SUPREME COURT RULES COMMITTEE

PUBLIC HEARING

July 8, 2016

10:00 a.m.

REPORT OF PROCEEDINGS had at the public hearing in the above-entitled matter, before MR. JAMES R. FIGLIULO, Chairman of said Committee, at Room C-500, 160 North LaSalle Street, Chicago, Illinois, on the 8th day of July, 2016, beginning at the hour of 10:00 a.m. and concluding at 11:03 a.m.

Reported By: Karen Fatigato, CSR

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PRESENT:

MR. JAMES R. FIGLIULO, Chair

MR. JOHN C. ANDERSON, Vice Chair

PROF. KEITH H. BEYLER, Reporter

MS. JAN B. ZEKICH, Secretary AOIC

HON. THOMAS L. KILBRIDE, Supreme Court Liaison

HON. ROBERT G. GIBSON

MR. JAMES D. GREEN

MR. JAMES A. HANSEN

MR. MARVIN J. LEAVITT

HON. MARGARET STANTON McBRIDE

MR. MICHAEL I. ROTHSTEIN

MR. JONATHAN M. THOMAS

MR. STANLEY L. TUCKER

HON. FRANKLIN U. VALDERRAMA

MR. EDWARD J. WALSH

CHAIRMAN FIGLIULO: Good morning, and welcome to the public hearing for the Illinois Supreme Court Rules Committee. We have a number of speakers today, and we're going to address three proposals which have been scheduled for hearing today. I'd like to welcome all of the members of the Illinois Supreme Court Rules Committee and all of the members of the public who are speaking or who are interested in these proposals.

So we will start with Proposal 15-02, which in summary is a proposal offered by the Access to Justice Commission which would amend Paragraph B of Rule 12 to replace the word affidavit with the word certificate and include reference to Section 1-109 of the Code of Civil Procedure.

We'll have two speakers who will address this issue, and the first one is Michael Fiello. Michael, if you could share your thoughts with us.

MR. FIELLO: Thank you. Thank you for the opportunity to testify in support of Proposal 15-02. I'm here representing the

Supreme Court's Commission on Access to Justice, which I have had the honor of serving on for the last four years. I'm also the co-chair of the Commission's Forms Committee. For the last almost 32 years of practice I have represented poor people in court as a legal aide attorney.

Proposal 15-02 in view of the Commission has only benefits and no drawbacks. It would serve the Commission's goal of simplification of court procedures and reduction in barriers to self-represented litigants.

735 ILCS 5/1-109 allows verification by certification except as provided by a rule. Current Rule 12 requires the self-represented litigant to verify and provide an affidavit for proof of service. As a result, we allow verification by certification of allegation in documents in pleadings, but the proof of service that that document was sent to another party must be verified by affidavit. I would be hard pressed to explain the reason for this difference.

For the last four years the Forms Committee has struggled to create forms that are

easy to use but legally sufficient. It's not an easy task. We try to remove as many obstacles as we can to the self-represented litigant, including trying to limit the length of the forms and to keep the language as simple as possible. Right now all of our documents that require a proof of service have the affidavit as required by Rule 12. That has the result of making the documents longer, and it also presents a hurdle to the self-represented litigant. It requires them to find a Notary, requires them to travel to that Notary, requires them to have a photo ID. It also requires them to pay the cost of the notarization, which is not waived by a court cost fee waiver they might have.

While this might seem like a comparatively simple task to obtain a Notary, it is not for a poor person. A poor person is usually struggling to have enough money to pay for their necessary expenses. An unexpected expense can throw off what is, at best, a delicate balance between their income and expenses. The cost of traveling to a Notary,

even if there was no cost for the notarization itself, could be such an expense. This is particularly true in rural parts of Illinois where I practice, where it is possible that they do not have access, in fact, most people do not have access to public transportation and they may have to travel many miles to get a Notary. That can result in a cost of 5 or $10 to have somebody drive you to where the Notary is if you don't have a car. If you do have a car, your car may be low on fuel because you are low on money. Using that fuel to travel to the Notary may result or affect your ability to travel to other places like necessary medical appointments.

There does not appear to be any discernible benefit to maintaining the current rule even if there was no impact on the self-represented litigant. Given the very real obstacles the current rule presents, the Commission urges the court to adopt the proposal and allow certification. Thank you.

CHAIRMAN FIGLIULO: Thank you, Mr. Fiello. Any questions? Thank you.

Mr. Markoff.

MR. MARKOFF: Good morning, Robert Markoff, I'm a collection attorney and actually originated the proposal by changing four words in Rule 12, affidavit to certificate, that was to keep it simple. The proposal -- I speak in support of the Access to Justice proposal, but I'd like to make a further suggestion to make it simple.

The proposal shows a dichotomy between an attorney and other people, that will cause confusion for young attorneys thinking, well, if there's a certificate for pro se individuals, where do we find a certificate for attorneys? It's a person. Very simply you'll find in the public comments to the proposal that it would read in case of delivery -- in case of service by person, delivery by certificate of the person as provided in Section 1-109 will eliminate the dichotomy between the attorney and non-attorneys.

That's it and thank you very much.

