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MEETING OF THE SUPREME COURT ADVISORY COMMITTEE

JUNE 27, 2025

(FRIDAY SESSION)

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Taken before *D'Lois L. Jones*, Certified Shorthand Reporter in and for the State of Texas, reported by machine shorthand method, on the 27th day of June, 2025, between the hours of 9:00 a.m. and 5:00 p.m., at the Travis County Civil and Family Courts Facility, 1700 Guadalupe Street, Austin, Texas 78701.

INDEX OF VOTES

Votes taken by the Supreme Court Advisory Committee during this session are reflected on the following pages:

INDEX OF DISCUSSION OF AGENDA ITEMS

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CHAIR TRACY CHRISTOPHER: Welcome. We have a very busy agenda this morning, or today, that we hope we can get through, but, of course, we still want everyone to be able to give their opinions on the rules in front of us. I'm going to turn it over to Justice Bland to tell us what's going on with the Supreme Court.

HONORABLE JANE BLAND: All right. Good morning, everybody. Happy summer. This is the last day of final orders for the Court, so, for the term, and once again, we've cleared the docket, so if your case argued this term, you should have a decision today, if you didn't have one yet.

We want to welcome Sherma Clery to our committee. Vernis has taken a job in the paralegal department at Lloyd Gosselink, where, I think, you know, private sector salary is a good one, so we wish her the best, and we're very happy for her.

Sherma is not new to the Court. She has been with the Court since 2014, working with our general counsel, and she's going to take on the role of rules in addition to her work in the -- with the general counsel, so we're very grateful to her, and I hope y'all will get to know her.

So, obviously, we all are grateful that

another legislative session has come and gone, and, you know, the high point, at least for those of us in the room that are state judges, is the Legislature approved a 25 percent raise for the judiciary, which is the first raise to --

(Applause)

HONORABLE JANE BLAND: It was the first raise to base pay since 2013, and we were -- ahead of this raise, we were ranked 49th in the country in compensation, so that, you know, obviously presents a problem for attracting and retaining top talent, and we're very happy, and the Legislature worked -- and, in particular, Joan Huffman and Jeff Leach, and the members of their respective committees, worked very hard to get this bill through. There was a lot of drama in that the House and Senate had not come to an agreement about what the bill should look like, and ordinarily, the last day of the session is committed to photographs and commemorating years of service for people who have been with the Legislature and retirements and that kind of thing, but they did a little business on the last day, and the little bit of business was our bill, and so, you know, it was almost like reality television. You could watch what was going on in the Senate. They would go over to the House. There would be House debate, and it would come back, so

we're very grateful that this legislative session they saw fit to pass that bill.

More important for this committee's work, as there's always -- as there always is after a session, we have several new laws that require rulemaking, and some of those have directives that require the rules to be -- that ask us to draft -- ask the Court to draft rules and to have rules and give us a deadline, and as you know, we try to meet those deadlines through a lot of hard work. And I want to thank everybody who have been on, and maybe it's all of you, because it's kind of all hands on deck. All of you have already done a lot of work in the last three weeks to get ready for this meeting, for legislation that has very early directives, so I'll go through it and just hit the high points.

There's House Bill 40, which is the business court bill, and it requires adjustments to a number of our rules, but also has two directives, one that asks us to develop rules for cases that are transferred and heard by the business court jurisdiction, and so, as you know, our business court task force kind of wrestled with this a little bit and came up with, I think, a good framework, so this will be kind of adding to that, that framework of existing rules.

Senate Bill 9 is the bail bill, and

ordinarily this committee focuses on civil rules, but the bail bill provides for appeals, and so that needed to have amendments to the Rules of Appellate Procedure, and of course, we will consult with the Court of Criminal Appeals. There's an express directive to have those rules in place by October 1, but the statutory changes go into effect on September 1, and so it's likely that there could be an appeal in that month interim, so our efforts are focused on trying to have something by September 1. That will probably mean that we'll have public comment after adoption of the rule, and we've had to do that on occasion with these quick turnarounds, but we will still have public comment and be back to the committee to discuss potential amendments if we need to.

Senate Bill 535 requires amendments to Texas Rules of Evidence because it expressly disapproves of our rape shield rule of evidence, and so we'll have to make that in line with the statutory language that the Legislature provided.

Then the compensation bill I talked about earlier is Senate Bill 293. In addition to the increase in compensation for state judges, it lays out sort of some extensive changes to judicial conduct proceedings, and so we are going to have to change procedures for judicial discipline, which will require updates to the conduct

commission rules, and, fortunately, we have a task force already in place that's been working on this in anticipation of this -- of this potentially happening and just, in general, updating those procedures, and so Justice Boyce is working on that, is at the helm of that, and we have a task force that some of you are on, and Justice Rebeca Huddle is our liaison to the Judicial Conduct Commission, so she is involved as well.

Senate Bill 293 also directs the Court to make certain rules for time sheets by March 1st, 2026, so not right away. So we're going to have a process or a work plan for that and with the idea that we will have those rules in place by the deadline.

Other bills that we referred just this week that came out of the legislative session, updates to the Code of Judicial Conduct related to Senate Bill 293. Senate Bill 441 and 2373, which have to do with protection of party identities and particular cases involving AI and deepfake technology. House Bill 1778, which looks at expanding the types of evidence of other crimes, wrongs and acts that can be admitted into evidence and a limiting instruction that would go with the admission of that evidence. And then there are some that we will handle in-house, and I'm not going to go through all of those, but they just usually relate to very specific topics like

the temporary licensing of military spouses and things like that, and they don't generally require wholesale rewrites.

There is an eviction bill, Senate Bill 38, that changes a lot of the procedures for county courts at law receiving de novo appeals from the justice courts in eviction cases, and so we will be convening a task force to work on changes to the justice court rules and other necessary changes related to that bill.

As many of you may have heard, Governor Abbott vetoed the court omnibus bill, which creates new courts and does other things, and it's usually just kind of an administrative type bill, but in the Governor's veto statement he thought that some of the substantive provisions, in particular having to do with expungement of cases that qualified for diversion, didn't belong in that bill, and took issue, I guess, with some of that bill language.

He has added that bill to the special session that he has called for July 21st, so we're hopeful that we will -- the omnibus part of the omnibus courts bill will be reinvigorated during the special session, because I know there are several jurisdictions out there that are anxious to have the creation of new courts to fit their growing populations and growing court dockets.

So we ordered preliminary approval in April of a uniform deposition IDDA, which allows for cross-state line taking of depositions, and it's out for public comment. 46 states have it, so and the Legislature had put in a directive last session to say, look at this, see if you want to incorporate it, and if you do, you need to get it done by September, right, so it's out for public comment until August 1, so those of you that are interested in subpoenas and deposition practice, take a look at the preliminary order adopting those rules.

The Court has issued an order inviting comments about law school accreditation as a component of the Texas Bar admission, and the Court's accepting comments until July 1st.

Let's see what else. We amended Rule 10 and TRAP 6 to govern attorney withdrawal, make it easier for counsel to contact by adding e-mail addresses, and thank you to Judge Schaffer, who brought that to our attention through this committee and has doggedly asked what's happening with that. So those changes took effect April 1st.

I am going to leave the rest of the update to another day, because we have so much business to conduct, but that gives you kind of a bird's-eye view of all of the work that the Court will be doing and has been

doing during the session and, now, over the summer, to incorporate legislative changes into our practice.

CHAIR TRACY CHRISTOPHER: Thank you. Justice Young, anything to add?

HONORABLE EVAN YOUNG: So many things, but not one that's more important than getting on with the agenda.

CHAIR TRACY CHRISTOPHER: Okay. Thank you. So our first item on the agenda is the procedural rules for the State Commission on Judicial Conduct. As Justice Bland said, we had a task force, and I believe Kennon is going to present on this one.

MS. WOOTEN: Yes. Thank you very much. I want to start by giving a little bit of background, just for the record, and context. We had an initial referral letter from the Supreme Court of Texas, dated September 16, 2024, and that was something we discussed during our last meeting. In that referral letter, there was reference to the fact that the procedural rules for the State Commission on Judicial Conduct did not reflect recent statutory changes. Those recent statutory changes referenced in the letter were from House Bill 4344 from the 87th Legislature, so we know that we just finished the 89th Legislature, and in that session, the regular session, Senate Bill 293 came about that essentially undid

some of what was done in House Bill 4344, made additional changes. There's also a Senate Judicial Resolution 27 that could lead to additional changes if the voters approve that in November when it will go to an election.

So where we are now, as was already previewed, is that a task force was formed after the last Supreme Court Advisory Committee meeting when we had some preliminary discussion about how these procedural rules might need to change. The task force members are identified on page one of the SCAC meeting agenda, and one very important task force member is to my right, Zindia Thomas, the general counsel of the commission, and I've asked her to please step in and fill gaps that I leave and correct me if a correction is needed, because she knows the ins and outs of how things work.

But I will dive in now, with consideration of the agenda and time, to the memo that's prepared for discussion today, and you'll see that in the memo there is an overview of materials. Specifically, we have, as Exhibit A to the memo, proposed amendments to the procedural rules to the State Commission on Judicial Conduct. Additionally, for ease of reference, Senate Bill 293 is attached as Exhibit B, and SJR 27 is attached as Exhibit C.

The memo provides an overview of the key

changes from Senate Bill 293 and SJR 27. If you read it, you know that the task force has proposed that some, but not all, of the provisions from Senate Bill 293 be incorporated into the procedural rules, and what I'll do now is direct your attention to the proposed amendments in Exhibit A to the memo.

These proposed amendments have a lot of footnotes in them to identify discussion points for the committee, and, Chief Justice Christopher, I can take them one by one or just go through the whole memo and then we can tackle them. Do you have a preference for how I proceed?

CHAIR TRACY CHRISTOPHER: Whatever you think would be the most effective.

MS. WOOTEN: Okay. I think what I'll do is go through this, and we can address the discussion points as we go, because, otherwise, it might be too much to digest.

MS. THOMAS: Yeah.

MS. WOOTEN: Okay. So, first and foremost, something for our discussion is what we refer to at the very top of the rules with reference to, essentially, the governing law, so the key provisions governing -- of governing law are Article V, section 1-a, of the Texas Constitution and Chapter 33 of the Texas Government Code.

To link that back to what I've told you already, Senate Bill 293 has edits or amendments, I should say, to Chapter 33 of the Texas Government Code. SJR 27 has amendments to the constitutional provision.

Because the task force has not recommended putting everything from Senate Bill 293 into the rules, there was discussion of the need to refer people to Chapter 33 of the Texas Government Code, in addition to the constitutional provision, so that anyone who is reading these rules will know they need to go to Chapter 33 of Texas Government Code.

I will say, in preparing for this meeting, it occurred to me that the language that's there now narrowly refers to the constitutional provision for the adoption and promulgation of rules, so if we're going to do something at the forefront to identify for readers where they should go to get additional guidance and mandates, really, I think we could change that language to say something along the lines of "See Article V, section 1-a, of the Texas Constitution and Chapter 33 of Texas Government Code for the law governing the commission," or something along those lines, but this is just a minor point. If anybody has any thoughts about what we should put there, please feel free to share them now.

Okay. Moving right along to the

definitions. So I want to focus your attention on the definitions of "judge" and "judicial candidate." And, by way of background, as you may recall, the Supreme Court of Texas, after, I think it was the last legislative session, made changes to these rules to add the definition of "judicial candidate" because there were changes in the law. For example, in House Bill 367, that essentially said that the commission would have authority over judicial candidates going forward. The definition of "judicial candidate" that's in the rules currently aligns with the definition in Texas Government Code 33.02105, because that is what was expressly referenced in the bill, and what has come about since then -- or a couple of things. One, there was a constitutional amendment that hit the books that, essentially, in my reading -- though I turn to Zindia to correct me if she has a different reading -- in my reading, said the commission actually has authority over all judicial candidates, not just a candidate --

MS. THOMAS: That's correct.

MS. WOOTEN: -- as listed here. Is that correct?

MS. THOMAS: That's correct.

MS. WOOTEN: Okay. So the language is a little outdated in that regard, but the other thing that's

happened is that now we have a change to the definition of "judge" to include JPs or judge of the court of justice of the peace, to be more precise. So we need to modify these definitions, and one discussion point for the committee is whether we should retain a definition for "judge" and a separate definition for "judicial candidate" or should define "judge" in a way that picks up candidates so that it's a simpler way of conveying the definitional concept.

I will say, in terms of discussion, you have a little bit of it laid out there in footnote 3 on page one of the proposed rules. To give you a little bit of additional background, I will say that one of the things we need to consider, I think, as a committee, in deciding how to proceed, is that some of the consequences, if you will, for findings of misconduct will apply to a judge but not a judicial candidate. For example, you're not going to remove a judicial candidate from an office a judicial candidate never held, right, so there may be good reason to maintain separate definitions for that, may be reasons for that dichotomy, if you will.

And another thing to consider is just the reality that not all candidates for office are a judge, right, so if you define to include as all candidates, you're picking up people who are not, in fact, judges, so it's not entirely accurate, though it is more efficient.

Anything to add, Zindia, before we go on?

MS. THOMAS: My only addition to that is it would be better and easier for the commission if they were separate, separate definitions, as well as, you know, you have municipal court judges that are not elected, generally, and so you will never have a judicial candidate from municipal courts generally. There are a few cities within the State of Texas that do actually elect their municipal judges. It's very few, but, so, I think it would be better and clearer if we kept those definitions separate.

MS. WOOTEN: Got it. And most of the time the municipal judges are appointed.

MS. THOMAS: Yes.

MS. WOOTEN: Through commissioners court.

MS. THOMAS: Through the city council.

MS. WOOTEN: Okay. So we'll open it up for discussion about whether to have one definition or separate definitions. I think, though, it's pretty clear that if we have two separate definitions, they'll be coextensive, for the most part.

MS. THOMAS: Right. Yes.

CHAIR TRACY CHRISTOPHER: Robert.

MR. LEVY: One thing, I do think that it should be two separate definitions, because as a person is

reading through the rules and sees the discussion, if they haven't referred back to the definition to incorporate candidate, they might not realize that this does apply to them, but I also -- this might be outside the jurisdiction of the -- your committee, but I'm mostly tongue-in-cheek. Perhaps we might want to include business court judges as well.

MS. THOMAS: Yeah.

MR. LEVY: I don't know if we have -- Marcy's committee needs to review that as well.

CHAIR TRACY CHRISTOPHER: Wouldn't they be included under "special court created by the Legislature" in the definition of judge?

MS. THOMAS: Yes, I think so.

MR. LEVY: Okay.

CHAIR TRACY CHRISTOPHER: Justice Gray.

HONORABLE TOM GRAY: My question was the same. I just noticed that it looked like Jerry Bullard was excluded from being ethical. But I would also suggest that somewhere in here you capture the -- in the concept of candidate, a person seeking appointment, because it is the same concept of if you're going to apply it to someone who's a candidate, someone that is seeking appointment to a position would seem to need to be bound by the same code.

MR. LEVY: But when do you start that process?

HONORABLE TOM GRAY: It's pretty formal.

MR. LEVY: Well, when?

HONORABLE TOM GRAY: The application would be kind of a drop-dead time frame.

MR. LEVY: You might want to note that, just so it's --

CHAIR TRACY CHRISTOPHER: I'm not sure, Kennon, do you think that we could expand that without the legislative authority to appointeds?

MS. WOOTEN: That's questionable.

MS. THOMAS: That's questionable.

MS. WOOTEN: And you raised another good point.

MS. THOMAS: My other point was usually, with judicial candidates, we are getting -- we get complaints on judicial candidates because they are either endorsing someone or they're violating what we call Canon 5, which has to do with political activities, and so normally, that's usually only in elections, and we don't usually get that for appointments. So that would be my biggest issue with that, is that I don't know if appointed judges fit the definition of judicial candidate when it says, "Any person seeking election."

CHAIR TRACY CHRISTOPHER: Judge Schaffer.

HONORABLE ROBERT SCHAFFER: Yeah, the only thing I'd bring up is the added part to (b), "and any candidate for an office named in this definition," part of our discussion was it seemed redundant, because "any candidate" would probably be picked up in part (c) under "judicial candidate."

MS. WOOTEN: And to be clear, and I should have said this earlier, if there are two separate definitions, that language that's proposed for (b) would go away.

CHAIR TRACY CHRISTOPHER: All right. I think we have consensus that we should probably have two definitions. Yes.

MR. WARREN: I do have one question, and it's referring to statutory courts. What about constitutional courts created by the Constitution? Because I don't see where it's pulling in constitutional courts or -- and statutory. It's only referencing the statutory.

MS. WOOTEN: That's a good point, because the constitutional provision underlying these rules refers to "Any justice or judge of the courts established by this Constitution or created by the Legislature."

MS. THOMAS: Which would include county

judges since they're the ones that are constitutional county judge, county courts.

MS. WOOTEN: Yeah.

CHAIR TRACY CHRISTOPHER: All right. Judge Chu.

HONORABLE NICHOLAS CHU: Just a question about judicial candidates for those, like, three cities or four cities that have municipal candidates for election. They're not included in judicial candidates. Does that need to be included in there?

MS. THOMAS: Yes. At this point, yes, it would be.

CHAIR TRACY CHRISTOPHER: Richard.

MR. ORSINGER: This is an inquiry and may be off base, but in my experience, the constitutional county judges really are just a head of the commissioner's court, is 90 percent of their responsibility, and then, occasionally, they'll have a juvenile docket or a mental health commitment docket. Is that wrong or right?

MS. THOMAS: That is a yes and a no. So, yes, the county judges, depending on the counties they're in, they kind of have two parts. They have their administrative part, which is they are the presiding judge over the commissioner's court, and then some of them also have courts of their own. Usually it can be juvenile, it

can be probate, it could be a wide variety of different things, depending on the counties they're in.

MR. ORSINGER: Okay.

MS. THOMAS: So with county judges that are judicial candidates, we do have a slight issue in the sense that whether or not we have the authority to really sanction them for stuff they do during endorsements, because even though they are under the Constitution --

MR. ORSINGER: Yeah.

MS. THOMAS: -- they might not be under our canons because they might not actually have judicial functions.

MR. ORSINGER: And as a practical matter, in my experience, those races are not considered by the candidates or by the public to be judicial races. They're considered to be who's going to head our county, who's going to run the county budget, and that's inherently political --

MS. THOMAS: Right.

MR. ORSINGER: -- as compared to someone who is a 100 percent adjudicatory official.

MS. THOMAS: Right.

MR. ORSINGER: And so I would think there are public policy reasons not to include a constitutional county judge within the ambit of these rules.

MS. THOMAS: Right. I will say that we do get complaints about county judges endorsing other people or endorsing some type of other candidate, such as another commissioner or stuff like that. We usually have to make the decision of whether or not they have judicial functions to then decide to go forward on that, so it's possible still that we might sanction them, depending on it, but we do -- because we know that particular position is so political --

MR. ORSINGER: Right.

MS. THOMAS: -- and generally has to be political, that we do take that into account if we're going to go forward in trying to sanction a county judge for it.

MR. ORSINGER: Well, then you could differentiate endorsing a judicial candidate from endorsing another politician or someone running for commissioner's court, but it troubles me that we have a constitutional problem here, as well as what I would consider to be a practical problem that these are essentially political positions and not judicial positions, and I think we ought to take that into account before we include the constitutional judge within the ambit of these rules.

MS. THOMAS: Right. Unfortunately, the

Constitution puts them into Article V.

MR. ORSINGER: So you think they're constitutionally within the scope of the Legislature's supervision?

MS. THOMAS: Yes.

MR. ORSINGER: We don't have a case on that, though, do we, right?

MS. THOMAS: Well, I mean, we've had -- we do have an SCR appeal in which we did lose that appeal because that particular county judge didn't have any judicial functions, and so -- and I can send that to you.

MR. ORSINGER: Yeah, but that's a no-brainer.

MS. THOMAS: Yeah, I know it was a no-brainer, totally start. Anyway, so, on that one, we know kind of where our line is, but kind of the issue comes in -- especially the political stuff and especially during election time, is are they or are they not within the scope of the canons, depending on whether or not they have judicial functions, they've waived those judicial functions, and stuff like that. So that's what we have to do.

Some of them are still in. As I say, when it comes to them endorsing, like, commissioners for office and stuff, we do take into account that generally that is

a more political --

MR. ORSINGER: Right.

MS. THOMAS: -- position than other judges are, so we do take that into account.

MR. ORSINGER: Thank you.

