a defendant or a witness may testify that I've known this person all my life and I've known this person by the name of Snake, we called him Snake. A juror who is not from that community, or who has not had that experience, may have a difficult time understanding how a witness can know a person their entire life but not know their actual name. That is not uncommon in certain communities. And the people from that community can sit there and have a conversation with the other jurors about, Hey, look, this is not unusual. This is very common in these areas. These simple things like why a defendant may have saw a police officer and turned and went the other way when he had did nothing wrong, or why he didn't get out of his car?

These things are very important. And when there comes time for deliberation, it takes people that sit in that jury room that can help explain conduct that may seem nefarious, but is actually innocent. Or so I'm not sure -- Something has to be done, and it has to be done quickly, and this may be a step in the right

direction.

CHAIRMAN HANSEN: Thank you. And we'll talk about that more in the committee meeting. Let's move -- Are there any other questions actually for our first two speakers on the proposal? Otherwise we'll move to the next on the list.

COURT REPORTER: I'm sorry. Can I get the person that spoke, before the last one, identified?

CHAIRMAN HANSEN: John Spesia, S P E S I A. He's a committee member.

COURT REPORTER: Thank you.

MR. ROGERS: I also had something to say about it, but I think it may be more appropriate for our meeting.

CHAIRMAN HANSEN: All right. Thanks, Larry. And I'll make a note to make sure I remind you in committee.

Next up --

MR. BEYLER: I did have one question.

CHAIRMAN HANSEN: Okay. Professor Beyler, go ahead.

MR. BEYLER: You know, I noticed your pattern is basically on the Washington rule that has been in effect at least for some time. Has there been any study or any information the committee got about what impact that that change has had on the length of voir dire and to what extent peremptories are being challenged under that rule?

Particularly I'm a little concerned about the impact on voir dire because I think the lesson one would learn as a practicing lawyer from reading that Washington case that you cited is that if I'm going to make a challenge, I'm going to have to have the kind of voir dire that will justify it, not because I have to assume going in that there will be an objection. And I raise this because in the past the committee has dealt with problems with judges not wanting to allow attorney voir dire, or at least wanted to keep it rather short. And that's why I'd like to hear anything you could say about what the Washington experience has been with voir dire under that rule.

JUDGE MCGRAW: I don't know how that's lengthened or extended voir dire. I don't know that. But I think, you know, your point is a valid one because it will cause voir dire to be conducted differently in anticipation that certain objections will be found, will be lodged to certain strikes. But I don't think that's a bad thing. In other words, the time that it takes to do meaningful voir dire is worth it in order to make sure that unconscious bias, if it's operating, can be ferreted out.

And I want to just add as an addendum or footnote that Batson requires this purposeful

discrimination. And I think that most would agree that that's -- an enlightened society is not permissible. But what is becoming a dawning awareness, increasing awareness, is the unconscious bias.

And so sometimes visceral or some type of response to some of those characteristics that Attorney Grant spoke about, his reasons for justifying a peremptory strike might be rooted an unconscious bias. And so if that is advanced as one of the reasons why the peremptory strike is being made, the reason why it's presumptively invalid is because it oftentimes is rooted and could be rooted an unconscious bias. And then it gives the Court and the attorneys an opportunity to do additional voir dire to see if prior contact with police, for example, really has interfered with a person's ability to be objective or not as opposed to, you know, we're striking them because of their prior contact with law enforcement, or we're striking them because close friend or family members had cases in the court system.

You know, it does require more work, but it's worth it to see if that's an attitude that the person holds that interferes with their ability to be fair, or if it's simply just like a cultural factor that shouldn't be held against them.

So I didn't answer your question directly. I kind of expanded on, you know, the type of procedure that I think your question implicated, more likely voir dire, but I think it's worth it, Professor.

JUSTICE BRIDGES: Chairman, if I could just add one comment to that. I know we have a time constraint.

I would just add, is that I'm not -- I'm also not aware of any of the most recent statistics from Washington. But what I would point out is that I think there's an opposite argument to be made, which is -- because the whole point of this is to end what we perceived to be discrimination in jury selection. I think it may reduce those actual voir dires because the State won't engage in it. So I think there's another view of that. That, you know, it would reduce the time because they would be prepared knowing that the burden has been shifted, and I need to be prepared. And so I think it may, in fact, reduce that. So just -- I only wanted to let the Chairman speak, but I thought I need to say that.

JUDGE MCGRAW: Thank you, Judge Bridges.

CHAIRMAN HANSEN: I appreciate that. And, you know, I guess being the Chair, I got to be the bad guy. We are going to move on, so I'll bear that, and I appreciate

that from the both of you.

And our next speaker is from Winnebago County State's Attorney, Mr. Hanley, I see you're there, and go ahead.

MR. HANLEY: Thank you to the committee, and good morning everyone.

My name is J. Hanley, Winnebago County State's Attorney. And I agree with those who have expressed the evil of explicit and implicit bias. However, I think this rule goes too far, and there's too many reasons. And I understand Judge McGraw's point about it giving judges a more robust procedure, but I read the rule as inappropriately limiting a judge's discretion, and particularly that trial judge.

Jury selection is the province of the trial judge. Our U.S. Supreme Court in Flowers versus Mississippi has said, America's trial judges operate at the front lines of American justice. In criminal trials they possess the primary responsibility to enforce Batson and prevent racial discrimination from seeping into the jury selection process.

My understanding, and particularly in the last few years, is that trial judges in Illinois are trained in the science behind implicit bias, its effects on how

it manifests in the courtroom. They are in the best position to observe the demeanor of attorneys and potential jurors, to make those credibility determinations about offered reasons for striking jurors, and decide whether peremptory strikes are being used in a manner that violates the constitution. Trial judges aren't perfect, but on balance given their training, and particularly their recent training, they do a fantastic job of showing fairness to parties. Over the last decades legal tools have developed to achieve the goal of doing away with discriminatory strikes.

It is not necessary to amend Rule 434 in the manner proposed because our Courts can and do already look to statistical evidence, evidence of disparate questioning of prospective jurors, side-by-side comparisons of struck versus not struck jurors, the history of peremptory strikes in past cases, and other relevant circumstances that bear upon the issue of racial discrimination.

I admit that I do not have the trial experience of particularly the judges and many on this committee and commission, but I do have concerns about the theme of limitation of judicial and prosecutorial discretion. It seems to be occurring in recent legislative and rule

changes.