CHIEF JUSTICE KILBRIDE: Mr. Markoff, that's in your June 20, 2016 letter, is that

right?

MR. MARKOFF: It's in the letter, but I also have a clean draft. I spoke with Ms. Zekich, she said it's in the public comments to your materials.

CHIEF JUSTICE KILBRIDE: Thank you.

CHAIRMAN FIGLIULO: Any other questions or any comments from the Committee on Proposal 15-02? Jan?

JUSTICE ROCHFORD: Good morning.

CHAIRMAN FIGLIULO: Are we going to address 15-05 now?

JUSTICE ROCHFORD: 02.

CHAIRMAN FIGLIULO: Will you introduce yourself?

JUSTICE ROCHFORD: I'm Mary K. Rochford, I'm the chair of the Commission on Access to Justice, and I'm sorry that I was not on the speaker list, but I just wanted to step up to say that the Commission unanimously supports this modification to the rule as a way to increase access to justice but still include safeguards for veracity under Section 2-109.

And in drafting our forms, we will make

sure that the self-represented litigant has enough instructions to know what they need to do to comply with 2-109 should the rule be changed.

So thank you for your time.

CHAIRMAN FIGLIULO: Thank you. Are there any other speakers who want to address Proposal 15-02? Thank you.

We will proceed to consideration of comments relating to Proposal 15-05, which is a proposal to amend Supreme Court Rule 941 and Supreme Court Rule -- and create Supreme Court Rule 943 to address issues relating to the shackling of minors in proceedings throughout the state and the attempt I think to conform the rules with respect to juveniles in detentions to that governing adults. And we have a number of speakers who are going to address this question and give some context to the proposal.

The first speaker to speak to this issue will be Judge Elizabeth Robb.

HON. ROBB: Good morning, Justice Kilbride, Chair Figliulo, Vice Chair Judge Anderson and Members of the Supreme Court Rules Committee, my name is Elizabeth Robb, I'm a

former chief judge of the 11th Judicial Circuit. I served as an associate judge and circuit judge for 22 years. I retired in 2014. The last ten years of my career I was a juvenile delinquency judge. And before going on the bench I was in private practice and I served as an assistant public defender representing juvenile court clients.

The Illinois Supreme Court, like courts across the country, has recognized that shackling of individuals in our courts should be done only in limited circumstances to maintain safety and order in the courts. In 1977 the court found in People versus Boose the shackling of adults should be avoided if possible because shackling tends to prejudice the jury against the accused, restricts the accused's ability to assist his counsel during trial and offends the dignity of the judicial process. That same year the court extended the Boose protections to juveniles being tried in delinquency proceedings in In re Staley.

In 2010 the Illinois Supreme Court adopted Rule 430 which codified the Boose

protections and sets forth the circumstances for shackling in criminal trial proceedings when determinations of guilt or innocence are to be made. However, there are no such guidelines to govern or in any way restrict the manner in which children are shackled in juvenile court.

Currently the practice of shackling is grossly inconsistent among judges throughout Illinois. There should be clear guidance to juvenile court judges on when and how to make the decision to shackle to ensure that there is some uniformity and practice throughout the state, which is exactly what the rule proposes to do, while preserving a judge's discretion to decide if shackles are necessary to preserve the safety and security of the child and others in the courtroom.

During my tenure as the juvenile court judge, I am sorry to say that it was our written policy that juveniles were to be shackled at the ankles and around the waist to the wrist in court proceedings other than at a bench trial or a plea hearing. In my county we did this because juveniles were transported from the

detention center, a facility several miles from the Law and Justice Center, by detention staff through a secured area to the courtroom, not by court security deputies. We did not routinely have court security deputies in our courtroom and this was and is a resource issue. We did not have enough deputies to staff the 13 courtrooms in the facility. However, I was never comfortable with this arrangement, and if I was given the opportunity to go back I would have found a way to have necessary security personnel in the courtroom so that juveniles would not be restrained during any court proceedings.

Logistics, scheduling and personnel issues should never dictate the dignity of a judicial proceeding. Some of the most vivid memories I have are of parents sitting in the courtroom waiting for their child to come into the courtroom from the holding cell and watching them as they saw their child in restraints, that is a moment when many of them dissolved in tears, and the juvenile's response was to hang his or her head in shame.

I also saw how difficult it was for the public defender to interact and communicate with a juvenile while wrists were shackled to their waist. They were unable to sign documents or write notes back and forth to their public defender and to effectively participate in their own defense. It was my experience that the juvenile detention staff, the public defender, the State's Attorney and often the juvenile probation officer were able to predict if a juvenile was a flight risk or might act out during the court proceeding and they would alert the court of the need to conduct a Rule 430 hearing when there was to be a trial. This proposed rule allows for that same type of process.

The decision to use restraints should be the sole determination of the juvenile court judge who is presiding in the courtroom at the time that a juvenile appears in court, who will hear evidence of why it is necessary for a particular juvenile to be shackled. No juvenile court should be able to operate under a blanket policy to indiscriminately shackle children as a

routine practice. There is growing consensus that indiscriminate shackling of children without an individualized determination that such restraints are necessary for their safety or others in the courtroom negates the rehabilitative mission of the juvenile court.