MR. WARREN: Should we just perhaps add where it says "county judge," "county judge with judicial functions"?

MS. THOMAS: We could do that. Yeah.

MR. WARREN: And that would just -- that would satisfy that criteria.

CHAIR TRACY CHRISTOPHER: All right, Kennon. We'll move on to the next discussion point.

MS. WOOTEN: Yes. Thank you. Before I move there, though, I will just note for the record and for committee members that, as you can see in the footnotes, there are several changes that are reflected in these proposed rules that will be made if SJR 27 passes, so some of those remain to be determined. Another thing I'll note, just in case it isn't something you've noticed already, is that the task force was aware that when we incorporate new rules we're going to have to renumber other rules, but that can be done, of course, later when the Court decides what to add.

Okay. Moving on to the next discussion

point, this is on page four of the meeting materials, definition section still. Subpart (g), the definition of "censure." So in the rules now, there are references to public censures, and there's this definition of censures, and the question is whether the censure is always public.

MS. THOMAS: Censure is always public. The only way for the commission to get to censure is if we are actually going to do a formal proceeding against the judge, and then after the hearing, the commission makes the decision of whether or not to sanction them. Censure is part of that decision of whether or not they want to censure a judge or they want to go on to try to get that judge removed. So a censure will always be public.

MS. WOOTEN: So with that in mind, I think a suggestion for the Court to consider is to go through the rules and maybe just define censure in a way that makes that clear and then you don't have to refer within the body of the rules to public censure.

MS. THOMAS: Yeah.

MS. WOOTEN: Minor point. Moving on to the next discussion point, also on page four, you see it toward the bottom of the page in bold, a reference to the fact that Senate Bill 293, sections 3 and 4, reference the definitions of "official misconduct" in conformity with Code of Criminal Procedure, Article 3.04, and willful or

persistent conduct that is clearly inconsistent with the proper performance of the judge's duties. A question for discussion by this committee is whether these definitions should be incorporated into the rules. I will refer you all to footnote 11 and let Zindia speak to this, if she wants to, before we go to the discussion, and that is a recommendation from the commission to add a definition of "official misconduct," but not "willful and persistent misconduct."

MS. THOMAS: So we asked for the definition of "official misconduct" because, generally, if we are going to suspend a judge for an indictment, it's either an indictment with a felony or a misdemeanor with official misconduct, and we didn't have a definition of "official misconduct," and we had a situation where we weren't sure if something was or was not considered official misconduct. So we decided to ask for that definition to be put in just to make it clear to our commission if we are in the situation where we have an indictment of a judge that's a misdemeanor with official misconduct, they have the ability to suspend that person.

When it comes to willful and persistent conduct that's clearly inconsistent with the proper performance of the judge's duties, that definition, there's a lot of parts to that definition because there's

a lot of different things that are considered willful and persistent conduct, and part of it is in the Constitution, part of it is in Government Code 33, section --

MS. WOOTEN: 33.001?

MS. THOMAS: Yeah, 33.001, so I feel that maybe we should just leave that as open as possible, because a lot of different situations might fit into that definition. It just depends on the complaint and what we get.

CHAIR TRACY CHRISTOPHER: Anyone think we should have a definition of willful or persistent conduct?

All right. How about official misconduct? Would anyone find that to be useful? Yes, Justice Gray.

HONORABLE TOM GRAY: I was voting on the last question.

CHAIR TRACY CHRISTOPHER: You think there should be a definition? Okay.

HONORABLE TOM GRAY: I think any time a judge is being accused of having done something wrong, there needs to be as much information and, therefore, limitation on that charge as possible.

CHAIR TRACY CHRISTOPHER: Anyone else on that point?

MR. LEVY: I tend to agree.

MR. WARREN: I would just like to add,

Justice, that if we don't, then that may leave it open to any interpretation that anyone may have.

CHAIR TRACY CHRISTOPHER: Yes, Kent.

HONORABLE KENT SULLIVAN: I'm always curious about what other states are doing, sort of a best practices comparison. Does anybody -- do we have information on that?

MS. THOMAS: I don't have that information right now. I can find that information out.

HONORABLE KENT SULLIVAN: I just think it would be a useful yardstick for us in moving forward.

CHAIR TRACY CHRISTOPHER: Okay.

HONORABLE KENT SULLIVAN: We're not operating in a total vacuum is what I'm saying.

CHAIR TRACY CHRISTOPHER: I think the Court would like the task force to look at those definitions. And before we leave page four, I had one question. You deleted "by lot" from (i) but not from (h). Is that on purpose?

MS. THOMAS: That's based off of the SJR 27, so SJR 27 took out "by lot" having to do with the review tribunal. They did not do that with SCRs.

HONORABLE TOM GRAY: So the shorter answer to your question is, yes, it was intentional.

CHAIR TRACY CHRISTOPHER: All right. So

we'll ask the task force to work on those two definitions. Next point that you want to bring up, Kennon?

MS. WOOTEN: The next point is very, very, very minor, but I will say that "willful" is spelled with two L's in the Constitution and with one L throughout the rules and in portions of the Government Code, so I defer to the Court on which spelling to choose, but the next discussion point is identified near the top of page five. Senate Bill 293, section 6, refers to a statute of limitations and false complaints. The question is whether we want to add rules for those particular sections. We didn't have a very robust discussion about this, but I think the thought was we don't need to put everything from the Government Code into the rules.

MS. THOMAS: With statute of limitations, we asked for a statute of limitations, so and Huffman was nice enough to give us that. Right now it's presently seven years, with a few other minor features, in that, specifically, if the complaint is something the commission thinks should be investigated, we can still investigate it, even though it might be after seven years. You can put the statute of limitations in there if you -- if you think it's necessary for people to go and see it.

So false complaints. Now, false complaints, I would -- false complaints is going to be tricky for the

commission. I will let you know, basically, the false complaints section says that if we get a complaint that the commission feels is false from the complainant, they can do administrative penalties and/or sanctions to that complainant. We're not sure how that's going to go within the commission. On talking to some of our commissioners, they seem to be a little iffy about whether or not they would ever say something is a false complaint, because complainants really believe what they write in their complaints. They really think that happened, and when we investigate it, we might find out that some version of that happened, but not exactly the way they saw that it happened, and so I don't know if that could be considered a false complaint.

We do also have to do -- we have to do rules regarding false complaints, so we might not need to do the rules in our procedural rules when we already have to make rules for false complaints.

CHAIR TRACY CHRISTOPHER: Any comments on whether false complaints should be in the rule? Justice Gray.

HONORABLE TOM GRAY: Well, mine's a little broader. It's about the statute of limitations as well. If y'all remember my diatribe from the last meeting, one of the problems with this area of the law is that there is

a lot in the rules, there's a lot in the statute, then there's a lot more in the Constitution in this area than there is in most any other area of the law; and I am a large proponent, contrary to where I normally am, I think all of it needs to be brought over into the rule so that there is one body of information that someone can go to.

With regard to the false complaint specifically, it may have the effect of someone who is thinking about filing a complaint. They go to the rule. They look at all of the procedure for filing one, and then they see this little part on false complaints and what may happen, and they may tend to be just a little bit more specific in what they are complaining about or not.

So I am a proponent in this one area that the rule should, in effect, restate the statute and the Constitution in those areas where it will help the participants in this process capture it. Because this is one of those areas where you are not dealing -- you frequently are not dealing with lawyers making these complaints, and so, for that reason, I am a globalist in this one situation.

CHAIR TRACY CHRISTOPHER: So there's a form for filing a complaint, and are there rules associated with that form?

MS. THOMAS: Yes. That's in the Government

Code. It's --

CHAIR TRACY CHRISTOPHER: Okay. And would that be where you put the false complaint?

MS. THOMAS: No, the false complaints will have its own section within the Government Code.

CHAIR TRACY CHRISTOPHER: But I mean in terms of somebody goes to your website, wants to file a complaint. How would they know about the false complaint aspect?

MS. THOMAS: We would possibly put that in our FAQs on our website. There's a question about when it's considered false complaint, and it gives them some information about false complaints.

CHAIR TRACY CHRISTOPHER: Kent.

HONORABLE KENT SULLIVAN: If I understood Zindia's comments earlier, I think the concern was over there are a lot of laypersons that file complaints.

MS. THOMAS: Correct.

HONORABLE KENT SULLIVAN: And they file them sincerely, but they get certain things wrong because they don't understand, and that's a concern.

MS. THOMAS: Yes.

HONORABLE KENT SULLIVAN: Is it possible that if the term of art is "false complaint" that we could define false complaint as one made in bad faith. Use a

good faith/bad faith as opposed to false being defined around technically accurate.

MS. WOOTEN: There is, in Senate Bill 293 of the amendments to the Government Code, a reference to false complaints. It's in section 33.02115 on page 25 of the materials, and related to, I think, your point, it refers to imposing administrative sanctions against a person who knowingly files a false complaint.

CHAIR TRACY CHRISTOPHER: But from my own point of view, I tend to agree with Justice Gray that it's useful to have everything in one place, and it doesn't sound like everything is in one place. Like, you know, if somebody goes to the website to file a complaint, they'll see the complaint form. They won't see the false complaint information, you know, if it's not all in one place, and they won't even see these rules to know how things are handled, and I tend to agree with him that we need to have a more comprehensive set, but I know that would be a lot of work.

Yes, Justice Kelly.

HONORABLE PETER KELLY: The form's pretty exhaustive, and it's eight to ten pages long and very detailed, so if there's going to be information about -- I can't imagine a citizen -- they're not going to go read the Constitution, not even the rules probably, but they'll

probably just look at the form and fill that out, so it might be a matter of adjusting the form to put an admonition about false complaints and not necessarily including it in the rules.

CHAIR TRACY CHRISTOPHER: Any other thoughts on that point? Yes, Justice Estevez.

HONORABLE ANA ESTEVEZ: I like his idea, and have it right where they are going to swear to their complaint and put, "I understand the penalties of perjury" and that I -- "if I submit a false report that I will be subject to" -- and then put specifically whatever rule, wherever we put this, put specifically what that place would be. I think that would give them two places where they would know that they could be sanctioned for violating a false report.

MS. THOMAS: Now that I think about it, it could be put on the actual page where they can get the complaint form, where they can download the complaint form, where it could be on their -- there's, you know, false complaint, explaining that they could get administrative sanctions and/or penalties for filing one.

CHAIR TRACY CHRISTOPHER: Who all thinks that it should be on the complaint form itself?

Okay. That's pretty unanimous.

HONORABLE TOM GRAY: Could I ask a question?

CHAIR TRACY CHRISTOPHER: Yes.

HONORABLE TOM GRAY: Of our guest? How many complaints do you get that are not on the form?

MS. THOMAS: We don't get any complaints that are not on the form, because we require everybody to fill out the form, because they either need to swear to it or do an unsworn declaration, as well as they have to mail it to us.

HONORABLE TOM GRAY: But you have the option of reading a letter from a person and filing your own complaint.

MS. THOMAS: Correct. So, for example, if we get, like, an anonymous complaint, since no one is going to swear to that, we would give that to the commission for the commission to decide whether or not they want to open that as a commission-initiated complaint, as well as the commission does open complaints based on news articles.

HONORABLE TOM GRAY: Off of what?

MS. THOMAS: News articles.

HONORABLE TOM GRAY: Truly unsworn.

CHAIR TRACY CHRISTOPHER: All right. Statute of limitations, anyone thinks that that should be in these procedural rules? Yes?

MR. LEVY: Yes.

CHAIR TRACY CHRISTOPHER: Yes? Anyone who thinks that it shouldn't be in the procedural rules?

Okay. So of people that are interested, it's about half and half.

MS. WOOTEN: The select few who are interested.

CHAIR TRACY CHRISTOPHER: I wasn't calling for a formal vote. I was just trying to see where we are.

All right. We'll get back to you on whether we want you to draft something up on that.

MS. WOOTEN: Okay. Sounds good. Moving on to the next discussion point, again on page five, in blue, third paragraph down, we have a requirement for the commission to provide the Legislature with annual reports regarding complaints filed with the commission, and another discussion point is whether that should be addressed in the rules.

MR. LEVY: I'm not sure that that needs to be in there, unless there's some, you know, someplace where public can go to see the complaint, the numbers, but I assume on your web page.

MS. THOMAS: Yes. It's on our web page. They can go see all of our annual reports.

CHAIR TRACY CHRISTOPHER: Any other discussion on that point? I think that's probably a no

then.

MS. WOOTEN: Okay. Moving on to proposed Rule 2, there is a change in Senate Bill 293 to provide for notice via e-mail, and so Rule 2 has been amended here to provide for notification via e-mail. One thing, though, that would probably benefit from some discussion by this committee is the identification of the e-mail to use.

So there is a statutory provision, again, in Senate Bill 293, for a judicial directory. Office of Court Administration of the Texas Judicial System specifically would maintain that judicial directory, and it would have the contact information, including e-mail address, for each judge in the state, and the directory would be provided to the commission, with access to the directory for purposes of providing to a judge written notice required by the subchapter.

I do need to make a tweak to what's on page five, last sentence highlighted there on proposed Rule 2, because it refers to communication with the judge or judicial candidate by e-mail, being through the e-mail address at that judicial directory, but as you probably picked up from what I just read, that directory covers judges but not judicial candidates, so a question that's come up is how do we identify the e-mail address to use

for notifications to candidates.

MR. LEVY: Wouldn't they have to put that in their formal filing?

MS. WOOTEN: You do have to put -- at least for some candidates, you put your e-mail address in for communications, but different candidates are governed by different bodies. So by way of example, district court candidates governed by the Texas Ethics Commission, you put your e-mail address in the form.

MS. THOMAS: In the form, but municipal JPs, that stuff is with the county clerk or with the city clerk.

CHAIR TRACY CHRISTOPHER: So are we talking about that blue directory that comes out, or is this something different?

MS. WOOTEN: This is different.

MS. THOMAS: This is different.

MS. WOOTEN: It's new, Chief Justice Christopher. It's on page 36 of the materials, and it's in section 13 of Senate Bill 293.

CHAIR TRACY CHRISTOPHER: Because the current directory will just list the clerk of the court. It will list the names of the judges, but the e-mail address is the clerk of the court.

MS. WOOTEN: As opposed to the judge's

e-mail address.

CHAIR TRACY CHRISTOPHER: Right.

MS. WOOTEN: And I think this statutory amendment would require the judge's e-mail address.

CHAIR TRACY CHRISTOPHER: Ah.

MS. THOMAS: And the reason for that is because -- because our investigation and our procedures are confidential, we try to make sure that when we send either questions to the judge or tentative sanctions or anything like that, we want to send it directly to the judge because of the confidentiality part of it, and that's why we were -- they put this in for the OCA to basically get us judges' e-mail addresses.

CHAIR TRACY CHRISTOPHER: Richard.

MR. ORSINGER: So I'm a little confused. If we have a judicial candidate, will their e-mail address be in the judicial directory established by OCA?

MS. WOOTEN: No. So that's what I was getting at. We need to revise this, because right now it refers to judicial candidates, but, in fact, the judicial candidates will not be a part of that directory.

MR. ORSINGER: Well, is there a way to include them -- are they required to have an official address for their campaign, or is there anything that makes them give you an official public e-mail?

MS. THOMAS: So usually with the candidates, they have a treasurer, a campaign treasurer form, that usually is the person that has an e-mail address or maybe the address of wherever they're holding their candidacy. The other place we could get that information would be what they put in their campaign finance reports. So those are basically the places we would try to find an e-mail address for them.

MR. ORSINGER: So is it possible to require that a judicial candidate have an official e-mail address, or does that require a legislative act or what?

MS. THOMAS: I think that's going to require a legislative act.

MR. ORSINGER: Oh, okay. So it is a problem.

CHAIR TRACY CHRISTOPHER: Judge Schaffer.

HONORABLE ROBERT SCHAFFER: What we're talking about is supposed to be maintained as confidential, correct?

CHAIR TRACY CHRISTOPHER: I would think so.

HONORABLE ROBERT SCHAFFER: And if that's the case, using other people's e-mail addresses to communicate with a judge or judicial candidate opens up a door that I don't think we should be opening up. Whoever is the -- for instance, the treasurer has no duty at all.

MS. THOMAS: Right. And we wouldn't send it to the treasurer.

HONORABLE ROBERT SCHAFFER: Okay. Well, that's what I thought you were saying there for a second.

MS. THOMAS: We wouldn't send it to the treasurer. Even with judges, you know, we can go to the website and look at their court and see if they actually have their own e-mail address on that. That's the e-mail address we're going to send it to. If we don't see an e-mail address for them specifically, we're not going to send it by e-mail. We're going to mail it to them.

HONORABLE ROBERT SCHAFFER: Does OCA maintain e-mail addresses for the judges?

MS. THOMAS: Not yet.

MS. WOOTEN: They will.

HONORABLE ANA ESTEVEZ: They do. They do.

HONORABLE ROBERT SCHAFFER: That's what I thought.

HONORABLE ANA ESTEVEZ: They send one -- they send e-mails to all of the judge but not the JPs.

MS. WOOTEN: This will be a different way that will be provided to the commission.

CHAIR TRACY CHRISTOPHER: Yes, Judge Estevez.

HONORABLE ANA ESTEVEZ: The Republican party

and the Democratic party, for the primaries, all maintain that information, so they have -- when you file, that would be where you would get their information. So, or, I guess, I don't know where independents and other parties, if they have an extraordinary party that comes out, but other than that, that should be a place where you could get any candidate's information, because you have to file with your party.

HONORABLE ROBERT SCHAFFER: That would only be effective upon filing, and that's at the -- there's campaigning going on way before the filing is done that you wouldn't have an e-mail address for, or potentially.

CHAIR TRACY CHRISTOPHER: John.

MR. WARREN: I was going to say, it would be included on the -- but then it goes back to Judge Schaffer's comment. It would be on your application for a place on the ballot, but also, an e-mail address is not covered under PII, personally identifying information.

MR. LEVY: It is, actually.

MR. WARREN: It is now?

MR. LEVY: Under data privacy law it is, but not US necessarily.

CHAIR TRACY CHRISTOPHER: Richard.

MR. ORSINGER: Yeah, a follow-up question, where do you get the conventional mail address for the

candidate to mail to?

MS. THOMAS: So the conventional mail address, we will send it to the court, so we actually will send it to the court.

MR. ORSINGER: What about a candidate?

MS. THOMAS: A candidate, we will either go and look on their campaign finance form to see if there's an address there for us to send it to them.

MR. ORSINGER: It's not required, though?

MS. THOMAS: No.

MR. ORSINGER: So I think you should earmark this for the next legislative session that there needs to be a way to plug this hole so you can give notice, private notice, but also official notice.

MS. WOOTEN: I do wonder whether there might be a way on the forms that the candidates submit to essentially have them convey that they understand their e-mail address would be provided with the commission without a statutory change. I don't know. Because that would be a way to do it with the person's consent potentially.

MS. THOMAS: The only issue with that is that we could probably only get the Ethics Commission to do that.

MS. WOOTEN: Not the others.

MS. THOMAS: Not the others, because the JPs and muni courts, that would be going to city clerks and the county clerks to get that information, because they're the ones that hold those campaign finance reports.

MS. WOOTEN: And currently, Zindia, is the communication with the judicial candidate via regular mail?

MS. THOMAS: Yes.

MS. WOOTEN: So I guess it's -- it's not a huge issue. It's not like you're not going to be able to communicate with the candidates. It's just not going to be via e-mail potentially.

CHAIR TRACY CHRISTOPHER: Justice Gray.

HONORABLE TOM GRAY: This causes me to go back and look at the definition of judicial candidate, and there's been some discussion about the filing of the paperwork, and as Judge Schaffer says, campaigning can begin long before that formality, and the question is whether or not a person that is a candidate that has not filed formal paperwork is bound by the Code of Conduct. I know that when I started a year before the opportunity opened to file the paperwork, I considered myself bound and -- but I guess that's a question. I don't know if it could be addressed in the rule, but I would think that the judicial candidate, defining who is being bound by these

rules, we may want to say something about it.

And then the other part, or my other comment, Rule 2, as drafted, may be fine for the initial paperwork, but it's very specific that the judge or candidate gets the notice, and my question is what if he's represented by counsel?

MS. THOMAS: If he's represented by counsel, we send it to the counsel's office.

HONORABLE TOM GRAY: Also.

MS. THOMAS: Yes. No, only. Only.

HONORABLE TOM GRAY: Well, this rule doesn't provide for that. It doesn't seem to anyway.

CHAIR TRACY CHRISTOPHER: Yes, Justice Kelly.

