

1 SUPREME COURT RULES COMMITTEE

2 PUBLIC HEARING

3 July 8, 2016

4 10:00 a.m.

5
6 REPORT OF PROCEEDINGS had at the
7 public hearing in the above-entitled matter,
8 before MR. JAMES R. FIGLIULO, Chairman of said
9 Committee, at Room C-500, 160 North LaSalle
10 Street, Chicago, Illinois, on the 8th day of
11 July, 2016, beginning at the hour of
12 10:00 a.m. and concluding at 11:03 a.m.

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23 Reported By: Karen Fatigato, CSR

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1 PRESENT:

2 MR. JAMES R. FIGLIULO, Chair

3 MR. JOHN C. ANDERSON, Vice Chair

4 PROF. KEITH H. BEYLER, Reporter

5 MS. JAN B. ZEKICH, Secretary AOIC

6 HON. THOMAS L. KILBRIDE, Supreme Court

7 Liaison

8 HON. ROBERT G. GIBSON

9 MR. JAMES D. GREEN

10 MR. JAMES A. HANSEN

11 MR. MARVIN J. LEAVITT

12 HON. MARGARET STANTON MCBRIDE

13 MR. MICHAEL I. ROTHSTEIN

14 MR. JONATHAN M. THOMAS

15 MR. STANLEY L. TUCKER

16 HON. FRANKLIN U. VALDERRAMA

17 MR. EDWARD J. WALSH

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

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

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

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



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

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

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

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



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

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



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

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

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



1 Mr. Markoff.

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

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

22 That's it and thank you very much.

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



1 right?

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

6 CHIEF JUSTICE KILBRIDE: Thank you.

7 CHAIRMAN FIGLIULO: Any other questions
8 or any comments from the Committee on Proposal
9 15-02? Jan?

10 JUSTICE ROCHFORD: Good morning.

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

13 JUSTICE ROCHFORD: 02.

14 CHAIRMAN FIGLIULO: Will you introduce
15 yourself?

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

24 And in drafting our forms, we will make



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

4 So thank you for your time.

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

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

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

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



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

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

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



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

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

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



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

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



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

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



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

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

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



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

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

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

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

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



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

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

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

19 CHAIRMAN FIGLIULO: Any further
20 questions?

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



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

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

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

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



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

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

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



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

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

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



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

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

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



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

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



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

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

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

16 MR. CORNELIUS: Thank you very much.

17 CHAIRMAN FIGLIULO: Thank you,
18 Mr. Cornelius.

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

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



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

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



1 detained while their case is pending.

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

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



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

16 Now, imagine that you're OM, a
17 14-year-old boy. You're not a big kid, you're
18 only 5 foot 6, 137 pounds, not exactly an
19 imposing figure. In addition, you have ADHD for
20 which you receive medication. However, you're
21 unable to get your medication while in the
22 detention center and so you appear in court
23 shackled without it. You're charged with
24 domestic battery because you and your brother



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

19 Finally, imagine you're PM, a petite
20 16-year-old girl. You were sexually molested by
21 your stepfather for years. When you told your
22 mother about it, she stayed with him and she
23 shipped you off to your grandparents. Your
24 biological father is in prison. You've been



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

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

24 Many juveniles who appear in court have



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

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

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



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

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

10 MR. CAIN: Thank you.

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

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

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



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

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

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



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

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

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



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

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



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

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



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

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



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

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



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

7 Hence, I'm speaking in support of Rule
8 15-05, and I would ask that you no longer allow
9 the indiscriminate use of restraints and
10 shackling with juveniles.

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

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



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

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

17 HON. GIBSON: Thank you.

18 CHAIRMAN FIGLIULO: Any other
19 questions?

20 MR. TUCKER: Jim, I have a question.

21 CHAIRMAN FIGLIULO: Yes.

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



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

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

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

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



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

7 Thank you.

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

13 CHAIRMAN FIGLIULO: Thank you,
14 Mr. Griffin.

15 Anyone else have any questions?

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

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



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

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

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

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



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

4 CHAIRMAN FIGLIULO: Thank you,
5 Mr. Griffin.

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

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



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

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

9 We will now consider the final matter
10 for public hearing, and that's the Proposal
11 15-06, which is from the Appellate -- well,
12 we'll hear from Mr. Fitzgerald from the
13 Appellate Lawyers Association. And,
14 Mr. Fitzgerald, if you could provide some
15 context to this Proposal and address the reasons
16 why you support it.

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



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

9 As currently drafted, Rule 307 permits
10 Rule 328 supporting records to be used in Rule
11 307(d) appeals from orders that grant or deny a
12 motion for a temporary restraining order. Rule
13 307(a) appeals, of course, also are expedited
14 interlocutory appeals, and we believe that the
15 Rule 328 mechanism is well-suited for a Rule
16 307(a) appeal just as well as for a Rule 307(d)
17 appeal.

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



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

15 So we believe that a Rule 328
16 supporting record is appropriate in Rule 307(a)
17 appeals. We believe it works well in Rule
18 307(d) appeals and should likewise be available
19 in Rule 307(a) appeals.

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



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

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

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



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

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

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

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



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

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

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



1 or concerns that may not exist in ordinary civil
2 appeals.

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

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

11 So we believe very strongly in the Rule
12 328 process and, of course, nothing that we're
13 proposing is intended to change that process.
14 Of course, the appellant's attorney compiles the
15 supporting record and authenticates it by
16 affidavit of the attorney. And, of course, the
17 appellee, if the appellee believes that
18 something material has been omitted from the
19 appellant's supporting record, they have an
20 opportunity, the appellant does, to compile a
21 supplemental supporting record also supported by
22 affidavit.

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



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

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

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



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

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

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

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

16 MR. FITZGERALD: Thank you,
17 Mr. Chairman.

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

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



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

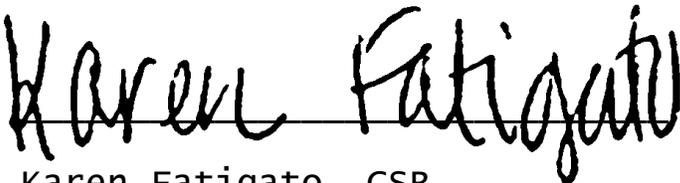
4 (whereupon, these were all the
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STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

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.



Karen Fatigato, CSR
LIC. NO. 084-004072



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