Indeed the members of the Juvenile Justice Committee of the Illinois Judicial Conference, which is comprised of experienced juvenile judges, unanimously supports this proposed rule. Mental health experts agree that shackling use unnecessarily humiliates, stigmatizes and traumatizes them. How I regret that I was a part of making a foreign and frightening experience even more traumatizing to a young person. The proposed rule would minimize the trauma that youth are exposed to during their court hearings, while ensuring that judges retain the discretion to make a case-by-case determination to shackle in order to maintain the safety and security of their courtroom.

For these reasons I urge this Committee to recommend that the Illinois Supreme Court

amend Supreme Court Rule 941 and create Supreme Court Rule 943 to address the use of restraints on a minor in delinquency proceedings arising under the Juvenile Court Act. Thank you.

CHAIRMAN FIGLIULO: Thank you, Judge. Does anyone have any questions?

HON. McBRIDE: Judge Robb, do you have any opinion regarding the suggested comment that was proposed by Judge Boatnick at the end of the rule, do you have any opinion? I don't know if you were aware, but she wrote a letter and suggested that the rule have a Committee comment that says this rule is not intended to limit the court's apparent power to control his or her courtroom and/or ensure the integrity of the proceedings are maintained in the event of disruptive behavior by the minor.

HON. ROBB: I think that the rule -- the comment assists judges and others in understanding that the judge is the ultimate arbiter of what is going on in his or her courtroom, and I support that comment.

MR. BEYLER: I had a minor technical question. When exactly is it that the court

proceeding begins? And I mean that in terms of they're bringing him from the juvenile detention center, does the court proceeding begin the moment the juvenile enters the courtroom or does it begin when the judge enters the courtroom?

The reason I'm saying that is you could see them being brought in shackled into the courtroom and then unshackled there before the judge comes in and someone could say, well, that's in compliance because the court proceeding hasn't begun until the judge is on the bench. But on the other hand, in terms if you're concerned about the kid being brought in because of the parents, you would I think want the shackles removed before the juvenile enters the courtroom.

HON. ROBB: I agree. I think once entering a courtroom it's a different situation.

CHAIRMAN FIGLIULO: Any further questions?

MR. GREEN: I'm curious, your Honor, to know how many counties in Illinois have this routine practice of shackling juveniles? The reason I ask this is I saw a news article

indicating there were only three or four counties doing this, and I thought the number was probably much higher. And McLain was not mentioned as one of the few counties reportedly doing this.

HON. ROBB: I'm unaware of what the practice is from county to county. I am aware that it varies quite a bit from county to county.

CHAIRMAN FIGLIULO: Thank you, Judge. We'll now hear from Vincent Cornelius.

MR. CORNELIUS: Good morning, Justice Kilbride, Chair Figliulo, I thank you for this opportunity to address you. I stand this morning as the fairly newly minted president of the Illinois State Bar Association and also as an attorney, who for at least 25 years now, has practiced in juvenile courtrooms. I've practiced as a prosecutor where I was once a supervisor of the Juvenile Division in DuPage County. I've practiced in those courtrooms as a criminal defense attorney, as a guardian ad litem, as court-appointed counsel, from time to time as pro bono counsel, as counsel for

court-appointed special advocates. And time and time again I have stood in the juvenile courtrooms and I have seen these young shackled people escorted into the courtroom. I would say that I would like to echo and adopt all of the excellent remarks made by Judge Robb and it will allow me to make my comments more brief.

As was described, I saw yesterday as I stood in a juvenile courtroom a 15-year-old girl who was pudgy, and I don't say pudgy to be offensive, I say pudgy because she in no way offered any threat of harm or escape or the like to anyone. She was trembling, she was afraid and she was shackled. And this was in DuPage county, the county where I was -- where I first began the practice of law.

I also practiced significantly in Will County where there is no transport issue. The Will County Juvenile Detention Facility is attached to the building where the courthouse is where the juvenile courtrooms are. And so these young people are transported down a hallway from one facility to another, and before they leave a place where they are not shackled, brought down

a hallway to a courtroom where they will participate in the proceeding, they are shackled for that brief period of time.

And so we've heard this word this morning indiscriminate shackling, and I would go so far as to say indiscriminate is probably not a strong enough word. I would go so far as to say that the shackling that we see in juvenile courtrooms in many places, it's presumptive, it is always -- it is the policy, I should say, of the circuit, it is the policy of the judge in those courtrooms and oftentimes as dictated by the sheriff or whoever it is who provides security.

And so the question is whether or not the restraints are necessary as you weigh and balance that against the humiliation, the degradation that happens to a minor, the demoralization that happens to a minor, that happens to him, that happens to her, that happens to the family. And so the Illinois State Bar Association has had stakeholders to take a look at this issue so that I would not be standing here today just as a person who now

does a great deal of criminal defense work and does a great deal of juvenile work.

Our child law section counsel represents a diverse range of stakeholders in juvenile court matters. Our child law section counsel consists of judges, prosecutors, defense lawyers, guardian ad litems, policy advocates from both the delinquency and child welfare side of the court, and from all geographic corners of the State of Illinois. They believe that this rule is essential and in the best interest and welfare of minors in the courtroom. And I'll go so far as to say that our child law section counsel has never had less than unanimous support for Rule 943.

