

1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF COOK)

3
4 SUPREME COURT RULES COMMITTEE
PUBLIC HEARING

5 ILLINOIS SUPREME COURT
6 BOARD/COMMISSION/COMMITTEE/TASK FORCE

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

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

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

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

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

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

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

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

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

24 Our first proposal is 22-02, which amends

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

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

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

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

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

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

1 experience base of our group.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 CHAIRMAN HANSEN: Okay.

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

19 CHAIRMAN HANSEN: Okay. Thank you.

20 Other committee members with questions?

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

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

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

4 Ms. Vincent, are you with us?

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

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

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

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

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

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

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

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

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

1 CHAIRMAN HANSEN: Thank you.

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

4 Hearing no one.

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

7 MS. VINCENT: Thank you very much.

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

15 Mr. Seth Horvath, are you with us?

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

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

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

1 Board.

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

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

13 Turning to 22- --

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

16 MR HORVATH: I'm sorry. The one that I'm going to
17 address last is Proposal 21-04, that's -- I'm sorry.
18 22-02. That's from the E-Business Policy Advisory Board,
19 22-02.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 Okay. We thank you for your time.

10 MR. HORVATH: Thank you very much.

11 CHAIRMAN HANSEN: Moving on. Our next proposal is
12 22-03. This amends professional -- Rule of Professional
13 Conduct 1.5. In a nutshell it talks about some fee
14 agreements. And as I read this again, it amends simply
15 the comment section to the proposal.

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

18 MS. DEGRAND: Good morning.

19 CHAIRMAN HANSEN: Hi. Go ahead. Thank you.

20 MS. DEGRAND: Thank you.

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

24 In the spring of 2021 then Chief Justice Birk

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

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

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

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

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

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

1 So I'd be happy to answer any questions.

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

4 Anybody have any questions regarding
5 Proposal 22-03?

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

9 MS. SAMARGHANDI: Very well, Judge.

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

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

14 CHAIRMAN HANSEN: Okay. Go ahead.

15 MS. RICH: Good morning. Thank you.

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

24 I'm not here today on behalf of either Holland

1 & Knight or April, but rather as a representative of the
2 Chicago Bar Association and Chicago Bar Foundations Task
3 Force on the Sustainable Practice of Law & Innovation.

4 And we are appearing today in support of Proposal 22-03.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 that you may have.

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

3 The committee members, does anyone have any
4 further questions?

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

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

13 Please, one of you go ahead.

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

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

24 One of the difficulties with Batson practice is

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 JUDGE MCGRAW: Can you elaborate?

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

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

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

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

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

24 MR. GRANT: Mr. Chairman.

1 CHAIRMAN HANSEN: Yes, go ahead.

2 MR. GRANT: Andre Grant.

3 I don't have a question, but certainly a
4 comment. Being a criminal practitioner for close to
5 30 years both in state court and federal court, it's
6 almost impossible to put forth a successful Batson
7 challenge. Notwithstanding that, the overwhelming sense
8 of injustice and unfairness, when it comes to the
9 exclusion of African-Americans from jurors -- from
10 juries, it's startling. It's absolutely startling.

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

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

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

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

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

1 direction.

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

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

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

11 COURT REPORTER: Thank you.

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

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

16 Next up --

17 MR. BEYLER: I did have one question.

18 CHAIRMAN HANSEN: Okay. Professor Beyler, go ahead.

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

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

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

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

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

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

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

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

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

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

21 JUDGE MCGRAW: Thank you, Judge Bridges.

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

1 that from the both of you.

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

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

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

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

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

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

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

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

1 changes .

2 My career has taken some twists and turns, and
3 I have been away from the criminal justice system though
4 receiving this job 18 months ago. As a former
5 prosecutor, I always knew the importance of judges' and
6 prosecutors' discretion in doing justice. The last
7 18 months has only strengthened that belief. Judicial
8 discretion is essential to achieving just results
9 including the elimination of implicit and explicit bias.
10 Whether a bond decision, discussion in a 402 conference,
11 sentencing decision, or a Batson challenge, the
12 discretion of the trial judge in the overwhelming
13 majority of cases leads to a just result. I would argue
14 that this rule limits that discretion.