HONORABLE PETER KELLY: I had a complaint filed last year, went to Commission on Judicial Conduct, and they were examining it for several months, and they finally sent it to me on, like, June 20th. I didn't receive it until two days before my response was due. They call it snail mail for a reason, but going from certified mail from Austin through the court system, finally making its way to my mailbox, I had two days. So I had to -- I was able to get an extension of time, but still it's a very stressful moment when you're trying to meet a deadline on something like that. So I would

suggest that instead of by e-mail or mail, say e-mail and mail, to the extent both addresses are on file and they can get it to them. It would have been a lot easier if I had just gotten it when they sent it.

MS. THOMAS: I will say to that, we do run into that a lot when we send it to the courthouse. It depends on whatever the mail system is for that particular courthouse. So we have run into that issue a lot. We will give an extension, as we did with him, when we find that out, but, unfortunately, we don't have control over the mail systems within the courthouse.

CHAIR TRACY CHRISTOPHER: Was there a reason why you wouldn't do e-mail and mail?

MS. THOMAS: For his situation, because we probably didn't have his e-mail address.

CHAIR TRACY CHRISTOPHER: No, just in general.

MS. THOMAS: We can do -- yeah, we can do both.

CHAIR TRACY CHRISTOPHER: As a part of the rule.

MS. THOMAS: Yeah, we can do that as part of the rule.

CHAIR TRACY CHRISTOPHER: I mean, it seems to me that it would be by mail and by e-mail, if

available.

MS. THOMAS: Yes. I mean, as of right now, we send basically everything by mail, unless we've caught generally someone is represented by attorney and they might just want us to send it by e-mail, but usually the letters inquiring, the questions that are sent to the judge, those are always by mail, sometimes by e-mail if we have an e-mail address. That's at the beginning. Usually we don't have an e-mail address at that point. Once we get the responses, generally everything after that is either by mail or -- and/or e-mail.

CHAIR TRACY CHRISTOPHER: Any other discussion on mailing of notices?

All right. Our next point, Kennon.

MS. WOOTEN: Yes. On page five, you see additional content added in blue there, and with the footnote, you'll learn that this is from section 5 of Senate Bill 293, but one question that the task force confronted and didn't resolve is what happens when the commission is doing something on its own initiative. By way of example, because of an article, and the question is whether in that situation there should be a requirement for the filing of a complaint. I think that I'll let Zindia address the commission's view that that should not occur, which is fleshed out, to a degree, in footnote 14.

MS. THOMAS: So the commission usually initiates a complaint either because staff brought them a news article to look at to decide whether or not they wanted to initiate a complaint. When we -- if we get an indictment, which is usually when we're going to suspend a judge, that starts its own case in itself, and as I said with the anonymous complaints, which are usually on the complaint form, we ask them whether or not they want to initiate a complaint by itself as a anonymous complaint.

I think adding the layer of making the commission itself have to fill out a complaint form, where none of us can really swear to that complaint form, I think that's a -- that is a -- something that I don't think is necessary when we have a news article right there, and why -- and it says right there why they basically initiated that complaint.

CHAIR TRACY CHRISTOPHER: Well, I think the question, though, is if you don't have a complaint, then there won't be a file, and should there be a file on those issues.

MS. THOMAS: Well, no, it starts a file. So if the commission decides to initiate a complaint based off a news article, that starts that file. And then that -- we continue that, so that would be considered the complaint in the file. It's not that the commission

issues complaints and we don't keep any paperwork. It starts its own file under its own CJC number.

CHAIR TRACY CHRISTOPHER: That's not in this rule, the way it's written.

MS. THOMAS: True.

CHAIR TRACY CHRISTOPHER: So that would need to be added.

CHAIR TRACY CHRISTOPHER: Justice Gray.

HONORABLE TOM GRAY: You could fix that problem by absolutely requiring the commission to file a complaint if they are going to proceed against a judge. And all they've got to do is swear to the fact that it's based on this newspaper article, that it's a true and correct copy of it, or that this is based on this anonymous information that we received and a true and correct copy is attached, or it's based on a phone call to a member of the commission and this is the recollection of the employee of the commission as to what was stated in the phone call. It's whatever -- whatever basis, whatever basis it is, because you're going after somebody. There needs to be a basis for it, and to me, it's like the indictment and the judge is entitled to know what the complaints against them are and what they are based upon. I feel kind of strongly on that point.

CHAIR TRACY CHRISTOPHER: Lamont.

MR. JEFFERSON: I'm not familiar with the process, but it seems to me like the commission would have, at least to some extent, an investigatory function as opposed to filing of a formal complaint. If you get an inquiry that would justify some sort of investigation, do you still open a file, I assume?

MS. THOMAS: Yes. We still open a file. We still do an investigation.

MR. JEFFERSON: But that would be something less than a complaint, right? I mean, you could --

MS. THOMAS: No, it -- no, it would be considered a complaint.

MR. JEFFERSON: So if there's a newspaper article that accused a judge of something that's baseless, but you think you need to follow up on it, that's -- that goes down on the judge's record as a complaint?

MS. THOMAS: No. Because the way that -- for disciplinary records purposes, only basically sanctions and dismissals with a letter of caution or dismissals with corrective action are actually counted toward your disciplinary record. If the commission opens a complaint on a news article and we do our investigation and basically determine that there is nothing there, it just gets dismissed as a report, and it doesn't count towards a disciplinary record.

MR. JEFFERSON: So it's not really a complaint. It's a report.

MS. THOMAS: Yeah, in a sense. That's what we put it down as, as either a investigative dismissal or a dismissal as report.

CHAIR TRACY CHRISTOPHER: Okay. None of that is in this rule.

MS. THOMAS: Correct.

CHAIR TRACY CHRISTOPHER: Okay. It needs to be added. I mean, if that's what you're doing, whether we call it a formal complaint or something else, you know, to me, it seems like it needs to be added. It needs to be -- there has to be a file, and I assume the time limits would start or not.

HONORABLE TOM GRAY: So that Lamont can understand the -- my understanding is that if Joe Q. Public citizen fills out the form, files a formal complaint, and I hesitate to use the "formal," but files a complaint, and y'all investigate it and determine it's baseless, it gets treated just like the newspaper article investigation, reported appropriately. You understand what I'm saying, Lamont?

MS. THOMAS: Right.

HONORABLE TOM GRAY: So that written complaint that's signed by someone gets handled the same

way that the commission's investigation of a newspaper article is handled, but there's no piece of paper that says this is the complaint, this is the scope of where we're going for.

MS. THOMAS: It's the news article. That's the complaint.

MR. JEFFERSON: But that's not a -- that's different than a -- to me that's different than a complaint. If someone is just reporting on something that they think happened, and, you know, the commission makes the decision that this warrants some investigation, the fact that it reported it, it's news. It's not a complaint. It's just something happened, and then you have to take the next step to -- it seems like to me, that's maybe a report, does -- should the report be investigated, and if it's investigated, should there be a complaint, which is -- all seem like they are different steps.

MS. WOOTEN: I think Chief Justice Christopher's suggestion is a good one, and that is to craft some language explaining the procedure followed when it's a commission-initiated process.

CHAIR TRACY CHRISTOPHER: Right, and whether we call it a formal complaint or we have some sort of recognition of what the paperwork is that, you know,

ultimately someone would want to know about. Because even if -- like when you're running for judge and you say, yeah, you can go look at my file, even a complaint that was dismissed shows up. It shows up as dismissed, as having no basis, but, you know, it shows up on my record, even though I knew nothing about it, and I assume the newspaper investigation would also show up in the same way. Or no?

MS. THOMAS: Depending on how it got dismissed, yes.

CHAIR TRACY CHRISTOPHER: I think we need to have clarity as to how all of that works in the rules. Because if, you know, any kind of complaint, even if they dismiss it, shows up as a complaint against a judge...

MR. JEFFERSON: Should it? I mean --

HONORABLE ANA ESTEVEZ: I don't think it does.

CHAIR TRACY CHRISTOPHER: It shows up, but it's not -- because, yes, like the first time I ever --

HONORABLE ANA ESTEVEZ: Only if it's --

CHAIR TRACY CHRISTOPHER: -- tried to get an appointment. No. If it's dismissed, it shows up.

MS. THOMAS: Well, no, if it's dismissed after a full investigation, which means we sent questions to the judge, the judge responded, and we did a memo, if

it's dismissed then, it will show up.

CHAIR TRACY CHRISTOPHER: Oh, no, no. I've had some that were dismissed that showed up I never knew about until I was going for an appointment to -- and my record came back that said, oh, complaint filed against you, dismissed, and I'm like I never heard about it.

MS. WOOTEN: Sounds like there's a question of whether that should have happened.

MS. THOMAS: Right.

CHAIR TRACY CHRISTOPHER: Okay. It did happen, and once I got that knowledge --

HONORABLE ANA ESTEVEZ: Only if they're open.

CHAIR TRACY CHRISTOPHER: -- I had to keep repeating it. You know, before, before that, I didn't have the knowledge of it, so I didn't have to say yes, and then once you get the knowledge of it, you have to say, well, yes, there was a complaint filed, but it was dismissed.

MS. THOMAS: I mean, my understanding is that, as I said, if a judge -- if we get to full investigation on a complaint where we send questions to the judge and they answer them and then it ends up being dismissed, those do show up on the disciplinary record, but anything before that that might have been dismissed as

a report, administratively dismissed, investigatively dismissed, those are not supposed to show up on the disciplinary record. As least that is my understanding.

CHAIR TRACY CHRISTOPHER: But it did.

MS. THOMAS: I'm sorry.

CHAIR TRACY CHRISTOPHER: No, I'm just saying, it did.

MS. WOOTEN: Do you recall the year at issue?

CHAIR TRACY CHRISTOPHER: Yes. It was in 2009.

MS. THOMAS: Before my time. Before my time.

CHAIR TRACY CHRISTOPHER: Justice Gray.

HONORABLE TOM GRAY: The reason you would want it written up as a complaint is a newspaper article may have a lot of other tantalizing information in it that the commission is not interested in. Well, maybe they're interested, but they're not going to make a case out of it. The point being, the complaint, in effect, says what the commission is looking at, and I think that is a huge importance to the judge, to understand where it's going, to give the investigators the scope of what they're going to be looking at. It's just -- otherwise, it's just nothing more than whatever wound up in the newspaper

article, and you've got to, in effect, defend against all of that, and it's just -- it needs to be more focused, and I think the complaint is the place that that process starts. Write it down, what are you complaining about, not all of this other stuff that's in the article, but this part of the article is what concerns the commission.

CHAIR TRACY CHRISTOPHER: I think we've asked them to come back with how they handle those sort of internal investigations, and we'll see what they come back with. Yes, Lamont.

MR. JEFFERSON: Just before we leave it, this strikes me as similar to grievance committee procedures, where is there even a -- the grievance committee gets information all the time. Maybe there -- and the person sending information considers it a complaint. The grievance committee looks at it and says it doesn't rise to a threshold level, and the lawyer never hears about it, the public never hears about it, and that's how it ought to be, it seems to me, for a judge. That may be introducing a whole new procedure into the process, I don't know, but I think it's important.

I think, you know, the judges, their interest in keeping their record clean is obviously legitimate, if it merits, you know, cleanliness; but at the same time, there are cases that should be

investigated, because if what's stated in the newspaper or whatever could rise to the level of a complaint, then you open a file and then it gets -- you know, maybe you dismiss it at that point after you open the file, but there should be a natural progression of, you know, when something rises to the level and what happens when you get to each step.

CHAIR TRACY CHRISTOPHER: Yes, Rusty.

MR. HARDIN: I think, not that this necessarily should be literally the way that it's done, but I think back to the days of Johnny Holmes, when he was the DA in Houston, and as hard-nosed as his reputation was, anything that had an allegation of violation of the Election Code, he would not investigate unless there was a sworn complaint, and his reasoning was, is that it is so subject to political misuse for people to make any kind of complaint about somebody that is a public official or trying to be a public official.

And the second thing, so I think something that would be -- we ought to be thinking about as far as what level of screening, if you're talking about normal political misconduct or regular criminal conduct, that was different, but if it was going to be a complaint about somebody as a politician, either a candidate or -- he wanted that extra. He wanted people to stand behind it,

and I get real nervous about investigations starting because of newspaper articles, particularly in this environment.

And then the second thing, I wondered as I was listening, is there something in the code that I'm unaware of, of judicial conduct, going to some of the things Justice Gray was talking about, you know, in the criminal system, if a case is found to have no merit, that person can then petition, through their lawyer, to have it expunged. Is there a process for which a judge, if the commission, Judicial Conduct Commission, clearly finds there is no merits to it at the end of the day, is there a process for which a judge could have that completely expunged?

MS. THOMAS: No, there is not a process.

MR. HARDIN: I think that's something that ought to be considered. I know that's not before you right now, but I get really concerned about if the bar is too low of what it takes to launch an investigation. It's similar to where you have allegations out there you didn't even know were there. So as I listen to it, if I were a judge, I would be concerned.

CHAIR TRACY CHRISTOPHER: Yes.

MS. WOOTEN: I will say, I share that view, but one thing that I found in the Constitution that we

have to consider in this context is that the commission is obligated to receive complaints or reports, formal or informal, from any source in its behalf and make such preliminary investigation as it may determine. I would like Zindia's confirmation, but it strikes me that this is probably why --

MS. THOMAS: Yes.

MS. WOOTEN: -- there's a process with the commission that can get initiated without a sworn complaint.

MS. THOMAS: Right. Yes. And I will say, when I started at the commission, we had a complaint form that you did not have to swear to at first, but when we decided to go to something else, such as if we wanted to do a formal proceeding, then we had to get the complainant to do a sworn complaint. So when we changed our form, that's why we put in sworn complaints or unsworn declarations in there for them to sign to, to make that process easier.

I will also say, to your comment about the expunction in this sense, is that if a case is dismissed, other than possibly being put on disciplinary, no one can get to that information because of our confidentiality that's within our Constitution and the statute. So all of that paperwork doesn't fall under -- well, it falls under

Rule 12, but there's a confidentiality issue, so no one would get it if they're requesting it. We can't really -- technically, we can't even say there was or was not a complaint against a judge, unless it became a public sanction of some kind.

CHAIR TRACY CHRISTOPHER: Harvey.

HONORABLE HARVEY BROWN: I'm just curious, is there a reason that we need to keep the records if they're dismissed? In other words, if something is just dismissed by y'all, why not not even have to go through an expungement procedure, but automatically it's destroyed.

MS. THOMAS: That's a record retention issue that would probably have to be changed in the Legislature for us to be able to destroy those records.

MR. HARDIN: You know, the record expunction process -- I'm sorry.

CHAIR TRACY CHRISTOPHER: Let me get Jackie and then I'll come back to you.

MS. DAUMERIE: Yeah, I think maybe some of the confusion is if you apply for appointment by the Governor, you have to sign something that releases all of your files, and then even early dismissed complaints are reported to the Governor.

CHAIR TRACY CHRISTOPHER: Right.

MS. DAUMERIE: So that's probably how that

information came out.

CHAIR TRACY CHRISTOPHER: Right.

MS. DAUMERIE: Yeah.

CHAIR TRACY CHRISTOPHER: Justice Gray.

HONORABLE TOM GRAY: I hate to disagree with my attorney over there, but there are times when folks know something that they know there's going to be splashback if they report it over their name. And being on the inside doesn't make it any less of a potential problem to incur the consequences for making a report of judicial misconduct. It may make it more sensitive. So I am pleased to learn that the commission will take anonymous information and investigate it. It doesn't mean that they don't need to document that in a complaint.

CHAIR TRACY CHRISTOPHER: Right.

HONORABLE TOM GRAY: And that's where I would -- I think there needs to be a vehicle of getting someone who is fearful of disclosing information of which they are aware, but at the -- and protect their identity, and yet still say there's going to be an investigation of this report. And so that's where I would disagree with Rusty that there is a place that is appropriate for anonymous complaints.

CHAIR TRACY CHRISTOPHER: Rusty.

MS. THOMAS: And I will also say that if a

complainant wants to be kept confidential, the statute allows us to do that. The only issue that we run into at that point is if what they're complaining about has to do with their specific case, and then that makes it very hard for us to keep their name confidential from the judge that we're investigating.

HONORABLE TOM GRAY: But if they can provide documents and other information upon which you can know that something is amiss, then you don't need to give credit to them for the reporting.

MS. THOMAS: Correct.

CHAIR TRACY CHRISTOPHER: Rusty.

MR. HARDIN: I think that's a very valid point. I think you've got to have -- I'm not suggesting that extreme that I was suggesting that Holmes did should be the model here, but I do think there needs to be protection for judges for those things that are meritless, and I'm raising the question as to whether that's appropriate for this committee to consider. Maybe it's not at all under the present charge, but I think that judges should be protected in terms of a permanent record and the expunction process that happens on the criminal side.

If there has been no probable cause found by a grand jury, it's dismissed for reasons that prosecutors

found there was no basis for, or if it was by a trial and he or she is found not guilty, an expunction allows the person to have no record of it anywhere, and law enforcement are ordered to destroy it, and as you may know, what that means is that the person that received the expunction can even always be cloaked honestly with the law. They can say they've never even been arrested or charged or convicted, not just convicted. So I'm just saying something like that seems only fair for people, because if you're a public person, and everybody here knows better than I, it doesn't take much to make an allegation.

CHAIR TRACY CHRISTOPHER: Justice Kelly.

HONORABLE PETER KELLY: I think in the grievance process, I had one filed against me, just somebody I had never heard of before, and what they do is they take it, and there was nothing to it at all. They labeled it an inquiry, and they put in their letter, saying, "You don't have to report this to your malpractice carrier. This is not going in your permanent record. There is no record of this. We're only labeling it an inquiry," for something that's totally outlandish. So it doesn't even rise to a level of complaint, and if there was something like that for, you know, CJC could do it, some sort of investigation, say, "This is an inquiry. It

doesn't even rise to something alleging something material."

CHAIR TRACY CHRISTOPHER: Lamont.

MR. JEFFERSON: I agree with that, and I would just say that this is a really important area and something that we should be very deliberate about, because we're really -- we're balancing, on the one hand, judicial independence and, on the other hand, judicial ligitimacy, and you have to really think through these issues to make sure that the public gets what the public thinks it wants, the judges maintain their independence, and, you know, we preserve their right to practice rule of law, and unpopular law, and so I just think it's a really important thing that we should be very careful about.

CHAIR TRACY CHRISTOPHER: Kent.

HONORABLE KENT SULLIVAN: Just to build on that a little bit, I hear some common themes that are in many of these, if not all of the comments that have been given. One is I think we value broad receipt, acceptance of information from a lot of different sources, including anonymous sources, but you want a process that protects an accused, in this case a judge, and a procedure that will avoid having a star chamber in the end.

So I think you want, at an appropriate point in the process, to have written specificity as to exactly

what the complaint is that would go forward and be investigated, and some specificity, reasonable specificity, as to what the underlying information is upon which the complaint is based. You want to at least consider expungement as a possibility on the back end and on the front end to be able to classify certain things that appear to be noncredible as an inquiry or something less than a complaint that would need to go forward and need to be reported or stored in some way. And I'll finish and say that it occurs to me that, again, we ought to look at what do other states do, because I said before, we don't operate in a vacuum. And Judge Schaffer pointed out to me that we are in Texas, we are in our own unique and special vacuum, so I want to retract the earlier statement, but I still think it is worth looking at what some of the other states that have been reasonably successful in developing effective systems, how they've handled similar issues.

CHAIR TRACY CHRISTOPHER: All right.

HONORABLE TOM GRAY: Justice Christopher.

CHAIR TRACY CHRISTOPHER: Oh, yes.

HONORABLE TOM GRAY: May I ask another question?

CHAIR TRACY CHRISTOPHER: Uh-huh.

HONORABLE TOM GRAY: Are there consequences

to labeling it a complaint? In reporting, time triggers, anything of that nature, time to disposition, et cetera.

MS. THOMAS: It would be time. Because presently we have -- we're on a deadline of 270 days, until September 1st, and so, basically, when we receive the complaint, that starts our deadline process and our counting of our deadline. That's going to change with the new bill, with SB 293. So, basically, our time line, which will now be 240 days, doesn't start until we have done what I call a staff recommendation report to the commission, at the first meeting that complaint gets on that staff recommendation report.

HONORABLE TOM GRAY: Okay.

MS. THOMAS: So our preliminary investigation at that point will be as soon as practicable.