We believe that young people like I saw yesterday shackled because it is customary, shackled because it is convenient to the county, and I believe that what has happened over the years because it's customary is that we've become anesthetized. We've become anesthetized to the fact that these are not just, as the juvenile court refers to them, minors, they're children, and they're often small in stature.

In fact, we all know of that 13, 14 year old who looks more like the 10, 11 year old and has the emotional maturity of an 11 year old and they are escorted into the courtroom shackled, as has been described, not to mention even the weight of the shackles, the sound of the shackles, the reaction to families in the courtroom. I would suggest that all of those things are unnecessary, disruptive and not necessarily in the best interest of the minors.

I would also go so far as to say that the courtroom for a juvenile is a scary place. It is probably the place more so than any other place where they are absolutely at all times on their best behavior. I stood arguing aggravation as a prosecutor where I talked about young people who were disruptive in the community, disruptive in the school system, disruptive in the family, disruptive every place they were, and this is why we should have perhaps a commitment to the Department of Juvenile Justice or as we described it at that time the Juvenile Department of Corrections, but not once did I see those people that I described

the way that I just described to you, not once did I ever see one of those people disruptive in a courtroom. They have a strong sense of what is at stake.

And so the shackling of these minors I submit to you that is automatic, just routine, presumptive. And as we have used indiscriminate, the term that we have used indiscriminate, is unnecessary, inappropriate and I dare say perhaps even something less than third world. And with that I urge you to adopt 943. And I'm happy to answer any questions.

CHAIRMAN FIGLIULO: Thank you. Does anyone on the committee have any questions for Mr. Cornelius?

MR. CORNELIUS: Thank you very much.

CHAIRMAN FIGLIULO: Thank you, Mr. Cornelius.

We will now hear from Mr. Paul Cain on this same proposal.

MR. CAIN: Good morning, Justice Kilbride, Members of the Supreme Court Rules Committee. My name is Paul Cain, as you've heard, I'm testifying today in support of

Illinois -- Proposed Illinois Supreme Court Rule 943. I'm a clinical professor of law at Northern Illinois University College of Law. However, I'm not testifying for the university or the college of law. In addition, I'm the First Vice President of the Illinois Association of Criminal Defense Lawyers, and the IACDL does support this proposed rule.

I first began representing juveniles in delinquency court in 1989 when I had a private practice in central Ohio. While at NIU College of Law, I've also taught a juvenile justice clinic that represented juveniles in delinquency court. I practice primarily in Winnebago County in the city of Rockford. The juvenile detention center is located in Rockford, it's designed to accommodate 48 juveniles, however, earlier this year it had as many as 67 juveniles detained there. All of those juveniles appear at some point in juvenile court, in delinquency court. It could be a onetime appearance for their detention hearing. It may be multiple appearances if they have to appear for pretrials, for status hearings because they're

detained while their case is pending.

Every juvenile that appears in delinquency court for any reason in Winnebago County from the detention center is shackled, it doesn't matter what their charge is, what their age is, what their size is. They may be shackled for as long as three to four hours. And when I say shackled, what do I mean? They're handcuffed, so their hands are in front of them cuffed. Their hands are secured to a steel ring on a thick leather belt around their waist like this so they can't hardly move them. As a result, it's almost impossible to write. It's difficult just to sign their name to a document, much less to take any kind of comprehensive notes to assist their defense counsel. Their legs are cuffed with a steel chain connecting the leg cuffs. As a result, they have to shuffle when they walk to avoid tripping and falling.

Imagine that you are JT, a 14-year-old boy. JT has ADHD for which he is medicated, although his mother is concerned that the medication is not working and has side effects

and it's very difficult for him to sleep. You're charged with possessing a stolen vehicle and a petition to revoke your probation for retail theft because of the stolen vehicle charge. Neither of these is a crime of violence. You have no history of failing to appear. While shackled and unable to maintain concentration due to your ADHD and lack of sleep, you have to follow what your attorney and the judge are telling you regarding the new charges since you're going to be arraigned. You also have to follow what your attorney and the judge are telling you about what's going to happen in the detention hearing. JT was a client of mine.

Now, imagine that you're OM, a 14-year-old boy. You're not a big kid, you're only 5 foot 6, 137 pounds, not exactly an imposing figure. In addition, you have ADHD for which you receive medication. However, you're unable to get your medication while in the detention center and so you appear in court shackled without it. You're charged with domestic battery because you and your brother

got into a fight with your father that got physical. Your brother had minor injuries, a rug burn on his leg and your father had no injuries whatsoever. You're also charged with criminal damage to property and disorderly conduct because you and your brother damaged a car by tying a rope across the street and damaged the cars antenna and windshield when the car hit the rope. Pretty stupid juvenile prank. While shackled and unable to maintain concentration due to your untreated ADHD, again, you have to follow what your attorney and judge are telling you about the new charges and about the petition to revoke because you're going to be arraigned on those, and again you have to follow what the judge and your attorney are telling you about what's going to happen during the detention hearing. OM was a client of mine.