My career has taken some twists and turns, and I have been away from the criminal justice system though receiving this job 18 months ago. As a former prosecutor, I always knew the importance of judges' and prosecutors' discretion in doing justice. The last 18 months has only strengthened that belief. Judicial discretion is essential to achieving just results including the elimination of implicit and explicit bias. Whether a bond decision, discussion in a 402 conference, sentencing decision, or a Batson challenge, the discretion of the trial judge in the overwhelming majority of cases leads to a just result. I would argue that this rule limits that discretion.

Secondly, and quite frankly, I think this rule unfairly prejudices the State. Specifically while supposedly eliminating bias in the jury selection process, the first three presumptively invalid reasons for striking prospective jurors instead increase it. These reasons favor defendants and will make it harder to choose a jury that will be fair to both sides. Frequently and particularly those who express a distrust in law enforcement are inappropriately biassed, but now those reasons are presumptively invalid.

It sometimes can be difficult to talk about these issues in the abstract, but I would encourage all of those on the committee to review the Washington State case, State v. Orozco, 19 Wash.App.2d 367, again, 19 Wash.App.2d. That was a murder case which was reversed because a potential juror who's black was struck because the prosecutor had personally prosecuted her numerous times in the past.

Again, there was no -- As I read the case, it was clear that there was actually no racial discrimination in that case, yet a murderer got another chance at acquittal. More specifically, the prosecutor offered the presumptively invalid reason that there was prior law enforcement contacts with the race neutral justification and acceptable justification that that prosecutor had personally prosecuted that individual juror. Again, there was no finding of racial discrimination, yet that case was remanded. I would point to the concurrence. I think it was particularly well written and showed some of the limitations to this rule.

In terms of my opposition to this rule, that is it. I will admit again that this is an issue that is, in fact, evil, and there be required changes necessary. I

don't believe that the rule as drafted is appropriate. Thank you.

I'm happy to take questions; however, I would acknowledge that there are two additional State's Attorneys behind me. Thank you.

CHAIRMAN HANSEN: Thank you. And I appreciate that acknowledgment.

Committee members, any questions?

I don't see anybody.

MR. GRANT: I'm sorry. I do have one question.

CHAIRMAN HANSEN: Go ahead.

Mr. Grant has a question.

MR. GRANT: The question I have is, what do you do when the judge is the person with the implicit or unconscious bias?

MR. HANLEY: Well, Mr. Grant, I mean, that's a problem, but that's a problem right now. I mean, I would love to have a perfect criminal justice system. I would love -- I think we are the envy of the world. If we don't have the best, we're close.

But this rule isn't going to prevent the judge from having implicit or explicit bias. And they probably could manipulate this rule in such a way that they would find a way to, you know, allow the peremptory challenge

to stand. So I don't -- I don't know that I have a great answer for that other than it goes to, you know, eliminating racism in America. I don't know what -- how any rule could provide and prevent any prejudice, particularly when the judge is the one who's prejudice.

I will point out that my understanding is, and particularly recently, that judges are being trained specifically on implicit bias and how it manifests in the courtroom. Thank you.

MR. ROGERS: I have a question.

CHAIRMAN HANSEN: Go ahead, Larry.

MR. ROGERS: Do you agree that there is implicit bias in jury selection?

MR. HANLEY: Absolutely. I think it would be foul not to understand that and recognize that, so yes.

MR. ROGERS: And do you agree that Batson, as it currently exists, is rather easy to get around by coming up with some easily identifiable race neutral basis even though race likely has something to do with the challenge?

A. I don't personally agree with that. I -- I -- But again I do have to recognize that I don't have 30 years of trial experience, I have 15 years of trial experience. And I haven't done a trial in two years

admittedly. So it would be inappropriate for me to say, you know, in my robust trial experience over the last five years I have witnessed that to not be the case. So, you know, I want to admit that.

When I talk to the prosecutors and other prosecutors throughout the state and in our office, you know, of course they believe that they are themselves guarding against their own implicit bias, and I think the Judiciary is doing that as well.

MR. ROGERS: And then the final question. It seems to me across the country that prosecutors are utilizing things like rap lyrics, something culturally associated with the black community in prosecutions. Don't you think if you're going to use things like rap lyrics to support your criminal charges, you should at least have people on a jury who culturally may understand and may not be offended by those type of lyrics, and can, you know, understand the context as opposed to just being offended because they just have no familiarity with it?

MR. HANLEY: Sure. And I would trust that a prosecutor would use the voir dire procedure that we have to try to find a jury that would fit the exact thing that you're talking about. I mean, it's not uncommon for -- It's actually very common for a prosecutor to think about

the evidence that's going to be presented and think about having jurors that would understand the evidence that was going to be presented in that case. I think that example is a fair example and would be already part of the voir dire process.

MR. ROGERS: I will reserve the rest of my comments for the committee meeting. Thank you.

MR. HANLEY: Thank you.

MR. GREEN: I have a question.

CHAIRMAN HANSEN: Okay. Sir, I -- Jeff Green. I have to just find out who it is for the court reporter. Go ahead.

MR. GREEN: If the judges are currently undergoing training on implicit bias, doesn't this proposal give those judges better tools to deal with those issues in the status quo?

MR. HANLEY: Well, so I -- again, I think it goes too far. One of the things that I really hadn't put a ton of thought about that I appreciate Judge McGraw talking about is this gives judges a little more frame work, for lack of a better word, just guidance on how to kind of go through Batson. And so that may still be an appropriate and necessary change. But I think the actual language of the law, and I think the Orozco case shows,

why this language can be applied in what I would think is just a terrible -- justice was not served in that case. The application of the actual language in this rule would be problematic.

MR. GREEN: Okay. Thank you.

CHAIRMAN HANSEN: Okay. Thank you very much.

We are now moving on to Mr. Berlin, Robert Berlin, the DuPage County State's Attorney.

MR. BERLIN: Good morning. Thank you very much for the opportunity to address this Committee.

I want to start out by saying that I agree with my colleague, State's Attorney Hanley, that the issue of implicit bias in jury selection is a real issue that needs to be addressed. But I also agree that the rule goes too far. And when I'm done with my comments, I have some suggestions that I believe will be very helpful in dealing with this issue.