HONORABLE TOM GRAY: Thank you. Kind of dovetails in with the need to have --

CHAIR TRACY CHRISTOPHER: A separate -- yeah, a separate section on how the commission handles its own actions. Okay. Should we take a 10-minute break?

(Recess from 10:31 a.m. to 10:42 a.m.)

CHAIR TRACY CHRISTOPHER: Kennon, since you're probably going to have to come back, we were wondering if you could hit some of the bigger picture,

rather than all, so that we can --

MS. WOOTEN: Yes, I am happy to do that.

CHAIR TRACY CHRISTOPHER: -- keep going on to the -- although you were surprised that these generated as much discussion as they did.

MS. WOOTEN: Yes.

CHAIR TRACY CHRISTOPHER: Okay.

MS. WOOTEN: I will, though, ask whether there will be an opportunity to come back, in light of when these changes need to be implemented.

HONORABLE JANE BLAND: We're going to work on it over the summer, so we'll be in touch.

MS. WOOTEN: But we won't come back to the committee?

HONORABLE JANE BLAND: Probably not, just given the timing.

MS. WOOTEN: Okay.

CHAIR TRACY CHRISTOPHER: So are there any specific items that you think the committee needs to discuss, in light of that?

MS. WOOTEN: Give me one moment, please. Sorry.

I think the only other thing that would be worth all of us to discuss as a committee is when the judge learns about a complaint. Because, now, the judge,

as we all know, doesn't get told if there's a complaint that simply goes away after the preliminary investigation, and the judge first learns, under the amended rules, seven business days after the date on which commission staff commences a full investigation, if it determines that such investigation is needed. So that's just a question as to whether the judge or judicial candidates should learn earlier. That might be good to discuss at a high level, and I think there's nothing more that we need to discuss here, any other alternatives, Zindia --

MS. THOMAS: I don't think so, no.

MS. WOOTEN: Okay.

CHAIR TRACY CHRISTOPHER: So I was wondering about that myself, in terms of this new rule, commission action on complaint. Is that what we're focusing on? And maybe it's statutory.

MS. WOOTEN: Yes, it is. And in regard to the rule we're focusing on, Chief Justice Christopher, it comes up on page six. It's an unnumbered rule as of now, but it's entitled "Rule and Recommendations on Filed Complaints," and then it carries over to page seven, and that's with respect to the commission's decision, following investigation report. So just to reiterate what you've said, this would be doing something different from what the Constitution and statutes provide for, but there

are some people who feel strongly that the judges should know earlier. There are other people who feel like they shouldn't, because they're going to worry about things that might go away in short order that don't have merit.

CHAIR TRACY CHRISTOPHER: So the commission action on complaint that says we're going to tell the judge that the complaint was frivolous is not required by statute?

MS. THOMAS: It isn't. It will be.

CHAIR TRACY CHRISTOPHER: Will be.

MS. THOMAS: So, presently, the way that SB 293 passed is that if we decide to administratively dismiss a complaint, we're going to have to tell the judge that there was a complaint filed, and that was dismissed. If it was -- if we have -- if we put it on our -- the first, what I call -- again, I call it a staff recommendation report. In that staff recommendation report, if the commission decides to dismiss it, we have to send them the dismissal, telling them this was dismissed within -- and that one's five business days.

If we decide, before we put the complaint on a staff recommendation report, that we are going in the full investigation where we're going to send questions to the judge, we are required to send them a notice that we're going into full investigation; and then, of course,

after the commission basically says, yes, that's fine, after we've gone into it, we're supposed to send them a notice that we've gone into full investigation, after seven business days of that commission.

So there's a lot more notification to the judges in SB 293 than we have been doing now. Because, now, we only tell a judge that there's a complaint against them if we go into full investigation.

MS. WOOTEN: So do you think that, with the changes to SB 293, this discussion might be unnecessary?

MS. THOMAS: Yes. I think because SB 293 puts a lot of notification to judges in the beginning, I don't think we need to give them a notification that we received this complaint.

MS. WOOTEN: I retract my suggestion for committee discussion on that point.

CHAIR TRACY CHRISTOPHER: Okay. That's what I was confused about, whether, you know, if the statute says you've got to do it, you have to do it, so not much we can do about it. Justice Gray.

HONORABLE TOM GRAY: But if you can do it earlier and there was a voluntary opportunity to respond, think of the opportunity of the judge to assist the commission in cutting something off as frivolous. That's why I would want, as a judge, to be -- get notice of the

complaint when it's filed and start any part of the commission's process. If I, as a judge, can cut it off, why not give me that opportunity, if I can provide you something that reveals that it is completely frivolous? That's just -- that's why I would want notice earlier as opposed to later before it goes into any type of formal process.

CHAIR TRACY CHRISTOPHER: And I would disagree with you.

HONORABLE TOM GRAY: I knew there was a lot of disagreement and that I might be in the --

CHAIR TRACY CHRISTOPHER: All right. And among the judges here, would you want to know immediately or only if they went to a formal investigation? If anyone cares.

HONORABLE NICHOLAS CHU: Only if they went to formal investigation.

HONORABLE MARIA SALAS MENDOZA: Same.

CHAIR TRACY CHRISTOPHER: Formal. Formal.

HONORABLE TOM GRAY: With no opportunity to cut it off from a formal investigation?

HONORABLE MARIA SALAS MENDOZA: I don't want to know about it.

HONORABLE NICHOLAS CHU: Yeah, I don't want to know.

CHAIR TRACY CHRISTOPHER: Bob.

HONORABLE ROBERT SCHAFFER: This is an interesting conversation, because at the task force meeting, I raised this very issue, and one of the judges who was on the task force I think was a criminal court judge, who said, basically, the criminal court judges get a lot more complaints filed against them than anyone else, and they don't even want to know about it unless it gets raised to a certain level and then they'll get involved with it, but there are so many filed against them, and probably the same is true with family court judges, that they don't want to deal with it unless it gets raised to a certain level by the commission and then they'll respond to it.

But, Justice Gray, I had the same exact response that you did, until I heard from these other judges.

HONORABLE TOM GRAY: Well, the -- the other reason that I'm an advocate of that is that you may be doing something as a judge that is not inappropriate, but generates a lot of complaints, and you would have the opportunity to fine-tune the way you approach something to avoid the complaints even getting filed with the commission. That's just my observation of the way I react to people being critical of what I have done.

CHAIR TRACY CHRISTOPHER: Harvey.

HONORABLE HARVEY BROWN: One reason not to know is that your knowing about a complaint while your case is still ongoing could subconsciously influence you or maybe cause you to be a little less fair with that person, or in defending yourself, you may have just created an opportunity to be recused.

CHAIR TRACY CHRISTOPHER: All right. I think the consensus is we don't want to know if it -- we don't want to know. Any other major issue, Kennon?

MS. WOOTEN: No. Thank you.

CHAIR TRACY CHRISTOPHER: Okay. All right. Then we will let the task force -- oh, Jackie.

MS. DAUMERIE: Can I ask a question of the committee? So there's a new portion of SB 293 that is about substance abuse and how to handle substance abuse, and there's express provisions for suspension there, but nothing else. Do we think that a judge could be sanctioned in another way besides suspension for substance abuse problems or what -- how that is handled currently? Is it?

MS. THOMAS: So currently there is no process. So, basically, if we get a report or a complaint about a judge that seems to be having some mental issues or physical issues that are affecting their ability to do

their job, we basically have to go through the same regular process we go through now. We have to do a preliminary investigation, and then we have to -- we either have to do one of two things. We either have to just go on with our regular or go into full investigation and send them questions, which I'm not sure we do, or with the way the statute is written now, we can do a -- have a presuspension hearing with them to determine whether or not we think they need to go see an expert, either a psychiatrist, doctor, or something, to determine what they're doing. And then after that hearing we could either activate the report to suspend them then or send them to an expert to get a report on whether or not this is affecting their -- their work, their job.

But we can't just suspend them on -- without the Supreme Court doing the suspension, and it could be affecting a lot of stuff that's going on at the courthouse itself. That's kind of why we ended up writing this procedure, because we were kind of getting in that situation at one point, and we were like -- we had a lot of people calling us about it, and we were like, well, we can't do anything just yet. We have to do a presuspension hearing and then see if we can ask the Supreme Court to suspend that person.

We, luckily, were able to go into a

voluntary suspension with him and have him see our person before we took it out. We ended up not sanctioning that person for it, but that we see -- that's kind of how we got to the process that's in SB 293.

MS. DAUMERIE: I guess my question, though, is could there be some sort of sanction outside of that process? It doesn't seem like there's anything to preclude it.

MS. THOMAS: Oh, no, we could -- we could technically still do a sanction after the whole process.

CHAIR TRACY CHRISTOPHER: Robert.

MR. LEVY: I did want to comment about the new rules on what you're referencing. One question, and let me ask a question because it informs my comment. If, under these rules, you go to a formal proceeding, somebody who might have a physical disability or mental health issue would be suspended for 90 days. Is that -- or 60?

MS. WOOTEN: 90.

MS. THOMAS: Under the new rules, 90.

MR. LEVY: 90 days. And the outcome of the formal proceeding, what is made public about the commission's determination?

MS. THOMAS: Nothing is made public. That whole proceeding is still confidential, and then the only way anything could be made public is towards the end, as

if they refuse to go see the person we've asked them to go see, and then we would have to ask the Supreme Court to suspend them, or after all of the process, the commission decides to give them a public sanction, and after a public sanction, that's the only way that would come about.

MR. LEVY: So I -- I'm very reluctant about the idea that you would have even any kind of sanction as a remedy if somebody has a mental or physical disability, and I understand the need to consider suspension if that disability is impairing their ability to perform their duties, although is the commission the right vehicle for that to happen versus the Supreme Court making a determination?

It raises a lot of sensitive issues, particularly with health questions, and it just doesn't seem to fit exactly within the construct of the other decisions the commission is making, and I also have a little bit of queasiness in terms of the commission's determination on the capability of a judge to perform their duties versus as a -- I'm looking at you. I'm not meaning to --

MS. THOMAS: Yeah.

MR. LEVY: But versus a, you know, question, obviously, whether they've acted inappropriately or unethically, that is kind of the meat and potatoes of what

the commission is addressing, and I recognize that you've got a process for having medical input, but, you know, if the person doesn't like the doctor you select, for example, and you know, with a mental illness, it becomes even more challenging because, you know, the person might not be comfortable talking to your doctor, and is your doctor that you select -- is that person going to reveal to you personal information that the judge tells the doctor?

And I could understand why they might be reluctant to have a full, frank discussion with a person who's not subject to patient confidentiality, and I'm just -- I'm just worried about this process, in that it raises a lot of difficult challenges. Not to mention the issues about what are physical limitations that also might relate. Like if the judge can't travel or is bed-bound, but able to do their job, is that enough to say that they should be suspended or not sit?

MS. WOOTEN: I'll just say very quickly, I share these concerns, but in reading --

MR. LEVY: You think the statute's clear?

MS. WOOTEN: I don't think it negates the concerns, but I think the statute does require the commission's involvement with the decision-making, and I will say to the final point, Robert, that the question is

whether the judge's alleged substance abuse or physical or mental incapacity brings into question the judge's ability to perform the judge's official duties. So that's the inquiry. But, yes, there is the statutory language that just got carried over to the proposed rule, set forth in Senate Bill 293, specifically on pages 32 through 33 in section 10.

CHAIR TRACY CHRISTOPHER: I will say, having been familiar with a couple of, you know, public, publicly known issues of either mental or substance abuse, it's usually because the judge has done something wrong. Okay. It's not just, oh, I think, you know, the judge is crazy. No, I mean, the judge has done something wrong that independently would be violating the Code of Judicial Conduct, and so that's how I -- well, at least the two that I'm familiar with and thinking about, and then it's kind of like the judge's defense, "Oh, I'm an alcoholic, and you know, I'll go into treatment," or "Oh, I have a -- some other sort of physical disability" and work with the commission. So, I mean, the ones that I'm aware of, that's how it happens. The judge has done something unethical.

MR. LEVY: To be frank, one of the issues I get concerned about is the use of this as a way to try to undermine judges. I have a mental health condition, and I

don't think it would impair in any way my ability to do my job, but does the fact that I have that mean that that's an issue that the commission needs to look into? And I recognize the issue of having a formal proceeding, hopefully, would not include any reference to -- you know, just because they might have a condition doesn't necessarily mean that they would have a formal proceeding.

I do want to suggest that we can -- you consider rules that clarify that the commission and any independently appointed medical professionals would have an obligation to maintain the confidentiality of that information, subject to the needs of the commission, but even within that, that those files would not be publicly available.

MS. THOMAS: So when we do this, we do have the professional actually sign a confidentiality agreement with us as well as because this information does not become -- generally, it's not going to become public, unless they just did something --

MR. LEVY: It's not FOIA available through the Open Records Act or anything like that?

MS. THOMAS: It would be under Rule 12, since we're under the judicial branch, but because we have a confidentiality statute, it could -- as long as it doesn't become a public sanction of some kind, all of that

information is considered confidential.

CHAIR TRACY CHRISTOPHER: All right. I think the task force and our group will continue to work with the Supreme Court over the summer as they refine these rules, since we have such a short deadline to get something in place, and the Supreme Court will let us know if they want us to look at it after the fact, as Justice Bland suggested, that sometimes we have to revise things after we get -- get the first draft out there. So we'll get back to you if that's what the Supreme Court wants us to do.

All right. Next, we'll move on to our business courts, and I think we have sort of the same issue with the business courts, too, in terms of having to get things in place quickly.

MS. GREER: Business court is open for court and very busy, according to the judges.

CHAIR TRACY CHRISTOPHER: Okay.

MS. GREER: So we were tasked with basically taking House Bill 40 and -- can everybody hear me okay? House Bill 40 had a number of rule-making provisions and other provisions that we thought may justify a rule and many that didn't, so we spent a great deal of time kind of vetting through what needed to be done and what didn't need to be done and tried to take a

light pen where we could.

We were very, very fortunate to have Judge Bullard on our subcommittee, providing real world insights from the business court directly, and that was extremely helpful, and I just want to take a minute of personal privilege very briefly to thank everybody on the subcommittee who worked really, really hard over the last couple of weeks to get this done.

So we -- let's just go through the recommendations. Mandy, if you could pull up the rules, the proposed rules. There was a lot of the -- let's see, they're on which page. It's Exhibit A to our memo, which is on page -- wow, there's a lot of stuff here. Okay. All right. It's on page -- I'm almost there. 75. So there was a lot in the statute about expanding the jurisdiction -- wait, that's --

MR. LEVY: You don't have the amended memo, the amended list. Which version of the --

MS. GREER: The proposed amendment, it's Exhibit A to the memo.

MR. LEVY: No, but she has the original.

MS. PATTERSON: Yeah, the one I have is from June 7.

MS. GREER: Oh, okay. You don't have the amended. Let me forward you the amended one real fast.

MR. LEVY: Marcy, you want me to just mention the first issue?

MS. GREER: Yeah, I got it. We'll go ahead and get started. What did you want to --

MR. LEVY: No, I just -- yeah.

MS. GREER: Okay. So the expansion of the jurisdiction of the business court was not something that we felt like needed a rule. That stays in the statute, and that's how we handled it last go around, so we focused in on the things that really needed a rule. There is a specific -- and I'm going to go in the order that the rules come up in the report. The first one is recusal, and the reason -- and the reason for that is there is a specific recusal provision in SB -- I mean, HB 40 for business court judges to make a recusal decision on their own initiative. Apparently, this has come up, and they needed a statutory change on it.

We felt like trying to put that into Rule 18a, which is already very cumbersome, was going to be very, very difficult and create potential problems for the judges that have to deal with it. So we decided instead to just make a -- suggest a comment to Rule 18a to add a comment to let people know there is a rule regarding business judges on their own initiative, and it's in section blah, blah, blah, of the Government Code, and so

that's how we thought it was best to handle. And I know that the judges who deal with this feel very strongly about not tinkering with Rule 18a to address just the business court judges, because the only people that are going to be affected by this rule are the business court judges and their staff, and they know how to proceed it, and they know where the statute is, and we felt pretty confident about them handling it.

CHAIR TRACY CHRISTOPHER: All right. Any comment on the suggested comment to Rule 18a? All right.

MS. GREER: Okay. The next recommendations were regarding -- oh, okay. Hold on one second. Oh, okay. This is in 355. Mandy, if you could move to page 77, please, where it says "See notice deadline." These revisions are simply to reflect specifically what is in the statute. The Legislature wanted to put -- wanted to phrase the limitations period this way, and so we were basically faithful to their language and suggest amending the statute -- I mean, the rule to reflect their preferred language. It's not that different from the way we had originally -- or the Supreme Court had adopted. I think the Supreme Court may have tweaked with some of our language from the last proposal, but the bottom line is they wanted the rule to read this way, and we felt like we should do that.

CHAIR TRACY CHRISTOPHER: All right. Any comments about this change? All right.

MS. GREER: Okay. The next one is on Rule 360, which is written opinions. And, Mandy, if you could go to 79. There is specific language in HB 40 about how the Supreme Court is supposed to look at proposing adopting rules, and one of the provisions is what's now contained in number (3). We put the other provisions elsewhere, and we'll get to that in a minute, but we felt like this particular one -- and this is pretty much the HB 40 language -- belonged in Rule 360 for written opinions, and we went back and forth as to whether it was "when required" or "when permitted," but because the Legislature used the word "must" in the provision in 46(a)(4), we felt like it would go in the "must issue a written opinion as necessary to provide guidance."

The reality is, is the business court judges are already doing that in these situations and are already under -- I mean, are already imposing mandatory requirement on themselves, so they felt like they were comfortable with this one. And I believe Judge Bullard did share these proposed rules with the business court judges just to kind of get their input, and we went with all of their recommendations.

CHAIR TRACY CHRISTOPHER: And I assume (3)

is straight from the statute in its wording?

MS. GREER: Yes, it is.

PROFESSOR HOFFMAN: What is "regardless of request"?

MS. GREER: Oh, "regardless of request," good point. If you see in part two that if it's on an issue important to the jurisprudence -- well, (1) is with a dispositive ruling on request of a party. (2), and this is the Supreme Court's rule currently, is on an issue of importance to the jurisprudence of the state, regardless of whether a party requested it.

PROFESSOR HOFFMAN: In other words, the court has an obligation on its own to bring it up.

MS. GREER: Correct. If the court believes it's necessary to provide guidance on the evolving usage, yada, yada, yada, then the court will issue a written opinion.

PROFESSOR HOFFMAN: Why wouldn't we just delete "regardless of the request" in (2) and (3)? In other words, the request only shows up in (1). Just a suggestion.

MR. LEVY: That's the current rule.

MS. GREER: Yeah. That was the -- how the Supreme Court did the current rule. It's different from what the committee proposed, but we could certainly

suggest that.

PROFESSOR HOFFMAN: Just throwing out for consideration that "regardless of the request" is --

MR. LEVY: Marcy, one just small clarification that the language is the same from the statute, except we added "the Supreme Court."

MS. GREER: Oh, yeah, correct. Because we felt like in the context of the statute they were trying to make it clear that the Fifteenth Court precedent mattered, but obviously the Supreme Court is the ultimate precedent for this business court, so we did add that language because we thought it would be weird not to have it.

HONORABLE TOM GRAY: I'm just a little, you know, geeking out over here on the appellate issues and writing an opinion. What is really different from (2) in (3)?

MS. GREER: What the Legislature sees as a difference between (2) and (3). I mean, this language, I think, needs to go in the rule somewhere, and it -- the Legislature sees it as different from "important to the jurisprudence of the state," so we felt like this was the best place to put it, because it didn't make sense in the context of the authority decisions. It wasn't limited to that.

HONORABLE TOM GRAY: I would suggest that it could probably be made just as a comment, but whatever.

MS. GREER: Okay.

CHAIR TRACY CHRISTOPHER: Do we need (2) and (3)? Shouldn't we just combine them? Because it's an "and."

MR. LEVY: Sure.

MS. GREER: Well --

CHAIR TRACY CHRISTOPHER: Or is it not really an "and"?

MS. GREER: Yeah, I mean, the "and" is -- I mean, we could combine them. We would have to put the "and" back in (1).

CHAIR TRACY CHRISTOPHER: Well, that's an "or." Upon request or if it's important, basically. Just wordsmithing.

MS. GREER: Yeah, it's currently "and" in the rule the Supreme Court put out.

MR. LEVY: Probably should be "or," but --

MR. HUGHES: I have a question.

THE REPORTER: Okay, I can't hear you.