Finally, imagine you're PM, a petite 16-year-old girl. You were sexually molested by your stepfather for years. When you told your mother about it, she stayed with him and she shipped you off to your grandparents. Your biological father is in prison. You've been

traumatized on multiple levels since childhood. You suffer from severe anxiety and panic attacks. You're in detention because you ran away from home, from the grandparents, contrary to the terms of your probation. You appear in court fully shackled for a petition to revoke your probation. Again, while shackled and unable to maintain concentration due to your severe anxiety and panic attacks, you have to follow what the attorney is telling you and what the judge is telling you about the new charges, about the new petition, again, because you're going to be arraigned and you have to follow what the judge and the attorney are telling you about the detention hearing. PM was a client of mine.

Juveniles in shackles typically rub their wrists because the handcuffs chafe and irritate the skin on the wrist. They do this as you try to explain important topics to them. They do this as the judge is talking to them. Juveniles like PM who have been traumatized are re-traumatized through shackling.

Many juveniles who appear in court have

mental health issues or disabilities such as ADHD, that already makes the process more difficult for them to understand and follow. Shackles and the distraction they cause only adds to the difficulty in understanding and following the court process. It means you must explain concepts and procedures multiple times to juveniles in shackles.

The indiscriminate shackling of juveniles is an unnecessary procedure that inhibits the juvenile in fundamental ways. And I agree with Mr. Cornelius' comments that indiscriminate is probably not a strong enough term. In Winnebago County it is presumptive. Every juvenile is shackled from the detention center, whatever they're appearing for, whatever their charge is, whatever their age, whatever their size.

This proposed rule will allow shackling of juveniles in those circumstances when shackling is necessary as determined by the court. Most juveniles would not require shackling and would not disrupt the court proceedings if unshackled. The proposed rule

will allow for more meaningful participation by juveniles in court proceedings. I strongly urge the Rules Committee to support Proposed Illinois Supreme Court Rule 943 and recommend that the Illinois Supreme Court adopt this rule. Thank you.

CHAIRMAN FIGLIULO: Thank you, Mr. Cain. Does anyone have any questions? Thank you, Mr. Cain.

MR. CAIN: Thank you.

CHAIRMAN FIGLIULO: We'll now here from Mr. Eugene Griffin on the same proposal.

MR. GRIFFIN: Thank you. My name is Eugene Griffin, I'm speaking in support of Supreme Court Rule 943. I've also just provided some written copies of what I'm going to say so you can have some of that later. I'm going to briefly talk about my background, the impact of indiscriminate shackling on adolescents, the additional impact when they're traumatized and finally a better to work with high-risk youth.

Regarding my background, I am an attorney and a clinical psychologist. As an attorney I was an assistant public defender in

juvenile court in Cook County. As a clinician I'm retired from Northwestern University Medical School's Department of Psychiatry where I worked with different State agencies on working with high-risk youth, including I worked with the division of mental health, I worked with Child and Family Services, with the Department of Juvenile Justice. I helped develop Illinois' Mental Health Juvenile Justice Initiative which identifies mentally ill kids in detention centers and links them to community services. So I have worked in every detention center in Illinois.

I have been in every Department of Juvenile Justice Youth Center in Illinois to the office of -- Administrative Offices of Illinois courts, I trained Illinois judges, probation officers and detention staff on understanding adolescent development mental health, child trauma and ways of working with these high-risk youth.

I did my internship at Harvard Medical School where I spent my time at Bridgewater State Hospital, a maximum security facility for

violent suicidal criminally insane men. And as a clinician in Illinois I served as unit chief of a long-term inpatient psychiatric unit of the former hospital Illinois State Psychiatric Institute. It was for -- the unit was a tri-agency unit for severely disturbed kids, as we got kids from what was then Department of Corrections, as well as Mental Health and Child Welfare. So my testimony is based on all these experiences.

Regarding the impact of indiscriminate shackling on adolescents, I would start by saying the court rightfully demands that kids in court treat the court with respect, and court officials now when a youth is not treating them respectfully. But I would say similarly the kids know when they're not being treated respectfully and they get upset when they feel they're being disrespected.

Shackling is aversive. Shackling a youth who is currently showing no signs of violence or intent to escape is perceived by the youth as being excessive and unfair. It embarrasses them and it upsets them, and when

they are upset they are less able to think rationally. They're responding much more emotionally. They're agitated. They're less thinking abstract, long-term, waiving constitutional rights, long-term consequences. As they get upset and embarrassed, they are more likely to just shut down. At this point they are not speaking with their attorneys or public defenders, they can't have these abstract conversations, they are paying less attention to what's going on in court and they won't be listening to judges who are talking to them from the bench. They will comply but it will be more of a silent compliance.

When I served as unit chief of the tri-agency program at the old Illinois State Psychiatric Institute, as I say, we got kids from Corrections, Mental Health and Child Welfare, and this was for severely disturbed kids who were high-risk violent, self-destructive, needed long-term care. There was little difference between the kids the three agencies sent us, they all pretty much were dealing with the same issues, but only the

Department of Corrections would bring their kids to us in shackles. And in our hospital we never used shackles with the kids. We could move them about the facility, and we'd do that with staff escorts. If there was a crisis, then we could use restraints, but that would only be used in the crisis and that would be used with special orders being written.