I have been a trial attorney for more than 35 years. I have tried 87 phoney jury trials over the course of my career, so I can say this, I have tremendous respect for judges and their ability to deal with these issues. And in working in three different counties, I can honestly say judges are -- the judges I've appeared in front of are trained, they know the three-step process

of Batson, the prima facie case; the State having to state their race neutral reasons in Step 2; but the most important step is Step 3 where the judge has to determine is there purposeful discrimination, and the reasons that the State's Attorney is giving, are they pretextual? And I think that if -- One of my suggestions is that is where greater training is needed both in the judiciary as well as with prosecutors.

But the reason I believe this rule goes too far is judges are supposed to be objective observers. And the judge should view any reasons that are given by a State's Attorney, or a defense attorney for that matter, for excusing jurors, they should view those in the eyes of an objective observer.

My concern about the rule is that it really creates two standards for jurors that are in a protective class and jurors not in a protective class. And I believe that that is a very slippery slope to go down when we start doing that. And the reasons that are listed -- the presumptive invalid reasons listed in Paragraph 6, many of these reasons have been approved by reviewing courts as valid reasons for excusing the juror regardless of their race or nationality.

Having a close relationship with people who've

been stopped, arrested, or convicted is, I believe, certainly a valid reason. And to have a rule that says that's presumptively invalid, I believe, it's kind of akin to a juror who says, Well, I think everybody charged with a crime is guilty, but I can still be fair and impartial. I think we would all agree that that is not a juror who can be fair and impartial. But this rule in essence, in my opinion, will result in the seating of jurors who may have a certain bias. And I believe that that is -- That's the purpose of a jury trial, is to find the truth, both sides are entitled to a fair jury, and the purpose of voir dire is to ascertain whether any jurors have any bias, opinion, or prejudice that would affect or control the fair determination of the juror of the issues to be tried. And I again agree that the judge is in the best position to make that determination.

It's a serious issue, and I want to say that our State's Attorneys here are trained on implicit bias. We have conducted our own training, we've conducted training with the Kane County State's Attorney's Office on implicit bias. And, yes, I do agree that it's something that needs to be addressed, but I would concur with the National Association of Attorneys General. There's an article where it determined that the best

solution may well be for courts by modifying court rules, or legislators by amending or enacting statutes, to strengthen the various steps in determining whether there is discrimination in the use of peremptory challenges, and I agree that needs to happen.

My suggestion is, one hour of CLEs is what's required right now for all lawyers in diversity inclusion, and I would think that we could do more than just one hour. Everyone could benefit from that. But judges, attorneys, everybody should be trained in implicit bias. And I think that will improve the system. But I do believe that the rule as written will result in having jurors that may be biassed, and that's what we want to avoid. Regardless of which side they may be biased against, everybody wants fair jurors, and everybody wants a fair trial.

CHAIRMAN HANSEN: Thank you. So using your example you gave under 6(3). So I get it, you wouldn't get to use your peremptory, but under the example you used, we should try and move for cause by saying, Look, they just came out and told me they couldn't be fair and impartial.

MR. BERLIN: You would make a motion for cause, but oftentimes jurors will acknowledge a bias, but then they'll still stay, Despite that, I can still be fair and

impartial. And yes, most judges will agree and excuse the juror for cause, but sometimes they'll find it doesn't rise to that level for cause, and that's really the purpose of a peremptory challenge, is to deselect those jurors who appeared bias towards the imposing party.

CHAIRMAN HANSEN: Other committee members, questions?

MR. ROGERS: I just wanted (audio distortion) --

COURT REPORTER: I'm sorry. I'm having trouble understanding him.

MR. ROGERS: I'm I just wanted the reference that you identified during your comments, State's Attorney Berlin.

MR. BERLIN: Yes. Mr. Rogers, National Association of Attorneys General's article The Evolving Debate Over Batson's Procedures for Peremptory Challenges. It was in a periodical dated April 14th, 2020, written by Daniel Edwards, Senior Assistant Attorney General in Colorado.

MR. ROGERS: And if I heard you correctly, a component of that -- of the section you read indicated that modifying court rules like Supreme Court rules is an appropriate way to address this; is that correct?

MR. BERLIN: Yes. And that is -- that's what they

recommended. But again, I believe this rule just goes a little bit too far.

MR. ROGERS: Thank you.

MR. BERLIN: Sure.

CHAIRMAN HANSEN: Anyone else?

Okay.

MR. GRANT: Mr. Berlin, thank you for your comments and your position, but let me -- let me ask you a question. I have some -- these are just some NAACP statistics and facts with respect to the criminal justice system and how it affects black people. One of their findings is that a black person is five times more likely to be stopped without just cause than a white person, and that a black man is twice as likely to be stopped without just cause than a black woman. Are you suggesting that these people should not sit on juries because they've been unjustly stopped by the police and they shared that during voir dire? Does that exclude them from being on a jury?

MR. BERLIN: Absolutely not. I'm not saying that at all. All I'm saying is that they're -- a close association with someone really who's been convicted or arrested, not necessarily stopped, but I'm talking about really convicted or arrested, that that can be a reason.

But judges have to review that reason if there is a Batson challenge, and the judges have to be trained in order to detect is it pretextual, is the prosecutor using that as a reason to excuse a juror because of race? And that's wrong. Prosecutors should never do that. But no, no one in that situation should be precluded from sitting on a jury.

MR. GRANT: Mr. Berlin, this is exactly the point that -- this is what implicit bias is, the inability to understand the cultural background that African-Americans come from. I happen to be a person that grew up in public housing, the Chicago housing projects. Do you know how many black people that I know that have been involved in the criminal justice system? Do you know how many family members, cousins? I mean, we got doctors and lawyers in the family, but we also have young men who have gone the wrong way. Nieces and nephews. Am I precluded from sitting on a jury because my nephew had a problem?

I mean, when you look statically at these reports, 1 out of 4 black men are involved in the criminal justice system in one way or another: conviction, parole, court pending. 1 out of 4. Are you -- There is no world that exists, for the most part,

for inner city black people who don't know somebody that's been involved in the criminal justice system. That does not preclude them from being fair, and it certainly shouldn't preclude them from sitting on a jury.

MR. BERLIN: Mr. Grant, I agree with you. I think you're misunderstanding what I'm saying. I agree. That should not preclude them from sitting on a jury. I absolutely agree 100 percent. But someone's close affiliation, a family member who's being convicted of a crime, that should be a valid reason to exclude you regardless of race. You know, that should apply to everyone.

Now, the judge's role is to determine, is that really a valid reason, or is that pretextual? And this is where the training of judges is very important. Because if it is pretextual, then that motion for a challenge should be denied. But I'm not suggesting at all that a juror with that type of background should ever be preclude. They can certainly be fair and impartial, and that's what we're trying to find out. That's the purpose of voir dire, is to find fair and impartial jurors. I agree 100 percent.

