



**ILLINOIS STATE
BAR ASSOCIATION™**

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Committee Secretary
Supreme Court Rules Committee
222 N. LaSalle Street, 13th Floor
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Re: Proposal 21-04 (P.R. 0297)
Proposal 21-06 (P.R. 0299)
Proposal 22-01 (P.R. 0304)
Proposal 22-02 (P.R. 0305)
Proposal 22-03 (P.R. 0306)
Proposal 22-08 (P.R. 0311)

Dear Committee Secretary:

On behalf of its more than 24,000 lawyer members, the Illinois State Bar Association ("ISBA") is pleased to provide comments on the above referenced proposals.

1. Proposal 21-04 (Rules 23 and 361)

The ISBA **supports** Proposal 21-04. Upon review by several ISBA substantive law and practice groups, the proposed amendments were seen as worthwhile and important practice improvements.

2. Proposal 21-06 (Rule 207)

The ISBA **supports** Proposal 21-06. Upon review by several ISBA substantive law and practice groups, the proposed amendments were seen as worthwhile and important. Not only would they minimize potential gamesmanship associated with deposition review, but they would accommodate the growing use, and efficiency, of remote depositions and promote electronic deposition review.

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3. Proposal 22-01 (Rule 706)

The ISBA **supports** Proposal 22-01. Although the financial needs and circumstances are uniquely known to the Illinois Board of Admission to the Bar, the proposed fee increases for the identified activities appear reasonable.

4. Proposal 22-02 (Rule 9)

The ISBA **supports** Proposal 22-02. Upon review by several ISBA substantive law and practice groups, the proposed amendments were seen as important improvements to ensure that minor technical deficiencies associated with document filing do not result in the loss of client rights.

Notwithstanding its support, and based on several comments it received, the ISBA suggests that the proposed “48 hour” timeframe for technical corrections be changed to “two (or three) business days” or other similar language. This way, intervening weekends or holidays when a lawyer might not see notice of a rejected filing, would not result in a final filing rejection and prejudice to a client. In addition, some ISBA commentators believed greater clarification was necessary on the distinction between a “technical” defect (subject to correction) and a “substantive” change (not subject to correction).

5. Proposal 22-03 (IRPC 1.5 Comment [4A])

The ISBA **opposes** Proposal 22-03. The Proposal was seen as very problematic by ISBA substantive law and practice groups. The ISBA’s primary concern is with the introduction of the concept of “affordability” into IRPC 1.5. “Affordability” is vague, too subjective, and potentially inconsistent with IRPC 1.5’s well established fee standard of “reasonableness.” The introduction of “affordability” was also viewed as a potential disciplinary trap for lawyers and a basis for unfounded complaints by disgruntled clients.

Notwithstanding its opposition to the proposal, the ISBA recognizes that many forms of alternative fee arrangements are ethically permissible. As such, the ISBA suggests that alternative language that eliminates the “affordability” concept and clearly preserves the “reasonableness” standard could be more appropriate such as:

[2A] Paragraph (a) permits fee agreements other than on an hourly basis, so long as the fee charged or collected is reasonable. Other types of fee agreements could include but are not limited to: (1) fixed fees for an entire matter, (2) fixed

fees by task or phase of matter, (3) recurring fixed monthly fees (also called subscription fees, (4) fees contingent on the amount saved or liability avoided (also called reverse contingency fees), or (5) a combination of any of these arrangements. Traditional limitations on sharing fees and nonlawyer ownership of law practices as expressed in Rule 5.4 remain applicable to alternate fee arrangements.

6. Proposal 22-08 (Rule 434)

The ISBA **supports** Proposal 22-08. As the Rules Committee no doubt knows, this is a complex issue. It generated significant discussion within the ISBA. One concern was that such a proposal would not, and should not, be appropriate in a civil context, which presents different types of issues for consideration. However, the ISBA recognizes the law related to exercising peremptory challenges in the criminal context is problematic and there is a need to revisit the current process and practice. The ISBA believes that the Proposal is an appropriate and good faith effort to do so. In addition, the ISBA has confidence in the litigation process and the judiciary to define the contours of the rule, and make such adjustments as may be necessary, as it is put into practice.

The ISBA appreciates the opportunity to provide its comments on the above proposals. If you require any additional information or have questions about the comments, please do not hesitate to contact me.

Very truly yours,



Charles J. Northrup
General Counsel

Cc: Amy Bowne (via email)