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

1 It sometimes can be difficult to talk about
2 these issues in the abstract, but I would encourage all
3 of those on the committee to review the Washington State
4 case, State v. Orozco, 19 Wash.App.2d 367, again,
5 19 Wash.App.2d. That was a murder case which was
6 reversed because a potential juror who's black was struck
7 because the prosecutor had personally prosecuted her
8 numerous times in the past.

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

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

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

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

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

8 Committee members, any questions?

9 I don't see anybody.

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

11 CHAIRMAN HANSEN: Go ahead.

12 Mr. Grant has a question.

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

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

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

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

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

10 MR. ROGERS: I have a question.

11 CHAIRMAN HANSEN: Go ahead, Larry.

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

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

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

21 A. I don't personally agree with that. I -- I --
22 But again I do have to recognize that I don't have
23 30 years of trial experience, I have 15 years of trial
24 experience. And I haven't done a trial in two years

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

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

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

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

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

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

8 MR. HANLEY: Thank you.

9 MR. GREEN: I have a question.

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

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

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

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

5 MR. GREEN: Okay. Thank you.

6 CHAIRMAN HANSEN: Okay. Thank you very much.

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

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

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

18 I have been a trial attorney for more than
19 35 years. I have tried 87 phoney jury trials over the
20 course of my career, so I can say this, I have tremendous
21 respect for judges and their ability to deal with these
22 issues. And in working in three different counties, I
23 can honestly say judges are -- the judges I've appeared
24 in front of are trained, they know the three-step process

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

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

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

24 Having a close relationship with people who've

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

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

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

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

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

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

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

7 CHAIRMAN HANSEN: Other committee members,
8 questions?

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

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

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

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

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

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

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

3 MR. ROGERS: Thank you.

4 MR. BERLIN: Sure.

5 CHAIRMAN HANSEN: Anyone else?

6 Okay.

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

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

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

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

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

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

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

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

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

1 appreciate your comments.

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

4 Mr. Rapp, please proceed.

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

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

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

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

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

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

24 I am nearing 50 years as a member of the

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

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

21 CHAIRMAN HANSEN: Thank you. Any questions?

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

23 CHAIRMAN HANSEN: Go ahead.

24 MR. BEYLER: In the letters we got from court

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

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

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

22 MR. BEYLER: Thank you.

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

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

4 CHAIRMAN HANSEN: Okay. Thank you.

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

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

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

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

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

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

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

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

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

24 Keep in mind there are lots of different types

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

12 According to the CDC, 26 percent of U.S. adults
13 have some type of disability. 13.7 percent are
14 mobility-based disabilities. According to the 2021 NALP
15 Directory of Legal Employers, 1.31 percent of the total
16 71,000 sampled lawyers are disabled. While those now
17 figures are a horrible commentary on accessibility in our
18 profession, I really hope this Committee looks to the
19 rights of the disabled as a primary consideration in
20 proposing changes to the Supreme Court Rules. Allowing
21 free of charge electronic access or in-home or
22 in-business access to transcripts is a great start. The
23 disabled community deserves to fully participate in our
24 legal system.

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

11 CHAIRMAN HANSEN: Thank you.

12 Questions?

13 MS. LEONARD: I have a question.

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

15 MS. LEONARD: Anna Leonard.

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

18 MS. LEONARD: Oh, okay. Sorry.

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

21 Okay. Committee members, any questions.

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

24 Thank you, Michelle.

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

3 MS. LEONARD: Okay. Thank you.

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

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

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

20 (Short interruption.)

21 MS. LEONARD: -- to pay for --

22 CHAIRMAN HANSEN: Hold on.

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

1 Go ahead, Ms. Leonard. Sorry about that.

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

6 MS. LEONARD: Got you.

7 COURT REPORTER: Much better. Thank you.

8 MS. LEONARD: Much better. Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 CHAIRMAN HANSEN: I understand. Thank you.

16 MS. LEONARD: You're welcome.

17 CHAIRMAN HANSEN: Anyone else on the committee have
18 questions?

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

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

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

24 MS. CZARNECKI: Good morning. My name is Laura

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

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

8 During a legal seminar, which a colleague of
9 mine had, which took place pre-pandemic, a federal judge
10 informed the attorneys present that less than
11 2 percent of cases make it to the trial stage in court.
12 And because most, if not all, American courts no longer
13 require filing of depositions unless and until they are
14 needed by the Court, this means the content of the vast
15 majority of depositions remain out of the public access
16 and domain.