CHAIRMAN HANSEN: Thank you. Again, I need to call it there, and we need to move on to the next proposal. I

appreciate your comments.

Next up we have Jim Rapp, 21-06, which amends as to the signing of depositions.

Mr. Rapp, please proceed.

MR. RAPP: Thank you Chair Hansen and members of the Rules Committee. I really appreciate the opportunity to urge an amendment to Supreme Court Rule 207. I want to ask you a simple question. Is it appropriate or just to expect (audio distortion) -- I'm sorry -- is it appropriate or just to expect a non-party deposed-remotely to travel well beyond the place of deposition to exercise their right to examine a transcript? My answer is equally simple, it's not. Rule 207 should be changed as proposed to require the opportunity to examine a transcript at a location convenient to the deponent or through electronic means if available.

What prompted this proposal? A friend's wife provided aid and comfort to a women thought victimized in a highly contested domestic case. Her husband, 85 years old, was subpoenaed for a deposition although he was not a party or meaningfully involved. He is Indian, his native language is Urdu, not English. A remote deposition was taken by a Chicago lawyer using a Chicago

reporter in their offices while the friend was in Quincy. A self-effacing and reserved individual, he asked that I attend. I made it clear he was not waiving signature and expected to review any transcript. Language was a concern. The lawyer responded aggressively and rudely saying that wouldn't happen. The transcript would need to be reviewed in Chicago at the reporter's office. And so a non-party, 85-year-old would be expected to travel over 300 miles at his own expense to review a transcript.

When the client's wife had been earlier deposed remotely, a similar request was made. The reporter claimed the transcript was work product and insisted on payment of $500 for the transcript to be sent for review.

In both of these cases I made it clear that if the transcripts were sent to me, that I would personally as a member of the bar ensure that they were not duplicated and would be returned to them promptly. The offers were refused as were request to provide the transcripts electronically.

True, not all lawyers or reporters would react as these did, however, their attitude cried out for a rule change. That is why the proposed rule has been submitted for your consideration.

I am nearing 50 years as a member of the

Illinois Bar. I have witnessed the change from carbon paper to embracing technology a benefit of which is to allow remote depositions. I also have witnessed the change from local judges homering out-of-town lawyers insisting that, If you want to practice down here, you're going to have to come down here. That thankfully has changed.

Rule 45 not only allows, but encourages liberal use of remote practice in accommodation of participants who face obstacles to appearing personally: distance, age, disability, costs, and other considerations are relevant. Why not require the same accommodation to deponents? Rule 206(h) specifically allows remote electronic depositions. A comment to the rule states that the Supreme Court seeks to reduce unnecessary discovery costs. Hey, great. Then 207(a) can require that the deponent traits (phonetic) to the reporter's office wherever it might be, quote, at the deponent's expense, to review the transcript. Makes sense? Not at all. This rule must be changed. Thank you.

CHAIRMAN HANSEN: Thank you. Any questions?

MR. BEYLER: Yeah. I have one, Jim.

CHAIRMAN HANSEN: Go ahead.

MR. BEYLER: In the letters we got from court

reporters, a number of them mentioned that their practice is to allow a deponent to come in via Zoom, take over the mouse, review the transcript, then electronically send in their signature. I take it that was not offered in your case. And what I would like to do is to get your opinion on whether the language you've submitted in Rule 207, which allows the electronic option, includes what those court reporters are describing.

MR. RAPP: That would be my view, and that's exactly what was intended. In other words, electric means can go well beyond. And you just highlighted a very simple way to have done it.

Now, come court reporters though might respond that somebody will -- will photograph each and every page, or something like that, to get around. But I'm not trying to be a techy. But the point is though, I think you're absolutely right. The contemplation was that there would be electric means that could be used to protect whatever so-called word product interest a court reporter might claim to have. Does that answer the question?

MR. BEYLER: Thank you.

MR. RAPP: Oh, by the way, I might want to add, I'm assuming the person who is to get that is technical

enough to deal with it. I'm not entirely certain this particular individual would have been capable, but he -- I would have accommodated that for him. Thank you.

CHAIRMAN HANSEN: Okay. Thank you.

Next speaker. I'm going to try my best. Michelle Rozovics?

MS. ROZOVICS: Oh, wow. I'm very impressed. Yes, exactly correct. Thank you.

In 2014 I was in a significant car accident. As a result of my injuries and the side effects from the medication, I was rendered permanently mobility disabled. I am a civil litigator with over 25 years in my own law firm, a large national law firm, and a staff counsel for an insurance company. I was also a professor of law in the U.S. and three other countries. I wrote the IICLE chapter on preparing for discovery depositions for over a decade. I am currently the recording secretary for the ISBA Civil Practice and Procedure Section counsel, which previously indicated its approval of the proposed changes for Supreme Court Rule 207 Proposal 21-06. My comments are my own.

A factor which I believe is important for the committee to consider here is the impact upon the disabled community. Disabled people, as much as we were

physically harmed by COVID-19, were accidentally enabled to more fully participate in the U.S. legal system when remote access was forced upon the courts and upon depositions. It would be great if we could take that accidental access and make it purposeful. For that reason I support Proposal 21-06.

Let me outline for you what is involved in the life of a mobility impaired person who must sign a deposition transcript under the current rules. So after receiving notice they began the task of determining how they can physically get to a court reporter's location, what will be involved logistically in that trip, what will be involved from a pain perspective, what medication changes might be required, and what physical assistance they might require.

Many disabled people do not have a car or they're medically unable to drive a car due to their disability and the medications they take. Some require special types of transportation due the to size of their wheelchairs, or other physical accommodations that they need. The disabled person may need to hire a home-health aide to drive them, dress them, or otherwise assist them. How far is the office that they're going to from the door to the building? Will the walk from the parking lot

cause them pain? Will they have to sit or stand for long in the waiting room? Will they need a cane, a walker, a rollator, a wheelchair? The disabled person may need to increase their medication before the trip to the court reporter's office to maximize their mobility. Depending on the extent of their disability, they may experience lasting increase in pain, swelling, restriction of movement, or even be bedbound for more -- one or more days after their trip to a court reporter's office.