CHAIR TRACY CHRISTOPHER: Sorry.

THE REPORTER: Remember to talk this way.

CHAIR TRACY CHRISTOPHER: Sorry. Yes, go ahead.

MR. HUGHES: First, I'm curious because I don't -- I'm not up on the jurisdictional issues, but it just seems to me that this is advisory opinions. I mean, nobody asked for it. It may not even be pertinent to a particular case, but the judge just decides to issue a written opinion on it. I mean, maybe there's an exception in the Constitution allowing the Legislature to confer this kind of advisory jurisdiction. That's number one.

Number two, why do we need to have a -- a rule? Why not just simply authorize the judges to issue standing orders or rules of practice for their court to do this? I mean, what I have seen many federal judges do is have bench rules of practice in their court, which have the effect of supplementing the district's local rules; and, in it, they do all kinds of interpretive things about how they interpret cases or what their usages of practice are; and it seems to me that may be an alternative, because what happens when you have the various -- because you're talking about business courts. Well, it just means it's one judge on one business court can issue these things? What happens when you have district -- you know, various business judges issuing different -- differing interpretations? And --

MR. LEVY: This is part of the original enactment of the business court. They specifically want

business court judges to issue written opinions, and they're not advisory opinions. They're opinions in particular cases, and the reference to what is in (3), I don't understand (2) and (10) to talk about rules of court or practice. They're applying those factors to their written opinions, and the Legislature explicitly wants the business court to write its decisions, and not advisory, but just when it makes a decision in a case, rather than just issuing a one-page order, it should write a written opinion explaining its decision.

MR. HUGHES: Well, first, I understand that, and if it's an issue in the case, obviously, you want them to do it, but the rule, as proposed, says "regardless of the request." The parties may not have even --

MR. LEVY: No, it's they want -- when Judge Bullard makes a decision in a case, he should write an opinion.

MR. HUGHES: That I understand.

MR. LEVY: Not advisory, but just -- and it's not with regard to a request for an opinion. It's just simply he should not only write opinions when requested.

MR. HUGHES: Well, I understand, but it seems the way the rule is --

MR. LEVY: I should let Judge Bullard

explain.

MR. HUGHES: As it's drafted, it invites opinions to address issues that aren't raised by the motion, as long as they have -- they would provide guidance on usage and practice before the court. It seems to me that, number one, if we want judges to issue opinions about these, and God bless, we certainly do want to know what the judge thinks the usage and practice on certain issues are, we would want to know that. I mean, I'm asking because I think it would be better to say that the judges are authorized to issue standing orders or bench rules, or whatever you want to call them, to address these issues without the necessity of waiting for a particular case.

CHAIR TRACY CHRISTOPHER: So I think we can cure this by putting "in connection with a dispositive ruling" up in the first line.

MR. LEVY: Yeah.

CHAIR TRACY CHRISTOPHER: And then it's either upon request or (b), if it's important.

MS. GREER: The only problem with that is dispositive rulings, I mean, I think that they're envisioning that discovery orders could be falling in this category, and those wouldn't be dispositive. But, I mean, our understanding has always been that this was in

connection with a specific case and a decision that had to be made in a specific case, and they do a written opinion to provide guidance.

HONORABLE JERRY BULLARD: Justice Christopher.

CHAIR TRACY CHRISTOPHER: Yes.

HONORABLE JERRY BULLARD: What we have been doing in practice is, obviously, we've got a directive to write an opinion if we're disposing of a case, if a party requests it, or if they don't request it and we say this is a pretty important issue. It's either new, or there's some change that we're going to write about it, if it's a dispositive motion, and we have the discretion on what we might -- it could be discovery. It could be a Rule 91a dismissal, which I've already done one of those, and I mean, I didn't have to write a full-blown opinion on that, but we felt like this is something that the parties need to know about why we decided the way that we decided, and following the legislative directive and the Court's directive as far as the opinion writing. And so we could decide, if no party requests, no party requests it, but it's important to the jurisprudence of the state of what we're developing as a business court, to write on it, and so we do that.

CHAIR TRACY CHRISTOPHER: Okay.

HONORABLE JERRY BULLARD: Or we can do it on our own for any order that would permit it.

CHAIR TRACY CHRISTOPHER: Richard.

MR. ORSINGER: It seems to me that at the end of (2) we have to change the "and" to an "or," or this doesn't work. I see number (2) as substantive issues, substantive law, affecting the jurisprudence, and I see (3) as the practices and procedures before the court. I may be overinterpreting (3), but I can see (3) as a huge limitation on (2) if we don't put an "or" in there.

Secondly, this whole concept about opinions. You know, in the federal system, district courts that have dispositive rulings issue opinions, and in doing research that involves federal law, sometimes the district court opinions are the only opinions you have. You don't have a court of appeals opinion, and especially don't have a U.S. Supreme Court opinion. So in the early days of establishing precedent, which is where we are with the business court on the issues that are in their -- in their domain, I think having trial court opinions is helpful to show litigants or out-of-state parties or lawyers as to how the courts are ruling in Texas before we finally get some kind of consensus at the court of appeals level.

I will also, as a footnote to the discussion, would remark that I remember when Justice

Harvey Brown published an opinion as a trial court judge on a complex discovery matter that got picked up in Westlaw, and I don't know if you did that on purpose, but it was very helpful. I used that as the sole significant authority until we started having more development.

So based on the federal practice that the federal district courts are actually the only guidance we have until we start building the court of appeals, I think it's very important that number (2) be there, that a justice -- pardon me, that a judge who thinks that they just made a ruling that's important to the jurisprudence of the business court, that they should have the authority, and I would encourage them to actually issue an opinion. Thank you.

MR. HUGHES: I did have one other question.

CHAIR TRACY CHRISTOPHER: Yes. Talk up.

MR. HUGHES: The way I -- I don't have the statute in front of me, but what was quoted in the memo seems to imply that the request involves not only decisions of the business court, but the Fifteenth Court, so my question was, was the committee considering a similar amendment to the rules for the Fifteenth Court of Appeals? I mean, maybe I've misconstrued.

CHAIR TRACY CHRISTOPHER: I mean, the Fifteenth Court of Appeals already has to write opinions,

so I don't think it needs to be changed.

MS. GREER: I mean, this provision is focused on writing rules for the business courts of the House Bill section 46, so I think that it's focused only on the business court rules. At least that's what we were focusing on.

CHAIR TRACY CHRISTOPHER: Yes, Pete.

MR. SCHENKKAN: I'm -- I want to suggest, for clarity, it seems to me that we really have two subparts to (a). One subpart is (1), and the other subpart is (2) and (3), and the differences are that (1) has two characteristics, and it's in connection with dispositive ruling, and it's on request. The other two don't require requests and are not limited to any motions on dispositive rulings. They could come up in a discovery dispute. And so clarifying that, structurally, verbally, I think would help with the rest of this problem.

MR. LEVY: And, Marcy, I believe that when we proposed language similar to this last year, our discussion was that -- and the statute, the Government Code says the Supreme Court shall adopt rules for the issuance of written opinions by the business court. So it was -- that was the dictate on written opinions, and so we had discussed that it wouldn't necessarily have to be every single dispositive ruling that would require an

opinion, that it would be dispositive, and it would satisfy number (2) as well.

It appears that the Legislature believes that they want more or more detail or they want these specific issues to be addressed. So I don't know whether that is -- it could be (2)(a) or it could be (1), plus (2) or (3), or it could just be (2) includes what we're proposing with (3). But if -- if you want it to be an "or" then that will add more written work for them.

CHAIR TRACY CHRISTOPHER: Yes, Lamont.

MR. JEFFERSON: Two things, real quick. First, I read the rule like Roger did, which sounded like it's just inviting opinions from courts, as opposed to being met with a particular case, so I like the idea of making it express that -- but then when is it that a -- that we want a reasoned order? I don't think -- and I haven't studied the statute, but I don't think it should just be on a dispositive ruling. I mean, if there is a ruling on privileged matters, that's a discovery issue. If it's a ruling on an apex deposition, you know, things that are really important to litigants, you would want to see a reasoned opinion. So if the statute doesn't restrict reasoned opinions to dispositive rulings, I'm not sure we should adopt that nomenclature.

HONORABLE TOM GRAY: See subsection (b).

CHAIR TRACY CHRISTOPHER: That's just a "may."

HONORABLE TOM GRAY: It's just a "may," but the court clearly, when they feel like it's appropriate, can do it on any order. Not just dispositive.

CHAIR TRACY CHRISTOPHER: Well, let me just put it this way. The issue was to make changes in connection with the statute. It really wasn't to refocus on what the Supreme Court had written the first time around, and so this change does focus on the statutory change. I guess the question is whether the and's are correct or not.

MS. GREER: I'm persuaded that it should be an "or." And one way we could do it, structurally, to Pete's comment, would be to have (2) say "regardless of request," comma, and then on "an issue of importance to the jurisprudence of the state" in subpart (2), "or as necessary to provide guidance," because I do see (3) as being a little bit different in covering a much broader category of potential orders that could be useful, like discovery apexes.

CHAIR TRACY CHRISTOPHER: Yes, Pete.

MR. SCHENKKAN: Just a suggestion that maybe the wording in (2) would be "in connection with any ruling in the case and without regard to a request," and it's all

of this is in the mandatory required, colon, little i, "on an issue important to the jurisprudence of the case"; little double i, "as necessary to provide guidance in the business court."

CHAIR TRACY CHRISTOPHER: Jackie, do you feel like you have enough information on that point?

MS. DAUMERIE: Yes, I have.

CHAIR TRACY CHRISTOPHER: Okay. Let's move on to the next issue then.

MS. GREER: Okay. Hold on. So the next -- the next one affects several rules, and I don't want Mandy to scroll through and have to make everybody feel like they're watching Blair Witch Syndrome, but 355 and 56, and I believe there's one other. Which one was it? There were several rules that had remand and removal provisions in them and transfer provisions, and we felt like with the Court -- I mean, with the Legislature directing us to make this process more streamlined, more transparent, and more understandable, we ought to put them all in the same rule.

So Robert took the first draft at creating Rule 360 and 361, which has the, basically, transfer provisions, the removal, remand, et cetera, and we tried to streamline them so that they would be more comprehensible. So, Mandy, if you would turn to page 80, and they're specifically focused on challenges, and the

Legislature uses the word "jurisdiction," which raises the point that we've debated several times in the larger committee, as well as many, many times before the subcommittee, of what is truly jurisdictional subject matter jurisdiction such that if the business court lacks it the judgment will be void versus what is more of an authority type provision, kind of like in the removal setting into federal court. If you remove a case, but you don't have removal jurisdiction, the court still has subject matter jurisdiction, but there may be a defect in the removal.

So, and the Legislature uses "jurisdiction" for all of those terms, so we had recommended last go-around -- and I think the Supreme Court seemed to agree with us in their changes -- that "authority" was a better word and allow the courts, rather than this committee or the Supreme Court in a rule-making process, or to try to draw that line, because the line is complicated, especially in the business court jurisdiction. It's going to take some time to work it out.

So we recommended using the word "authority" rather than "jurisdiction." And we only used "jurisdiction" in one context, and that's under (a)(1). If you're challenging the business court's subject matter jurisdiction, it should be filed within 30 days, and

this -- then that picks up the other language the Legislature seems to like about the 30 days of the later of the initial pleading invoking the business court's jurisdiction or the date the party challenging the removal was served with process, if they were served after the notice of removal was filed.

A lot of things wrapped up in that, so let me kind of unpack them. The -- the bedrock principle of jurisdiction is that subject matter jurisdiction can be raised at any time, even for the first time on appeal, so we didn't feel that you could have a consequence to somebody filing a subject matter jurisdiction motion more than 30 days after the initial process, but the Legislature is very clear it wants these decisions made early and definitively and attach consequences where possible, but that was pretty clear to us from House Bill 40, and so we separated the two out.

The subject matter jurisdiction should be raised within 30 days, and the number (2) is a motion challenging other aspects of the business court's authority must be raised within 30 days. So if it's not core subject matter jurisdiction, you've got to raise it within 30 days. I think that this structure will facilitate the legislative intent, because if you have any question in your mind, you're not going to lay behind the

log. You're going to go ahead and file your motion on whatever authority challenge you're making within 30 days to be sure, if you know about it, and what it leaves open is if there's a pure subject matter jurisdiction challenge later that's not known to the parties that can be raised at a different time, but leaving the courts to figure that line out. So that's why we set it up this way.

The second part of this is the (b) alternative under (a)(1) and (a)(2) is to be consistent with Supreme Court, U.S. Supreme Court, due process authority that no one can be forced to do something within a certain time frame until they've actually been served and joined to the lawsuit. So that was -- and we figured either their case will be filed or a notice of a ruling would be circulated, and that would trigger that deadline. Robert.

MR. LEVY: I just want to point out that the language that's set out here is basically pulled from the existing rules, but just combined into one rule, so that it applies to the three different ways a case could be commenced in business court. One is originally filed there. The second is removal, and the third, which is a little bit different, is when a case is transferred by another court to the business court, and so it would have one rule rather than these pieces being in three separate

rules. But I don't think we made any material changes other than the specific provisions of the statute.

CHAIR TRACY CHRISTOPHER: All right. Any discussion on proposed new Rule 361?

MS. GREER: Well, it would be (a)(1) and (2).

CHAIR TRACY CHRISTOPHER: (a)(1) and (2). All right.

MS. GREER: (a)(3), although they don't specifically talk about discovery in the rule, we debated whether we needed a provision like this, because inherently the business court probably already has this authority, but we decided that it -- and they have been doing this.

HONORABLE JERRY BULLARD: That's correct.

MS. GREER: But we decided we wanted to make it clear that this was discretionary and that parties should not expect merits discovery in connection with one of these challenges, that it would have to be with the business court's permission and limited. So that's our suggestion there.

CHAIR TRACY CHRISTOPHER: Yes, Justice Gray.

HONORABLE TOM GRAY: I would add "jurisdiction or" before the word "authority" to make it clear that, because you've used different words in (1) and

(2), you should use the same words in (3).

MS. GREER: That's a good suggestion.

CHAIR TRACY CHRISTOPHER: All right. Any other comments on limited discovery? Okay.

MS. GREER: Okay. (4) is -- this is when the business court determines on its own initiative or a party's motion that it does not have authority. This, again, to Robert's point, we're just combining what was already in the rules and making it more streamlined, so we just -- the language is a little bit tweaked to accomplish that purpose, but in (a), the point is to perpetuate the idea that everybody gets 10 days' notice and an opportunity to be heard, if the business court is doing it on its own initiative, and if there is -- at the request of a party, the three options. Of course, it can retain it, but we didn't think we needed to say that, because it's if the court finds it doesn't have jurisdiction or authority, it can transfer, it can remand, or it can dismiss, depending on where it came from in the first place. So that's what (b)(1), (2), and (3) are, and definitely avoid errors. Discuss that or keep going?

CHAIR TRACY CHRISTOPHER: Any thoughts on that? All right.

MS. GREER: Okay.

MR. LEVY: I will point out -- and back to

Justice Gray's comment, we actually probably should not put that in, because you see now in (c) that we're suggesting that challenges to subject matter jurisdiction really should be resolved on the pleadings and not by discovery.

HONORABLE TOM GRAY: Well, and you have to do the jurisdictional authority all the way through, because if you are dismissing a case based upon the court's determination that it does not have jurisdiction, you still have to give them the 10 days' notice --

MR. LEVY: You do have to do that.

HONORABLE TOM GRAY: -- and so the problem is you use one word in (1), a different word in (2), and then from there further out, as you talked about in the memo, you used the word "authority" to substitute for both of those words, and somewhere you need to --

MR. LEVY: Can we -- can we change -- would it raise confusion if we said in (a)(1), instead of saying "jurisdiction," we say "subject matter authority"? Is that not a term of art that people would understand?

HONORABLE TOM GRAY: I don't think they would.

MR. LEVY: But otherwise, you make a valid point.

HONORABLE TOM GRAY: I don't know how to fix

it. I just know that there's standard rule of interpretation is that when you use different words, you mean different things, and you've used two different words in (1) and (2), and then in (3), you're using the same word --

MR. LEVY: Option (2), under (a), "challenges to authority," paren, "including challenges to subject matter jurisdiction."

HONORABLE TOM GRAY: But you want in (2) to cut off any nonjurisdictional challenges after 30 days.

MR. LEVY: Nonsubject matter jurisdiction challenges.

HONORABLE TOM GRAY: Correct.

MR. LEVY: And that -- but just defining "challenges to authority" to include the broader term would seem to resolve the wording comment that you made.

HONORABLE TOM GRAY: Well, we can move on.

MR. LEVY: Okay.

HONORABLE TOM GRAY: You're aware of the issue. There's no point in debating it here.

CHAIR TRACY CHRISTOPHER: Okay. Richard.

MR. ORSINGER: In light of the discussion, I have a little bit of concern that if we use the word "jurisdiction" too broadly, we're mixing together subject matter jurisdiction and personal jurisdiction over

typically a nonresident respondent or a party who's been served by public citation. By notice, publication. Sorry, pardon me. Let me step back. So we don't really care about this rule applying to personal jurisdiction, do we? We only care about people attacking the subject matter jurisdiction of the court, and if that's true, then perhaps we should make it clear that we don't want these rules to apply to a special appearance by a nonresident of the corporation.

MS. GREER: We did that in the comment.

MR. ORSINGER: You did?

MS. GREER: Uh-huh. Special appearances are governed by Rule 120.

MR. ORSINGER: Okay. Very good. Thank you.

MS. GREER: But to your point, I think if we add jurisdiction, it would be advisable to say "subject matter jurisdiction."

MR. ORSINGER: I would like that. That's real clear.

CHAIR TRACY CHRISTOPHER: All right. Moving on to --

MS. GREER: (c).

CHAIR TRACY CHRISTOPHER: -- (c).

MS. GREER: Mandy, can you go to the next page? One of the provisions of House Bill 40 allows --

requires the Supreme Court to make rules regarding procedure, but allows it to consider resolving on the pleadings or by summary proceedings. We felt this was really important because it harkins to our plea to the jurisdiction practice, which is a way that a lot of these authority challenges are being raised anyway, but the law is not exactly crystal clear on this, so we felt that we should make a specific recommend -- when I say -- I say these things, I mean with respect to the Court that we're just advising. I don't mean to suggest that this is definitive, but we felt that it would be important to say in the rule "by pleadings or some other proceeding."

We talked about using language like plea to the jurisdiction, but we felt like that may be too -- introducing another element of confusion that could be avoided, and the business courts are resolving these on the pleadings, where appropriate, or by summary proceedings. And we can talk about the hearings later.

Any discussion on that? I'll keep going then. "The Business Court shall make a prompt determination." This is straight from the statute, and these are the three factors that it needs to -- that the business court needs to consider in connection with making that determination. The fourth was the one that we put in the opinion, for the written opinion rule, 360, because we

felt like it belonged there, but these three considerations focused, we thought, on the prompt determination of authority and so just, literally, the language from the statute.

CHAIR TRACY CHRISTOPHER: Any questions? Any comments on (5)? All right. (6).

MR. ORSINGER: I have a question.

CHAIR TRACY CHRISTOPHER: Oh, yes. I'm sorry. Yes, Richard.

MR. ORSINGER: I just wanted to follow up, Marcy, on this business and commercial courts. Are we talking about like the Delaware Court of Chancery and other courts that have jurisdiction that includes, but is not limited to, business litigation?

MS. GREER: That's my understanding is what the Legislature is saying, and --

MR. ORSINGER: So in a state that doesn't have a dedicated judiciary, we would be ignoring the rulings of their Supreme Court?

MS. GREER: I don't --

MR. LEVY: It's not saying you're ignoring.

MR. ORSINGER: You're just not required to read and follow or recognize?

MR. LEVY: And they're not required to follow either. They -- they're encouraged to consider and

evaluate those. It's a "may consider," and they obviously will consider a binding authority or other persuasive authority, but the Legislature seems intent on establishing this, and I think the goal is that the business court in Texas will be of the same stature as the Delaware Court of Chancery and other dedicated business courts in other states, as well as courts that have broader, different jurisdiction.

MR. ORSINGER: Okay.

CHAIR TRACY CHRISTOPHER: But this particular provision is only limited to a question of authority as opposed to substantive decisions.

MR. ORSINGER: Oh, I completely missed that. Okay.

CHAIR TRACY CHRISTOPHER: Right? Is that my understanding? Okay. So they could still look at other law for substantive issues.

MR. ORSINGER: Okay.