So when youth were clinically stable, ready for discharge, we would then call the referring agencies. And again, only the Department of Corrections would come in and as they were taking kids out they would shackle just their kids. And many times I observed youth who were calm, stable, had done well for months in our long-term care facility, as they were leaving they would say goodbye to staff, peers, be very appropriate, then they would step up to get shackled, and the guards would shackle their hands, wrists, everything, and you would just see the kids shut down. They would comply, this worked well for transportation, but that doesn't work when you're trying to talk with the kid, whether it's the attorney or the judge

trying, that is not the time that they're having anymore conversations. Their game face is on, and they are doing minimally what they have to do. Only the most basic communication is possible with them at that point.

To shift briefly now, we know now from current research that most of the kids in juvenile court have a trauma history. Most, in fact, have been mistreated by adults. And when you have traumatized kids, they are already anxious and on edge and they are anticipating that they are going to be mistreated by adults, that's part of the reaction to traumatized kids and how they don't trust adults anymore. So more adults coming in and forcefully shackling kids can trigger traumatic responses which include fight, flight, freeze. So in a sense you get a self-fulfilling prophecy of as you're taking a traumatized kid and you're tying them up, you're actually increasing their anxiety and making it more likely they're going to want to flee or fight or more often what will happen with these kids is they will again simply shut down, that's a form of dissociation. They will

listen, they will respond, but they are no longer engaged in conversation. They are no longer thinking rationally. So you're taking their limited ability to communicate and you are damaging that even more.

So as to a better way to work with these kids, we understand that in juvenile court safety and communication are essential, but these are better supported through a rehabilitative approach with kids. That's what Miller versus Alabama and other U.S. Supreme Court decisions have called for in working with kids in juvenile justice. To achieve this, you let kids know what the expectations are. Safety and structure are paramount, but you can do this verbally, you can let the kids know what the expectations are, you make the instructions simple, you make them clear, you repeat them, you have a translator if you need it. You don't need to do this in ways that just automatically start with yelling, with punishing or with tying kids up. If you want to teach a kid new positive behaviors, it's the interaction between the adults and the kids that are essential and

this requires some trust and some mutual respect. So a rehabilitative approach might include the use of shackles when a kid gets out of control, when he is high risk, when there is a risk of running away or being violent, but that's never where you would start.

Hence, I'm speaking in support of Rule 15-05, and I would ask that you no longer allow the indiscriminate use of restraints and shackling with juveniles.

CHAIRMAN FIGLIULO: Thank you, Mr. Griffin. Any questions?

HON. GIBSON: Yes. Mr. Griffin, I'd be interested in your thoughts on the application of the rule in the unusual case where there is a court -- there is a hearing and the court finds the use of restraints is necessary for one of the three reasons. In reviewing the rule and the application of the rule, I'm not certain about whether it's contemplating there has to be a hearing before each court proceeding within a particular case or whether there's one court hearing and that governs the remainder of the case, whether there's three court appearances,

six court appearances or whatever number, and I wondered what your thoughts were on that.

MR. GRIFFIN: Again, I defer to you on interpreting. Clinically I would say there should be a hearing each time a youth is brought back to court. Because I'm upset and at risk of running today doesn't mean next month that would still be true. In fact, you'd hope there would be progress. So it might be perfectly appropriate to say he's a high risk today, he's new in the detention center, he's high risk, he's still coming down, he needs to be stabilized, but a month from now he is stable, he's been doing well and there would not clinically be a need for restraints at a next hearing sometime later in my opinion.

HON. GIBSON: Thank you.

CHAIRMAN FIGLIULO: Any other questions?

MR. TUCKER: Jim, I have a question.

CHAIRMAN FIGLIULO: Yes.

MR. TUCKER: Mr. Griffin, I noticed that the body of your rule addresses disruptive behavior only when there has been a history of

disruptive behavior, and the proposed rule seems to take care of that under the Committee comment.

In the situation where a juvenile has no history of disruptive behavior but engages in disruptive behavior that essentially brings the proceeding to a stop, please present your arguments why that matter should be covered in a Committee comment rather than included in the rule, for example, as A4. Thank you.

MR. GRIFFIN: I'm sorry, I don't have that in front of me so I can't fully address it. I wouldn't have an objection to it being in the rule. To me it would be much harder to have a hearing anticipating a youth needing to be shackled when there's no history of it so I don't know how you could address that for somebody with no history until they've acted up in court.

MR. TUCKER: Well, it seems to me that perhaps the court needs some guidance. I mean, if we're going to do a rule, the court needs some guidance in the immediate situation where the situation deteriorates that the rule really

doesn't cover that situation. Maybe somebody read the Committee comment or maybe they didn't, who knows. But in the immediate moment where a hearing is disrupted, it seems to me that you might want to consider including the disruptive behavior scenario in the body of the rule. Thank you.

MR. GRIFFIN: I have no objection. To me the judge is always in charge and that would apply across all circumstances and all court hearings, not just juvenile court, but I would have no objection to it.

CHAIRMAN FIGLIULO: Thank you, Mr. Griffin.

Anyone else have any questions?