As a mobility-disabled attorney, I am only able to practice at the present time because COVID-19 forced remote access in every case to every person. What hope does a disabled deponent, disabled witness, subpoenaed for a deposition have of navigating the nuances of our system, particularly when they don't have representation by an attorney. How will they know that the current rule allows them to request a reasonable accommodation or a reasonable arrangement from a willing court reporter, let alone an unwilling one as Mr. Rapp told us about? Why should a witness have to pay a transcript fee or any fee for gaining access to their own words that are done under oath just to make sure that they were accurately described?

Keep in mind there are lots of different types

of disabilities including ones that have speech impediment, cognitive processing problems. A lot of medications cause those specific problems. COVID-19 is well known to cause those specific problems. So the necessity of time to review becomes even more important. I absolutely support the technological restrictions on sharing of the transcript after the deponent has electronically reviewed it. I support the court reporter's ability to restrict that transmission post review. But when we are embracing remote depositions, we need to embrace remote review of that transcription.

According to the CDC, 26 percent of U.S. adults have some type of disability. 13.7 percent are mobility-based disabilities. According to the 2021 NALP Directory of Legal Employers, 1.31 percent of the total 71,000 sampled lawyers are disabled. While those now figures are a horrible commentary on accessibility in our profession, I really hope this Committee looks to the rights of the disabled as a primary consideration in proposing changes to the Supreme Court Rules. Allowing free of charge electronic access or in-home or in-business access to transcripts is a great start. The disabled community deserves to fully participate in our legal system.

And I also support if there needs to be a charge in order for the court reporters to feel comfortable to disseminate these transcripts, that should be borne, just like other charges, by the party requesting the write-up of the transcript. So if, just like there is an original cost for writing up the transcript, then there can be a witness review cost, and that can be borne by the party writing up the transcript. I see no reason why that should ever be borne by the witness.

CHAIRMAN HANSEN: Thank you.

Questions?

MS. LEONARD: I have a question.

CHAIRMAN HANSEN: I'm sorry. Who is that?

MS. LEONARD: Anna Leonard.

CHAIRMAN HANSEN: Yeah. Well, you're one of our speakers, so --

MS. LEONARD: Oh, okay. Sorry.

CHAIRMAN HANSEN: -- you don't get to ask the question. Sorry.

Okay. Committee members, any questions.

I didn't hear any, so I will move on to the next speaker.

Thank you, Michelle.

Anna Leonard, you are our next speaker, so please proceed.

MS. LEONARD: Okay. Thank you.

Good morning. My name is Anna Leonard. I'm a proprietor of Anna Leonard Reporting Service, LLC. I've been a reporter for 43 years. As the silent and impartial observer of legal proceedings, I much prefer working quietly uttering a few select chosen words: speak up, please repeat, one at a time.

I chose to speak publically before the esteemed body stepping outside of my comfort, so please bear with me as I address this very important proposed rule change at 207(a) addressing one of the primary roles of my duties, and that is being the guardian of the record.

As the quiet and impartial observer of legal proceeding over many years, I have experienced firsthand the general nature of litigants. I need not explain that one side or the other has more or less financial ability to --

(Short interruption.)

MS. LEONARD: -- to pay for --

CHAIRMAN HANSEN: Hold on.

Jeff Green, you need to mute. You stepped away from your -- There we go. Okay.

Go ahead, Ms. Leonard. Sorry about that.

COURT REPORTER: Okay. And, Ms. Leonard, if you can please -- you're moving around a little, and it's not as clear to me what you're saying. So if you can just look at your screen so --

MS. LEONARD: Got you.

COURT REPORTER: Much better. Thank you.

MS. LEONARD: Much better. Okay.

So I acquire to the meeting and made some notes, and based on my observations of the general nature of legal proceedings over 43 years and handling my duties in particular related to the read and sign obligation or right of witnesses to rereading transcripts.

Mr. Wrap did make a clear distinction when he mentioned non-party witnesses should be able to be offered the ability to review the transcript without having to purchase the transcript, or travel, et cetera. And I have been faced with that question over many years, and in the non-party subpoenaed witness situation where attorneys struggle with how do we give access to subpoenaed witness's without being too burdensome to them, we want to progress our cases without any hang-ups such as that. So I have offered to attorneys taking the deposition, if they would like to pay a transcript fee

for that purpose, then I can make it accessible under the guidance of the attorney paying for the transcript, a party attorney. So that's one distinction.

Party witnesses. Party witnesses that are represented by counsel, there's a whole Pandora's box of why other than revenue, and we do have to pay our bills -- as to why we require parties to pay their fair share for transcripts in legal cases.

With COVID, and also with the ADA Act, that court reporters also have worked with since its inception and have had many tools to support the disabled community, non-party witnesses can -- we can provide access to read a non-printable undownloadable transcript so that they may preserve their right to read and sign under our guidance.

Party witnesses, again, the attorneys may purchase a transcript, and they may oversee and guard the record allowing for their witness to read and sign the deposition.

Transcripts are very expensive, and we know that. The time that court reporters must take to prepare these transcripts accurately is enormous, and we need to be compensated or there would be no court reporters to work in the industry.

My next point is there has always been the ability to mail transcripts to witnesses via the U.S. Postal Service. So the new technology of electronic means is not quite getting to the root of why that was never allowed under the current rules. And that is because court reporters, again, must ensure that transcripts are not disseminated. There are out there records that contain vital and confidential information.

So the thought process of my role and duty with regards to handling review and signing of depositions is that the court reporter is both the maker and protector of your record. And this is a crucial role that must be preserved perhaps with modern technology, there can be some modifications to the rule. It's easy to say that though, however, we still have to ensure through whatever means that the record is guarded -- the contents and privacy of the record is guarded, and that's the job we're entrusted with.

So we are asking respectfully that the Rules Committee protect the integrity and the duties of the court reporter's production. Thank you.

CHAIRMAN HANSEN: Ms. Leonard, do you agree with Mr. Rapp that a non-party, 300 miles away from where you may be located, should not have to, at their own expense,

travel to Chicago to your office to review and sign a deposition?

MS. LEONARD: I -- I think it has been stated that most court reporters nowadays are offering the read and sign by electronic means, non-printable non-downloadable copies.

CHAIRMAN HANSEN: Sure. Okay. With DocuSign and that they can sign the transcript, correct?

MS. LEONARD: Exactly. I am never comfortable asking a subpoenaed witness non-party to pay for a transcript. So, however, party -- to party witnesses I will not provide a free transcript. If this is where the rule is going, then we would never get copy orders from attorneys. In our profession, we wouldn't be able to --

CHAIRMAN HANSEN: I understand. Thank you.