MS. GREER: I mean, I can take it from --

CHAIR TRACY CHRISTOPHER: Here, too, yeah.

MS. GREER: Here, too. I don't think the Legislature is precluding that consideration. I think they're just saying pay special attention to this.

CHAIR TRACY CHRISTOPHER: All right. Section (6).

MS. GREER: This is the big one, interlocutory appeal. So we really -- we had a lot of consensus. Let me just back up and say the statute allows the Supreme Court to allow, require, or prohibit interlocutory appeals -- and this is unusual, because normally the Supreme Court doesn't have that authority. They say we get to choose what is interlocutory and what's not, and it's got to be by statute, but here they've expressly allowed the -- given the Supreme Court the authority to adopt, require, or prohibit. We did not talk about prohibit for very long. The real discussion was with allow or require, because I do think that there is an appetite to get up to the Fifteenth Court and get some guidance on some of these issues, which would then permit a further appeal to the Supreme Court of Texas.

So we debated this provision probably the most of any part of Rule 361, and we did not get to a total consensus on this. We did agree that the appeals under this rule should be accelerated, because the interlocutory appeals traditionally are and, you know, the whole thing about business court is expedience and, you know, getting things done efficiently, so we felt that that was important.

We also felt that there should be an interlocutory appeal, but the big issue becomes whether

it's permissive or mandatory as of right. In other words, can you take it up, and it was interesting. I talked with all three of the Fifteenth Court justices at their recent event, and they had differing opinions on that. So that may be a point of discussion between you-all.

I think we are concerned about the number of appeals that would be taken that might delay by having an as-of-right appeal, and so I think there's a tendency to lean more towards permissive, but then the question becomes does it look like the permissive appeal statute that we already have, and the Legislature has recently put limits on that, requiring the courts of appeals to give reasons if they turn down a permissive appeal, or do we want to have it just a single certification, because under those permissive appeals both the district court and the court of appeals have to make the discretionary determination to take the case.

We could, because the Supreme Court has, you know, unlimited power under this, make a rule that only the Fifteenth Court has to make a decision whether to take the case. So that's -- and we put in the comments that any appeal, if it were permissive, would be taken in accordance with TRAP 28 and 29. So we don't have to rewrite rules to govern the process, just the discretion, and so we needed to put in this rule what that choice is.

So those are the choices that have been laid out and --

CHAIR TRACY CHRISTOPHER: Well, I'd like to ask Judge Bullard what kind of challenges to authority would you not think should be appealed immediately? Where, if you were being asked permission, you would say no?

HONORABLE JERRY BULLARD: Well, at this point, we would -- we would encourage that decision to be appealed so we could develop a body of law that lets the parties know what the Legislature meant by the "jurisdiction" and what the rules mean by "authority."

CHAIR TRACY CHRISTOPHER: So if you're going to be granting permission in 99 percent of the cases, to me, it makes it better to make it an interlocutory appeal because it's a simpler process than the permission to appeal process, because you have to file something separate before you actually get to the briefing, and that's what I would think, looking at it from an appellate court point of view.

HONORABLE JERRY BULLARD: And I could add that the cases that there's been a disposition on jurisdiction, there's been one that I'm aware of, where the parties requested permissive appeal, and of course, the judge actually granted that permission and the Fifteenth accepted that, so that is sitting in the

Fifteenth right now. Everyone else has challenged those either by direct appeal or mandamus, and the Fifteenth has written on that, said there's no interlocutory appeal, but there could be a mandamus, and the court denied the mandamus on that jurisdictional issue. So the Fifteenth, they've already kind of seen this issue.

CHAIR TRACY CHRISTOPHER: So would there be potential motions that have already been decided by the Fifteenth Court so that having an interlocutory appeal right would just be kind of a waste of time, or because since they've already ruled on an exact same fact scenario, that you would then deny permission to appeal?

HONORABLE JERRY BULLARD: I can't speak for all of my colleagues, but I would be -- I would welcome that appeal, if there was an issue, if somebody wanted to take that up.

CHAIR TRACY CHRISTOPHER: But do you think that the law is far enough along that you would say, "No, the Fifteenth Court has already said I do have jurisdiction," so off we go?

HONORABLE JERRY BULLARD: Well, let me clarify that. On that one decision, that was a pre-September 1, 2024, cases, so that's the one they took and dealt with. That's the only one they've spoken on so far as the Fifteenth.

CHAIR TRACY CHRISTOPHER: So from an appellate court point of view, this is just my opinion, I would just go with the interlocutory appeal, but if we think that down the road there will be enough authority to stop the interlocutory, the need for the interlocutory appeal, then it might be better to just call it a permissive appeal to begin with. Do you see what I'm saying?

MS. GREER: Uh-huh.

CHAIR TRACY CHRISTOPHER: That's my thought. Any other appellate court judge that might have thoughts? Justice Gray.

HONORABLE TOM GRAY: The question that I always ask when you get to the permissive appeal or interlocutory appeal, the first question, is it a use-it-or-lose-it proposition? On subject matter jurisdiction, it's not a relevant question. On everything else, it seems to be.

I know that on some interlocutory appeals the Supreme Court addressed that in connection with the statute on interlocutory appeals, but it will make a big difference to the parties pursuing that appeal if it is an issue that if they don't raise it by whatever vehicle you have created, whether it's permissive or interlocutory, if they can never raise it. Whereas, if you don't create

that avenue for them, you avoid that question, and you leave it to a mandamus if they want to address it immediately; and so, I guess, if we're going to do one or the other, we need to make -- I would feel that we need to make sure and address the underlying question, is this a -- an attack upon the court's authority that you waive by not using the remedy of either permissive appeal or an interlocutory appeal at the time the issue arises.

CHAIR TRACY CHRISTOPHER: Do you think that's something that could be addressed by rule?

HONORABLE TOM GRAY: I do.

CHAIR TRACY CHRISTOPHER: Really. Justice Keltner.

HONORABLE DAVID KELTNER: I would not address it by rule. That's not the way we have done that with other appeals, and I think I would go with just straight interlocutory appeal and the first (a) option.

CHAIR TRACY CHRISTOPHER: Yes, Roger.

MR. HUGHES: Well, I thought the law, as it stood now, was that if you decide not to take it up by appeal or mandamus, you're free to bring it up for final judgment. We don't need a rule for that, but the other thing is, is having practiced in an era where you could appeal the denial of a motion to transfer venue, and all of the sudden every denial got taken up on an

interlocutory appeal, that had to be put down.

Then we did it -- we created an interlocutory appeal for arguments over the sufficiency of the expert report required in medical malpractice cases, and now, in some courts, not in every court, I see virtually every denial of a motion to dismiss over inadequate reports taken up, and the result has been a lot of questionable decisions on reports that might have been better to challenge by motion for summary judgment at a later point.

My point is, here is -- I would favor a permissive approach, largely because once -- what my experience has been, and it's just mine, is once you create the right of interlocutory appeal, trying to pry it away from the hands of parties who have a lot of money at stake, or routinely have a lot of money at stake, is very, very difficult. And so I think it would be much easier if we want to take a wait-and-see approach. I would favor permissive and then we can -- at a later stage, we can see what ones it might be beneficial to the jurisprudence of the state to be made the basis of interlocutory as a matter of right.

CHAIR TRACY CHRISTOPHER: Robert.

MR. LEVY: I take the opposite view, Roger, and the reason is that, particularly with respect to the

fundamental questions of the jurisdiction of the court to hear types of disputes, and the Legislature has now expanded that jurisdiction somewhat and added language that's going to make it more challenging as to whether a transaction or dispute is within the jurisdictional provisions of the Government Code. It is so important to have clear and quick guidance on these issues, and the -- you know, the issue is not whether the dispute is going to be resolved. It's where it will be resolved, and, in particular, if there's a question of where the parties want the matter resolved in the business court and this fundamental question of jurisdiction needs to be addressed, I think it should be through interlocutory appeal so it's addressed promptly and clearly, and that way we will have jurisprudence prepared.

It's going to be very, very different than the venue issues, because those are -- you know, those could happen in multiple cases, and this is statutory interpretation as it relates to the claims in the case, and that's -- the goal is to create a comprehensive body of jurisprudence on that point.

CHAIR TRACY CHRISTOPHER: Richard.

MR. ORSINGER: The way I see the question is a little bit different from precedent creation. It's that if the case should not have been tried in the business

court and you have to try the case and then appeal it to the court of appeals to find out that the trial was a nullity, you have a huge amount of --

MR. LEVY: Yeah. That's a very good point.

MR. ORSINGER: So my thought is, and this was the same prospect, I think, behind the venue appeal, was what's the point in going through a jury trial and an appeal just to find out that you shouldn't have tried it in that county in the first place, and I know that the tradeoff is you get all of these interlocutory appeals. And maybe the way to mitigate that is to have permissive appeals so they can be tamped down, but it does seem to me that we've got to have either a required appellate review at the immediate stage or, at the very least, discretionary.

Now, if we make it required, yes, there may be some resistance to making it discretionary later. If we make it discretionary now, it seems to me that we're going to have a lot of appellate decisions that the court of appeals, the business court of appeals, is going to grant a lot of those in the beginning, but then as the rules start developing and become clearer, they're going to be selective and say, "This one's resolved by precedent. We don't need to hear this case." So, to me, it's a more cautious approach, is to start with permissive

now, but not require the permission of the trial judge or the consent of the parties, but just make it discretionary with the business court of appeals.

CHAIR TRACY CHRISTOPHER: So you would not reference 28.3?

MR. ORSINGER: Well, I don't want to disregard a statute that's binding, but the point here is that does it require the consent of both parties to have an interlocutory appeal on this issue? Does it require the consent of the trial judge to have an interlocutory appeal on this issue?

I'm advocating that any party can have it, without regard to what the trial judge wants or the other party wants, but it should be discretionary with the appellate court whether to take it as an interlocutory appeal. That's just a possible solution.

CHAIR TRACY CHRISTOPHER: All right. Let's take a straw poll on, first, interlocutory appeal. Who thinks it should be interlocutory appeal?

HONORABLE PETER KELLY: As of right?

CHAIR TRACY CHRISTOPHER: As of right. That looks like 18.

And who thinks it should be permissive? That's five.

All right. And who likes Richard's idea of

permissive, but not all parties have to agree, which is not currently in our rules? So it would involve a different -- different rewrite, but it would allow the Fifteenth Court to say, okay, we've ruled on this enough, stop. Who's in favor of that? Who thinks that that would be a good idea?

HONORABLE ROBERT SCHAFFER: I like the sound effects, don't you?

CHAIR TRACY CHRISTOPHER: Okay. We have about 10 votes for that kind of potential option.

Does the Supreme Court have enough to make their mind up on that?

HONORABLE TOM GRAY: There was a third option of neither of the interlocutory appeals and do it by mandamus.

CHAIR TRACY CHRISTOPHER: Oh, okay.

HONORABLE TOM GRAY: I take it you don't like that option. That's probably why you left it off.

CHAIR TRACY CHRISTOPHER: Just me, personally. Okay.

HONORABLE TOM GRAY: But the beauty of the mandamus is when it gets to the Fifteenth, if they don't want to deal with it, one word.

CHAIR TRACY CHRISTOPHER: All right. Who thinks mandamus would be the better way to go? Three,

three votes for mandamus.

MS. GREER: I think two quick points, before we leave that one, is I meant to say -- and we had talked about putting in the comments, and I meant to add it, that if the Court did go with the as-of-right, they could remind that summary disposition was available -- (inaudible)

THE REPORTER: Can you speak up a little bit? I can barely hear you.

MS. GREER: Oh, sorry, that the Supreme Court could -- we could remind them in the comments that the summary disposition of the appeal is available, and it was as of right. That was a suggestion, and I mentioned putting it in the proposed comments if that election was chosen, and the second thing I'll just say, it occurred to me that if the Supreme Court doesn't create an interlocutory appeal when given permission, I don't know if the Legislature will do it again. Just something to consider.

CHAIR TRACY CHRISTOPHER: Good. We'll move on to (b).

MS. GREER: (b) is really just moved. We didn't rewrite it or change it. We just moved it, so there's no change there.

CHAIR TRACY CHRISTOPHER: Okay. Moving on

to 362.

MS. GREER: 362 is the inaccessibility of the business court judge. This is just basically codifying section 16 of House Bill 40.

CHAIR TRACY CHRISTOPHER: Is there nothing to be changed about it, just the statutory language?

MS. GREER: It's just the statutory language, straight out.

CHAIR TRACY CHRISTOPHER: Okay. Any comments on that one? All right. Next one.

MS. GREER: Okay. Agreed transfers, this is as to cases. This is a new authority that's been granted by House Bill 40 for cases that were pending before September 1, 2024, can be transferred to business court by agreement, and we had a lot of discussion about how this would work, and so it kind of harkins -- we're on 363, right? Yeah, great.

It kind of harkins to the procedure for recusals in that it involves the administrative presiding judge, because we felt like that would be an easier mechanism. It's already in place for transfers when a judge of a district court thinks, yeah, this case would be better off in business court. They go to the presiding judge, and we did have the benefit of having a presiding judge on our committee, subcommittee.

HONORABLE DAVID EVANS: I'm sorry. I was distracted by Mr. Keltner. I promised I wasn't going to speak today. Go ahead.

MS. GREER: No, no, it's fine. Who provided input that this, as to how the procedure would work most smoothly, so we set it up to be on an agreed motion, and that would be filed in the court where the case is pending, and obviously, it has to be a case that could be sent to business court that's properly venued in an operating division of the court. The judge who it's being sent to signs and files an order indicating either, yes, I think this court -- this should be transferred to the business court or refers it to the business court.

So it's kind of like a recusal. You either say, yes, I'm going to recuse, you get to decide in the first place, or if you don't, you refer it to the presiding judge of the administrative region, not of the business court. And then if there is going to be a hearing, the regional presiding judge notifies the parties, similar to transfer request, sets a hearing.

And then the decision, in the decision making process, (c)(1) speaks directly to House Bill 40. They want to consider whether the presiding judge of the business court -- or whether the business court has the capacity to take on the case, because obviously we don't

want to flood them, so we suggested having the regional presiding judge consult with the presiding judge of the business court, currently Grant Dorfman, as to business court capacity. So that's pretty much from the statute.

And then the two decisions, the decision of the judge where the case is pending and the regional presiding judge, take into consideration these issues, the complexity of the case, how long it's been pending, is it difficult to resolve, would business court be a better place for this. That's, again, straight out of the statute, and whether the transfer will ensure the facilitation of fair and just and efficient administration of justice, which is always a factor and also from the statute.

The one thing that is interesting about this is, under (a), they use the word "district court" and "district court's case load," but the way that this provision is set up, section 56 of House Bill 40, it should apply, I think, we think, to all kinds of courts, not just business court. I mean, most of them are going to be coming from district courts, just because of the jurisdictional thresholds, but the way that the bill is set up does not necessarily limit it to district court. So that's kind of -- you don't know if that's a drafting issue or what, but we wanted to point it out for

consideration.

And then the clerk duties, this is just very similar language to the assignment of within the business court after a case is transferred, in other rules, in the business courts.

CHAIR TRACY CHRISTOPHER: Well, in some counties, the county court has the same jurisdiction as a district court, so it's possible that a case like this could be in a county court.

MS. GREER: Right, and as we read the bill, they intended to empower county courts as well, but then they used the word "district court" in the consideration, so it's a little bit of a tension. So we went ahead and used the words from the statute, but that's a consideration as to whether to leave the word "district" in or change it to "pending court."

CHAIR TRACY CHRISTOPHER: Anyone have any discussion on this particular provision, 363? I would take out "district court," personally, but...

MS. GREER: I was tempted to, in case you can't tell.

CHAIR TRACY CHRISTOPHER: Okay.

MS. GREER: One other thing, in the notes and comments, we indicated, consistent with the statute, that the authorization expires on September 1, and we also

pointed out that this is an interesting function of House Bill 40, is that Montgomery County has basically opted into business court, so even though they're in, I believe, the Second Judicial Administrative District, they are now for purposes of this rule -- I mean, the structure, in the Eleventh District, which is Houston. So Montgomery County gets to go to business court.

MR. LEVY: I'm not sure they made that choice, but they are certainly there, and that, by the way, complicates a few issues we talked about, including recusals and how cases or issues from Montgomery County cases that are in the business court in the Eleventh region, so it's a little bit awkward in some places, but I don't think it's a major issue.

CHAIR TRACY CHRISTOPHER: Okay.

HONORABLE DAVID EVANS: We have not addressed the issue of whether a change of the division boundaries changes the recusal jurisdiction on a motion brought in Montgomery County. I visited with Judge Brown, and I have visited with Judge Trapp, the respective presiding judges, and it will be on the agenda of the presiding judges on July 8th to see if there's input on whether we should approach the Court about a special order or something of that nature.

I don't know. At this point, at this point,

the legislation adopts Rule 18 as one of the more elegant solutions when you compare it with probate and municipal courts and the other 10 or 12 one-offs to 18a. But at this point, I think Judge Trapp and -- who has that division, that's 2, that region, will probably hear a contested recusal and then make his recommendation. But as to the agreed transfer, I agree with the solution that it should go to Judge Brown in that regard.

I'm loathe to make a comment since I was on the committee, but I do want to point out that the presiding judge can determine there's no jurisdiction, and the business court judge could determine that they don't have the capacity, or both of them could determine there's no jurisdiction, and that would leave the regional presiding judge with the dilemma of having found that the trial court has failed to resolve the case in a timely fashion under the guidelines that are now being set and that it wasn't reached because of docket conditions.

And I only make that as a note, and in case the Court wants to address it, because in my situation, if I was to find the case didn't have jurisdiction or Judge Dorfman said, "We don't have jurisdiction," I wouldn't want to leave it back in the trial court where it's not getting tried. Then again, I don't want to set up a backdoor process for every case that doesn't have business

court jurisdiction to try to trade judges, so that's my comment on the record.

CHAIR TRACY CHRISTOPHER: I just hope no one reads that.

HONORABLE DAVID EVANS: Yeah.

CHAIR TRACY CHRISTOPHER: Yes, John.

MR. WARREN: Justice Christopher, I want to go back to your comment about removing "district courts" from there. Instead of removing "district courts," I'm not aware of any other county where the county courts have similar jurisdiction other than Dallas County.

CHAIR TRACY CHRISTOPHER: Right.

MR. WARREN: So could we just have "district courts or a court of similar jurisdiction"?

CHAIR TRACY CHRISTOPHER: Yeah, that would be fine, too. Yeah. That would work.

HONORABLE MARIA SALAS MENDOZA: County courts and district courts have concurrent jurisdiction in El Paso.

MR. WARREN: In El Paso?

CHAIR TRACY CHRISTOPHER: All right. We have a few rule amendments to the judicial administration rules that we're going to try to do before we break for lunch. Harvey, you had something else?

HONORABLE HARVEY BROWN: Just real quickly,

on Rule 362, I'm sorry to go back. Subpart (d) says the "injunction may be dissolved," and I know that's from the Legislature's language, but I wonder if it should just say "the writ," because the whole rules about writs, and there's more than writs for an injunction. There's writ of sequestration, et cetera, and it seems like these rules and what they're trying to accomplish would apply just as much to sequestration or garnishment.

MR. LEVY: 360 what?

HONORABLE HARVEY BROWN: 362(d) says "the injunction," and I'm suggesting that maybe it should say "the writ," which is broader.

MR. PERDUE: You're supposed to presume they know exactly what's intended.

HONORABLE HARVEY BROWN: I don't think we can make it narrower, but I think we can make it broader.

CHAIR TRACY CHRISTOPHER: Yes, Judge Chu.

HONORABLE NICHOLAS CHU: John's comment kind of sparked a little thing that I was thinking of that I didn't think would apply, but maybe does apply, and I apologize, Jerry, especially, because I don't know much about business court. With -- in probate litigation, especially with statutory probate courts, sometimes there's complex business litigation as an ancillary case, and so I'm wondering if those would be subject to a

transfer to business court, and if so, then some of this language would have to be amended to include, instead of the regional presiding judge, it's the presiding judge of the statutory probate courts in Texas. That's the head that handles all of the recusals, the regional presiding judge actions. So if it does, it probably needs to be changed. If it doesn't, great. Maybe that's just fixed by a comment that says if this does apply to statutory probate courts, apply it as we see fit, or something like that, with its equal partner.

MR. WARREN: You make a good point, because probate --

HONORABLE DAVID EVANS: Without --

THE REPORTER: Wait.