VICE CHAIR ANDERSON: Just so I'm clear, so you wouldn't have an objection to the rule being amended to add the restraints may be authorized by the court or security personnel in an emergency situation where the court has not yet had an opportunity to conduct a hearing?

MR. GRIFFIN: I would not, correct. I mean, if there's a youth who has no history who suddenly gets up and is violent in the middle of

a hearing, I would say from a clinical point of view you need to maintain safety if it's an emergency.

In hospitals when we would do restraints, if the kid was suddenly violent you wouldn't go and find a doctor and get the order first, in the emergency you maintain safety and then you document it and get the orders afterwards. We always start with safety.

VICE CHAIR ANDERSON: That is what the proposed rule currently requires. I mean, you have an emergency situation, you're supposed to stop everything and conduct a hearing.

CHAIRMAN FIGLIULO: We have discussed this, you know, in the Committee, and we have referenced that particular issue to the Illinois Judicial Conference Juvenile Justice Committee, and the Committee comment or the proposed comment to the rule recognizes that this rule does not alter or modify the court's inherent power to control the integrity of its courtroom and the safety of the personnel. And it is an issue that we have discussed and we can discuss again. We welcome any comments.

MR. GRIFFIN: No, I just assumed the court already had that power and the rule is not intended to change that.

CHAIRMAN FIGLIULO: Thank you, Mr. Griffin.

That concludes the speakers who are addressing Proposal 15-05. I will note for the record that this proposed rule change originated with the Illinois Justice Project and was supported by a number of organizations, then the proposal was submitted to the Illinois Judicial Conference Juvenile Justice Committee who considered the original proposal and then considered proposed revisions to that rule, including the Committee comment that is now part of the proposal to -- that's before the Illinois Supreme Court Rules Committee today and is the subject of this public hearing which changes -- which creates a new rule, Rule 943 and amends Rule 941.

The Committee will take that proposal under advisement and we'll consider further -- all of these comments and a number of the written materials that have also been submitted

to the Committee and we will address that at our meeting following this public hearing.

We have one other proposal if there's any other questions concerning 15-05 from the Committee? Thank you, and thank you for all the speakers and all the people who have devoted the work and the research with respect to that proposal.

We will now consider the final matter for public hearing, and that's the Proposal 15-06, which is from the Appellate -- well, we'll hear from Mr. Fitzgerald from the Appellate Lawyers Association. And, Mr. Fitzgerald, if you could provide some context to this Proposal and address the reasons why you support it.

MR. FITZGERALD: Thank you. Good morning, Justice Kilbride, Chairman Figliulo and Members of the Committee. My name is John Fitzgerald, and I'm speaking today on behalf of the Appellate Lawyers Association in support of Proposal Number 15-06. This proposal would amend Rule 307 in three ways, and I would like to address what I would expect to be the least

controversial change or group of changes first, that is the group of changes that would authorize the use of a Rule 328 supporting record in a Rule 307(a) appeal from an order granting or denying a motion for a preliminary injunction. Quite simply, we believe that the Rule 328 mechanism works very well, especially in expedited appeals.

As currently drafted, Rule 307 permits Rule 328 supporting records to be used in Rule 307(d) appeals from orders that grant or deny a motion for a temporary restraining order. Rule 307(a) appeals, of course, also are expedited interlocutory appeals, and we believe that the Rule 328 mechanism is well-suited for a Rule 307(a) appeal just as well as for a Rule 307(d) appeal.

By way of context, I have worked on several cases and members of the ALA Rules Committee have worked on several cases in which it has taken a very long period of time to compile the full record on appeal in a Rule 307(a) appeal. And, of course, there's the expedited briefing schedule in 307(a) appeals

seven days from the filing of the records for the appellant to file their opening brief and then the appellee has seven days thereafter. I've had cases in which I've represented appellees in Rule 307(a) appeals. The appellant has required in some cases multiple extensions of time to file the full record on appeal. We couldn't reach agreement on what the record would include so by default it was the full record. And the practical reality was that the appellant had several months to work on their opening brief, and then, of course, representing the appellee, I had only seven days to prepare my brief.

So we believe that a Rule 328 supporting record is appropriate in Rule 307(a) appeals. We believe it works well in Rule 307(d) appeals and should likewise be available in Rule 307(a) appeals.

The other changes that we proposed were prompted by the Appellate Court's opinion in Nizamuddin versus Community Education in Excellence. That opinion was issued in December of 2013. In that case the Appellate Court held

that in a Rule 307(d) appeal for an order that either grants or denies a motion for a TRO, the court held that the Notice of Appeal must be filed in the Appellate Court, not the Circuit Court, even though no Supreme Court rule actually says that. The Appellate Court acknowledged that the Supreme Court rules do not provide that a Notice of Appeal in a 307(d) appeal ought to be filed in the Appellate Court, but the Appellate Court nevertheless found that that was the requirement.

The Nizamuddin opinion is also noteworthy because it held that the mailbox rule and Supreme Court Rule 373 is not available in Rule 307(d) appeals, again, even though nothing in the Supreme Court rules actually provides that that is the case.