MS. LEONARD: You're welcome.

CHAIRMAN HANSEN: Anyone else on the committee have questions?

Okay. Thank you. Our next speaker, I'm going to do my best, Laura Czarnecki.

MS. CZARNECKI: Likewise, I am impressed with your pronunciation. That is exactly correct.

CHAIRMAN HANSEN: Thank you. Go ahead, ma'am.

MS. CZARNECKI: Good morning. My name is Laura

Czarnecki. First I would like to thank the Rules Committee for providing us the opportunity to comment on the proposed change to Rule 207.

I have been a court reporter for 28 years. My first 26 years I worked as a freelance court reporter, and the last two years I have been working with the -- for the 19 Judicial Circuit.

During a legal seminar, which a colleague of mine had, which took place pre-pandemic, a federal judge informed the attorneys present that less than 2 percent of cases make it to the trial stage in court. And because most, if not all, American courts no longer require filing of depositions unless and until they are needed by the Court, this means the content of the vast majority of depositions remain out of the public access and domain.

The general public is not invited to the deposition suite. The discovery process of the United States Judicial System cannot have a revolving door to allow any layperson who is not involved in the proceedings or had no interest in the outcome of the suit or has not been officially vetted and authorized to be privy to or have access to or possession of the sworn verbatim testimony elicited in the party's pursuit of

justice, to then to have control on the content of the deposition testimony.

The deposition transcript is not a souvenir. Even when deposition transcripts were routinely printed on hard copy paper, the original transcript once read and signed was maintained and preserved at the certified shorthand reporter's office until such time as it was to be filed with the court in advance of trial. Hard copies unsigned by the witness, purchased by counsel on behalf of their clients, were maintained in case files in law offices as the confidential documentation that they are.

While modern technology has facilitated more efficient documentation processes across all businesses, the documentation is no less proprietary, no less private, no less personal to the parties involved in the litigation. And although today's technological tools have created some economies in documentation, creation, reproduction, and transmission, technology has simultaneously shifted many costs of doing business to acquisition, maintenance, securitization, and replacement of these same tools.

And I'd also like to state that I adopt the comments of Ms. Leonard and my following colleagues.

Thank you again for this opportunity to speak.

CHAIRMAN HANSEN: Thank you. I'll ask you my next question, and then I'll open it up to the forum.

Do you agree that the rule as written without the change under this -- Let me give you a hypothetical. Well, not a hypothetical, it happens all the time.

I'm in a case with three other lawyers, and we have one lawyer from Chicago, a couple lawyers from St. Louis, myself, and let's say we agree to do a Zoom video deposition.

MS. CZARNECKI: Okay.

CHAIRMAN HANSEN: And that plaintiff takes the deposition and hires in a depo, hires a court reporter who tells us they're in Columbus, Ohio because they couldn't get anyone from Chicago. We all agree to do it by Zoom. At the end, I'm the attorney for the party that is being deposed, I say, I reserve signature for my client. Send me a copy, and we'll take a look at it. Do you agree that with all this change, that currently the way the reading is of the rule, the court reporter can tell me, Well, Mr. Hansen, you and your client, or your client, can drive to my office, but I'm not sending it to you?

MS. CZARNECKI: I am not really a great speaker. If you could -- I'm sorry. I just --

CHAIRMAN HANSEN: Sure. Let me rephrase it. And the rule currently --

COURT REPORTER: Mr. Hansen, can you get close to your computer because you're breaking up a little bit. Thank you.

CHAIRMAN HANSEN: The way the Rule currently reads, it says that the deponent will be given an opportunity to examine the deposition and make corrections based on error by coming to the office of the court reporter or elsewhere by reasonable agreement at the deponent's expense.

As the rule currently sits, if I'm a party in a lawsuit, and there's multiple parties across multiple cities, we are all doing Zoom videos now. And a lot of times I'll get a Zoom video reporter that tells me he or she is across state lines. And my question is, unless this rule is changed, that court reporter could tell me even as a party -- and I'm paying for the transcript -- that I have to bring my client or myself to their office to review it. Isn't that inefficient in today's society with us allowing Zoom video depositions to take place, which have become the norm?

MS. CZARNECKI: Well, I personally have not made a party opponent attorney, come to my office to read. I

mean, they purchased the transcript, I provided it to them, and then they read and sign at their offices, and then they send the corrections to me. So I'm not --

CHAIRMAN HANSEN: Okay. Okay.

MS. CZARNECKI: I've not experienced that. I've never experienced where I've required the actual attorney to be in my office reviewing the transcript with their client. Is that your question?

CHAIRMAN HANSEN: But apparently it's existing because that's what Mr. Rapp encountered, that we --

MR. CZARNECKI: Well, but Mr. Rapp was talking about a non-party.

CHAIRMAN HANSEN: True. And even --

MS. CZARNECKI: In my -- Excuse me. I'm so sorry. I did not mean to interrupt you.

In my experience I've had attorneys that have had non-party deponents, I've had the attorneys who wanted their testimony, that they've actually facilitated the signature. And, you know, for instance, when you have people who are less able to get to offices and whatnot, so the responsibility was always taken upon by the attorney who wanted that person's testimony. At least that's been my experience. I know that's not the rule, but that's been my experience.

CHAIRMAN HANSEN: Thank you. And I appreciate that.

MS. CZARNECKI: You're welcome. Thank you.

CHAIRMAN HANSEN: Okay. Next speaker. I'll do my best. Katherine Rajcan?

MS. RAJCAN: You were on a roll.

CHAIRMAN HANSEN: Oh, good.

MS. RAJCAN: You were on a roll, but let me correct you, it's Rajcan. I always say it's like the ray of sunshine.

CHAIRMAN HANSEN: Go ahead. Thank you.

MS. RAJCAN: Thank you to the Rules Committee for providing us the opportunity to submit comment and testimony on a proposed change to Rule 207(a).

I have been a member of the Illinois Court Reporter's Association, ILCRA, for my entire professional career of 41 years. And I am the current legislative liaison of the Illinois Court Reporter's Association.

On behalf of ILCRA I would like to state as follow: The Illinois Court Reporter's Association opposes the proposed change to Supreme Court Rule 207 as written as follows: Of utmost concern is the breach of confidentially and the dissemination of private information this proposed amendment calls for. Deposition transcripts contain sensitive information

which, One, can be protected by confidentiality orders when witnesses testify on topics such as trade secrets, HIPPA-protected information, and work product information.