HONORABLE DAVID EVANS: It's based on divisions, is the definition for business courts, and it's -- the divisions are designated by the regional presiding judge, and when we first encountered this, we did address the idea that we could have a case somehow, an ancillary jurisdiction in probate court that would come up. Now, all of us have a pretty good relationship with Judge Herman, but that was our answer when we read that at first, but if we need to address it, we can do that. Haven't seen it yet.

CHAIR TRACY CHRISTOPHER: So, I'm sorry, so

you think that it would still come to you, not to Judge Herman?

HONORABLE DAVID EVANS: We do, but, you know, you should know that also, under the practice, Judge Herman has us hear his recusals, so however you wish to do it. Because the business court gave specific divisions and defined them geographically to be coincidental with the administrative judicial regions, thus that Montgomery shift is now in a different division. That's how we -- that's how have interpreted it so far. You know, if I hear one less recusal, I'm not going to get excited, or a motion to transfer.

CHAIR TRACY CHRISTOPHER: It doesn't sound like it needs to be in a comment. It sounds like you-all are handling it if something like that did come up, but we'll leave that up to the Supreme Court to whether they think it should be in there or not.

HONORABLE DAVID EVANS: It's 16 people involved. Nine business court judges, five presiding judges, Judge Herman.

CHAIR TRACY CHRISTOPHER: You can handle it.

HONORABLE DAVID EVANS: And a business court. Pretty short list.

CHAIR TRACY CHRISTOPHER: Right.

HONORABLE DAVID EVANS: And Supreme Court of

Texas, I apologize.

MR. LEVY: And this rule, again, is -- Rule 363 is a limited time only rule --

HONORABLE DAVID EVANS: Yeah, right.

MR. LEVY: -- that will probably not be used very frequently, in any event.

HONORABLE DAVID EVANS: Exactly.

CHAIR TRACY CHRISTOPHER: Okay. Let's move on to the RJA so we can eat lunch before it gets too crusty.

MS. GREER: And this is pretty quick. It's just basically making changes to the Rule 11 and Rule 13 of the judicial administration rules to take into account that business court can now be an MDL pretrial judge, a pretrial court. So the MDL panel of the Supreme Court can assign a business court judge and a retired business court judge to be an MDL judge. So, I mean, if you can just kind of scroll through, Mandy, to page 84. It would just expand pretrial judge to include business court judge, adding the business court to 13.1(b), which is applicability of the MDL rule, similar changes to other parts of Rule 13.

CHAIR TRACY CHRISTOPHER: All right. Do we have any questions about this?

MS. GREER: Oh, I see a typo. Where did

that come from?

MR. LEVY: Yeah.

MS. GREER: Well, that's me. I apologize.

MR. LEVY: It should say "business court judge."

MS. GREER: Yeah. It should say "business court judge."

CHAIR TRACY CHRISTOPHER: All right. Any comments on that? Then we'll take a 30-minute lunch break, if that's all right with everyone.

(Recess from 12:18 p.m. to 12:51 p.m.)

CHAIR TRACY CHRISTOPHER: Okay. Our next item on the agenda, which to all of you civil practitioners will be "what," is bail appeals; and in connection with that, with the Supreme Court's approval, we created a bail appeal subcommittee of the judges that we thought would be most interested in this issue, and Justice Miskel is going to walk us through it.

HONORABLE EMILY MISKEL: Okay. So to start off, it is a criminal bill. I know that that may not be the specialty or expertise of many in this room, so before I start to talk about what we've proposed, I'll tell you the process we went through.

As far as I know, the people who are most interested in this were on the subcommittee. People who

have had criminal district court experience. Others, we got some draft rules early on. We circulated them to prosecutors. We circulated them to Texas Indigent Defense Commission. We circulated it to judges that hear criminal cases, so this has been sort of vetted in discussions with people who are going to have to apply this day-to-day.

But the context on how this new SB 9 came to be, which someone is arrested -- and this depends on county size, but when someone is arrested, they have to be magistrated within 24 hours, or I think three days in rural counties, and that's done at all hours of the day and night. So a lot of counties will, like, have JPs do it, or they'll go to the Legislature and they'll get a magistrate appointed to do this kind of thing, and the magistrates are created under all different statutes that have all different authorities. So it was really this ad hoc system of just the goal of being there 24 hours a day, getting, you know, arrestees magistrated, and then that's when they put in their request to be appointed counsel, and it just, sort of -- nothing happens for a while. It's not assigned to a prosecutor or to a district court until it gets indicted, which can be, like, months after that initial magistration. So that's the background.

Under the old system, if the defendant thought their bail was too high, they could file a writ of

habeas corpus, which is a civil case that would be immediately assigned to a district court, but if the prosecutor thought the bail was too low, under the existing law they could not get in front of a district judge until the case was indicted eventually. They had to go back to the original magistrate who set the bail in the first place.

So as part of bail reform, there are two sections in SB 9 that affect our work here. So the first thing they created was a way for the prosecutor to have a district judge review the bail amount. The second thing they created was a way for the prosecutor to appeal the district court's review of the bail amount. So that's what we're here today to talk about, is that second part.

So once the prosecution has had a chance to take their complaint that the bail's too low to the district court, how are we going to handle the appeal? The fun feature that the Legislature threw in is that the appellate court has to issue an opinion within 20 days, which is quite a bit faster than any other -- maybe judicial bypass is the only other thing that's been that fast. So our main concerns were -- oh, and the other feature is that the appellate court is doing a de novo review of the district court judge's review of the bail amount. And it's not all bail conditions. It's just bail

amount.

So we had to figure out, as a subcommittee, that initial magistration is not on the record. There's no attorneys there. There's nothing for us to review de novo, so how are we going to get a record to appropriately review? So as part of the rule that we're presenting, we have to talk about what the district court judge has to do in that review hearing, what the State has to assemble for us, so that the appellate court has something to review. So I think that gets us through that page, if we want to scroll down. Keep scrolling.

Okay. So the proposed rule, the main hurdles were to get a record that would be sufficient for an appellate court to even be able to review de novo, and then the other thing that came up that was a big issue is the defendant may be indigent. They may be entitled to court-appointed counsel, but they may not realistically have had court-appointed counsel actually appointed for them. There's guidelines about when court-appointed counsel has to be appointed, but statewide we have a lot of trouble in some places meeting those guidelines; and so, as part of our appellate rule, we wanted to clarify if defendant is indigent and entitled to counsel and requests one, that has to be appointed for this review hearing; and also, because there's a shortage of criminal appellate

counsel and it would be prohibitive to appoint dual counsel in each one of these cases, that we wanted the process to be made to be simple enough for the defendant's trial counsel to handle the appeal.

So we did not want them to have to be familiar with all of the Rules of Appellate Procedure. We wanted it to be something that they could take the one rule, as a trial lawyer, and respond to the State's appeal. So those were sort of the two guiding lights in our work.

So the rest of the memo speaks -- oh, the last thing was if the defendant -- under SB 9, if the defendant is incarcerated at the time the State takes its appeal, the defendant remains in custody during the pendency of the appeal. So even though the initial appellate opinion has to come down within 20 days, if we allow the rehearing and reconsideration en banc and all of these other things, the defendant is being held, essentially, without bail during that whole process. So we made a choice to say the Legislature wanted these to be expedited. We are going to issue our opinion quickly, and there is no -- going to be no post-opinion processes.

We conferred a little bit with a member of the Court of Criminal Appeals, and I think, as a subcommittee, we felt confident that if they wanted to

review anything that a court of appeals did, they would have the authority to stay the mandate and take up whatever they wanted to take up.

So that's essentially the overview of what SB 9 -- and SB 9 did a bunch of more things, but those are the only two that affect us. So if you want to scroll down to the actual rule. So this rule lives in a criminal rule that has to do with other appeals in criminal cases. We chose 31.8 to be the number for it. So the first part there, appeals pursuant -- these particular bail appeals are governed by this rule, and for as much as possible, we wanted this rule to be the only thing you had to read to know how to do these appeals, because, again, trial counsel are tasked -- are going to be tasked with doing this.

The second thing we needed to make sure was that there was a record, so that's what section (b) does. If the State contends that bail has been set too low, the district court must set the matter for -- the statute says "review," but we need it to be a hearing so that we have a record for the appeal, so we're clarifying there that the district court's review is a review hearing and that the district court must enter a bail order and that, therefore, that under the statute is the bail order that can then be appealed, that they can't directly appeal from

the magistration that was not of record and would have nothing for us to review.

In section (c), we wanted the State's notice of appeal to point out that it is one of these appeals so that as soon as it comes in you know it has to be resolved within 20 days, and also, we're requiring that the State give a copy of this rule to the defendant upon noticing its appeal. Again, because defendant's trial counsel may not have any idea what this is or how to do it, and hopefully, the rule itself will give them all they need to do.

Scroll down to (d). Next, we're like, okay, if we're going to do a de novo review of the trial court, what kind of thing needs to be in the appellate record. It was pretty clear that, given the short time frame, we need the State to be assembling the record, kind of like an original proceeding. So the State, together with its notice of appeal, has to provide this appendix that has everything that the district court could have reviewed.

We went back and forth on whether to list the types of things that we would expect to see or just to say everything, and we said that at this time, given that this is a new rule, we'll err on the side of listing the things that an appellate court would want to see that the district court reviewed to make a bail decision, and so we

talked to prosecutors, criminal judges, all sorts of things to say, hey, when you do these bail reviews, like what are you looking at, and that is the list of things that are commonly considered in making a bail decision.

Even though the State has the job of putting before the appellate court everything the appellate court would need to look at, we also give the defendant a chance to supplement it with anything the State failed to include.

If you'll scroll up to (e), one of the trickiest parts was how to get a reporter's record in this time frame, because, you know, on appeal, appellate courts have, I would say, not the power to make these things happen within our 20-day deadline. So we needed for the trial court to have enforcement powers to make sure that the reporter's record can happen, so what we said was as soon as the State has requested the record and arranged for payment, the trial court judge has to make sure that the reporter's record, just from that bail review hearing, is prepared within five days. And it's still the State's job to provide that reporter's record to us in its appendix, but we needed some teeth in there to make sure that that got done and that it wasn't the job of the court of appeals to try to also get a record in 20 days.

Further bail decisions, because the trial

court could always review the bail decision while it's pending, so we need to be notified about that, and then here is what we decided for the rule. Like I said, if we're expecting criminal defense attorneys to handle an appeal, potentially for the first time, we want to make the requirements very basic. So they don't have to be a formal appellate brief like we're used to seeing. They don't have to comply with Rule 38. They can be in the form of a motion or a letter. We even potentially discussed preparing a form to assist defense counsel with this. Briefs are limited to 3,000 words.

How we picked that word limit was we looked at what's the shortest word limit currently that exists in the TRAP, and it was 2,400 words for a response to a petition for review, or a reply, and so we -- initially, our rule had 2,000 words. The prosecutors all freaked out that 2,000 was too short, so we said, fine, 3,000. I think we all would have still been happy with 2,000, but that's how we arrived at that word limit.

No extensions of time and no extensions of word limits. The reason it also needs to be short, primarily two reasons. One, the appellate court has to review everything and turn it around in 20 days, but number two, again, defense counsel is responding to this, and if we give them a 50-page brief to respond to, that's

going to overwhelm their ability to be competent in an area that's not their area of competence, so the shorter it is, the more competent we felt that a defense attorney would be able to respond to the relevant points.

And, basically, what SB 9 says is this whole appeal is about the amount of bail is too low, so we really don't need to be hearing about anything else, except as it relates to what amount of bail do you think is the correct amount and why, which is what SB 9 says. So the State's brief has to tell us that, why you think the bail is too low, what your requested relief is, including the bail amount you think is appropriate.

So the State, with its notice of appeal, provides the appendix, the complete appellate record. State's brief is due five days later. Defendant, if they want to file a brief, is due five days after that, and no extensions on anything. (h) is where we clarify that if the defendant is an unrepresented indigent, the trial court has to ensure that counsel is appointed before the bail review hearing, and then that trial counsel is authorized to respond to the State's appeal.

And then go to the next page. Section (i) basically is just a restatement of what SB 9 says, what the appellate court does. De novo review, expedite, issue an opinion, or an order, not later than the 20th day after

the appeal is filed. This is straight out of SB 9. The appellate court can affirm the trial court's bail, itself modify the bail amount, or reject the bail amount with or without a reason and send it back to the district court.

What we added to this rule is the appellate court may hand down an opinion, but is not required to do so. Again, trying to keep these very expedited, and no rehearing or en banc reconsideration, will issue the mandate together with the order and judgment.

And then, lastly, under section (j), part of what a trial court does when it sets bail is there's all of these reporting systems. There's TCIC. There's the Public Safety Reporting System. There's bail forms that are required by law, and so once a bail is set, it has to be entered in these various systems. Appellate courts aren't set up to do that, so section (j) makes it clear that even if the appellate court itself modifies the bail amount, the trial court has to type it into all of the systems of where it has to go.

So that is a recap of the rule. Like I said, we met several times and -- yeah, Ana.

HONORABLE ANA ESTEVEZ: Just let them know that it's not for every case. These are for pretty much the heinous crimes.

HONORABLE EMILY MISKEL: Oh, yeah. So SB 9

sets out a subgroup of serious felonies. It's like nine serious felonies that this appeal process applies to, so the trial court bail review process applies to any felony, but the bail appeal is only from, like, approximately nine of the serious felonies.

HONORABLE ANA ESTEVEZ: And then one third-degree felony.

HONORABLE EMILY MISKEL: So that was a real quick recap of the context and background, what SB 9 changes in this limited way, and then a real quick trip through all of the provisions of what we thought needed to be included in the rule, so if anyone has any questions or discussion. Yes.

MS. WOOTEN: Very minimal, but first and foremost, in subpart (g), which states the word limit. There's no reference to excluded content, like you see in TRAP 9.4. So that might be helpful.

HONORABLE EMILY MISKEL: I think we thought that there wouldn't be all of those sections that are included. Like, so, really, what we thought, we thought these would be letter briefs, but we didn't want to say letter brief because people take that very literally and do it as like a business letter, so we left it open. It can be a motion. It can be a letter brief, and that is the word count.

MS. WOOTEN: I think, though, about signature block.

HONORABLE EMILY MISKEL: Oh, okay.

MS. WOOTEN: Sometimes it comes to that, right, and so it might be worthwhile to just specify things like that are going to be excluded.

HONORABLE EMILY MISKEL: My counteroffer is we were going to initially only give 2,000, and we gave 3,000 and all the words count.

MS. WOOTEN: The only other thing that I noticed is that in subpart (g) there's a reference to the defendant's brief being due five days after the State's, but the calculation method isn't spelled out. If we want this to be a one-stop shop, maybe we explain how the days are counted.

HONORABLE EMILY MISKEL: Okay. I think the statute is 20 calendar days. Is that right? So I don't know if -- I think we meant this to be five calendar days.

MS. WOOTEN: So you could just say that.

HONORABLE EMILY MISKEL: Okay.

HONORABLE PETER KELLY: If it's a form, we were talking about in the subcommittee, my thought was something like the docketing statement we have filed, in civil cases anyway. If you have something like that, then you can limit the description to 3,000 words, and all of

the other information would be captured outside of that 3,000 words.

CHAIR TRACY CHRISTOPHER: Yes, Robert.

MR. LEVY: So a comment and then a question. Being a civil practitioner, I'm not familiar with this process. I look at Rusty. I think you've done this once or twice, but obviously, this is a right of the State to appeal. Are there constitutional concerns that we're setting up a one-sided appeal process that don't -- that would not allow a defendant to also have a specified process to appeal, other than through a habeas?

HONORABLE ANA ESTEVEZ: They can appeal.

MR. LEVY: Oh, they can?

HONORABLE EMILY MISKEL: Yes, I think it's actually opposite. So the Code of Criminal Procedure lists only a limited number of things that the State is allowed to appeal, and the State has no right of appeal unless --

MR. LEVY: Well, yeah, certainly not substantively. They can't appeal a jury verdict or anything like that, but I'm just talking about the right to appeal a denial of the bond. Is that something that is otherwise appealable under --

HONORABLE EMILY MISKEL: So if the defendant filed a writ of habeas corpus to lower the bail amount and

the trial court denied it, could the defendant appeal that habeas corpus action?

MR. LEVY: Well, yeah. I'm thinking just a normal bond setting process where magistrate makes the --

HONORABLE EMILY MISKEL: I'll defer to my colleague.

HONORABLE ANA ESTEVEZ: I have -- there's an opinion on Spielbauer, one of mine, that, you know, on whether I should have lowered it, and so I would say they do that now. It's a writ, and then they appeal it.

MR. LEVY: So it's through a habeas.

CHAIR TRACY CHRISTOPHER: It's just a different motion.

MR. LEVY: Okay.

CHAIR TRACY CHRISTOPHER: Rather than a motion to lower bond, it's a writ of habeas corpus, and then the writ is appealable, but it's just like a motion.

MR. LEVY: So the standards are pretty much the same.

CHAIR TRACY CHRISTOPHER: Right.

MR. LEVY: And then my question is in the -- back to the rule, you have time limits, including the requirement that the court has to ensure that the reporter record is submitted. What happens if you don't?

HONORABLE EMILY MISKEL: Well, I'm going to

be very candid. The Legislature said the appellate court has to issue its order within 20 days after the appeal is filed, and we didn't want it to look like appellate courts are blowing all of their deadlines because reporters aren't doing records, right, so the effort was to put the person who has the most day-to-day control of that happening in charge of making it happen, but, realistically, I guess, you could compel the trial court by writ of mandamus. I don't know. I would hope they would get it in.

CHAIR TRACY CHRISTOPHER: Most of our trial judges say these hearings should not last more than an hour or so, so we're hopeful that, you know, that the court reporter can turn around the record in such a short period of time. But right now the only thing an appellate court can do is require the trial judge to hold a hearing on why the record's not done, and then, you know, it's a very cumbersome process.

MR. LEVY: Are these hearings primarily evidentiary, or are they just argument?

HONORABLE EMILY MISKEL: They're evidentiary, so what -- in talking to some district judges that hear these -- and it works very differently in very different counties, like everything else that we do, but usually, it's the State entering in the charging

documents, the criminal history. I don't know, if you want to, you know, add anything to this discussion. And then just talking about why or why not the facts of the case. Ana, do you want to add anything about the process?

HONORABLE ANA ESTEVEZ: Well, they bring witnesses, so, yes, it's evidentiary. They can -- the State, if they want to bring -- when they're doing a motion to lower it, they bring police officers, because the Rules of Evidence don't apply. When they want to have it increased, they bring victims, because they want us to increase the bond and tell us how much -- how scared they are or what they've done to violate their protective order and how we're not doing our job enough, so it just depends if we're talking about lowering or increasing the bond.

HONORABLE MARIA SALAS MENDOZA: There's also recent changes require the trial judge to look at the Public Safety Report, so and we were told we had to make those findings, so a lot of times the hearing is the court reviewing the Public Safety Report, and that's on the record, and that includes history --

MR. LEVY: So you need the record, clearly.

HONORABLE MARIA SALAS MENDOZA: Right.

CHAIR TRACY CHRISTOPHER: Yeah, Kennon.

MS. WOOTEN: One thought, and I will admit I'm not familiar enough with the underlying language to

know whether or not it's a good one, is that TRAP 34.6 addresses the reporter's record, and then subpart (a)(2) refers to an electronic recording, which is authorized, so that could expedite the process in a situation like this where you don't have to have something more. You just have the electronic recording.

HONORABLE TOM GRAY: Please, no.

HONORABLE EMILY MISKEL: I think, so that did come up, actually, in our subcommittee, and having the appellate court being forced to listen to the entire audio as opposed to having a text-searchable record we thought is not a good system to set up from the outset. There are separate issues with court recording and all of that. We are just not touching any of that with a 10-foot pole. We just decided to stick with we want a reporter's record of the proceeding and just let's make it happen on an expedited basis.

CHAIR TRACY CHRISTOPHER: If it was a recorded hearing instead of a court reporter, we would expect the State to provide the transcript with the recording, and we didn't get into that level of detail. Maybe we should. But when you -- when you have a recorded record, part of your duty is to get a transcript. You don't just file the recorded record with us.

MS. WOOTEN: Uh-huh.

CHAIR TRACY CHRISTOPHER: I mean, we might -- we could probably put that in a footnote, but we just thought it was making the rule cumbersome to address all of that.

