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July 6, 2021

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Via Email

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**Re: Office of the State Appellate Defender's Response to
Proposal No. 20-09**

The Office of the State Appellate Defender ("OSAD") writes in support of proposal 20-09. In addition to this letter of support, OSAD will send two representatives to the public hearing on July 21, 2021, to provide live testimony and answer any questions this committee may have concerning OSAD's support for the proposal.

Amendment to Rule 315(b)

OSAD supports the amendment to Rule 315(b), as it clarifies the deadline for filing a petition for leave to appeal in the case of a modified judgment upon denial of rehearing. The current rule requires a petition for leave to appeal to be filed within 35 days of the order denying rehearing. But when a court modifies the judgment, the new opinion may be issued several days following the order denying rehearing. The new rule is more equitable in that it allows for a full 35 day period following entry of the new judgment.

Amendment to Rule 321

OSAD supports the proposal to amend Rule 321 so as to require the common law record to include exhibits offered by a party, even if the exhibit is not ultimately admitted. This provision will create a more complete record of trial proceedings, and enable appellate review of any errors in the exclusion of defense evidence.

New Rules 322 and 455

OSAD supports the adoption of Rules 322 and 455. Exhibits

are an essential part of any appellate record. Unfortunately, in OSAD's experience, parties in the circuit court often overlook the need to impound exhibits to ensure they are made a part of the record on appeal. When the record on appeal is incomplete, appellate counsel must devote extra time and resources tracking down the missing portions of the records. This process creates excessive delays in the briefing and resolution of the appeal. In some cases, the inability to obtain exhibits prevents appellate review until after the appellant has completed his or her sentence.

For example, as of this writing, over 30 cases assigned to OSAD's First District in 2018, 2019 and 2020 are missing State's exhibits that should have been impounded. Over two-thirds of the incomplete records in the First District office are missing exhibits that were never impounded.

Although Rule 608 currently requires the clerk of the circuit court to prepare the record on appeal, including all exhibits, the onus cannot fall entirely on the clerk in light of the persistent failure of parties to impound exhibits. Proposed Rules 322 and 455 ensure that the parties and the clerk will share the burden of compiling complete records.

OSAD believes that proposed subsection (a) of each rule will address the foregoing record issues by requiring parties to file inventory lists with a description of each exhibit, and to file their exhibits with the clerk within seven days of sentencing or notice of appeal. Both components are essential to the compiling of a complete record. OSAD commonly receives records without an impound order, and in such cases an inventory list would save OSAD's paralegals the trouble of scouring the report of proceedings in order to determine whether any exhibits should be a part of the record. The filing requirement will facilitate compliance with Rule 608 by ensuring the clerk is given the exhibits needed to file a complete record. Requiring the parties to file their exhibits should also alleviate the burden on OSAD paralegals, who must track down missing exhibits from trial attorneys. OSAD believes these provisions will result in a complete record ready for briefing months, and in some cases even years, earlier than the current system.

OSAD also supports subsection (d) of Rule 455, addressing exhibits that are shared between codefendants. Currently, exhibits offered at joint trials are not impounded until each codefendant has been tried and sentenced. As a result, the slowest-moving case sets the pace for all the others and prevents codefendants from proceeding with their appeals. This causes very lengthy delays. By requiring the parties to provide copies of exhibits to the codefendants as they move forward with their appeals, this subsection of the rule will eliminate extreme delays in these cases.

Finally, OSAD supports proposed subsection 455(e), specifying the mandatory nature of the rule and allowing for the imposition of sanctions. As seen

with Rule 608, a directory rule or a rule without consequences can result in routine noncompliance.

Conclusion

Illinois law puts the burden of a complete record on the appellant, and any doubts arising from an incomplete record are resolved against the appellant. As such, OSAD has a duty to make sure that its clients' records are complete. Missing exhibits are a major hindrance to this objective. OSAD believes proposal 20-09 will help rectify this problem, resulting in a more equitable and efficient appellate process. This will benefit clerk personnel, OSAD's clients and its staff, and ultimately the taxpayers of the State of Illinois.

On behalf of the Office of the State Appellate Defender, we thank the Supreme Court Rules Committee for considering our comments on the pending proposal. Please let us know if any additional information would assist the Committee.

Sincerely,

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