Two, a witness testifies to personally such as Social Security numbers, addresses, income, debt, assets.

Three, a non-party witness becomes privy to information during a deposition through the question-and-answer process.

And four, includes every other scenario in which personal and private information is discussed and made part of the record.

The process that is currently in place for transcripts where signature is reserved ensures the transcript does not leave the control of the court reporter guaranteeing the protection of the information contained within the record.

The proposed changes as written establish a scenario wherein this information will be released to a non-party witness creating an absolute and profound loss of control by all parties over what is done with the information contained within the transcript.

The rule does not distinguish between party and non-party witnesses, which does not guarantee the

transcript for which signature has been reserved, remains under the control of any officer of the court.

The proposed changes as written render Illinois CSRs incapable of complying with ethical obligations to protect this information. Non-party witnesses have no stake in the litigation and do not understand the importance of protecting this confidential information. ILCRA believes this act alone creates a potential in which Illinois court reporters would be required to violate their sworn duties as officers of the court and would subject certified shorthand reporters to civil and in some cases criminal action if the private information reaches individuals outside of the litigation.

The proposed changes as written would also require court reporters to provide their goods and services at no cost, and it offers no recourse in the event the requirements for returning the signed transcript are not followed through on.

In a typical deposition scenario, the taking attorney orders the transcript from the court reporter. After the transcript is completed and certified, the taking attorney is invoiced and pays for the transcript. All other parties who want a copy of the transcript will order the transcript and be invoiced and by rule pay for

a transcript. Under the proposed changes to the rule, court reporters would be required to provide a free deposition transcript to every witness who testifies at a deposition in which signature is reserved while all other parties are invoiced. This would be a violation of our obligation to neutrality. It creates serious financial inequity among the parties in litigation, and it undermines the performance of the duties of an Illinois CSR.

The proposed amendment to Rule 207(a) is too lax in who may posses the court certified transcript, and too limiting in how the officer may achieve protecting the confidential information in the transcript while facilitating the reading and signing of the transcript by the deponent.

For all these reasons the Illinois Court Report's Association objects to the adoption of the proposed amendments to Supreme Court Rule 207(a). Thank you. And I'd like to thank you for having a certified shorthand reporter present to report accurately and preserve these important proceedings.

CHAIRMAN HANSEN: Any questions from the committee? I'll ask one.

Under your scenario you're concerned about the

release of confidential dissemination of information. But currently if I pay for a copy, you're sending it to me anyway even if I'm a non-party. How is it different simply other than paying a charge, your concern for confidentiality release now verus the change in the rule?

MS. RAJCAN: Sir, I have never in my 41 years provided a hard copy portable transcript to a non-party witness, and I know of no court reporter among all my colleagues in the state who have ever done so. And this is why I think it is wise to allow for the videoconferencing access for a witness to read and sign their transcript as has been done by many, many court reporters throughout the state since the pandemic. And I would offer also, sir, that the libraries have great technology available to any witness who might not have access to the Internet. And the librarians are so willing to serve and assist patrons in that service.

CHAIRMAN HANSEN: So if I understand what you say -- I want to make sure I understand what you say correctly.

I produced a non-party witness in a case, and I'm their lawyer and I say, Send me a copy. And you say, Well, I'll charge you. And I say, Okay. Are you saying you've never sent a non-party attorney witness through their attorney a hard copy of the deposition?

MS. RAJCAN: Forgive me. I don't know if you're a judge. I keep wanting to say your Honor.

CHAIRMAN HANSEN: No, I'm not a judge. I'm a lawyer.

MS. RAJCAN: Thank you. Because I want to be respectful.

No. As a matter of fact, myself and many other court reporters I know have sent transcripts to non-party professional witnesses: doctors, accountants, who are non-party, non-interested because we understand their limited time and the importance of them reading and signing their transcript.

I will note that most professionals who we offer our service to do not reserve their signature because they too recognize the professionalism of a certified court reporter.

CHAIRMAN HANSEN: Okay. Anyone else?

Thank you. Next up is another -- I didn't get anyone with the last name of Smith. Robin Chimniak.

MS. CHIMNIAK: Very good. Thank you. You are definitely on a roll today.

CHAIRMAN HANSEN: Yeah. You're up.

MS. CHIMNIAK: All right.

Thank you to the Rules Committee for providing

us the opportunity to submit comments today. My name is Robin Chimniak, and I'm president of Chimniak Court Reporting and Video. I've been a court for just short of 44 years, the majority of those years being in the state of Illinois, over 30 of those years being an owner of my own agency, and a good part of that time being an Illinois Court Reporter's Association member.

Court reporters in the state of Illinois are licensed professionals. As the State has rightly deemed, the services provided by reporters in legal and administrative proceedings to affect the health, safety, and welfare of the people of this state. Licensed reporters are guardian of the record charged with capturing, producing, and preserving for a minimum of ten years the official record. And we are ethically bound to be neutral and fair in providing our services as well as protect the privacy of individuals and entities' information and the confidentiality of their information to which we have been privy. This includes both testimony and documentation.

In logic and in law, one occurrence or even two does not establish a pattern such as in this case, nor is one occurrence a reasonable reason to change the rules of an entire industry in the state of Illinois. But perhaps

rather than the proposed rule change that has been suggested, a better option would be to amend the existing Rule 207(a) by adding a reasonableness phrase. For instance, the deponent will be afforded an opportunity to examine the deposition at the office of the officer or reporter or elsewhere by reasonable arrangement and at reasonable expense of the deponent or an additional signature expense to the party at whose request the deposition is transcribed.

Court reporters or their administrative staff expend time and effort in administrating the rule protecting the deponent's right to read, fill out an errata sheet if desired, and sign their deposition. These are tasks and duties that are necessary business responsibilities to the licensed court reporter or their office. In fact, any practice, Illinois Court Reporters have been generous and creative in their efforts to afford the deponent the opportunity to read and sign including meeting the deponent at places convenient for the witness such as libraries, restaurants, or perhaps setting up signature at the office of a court reporter in another city, county, or state.

Over the past three years, as my other colleagues have mentioned, we have all also arranged for

Zoom meetings for deponents to read and sign via share screen. This helps create an expeditious way for witnesses to read and sign with no delay to the litigation. These are creative accommodations and accommodating efforts that have existed for decades to facilitate witnesses reading their transcripts. So for that reason, it's unnecessary to completely change Rule 207(a) as suggested.