In short, Nizamuddin creates two significant traps for the unwary. It imposes requirements that are not stated anywhere in the Supreme Court rules, and failure to comply with those requirements could cause someone to lose their right to appeal. We believe that rules governing the filing of a Notice of Appeal and

the filing of documents generally in the Appellate Court should be clearly and expressly stated in the Supreme Court rules. We hope that our proposed amendments will foster that clarity.

As you can see, we propose amending Rule 307(d) to specify that in Rule 307(d) appeals, as in all other civil appeals, the Notice of Appeal shall be filed in the Circuit Court. Of course, the Circuit Court needs to be notified that there is a pending interlocutory appeal. In addition, under the existing rules, the Appellate Court will receive a notice -- a copy of the Notice of Appeal anywhere -- anyway in the supporting record.

We also propose that Rule 307(d) be amended to specify that Rule 373, the mailbox rule, is available in Rule 307(d) appeals provided that the documents are sent to the Appellate Court by overnight delivery.

Those are the proposals and the context for them. I would also like to take this opportunity to thank Stanley Tucker and Jan Zekich for their very helpful comments and

suggestions which have been incorporated in the draft before you today. And I would be happy to answer any questions that you may have.

MR. BEYLER: We received, you know, a letter from I guess it's the Cook County Public Guardian suggesting that we should have a further amendment saying in Rule 328 supporting record shall not be filed in cases arising under the Juvenile Court Act or an order terminating rights in a matter, in those cases a Rule 323 record shall be filed. I don't know whether you received that comment or not, but do you have any reaction?

MR. FITZGERALD: I'm afraid I have not received that comment. And I think the best answer I can provide because I didn't receive it or the ALA did not have an opportunity to take an official position. I can tell you that our proposal is not intended to have any particular effect on the unique needs that may arise in those types of cases. And so I think I can say that the ala I believe would have no objection to that suggestion. We acknowledge that those types of cases do oftentimes create unique needs

or concerns that may not exist in ordinary civil appeals.

CHAIRMAN FIGLIULO: Could you briefly address the Rule 328 record and why that process should apply both to the appellant and the appellee as proposed by the Appellate Lawyers Association?

MR. FITZGERALD: And this was I believe the change that was made in response to the very helpful comments by Mr. Tucker.

So we believe very strongly in the Rule 328 process and, of course, nothing that we're proposing is intended to change that process. Of course, the appellant's attorney compiles the supporting record and authenticates it by affidavit of the attorney. And, of course, the appellee, if the appellee believes that something material has been omitted from the appellant's supporting record, they have an opportunity, the appellant does, to compile a supplemental supporting record also supported by affidavit.

The language that was added to our proposal was simply intended to clarify that

both appellants and appellees have that opportunity. It was not intended to be a one-sided change that would benefit only appellants as opposed to appellees.

CHAIRMAN FIGLIULO: Thank you. I have one other question with respect to the second part of the proposal. You're concerned about filing the notice in the Circuit Court, this requires now that the notice be filed in the Circuit Court as well as the Appellate Court?

MR. FITZGERALD: Correct. So the appellant has to file the Notice of Appeal in the Circuit Court and then -- and this is already covered in Rule 307(d). The appellant has to compile, of course, the supporting record. Rule 307(d)(1) already specifies that the appropriate supporting record shall include the Notice of Interlocutory Appeal. So we propose that the appellant -- and by the way, I believe this is what most appellants already do in Rule 307(d) appeals, you file the Notice of Appeal in the Circuit Court, thus initiating the appeal, and you file your legal memorandum, your petition and your supporting record in the

Appellate Court. And the supporting record includes a copy of the Notice of Appeal that you have filed in the Circuit Court.

CHAIRMAN FIGLIULO: So you're not anticipating that there would be a requirement, that there be a notice filed, a separate notice filed in the Appellate Court?

MR. FITZGERALD: No. No. We anticipate just that the supporting record in the Appellate Court includes a copy of the Notice of Appeal that was filed in the Circuit Court.

CHAIRMAN FIGLIULO: Thank you very much. Any other questions from the Committee? Thank you, Mr. Fitzgerald.

MR. FITZGERALD: Thank you, Mr. Chairman.

CHAIRMAN FIGLIULO: This will conclude the comments at this public hearing for the three proposals that have been identified and noticed as part of the agenda for the public hearing.

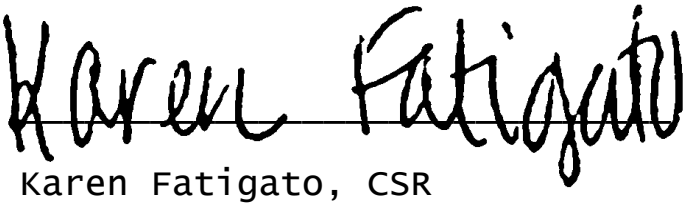
I want to thank everyone who has participated in today's public hearing, and the

Committee will now adjourn for further consideration of the proposed rule changes and other matters. Thank you.

(Whereupon, these were all the proceedings had at this time.)

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

Karen Fatigato, being first duly sworn, on oath says that she is a court reporter doing business in the City of Chicago; and that she reported in shorthand the proceedings of said public hearing, and that the foregoing is a true and correct transcript of her shorthand notes so taken as aforesaid, and contains the proceedings given at said public hearing.



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