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

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

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

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

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

24 Thank you again for this opportunity to speak.

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

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

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

10 MS. CZARNECKI: Okay.

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

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

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

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

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

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

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

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

4 CHAIRMAN HANSEN: Okay. Okay.

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

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

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

13 CHAIRMAN HANSEN: True. And even --

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

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

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

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

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

5 MS. RAJCAN: You were on a roll.

6 CHAIRMAN HANSEN: Oh, good.

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

10 CHAIRMAN HANSEN: Go ahead. Thank you.

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

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

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

24 Deposition transcripts contain sensitive information

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 Under your scenario you're concerned about the

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

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

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

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

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

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

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

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

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

17 CHAIRMAN HANSEN: Okay. Anyone else?

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

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

22 CHAIRMAN HANSEN: Yeah. You're up.

23 MS. CHIMNIAK: All right.

24 Thank you to the Rules Committee for providing

1 us the opportunity to submit comments today. My name is
2 Robin Chimniak, and I'm president of Chimniak Court
3 Reporting and Video. I've been a court for just short of
4 44 years, the majority of those years being in the state
5 of Illinois, over 30 of those years being an owner of my
6 own agency, and a good part of that time being an
7 Illinois Court Reporter's Association member.

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

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

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

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

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

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

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

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

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

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

13 Thank you for this opportunity.

14 CHAIRMAN HANSEN: Thank you.

15 Questions from any committee members?

16 Okay. Thank you very much.

17 Next Diane Berndt.

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

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

24 MS. BERNDT: Very lucky.

1 CHAIRMAN HANSEN: Okay. Go ahead.

2 MS. BERNDT: My name is Dyann Berndt, and I am an
3 Illinois licensed certified shorthand reporter. I'm
4 objecting to the proposed changes being considered to
5 Supreme Court Rule 207, which deals with the finding and
6 filing of depositions. One proposed change to the rule
7 is intimating that the court reporter should provide a
8 copy of the transcript to the deponent at no charge.
9 This would be in direct violation of Section 28 of
10 255 ILCRA 415, the CSR act, which states, quote, A person
11 certified under this account may hold an attorney, firm,
12 or any other entity personally responsible for payment of
13 shorthand reporting services rendered at the request of
14 that attorney, firm, or entity, close quote.

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

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

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

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

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

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

14 As far as electronic transmission of the
15 transcript, providing the transcripts electronically to
16 the deponent is akin to providing their attorneys with a
17 free transcript, which unfortunately some attorneys do
18 hope to accomplish. Again, this is in violation of
19 225 ILCS 415/28, which I quoted earlier; and I assume
20 addresses what Mr. Northrop has referred to as, quote,
21 gamesmanship associated with deposition review, close
22 quote.

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

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

8 In many states court reporting agencies are
9 already billing attorney what's called an 0 and 1, or an
10 original and a copy, for this very reason. We have not
11 done that in Illinois to date, but if this rule is
12 enacted, that would become standard practice here too.
13 It isn't fair to require your opponent to fund your
14 litigation, and again it goes against the language of the
15 American rule.

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

21 Thank you.

22 CHAIRMAN HANSEN: Thank you.

23 Any questions for Ms. Berndt? Okay.

24 Well, that concludes our speakers, and I want

1 to thank everybody for their time today. Those of you
2 who are still on the Zoom, the committee members, we will
3 exit this Zoom meeting. Those of you who we have
4 provided an additional link to jump into our committee
5 meeting, I am going to recommend we take a quick
6 15 minutes, if we all can stretch, get something to
7 drink, if we need to take a quick break, slam down a
8 sandwich, whatever. We will reconvene and 1:00 o'clock.
9 And you will not offend me if you're eating on screen
10 because I may be doing the same. So Committee Group,
11 thank you. Thank you to everybody else. We'll see the
12 committee at 1:00 o'clock to discuss this further.

13 (Which were all the proceedings had in
14 the above-entitled cause.)
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1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF COOK)

3


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

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

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

14

15



ROCIO ARIAS, CSR

16

17

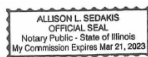
18 CSR No. 084-004525

19

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

21

22



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