I adapt my colleagues -- previous colleagues' comments and future colleagues. And I also wanted to add that if the entire transcript and their accompanying exhibits are released to a non-party witness exclusively for the purpose of reading and signing the deposition transcript, the control of safeguarding the information from the public domain are uncoupled and void. In fact, an arrangement can be made that such court reporter or attorney who facilitates this and causes the release of personal, private, or propriety information outside the circle of authorized parties to a suit, could be found negligent and/or legally liable for such release.

Court reporters in Illinois, by virtue of their licensure and accountability form a bows work for the protection of the veracity of the record including no missed portions of the record of proceedings and

virtually eliminating the possibility of deep fake testimony or colloquy and securing the record from the danger of parties' personal and private information being doxed or published to the public.

The release of confidential information communicated at court proceedings to persons unlicensed in the legal profession, and thus to the public domain, endangers the veracity of the official record and can compromise a party's access to justice and equity. The accuracy reliability of the official record is paramount in the pursuit of justice because the outcome of these proceedings can and do have life-altering effects.

Thank you for this opportunity.

CHAIRMAN HANSEN: Thank you.

Questions from any committee members?

Okay. Thank you very much.

Next Diane Berndt.

MR. BERNDT: Thank you, Mr. Chairman. I appreciate that you correctly pronounced my last name. Most people do not, so thank you very much.

CHAIRMAN HANSEN: Today is a lucky day. I've gotten everyone right so far. I'm going to head to the lottery next. Thank you.

MS. BERNDT: Very lucky.

CHAIRMAN HANSEN: Okay. Go ahead.

MS. BERNDT: My name is Dyann Berndt, and I am an Illinois licensed certified shorthand reporter. I'm objecting to the proposed changes being considered to Supreme Court Rule 207, which deals with the finding and filing of depositions. One proposed change to the rule is intimating that the court reporter should provide a copy of the transcript to the deponent at no charge. This would be in direct violation of Section 28 of 255 ILCRA 415, the CSR act, which states, quote, A person certified under this account may hold an attorney, firm, or any other entity personally responsible for payment of shorthand reporting services rendered at the request of that attorney, firm, or entity, close quote.

Currently deponents are not charged a fee to review their transcripts. The ideal situation, of course, is for the deponent's attorney to purchase the transcript and review it with their client or send it to their client for his or her personal review. If, however, the attorney does not purchase the transcript, stenographers generally go out of their way to accommodate the deponent's requests to view it and at no charge to the deponent. Most stenographers arrange meetings in public places like libraries or coffee shops.

These arrangements by stenographers are regularly used when the deponent is a non-party subpoenaed witness. The proposed change that they meet the deponent at their residence or business address is objectionable purely from a safety standpoint.

Another proposed change is to meet the deponent in the county where the deposition was taken. In our new age of videoconferenced depositions, this is potentially an unreasonable burden on the stenographer. The first question is, what would be considered the location of the deposition? Is it where the attorneys are, is it where the stenographer is, or is it where the deponent is located? I am located in Cook County, but the deponent may reside in Southern Illinois. It would be very unreasonable to require that the stenographer travel to Sangamon County, for example, from Cook County simply to review a transcript.

Mr. Northrop of the Illinois State Bar Association has stated that the current rule requires that deponents be provided their transcripts to review in person. In fact, this is not the language in the current rule. A witness who appeared for a videoconferenced deposition can be provided a review of the transcript via videoconference using the screen share option, which is a

quick and easy solution and also directly addresses Mr. Fox of the Illinois Defense Counsel's assertion that the rule change would, quote, be a means of expediting litigation and a convenience for the litigant and witnesses, close quote.

Surely this issue is not at the root of delays in litigation. In my experience recently the pandemic has been the cause for the backlog in court calendars, not attorneys waiting for court reporters to produce transcripts to deponents for their signature. And as I've already stated, stenographers go to great lengths to ensure that the deponent's needs are accommodated reasonably.

As far as electronic transmission of the transcript, providing the transcripts electronically to the deponent is akin to providing their attorneys with a free transcript, which unfortunately some attorneys do hope to accomplish. Again, this is in violation of 225 ILCS 415/28, which I quoted earlier; and I assume addresses what Mr. Northrop has referred to as, quote, gamesmanship associated with deposition review, close quote.

The final proposed change to Supreme Court Rule 207 is requiring the attorney who noticed and takes

the deposition to pay for the deponent's copy of the transcript. This is essentially cost shifting and in violation of the American rule, which states that each party must pay for their own legal experiences. This change would provide no incentive for the opposing couple to ever purchase a transcript if they could simply reserve signature and have their opponent pay for it.

In many states court reporting agencies are already billing attorney what's called an O and 1, or an original and a copy, for this very reason. We have not done that in Illinois to date, but if this rule is enacted, that would become standard practice here too. It isn't fair to require your opponent to fund your litigation, and again it goes against the language of the American rule.

In closing, I am asking this Committee to reject these proposed changes to Supreme Court Rule 207. In my opinion, they are based on an unusual situation, they are a solution looking for a problem, and they would result in the unfair restraint of trade.

Thank you.

CHAIRMAN HANSEN: Thank you.

Any questions for Ms. Berndt? Okay.

Well, that concludes our speakers, and I want

to thank everybody for their time today. Those of you who are still on the Zoom, the committee members, we will exit this Zoom meeting. Those of you who we have provided an additional link to jump into our committee meeting, I am going to recommend we take a quick 15 minutes, if we all can stretch, get something to drink, if we need to take a quick break, slam down a sandwich, whatever. We will reconvene and 1:00 o'clock. And you will not offend me if you're eating on screen because I may be doing the same. So Committee Group, thank you. Thank you to everybody else. We'll see the committee at 1:00 o'clock to discuss this further.

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

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

Rocio Arias, being first duly sworn, on oath says that she is a Certified Shorthand Reporter doing business in the City of Chicago, County of Cook, and the State of Illinois;

That she reported in shorthand via videoconference the proceedings had at the foregoing prove-up hearing;

And that the foregoing is a true and correct transcript of her shorthand notes so taken as aforesaid and contains all the proceedings had at the said hearing.

Rocio Arias

ROCIO ARIAS, CSR

CSR No. 084-004525

SUBSCRIBED AND SWORN TO
before me this 25th day of
October A.D., 2022.

Allison L Sedakis

ALLISON L SEDAKIS
OFFICIAL SEAL
Notary Public - State of Illinois
My Commission Expires Mar 21, 2023

NOTARY PUBLIC

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