HONORABLE MARIA SALAS MENDOZA: So I think we discussed that recordings are only allowed in some courts. It's not that you can just turn on a tape recorder or whatever. I don't even know what that's called anymore, but, actually, recording is only allowed in some counties, and it does get transcribed, and that's the official record, but the way this rule is set up, this is a -- a remedy that's given to the State that it didn't already have, right, so this is something addressing the State didn't have, so we're putting the onus on the State to get us the record for proper review. That's what we focused on.

CHAIR TRACY CHRISTOPHER: You know, I was shocked to find out that the State actually pays for the record, which is kind of funny, because it's coming out of one budget and going into another budget in terms of who's paying whom, but there are -- like Galveston County has pretty much moved almost completely to recordings, and they -- it's my understanding the recording service put on quite a presentation about how fast they could do the record turnaround, and so, you know, they do it as part of

the appeal process when it's a recorded one.

Yes, Judge Chu.

HONORABLE NICHOLAS CHU: Justice Miskel, on the -- on the rules, it states notice of appeal, the State must serve a copy to the defendant. In a lot of these scenarios, there should be already appointed counsel, so should that just say to the defense counsel?

HONORABLE EMILY MISKEL: So we did talk about that, and what we decided was if it says serve something on the defendant and they're represented, the State has to serve it on their counsel, right?

HONORABLE NICHOLAS CHU: Sometimes, like in situations like protective orders, you have to serve it directly to the defendant, so I'm kind of concerned that in some of these smaller counties they'll think, oh, it's just like a protective order, and this guy's in jail and can't reach their lawyer.

HONORABLE EMILY MISKEL: Okay. That's a fair point that we just made a judgment call on, so that could easily say "defendant" --

HONORABLE NICHOLAS CHU: If represented.

HONORABLE EMILY MISKEL: -- "or defendant's counsel."

HONORABLE NICHOLAS CHU: Yeah.

CHAIR TRACY CHRISTOPHER: Yes.

MS. GILLILAND: In subsection (j), would you consider another term other than "district court"? The reason being, typically, your judges are not the ones doing any kind of reporting. It's usually the clerk. Also, if we're talking about reporting to things like TCIC, other types of reporting, that's typically done by law enforcement and that anyone within the court system doesn't even have access to do that type of reporting, and so it's much broader than just the district court that would have any kind of follow-up reporting requirements.

HONORABLE EMILY MISKEL: Okay. Help me out, because this is an area I didn't have personal knowledge with. Our understanding was when the district judge sets the bail amount, the district judge has to enter in that bail amount in systems, including the PSRS and potentially others.

MS. GILLILAND: Yes, but in some counties it's not necessarily the judge, and sometimes when "court" is used, there's a question between everyone involved, do you mean the judge or do you mean the clerk, and it kind of depends on how you're set up in your county, if you have magistrate courts or if you have clerks doing that, and then when you do flip over to like TCIC and NCIC and entering those types of, like, bond conditions and things like that, that's strictly usually your sheriff's office

and other law enforcement entity.

HONORABLE EMILY MISKEL: Sure. We just meant, to the extent the trial court has to do it, it's not the appellate court, so could we revise (j) to say "the district court or district clerk"?

MS. GILLILAND: Or even just "the county," or I don't know what the proper --

HONORABLE EMILY MISKEL: No, we meant this to be whatever the district judge was supposed to do, the appellate court is not going to do for that district judge. The district judge still has to do it. Do you want to add?

HONORABLE ANA ESTEVEZ: Yeah, I think you should just leave it "district court," and the court can ask the clerk to do it or the sheriff's office if they have to do it. We have to do our own. So I didn't know -- I thought by statute we had to do our own. So I don't know that we are --

HONORABLE MARIA SALAS MENDOZA: We have to do the bail bond form.

HONORABLE ANA ESTEVEZ: Yes.

HONORABLE MARIA SALAS MENDOZA: And then everything flows from that. So the bail bond form goes to the clerks and the sheriff's department, and it flows down, so everyone has to make the entries based on the

district judge's entry of bond.

HONORABLE ANA ESTEVEZ: Right.

MS. GILLILAND: It's just there's a lot of cooks in that kitchen.

HONORABLE EMILY MISKEL: Well, we're only referring --

HONORABLE MARIA SALAS MENDOZA: Yeah, but --

CHAIR TRACY CHRISTOPHER: One at a time.

HONORABLE MARIA SALAS MENDOZA: I apologize. But I agree with Judge Estevez. When the judge does it, that goes down to all of the systems that do it, even if, for example, I know you're saying and I think this is true, in some district courts it's actually the coordinator or the bailiff or somebody else that does the form, but the judge is required to certify to that bail bond form, so the judge has to do that. However they do it, the judge has to do it. Our choice was the district judge does it, and all of the other systems will follow with their reporting.

MS. GILLILAND: It's just very broad in saying "any reporting systems." That covers a lot of other data entry programs that not necessarily the district court or affiliated offices do.

CHAIR TRACY CHRISTOPHER: Would it be useful to refer to -- at first we had -- we were referring to the

reporting requirements just to make it clear, but we thought maybe that made it less clear.

MR. WARREN: How about we just make it "the reporting officer"? That way everyone will know who it is. If I'm the reporting officer, I know that's me. If it's the sheriff, they'll know.

HONORABLE EMILY MISKEL: But I feel like the appellate court orders the district court to do things, and then what the district court does from there -- do you know what I mean? I don't know that the appellate court can order any other officer to do anything.

MS. GILLILAND: And, really, is the point of this just to alleviate any expectation that the appellate court is going to -- is there a way to do it kind of in the negative of "not it"? It's back on the county.

HONORABLE EMILY MISKEL: That's what we were trying to implement, so think of wording that says that.

HONORABLE PETER KELLY: Washes its hands of the matter.

CHAIR TRACY CHRISTOPHER: Do we have any other comments? Yeah, Rusty.

MR. HARDIN: There's some problem -- the irony of this, there's some problems from the defense attorney's point here that didn't exist before, and the problem is how this creates -- you know, this whole bail

thing really is because certain members of the Legislature were pissed off at Harris County, and that's what really gave genesis to this. So the county that it was concerned about, I'd be very surprised if around the State in the smaller counties that judges are setting the bond too low.

I think this is really a problem that arose in the large cities, and when a sizable number of judges in Harris County, and also under a federal ruling from Judge Rosenthal, hers was misdemeanors, hadn't gotten to the felonies and then there was some arrangements worked out, but whenever we get a hot button political issue in this country, we seem to have to make a bunch of new rules, and here's the problem with this one. There's a tremendous potential for abuse by prosecutors, and I'm not saying that they will, or, so, but they can now keep a defendant in jail by simply wanting to appeal, and now he's not going to get out, as I read the bill, and you can correct me if I'm wrong.

He's not going to get out, no matter how -- maybe the judge sets the bond and maybe the prosecutor is just really upset with this person. He can keep him -- never before have we ever been able to do this where the prosecutor can unilaterally keep somebody in jail, granted it's limited to 20 days, but there's never been anything like that.

And I was going to ask you questions here, too. I can't tell from the bill. I understand, I think, that y'all deliberately did this, and I understand why, but he might be able to keep him there longer, because there's nothing to say he can't appeal to the Court of Criminal Appeals, and there's nothing here to say the Court of Criminal Appeals has to rule in a period -- certain period of time.

So we took a political issue that didn't exist for most of the problem, it wasn't a problem for most of the State, to apply it to the whole state, when the real complaint was Harris County. And then in Harris County, the circumstances that give rise to some of the things we talk about in here, how long does it take to get them before a judge? The magistrate may sometime not be -- well, none of those -- may not be a lawyer and may take a while to get -- none of those issues apply to Harris County.

So what happens in Harris County, just so you know, is a long time ago Harris County went to what we call a direct filing system. It used to be like it is around the state. Everything was filed in the JP court for felonies. The JP court maintained authority over the case until there was an indictment, and then and only then did the district court have the sole authority over

felonies, and that was what was done around the state. Then when we went to direct filing in Harris County, the district attorney told all of the law enforcement agencies, we're not going to take your cases unless you've allowed them to be reviewed by our prosecutors, and then this whole system will move faster because the case will be filed directly in the district court at the time it's filed.

So the district court has it. So in Harris County, the person is arrested, the case is filed in that district court. It's not filed at JP court. JP court no longer has anything to do with it, and then as soon as they're arrested, that night, maybe within eight to twelve hours, they're now in Harris County on a video before a magistrate, who is a judge. The prosecutor's there and appointed attorney is there. It's videoed, and so within 24 hours they have appeared before a real live judge and had a bond set.

When all of this politics happened, some magistrates or some judges said, "I don't want the magistrate setting my bond anymore. After the magistrate's hearing, I want it to come straight to me." And all of these are things that are not envisioned by the bill, but it's a circumstance that's happening. Not blaming anyone. It's just not a realistic view of what's

happening in the area that gave rise to this.

I've never gone to an outside county where I thought the bond was -- the prosecutor was going to be upset with the bond. It's almost 99 percent of the time the other way around, and then what we've done is we've treated unequally as far as the defendant, because those of you in the appellate courts can tell me much quicker and be much more knowledgeable than I can, but a writ of habeas corpus rarely by the defendant gets heard in 20 days.

So the defendant is going to stay longer if he's challenging his appeal than if the prosecutor is trying it. He can be kept in jail longer, but his complaint can be heard much quicker than the defendant's complaint, and I respectfully suggest that the reason all of this was, is they were trying to punish somebody where the circumstances they're upset about don't exist, except the political issue of a group of judges in Harris County believe just everybody and his brother should have a bond, no matter what, and so a lot of the objections were legitimate objections, but I don't think this is the right solution. So I don't know what to suggest otherwise, other than I think this is not fair to defendants.

CHAIR TRACY CHRISTOPHER: Yes. Justice Gray.

HONORABLE TOM GRAY: I'll get back into some of the minutia. I agree with what Rusty has said about the origin, but I don't know that we can fix it here.

MR. HARDIN: I think you're right.

HONORABLE TOM GRAY: I noticed, Judge Miskel, that you were very careful about the use of the term "bail" throughout the rule, except in (d)(6) and (7), and those references to "bond findings" and "bond conditions" seem to need to be "bail."

CHAIR TRACY CHRISTOPHER: I think that's right.

HONORABLE EMILY MISKEL: Our -- it's my recollection, and, again, this is not my expertise, people refer to like stay away from the victim, take a -- you know, whatever assessment as bond conditions, and I was thinking bail is the amount and bond is those other things. Am I wrong in that?

CHAIR TRACY CHRISTOPHER: Yeah.

HONORABLE EMILY MISKEL: Okay.

HONORABLE PETER KELLY: I tried to make a distinction in an opinion and the CCA disagreed with me.

CHAIR TRACY CHRISTOPHER: CCA says no.

HONORABLE PETER KELLY: And they said bail is bond and bond is bail.

HONORABLE EMILY MISKEL: Okay. So fair

feedback. Yes, that's fine.

HONORABLE TOM GRAY: And then I'll just -- my editorial commentary is there's no way that they're going to do the 20 days, so my real question reiterates what somebody over here asked about what happens if you don't meet the deadline, and the only incentive -- and I don't know if this is something that can be done by rule, but the only incentive, and to reach the equitable part that Rusty has referred to, is that if this defendant is still in jail, because there is a chance that he made bail before the appeal, but if he is still in jail at the running of the period in which this is supposed to be resolved because the record's not filed, the court of appeals hasn't done what they're supposed to do, whatever the issue, he gets kicked out on the bail that was set.

HONORABLE EMILY MISKEL: Okay. So this is something I wanted in a previous draft that we ended up agreeing to remove, but I said, right under -- I can't remember which section. Maybe on (g). "If the State has not provided the appellate court with everything the appellate court needs to address the case or resolve the case, then the appellate court shall dismiss," because I wanted to make it clear, you know, whoever is going to end up in the newspaper about this, that it's not the appellate court's fault if a record wasn't provided, and

we ended up agreeing that, like, I don't know what our authority is to dismiss things, but I agree with you about wanting to make sure that the light of transparency is shown on the correct target.

Peter, I saw you want to respond to something about that.

HONORABLE PETER KELLY: It was actually separately. It was on (j).

HONORABLE EMILY MISKEL: Okay. Okay. I'll let you --

CHAIR TRACY CHRISTOPHER: We sent, of course, a draft of this around to all of the appellate court chiefs, and everyone had different ideas on how, if, why, we might be able to dismiss, and we decided we were just going to let every appellate court make their own decision on that. But, you know, I think -- I think we'll get it done in 20 days, as long as the State gets theirs done in, you know, the time frame, and, you know, the State doesn't get theirs done in the time frame, then the appellate court has to decide what to say.

HONORABLE EMILY MISKEL: So what I will say is the reporter's record is still due before the State can file the appeal. So the State has to provide its appendix, and one of the documents in the appendix is the reporter's record, so the appellate court's 20-day clock

shouldn't start until the reporter's record is filed in that appendix.

CHAIR TRACY CHRISTOPHER: Yeah. Judge Chu.

HONORABLE NICHOLAS CHU: On (e), I'm kind of concerned with the reporter's record coming in in five days, only because, say, I do a bail hearing as a district judge on Friday. My court reporter goes on vacation for the week, and then that's well over five days. In the Code of Criminal Procedure for examining trials -- and this is super ancient, because almost nobody does examining trials anymore, but there is a provision where instead of a record at the examining trial, the witness testimony can be reduced to writing, so I don't know if in lieu of a court reporter's record that the parties agree to something in writing.

CHAIR TRACY CHRISTOPHER: We did discuss that and didn't think we had the ability to do that.

HONORABLE NICHOLAS CHU: Okay. Yeah.

CHAIR TRACY CHRISTOPHER: That we would basically rely on a summary of the evidence that was presented and the exhibits that were presented.

So from the date of the review hearing, the State has 20 days before they have to file their notice of appeal.

HONORABLE NICHOLAS CHU: Uh-huh.

CHAIR TRACY CHRISTOPHER: So if they want to get the court reporter record, they've got to do that at day 15, if not earlier. So, hopefully, if they know immediately and they tell the court reporter immediately before she goes on vacation, she gives the record to somebody else to get it done. I don't know how else to do it, because the person is staying in jail.

HONORABLE NICHOLAS CHU: Yeah. No, that's fine. I just wanted to --

CHAIR TRACY CHRISTOPHER: Yeah, Rusty.

MR. HARDIN: So that does mean, really, it may not be 20 days in jail? It may be 40 days in jail.

CHAIR TRACY CHRISTOPHER: It is. It is 40 days in jail.

MR. HARDIN: Yeah, it is.

HONORABLE EMILY MISKEL: Well, but if he's out at the time that the State appeals, he stays out.

CHAIR TRACY CHRISTOPHER: True.

HONORABLE EMILY MISKEL: If he's in when the State appeals -- so they have the district judge review hearing, and if he -- and a bond is set that the State thinks is too low, if he makes the bond and gets out, the State can still appeal, but he stays out during the appeal. But if he's in and hasn't made the bond, he's in when the State appeals. So it's not always 40 days is

what I'm saying.

MR. HARDIN: Well, that's true, and I guess what that would mean is, is that -- and, again, that county that was aimed at will find a way around it. What will happen is if the judge believes that's the right amount of bond and it doesn't kick in, the appeal doesn't kick in until the record's prepared, then he simply -- he, a defendant, will get bond that day, and it won't apply to it, except the indigent who couldn't make even the bond that they thought wasn't high enough. And in Harris County, they've been appointed an attorney immediately, so it's not like they'll languish without somebody. I'm just thinking --

CHAIR TRACY CHRISTOPHER: Yeah, I agree with you. Like, if the magistrate set the bond at 50,000, which -- and the State thought that was low, but it still might take an indigent person a while to get a 50,000-dollar bond. Yeah. So, I mean, that's the kind of scenario that might happen.

MR. HARDIN: You know, the numbers may not -- for all of the kind of practical things we're talking about, the numbers may not be as bad as I'm afraid of, because Harris County, that's a big, big volume of cases they have on their docket everyday that have just been arrested, and that's not true, necessarily, in the smaller

counties.

CHAIR TRACY CHRISTOPHER: Well, the scuttlebutt is that the Harris County prosecutor won't appeal.

MR. HARDIN: Well, actually --

CHAIR TRACY CHRISTOPHER: I don't know whether that's true or not, but that's the scuttlebutt.

MR. HARDIN: I guess what will happen is they'll only do it in those cases where they really think it's really, really wrong and not just intending to do it, but the potential is there for a prosecutor to do it just to keep the person in longer.

CHAIR TRACY CHRISTOPHER: Yeah. Yeah, Roger.

MR. HUGHES: I had two questions, and it probably reveals my unfamiliarity with criminal practice, which I avoid like the plague. The first one is when I look at a rule of procedure, appellate procedure, that says something has to be done by the 20th day, well, all of the civil ones know, well, if the 20th day falls on a holiday or a weekend, it's carried over till the next business day. Was that the intent, or was it 20 calendar days?

HONORABLE EMILY MISKEL: No, the statute says, "Not later than the 20th day after the date the

appeal is filed."

MR. HUGHES: Well, again --

HONORABLE EMILY MISKEL: So it would be the Friday before.

MR. HUGHES: We have Rules of Procedure that says the last day doesn't count and it's carried over to the next day, and so if you intend that it would be 20 calendar days and no more, you might want to work on the rule a little bit.

Suggestion, a second one is, I'm not clear, it sounds like what you were saying is that if the person hasn't bailed himself out or herself out when the State files its appeal, that's it, you can't bail yourself out.

CHAIR TRACY CHRISTOPHER: Correct.

HONORABLE EMILY MISKEL: Yeah, so I'll read what SB 9 says. "If the State appeals pursuant to this article and the defendant is on bail, the defendant shall be permitted to remain at large on the existing bail. If the defendant is in custody, the defendant is entitled to reasonable bail, as provided by law, unless the appeal is from an order that would grant bail in an amount considered insufficient by the prosecuting attorney, in which event the defendant shall be held in custody during the pendency of the appeal."

MR. HUGHES: Okay. This leads to the

question, this lucky person has bailed himself or herself out. State appeals, and instead of getting an order saying the bail is mighty fine or the bail is insufficient, it needs to be X dollars, they get the appeal decision that says we think it's too low, and we're not going to set it. We're going to send it back. So this person who is out on bail, what, they can go -- his bail just got revoked, and he or she has to report to prison? I mean, to custody, or what?

HONORABLE EMILY MISKEL: We issue the mandate together with the appellate opinion, so he's only held during the pendency of the appeal. So on that 20th day, the mandate would issue, and the appeal would be done.

MR. HUGHES: Yeah, but does that terminate his bail, so he or she has to report to detention until a new bail is set?

HONORABLE ANA ESTEVEZ: We have that now.

MR. HUGHES: What?

HONORABLE ANA ESTEVEZ: We do that now. They just don't have an appeal. So I mean --

MR. HUGHES: Oh, I'm not --

HONORABLE ANA ESTEVEZ: If I find it insufficient for any reason, I put in a new bond. The company surrenders the bond. There's a warrant. They

come back, and they have to pay more.

MR. HUGHES: Okay. Well, I mean, if that's not quite clear from the rule, maybe from the Rules of Criminal Procedure it is, but I just was wondering if that's the effect, and you're saying that is.

CHAIR TRACY CHRISTOPHER: It is.

HONORABLE ANA ESTEVEZ: Yeah. So your question is if they come back and it wasn't enough bond and they've been out on bond, if they're going to get rearrested. Yes.

MR. HUGHES: Okay.

HONORABLE ANA ESTEVEZ: But that happens now.

MR. HUGHES: Okay. Understood.

HONORABLE ANA ESTEVEZ: Just without the appeal court in the middle.

CHAIR TRACY CHRISTOPHER: Yes.

HONORABLE PETER KELLY: I just had a comment on (j). In light of the fact that every county is different, instead of specifying reporting systems, maybe we use more general language like "take all steps necessary to facilitate enforcement of the appellate court's order."

HONORABLE EMILY MISKEL: I think that's more vague, though, because we really want the district court

to know, oh, I've got to do an updated bail form, right?

HONORABLE PETER KELLY: But isn't it different in every county, or does every --

HONORABLE EMILY MISKEL: No, everyone has to do a bail form, but is it different how you have to, like, type it into the system?

HONORABLE MARIA SALAS MENDOZA: No, everyone has to do -- the changes that we had to do a training on, there's a bail bond form that, every bond hearing, I still have to do everything I'm required to do, set out the order, all of the conditions, and I have to do a separate form that goes to the State, and I have to certify that I reviewed the Public Safety Report.

That's the form that we wanted to address, and that one will lead to all of the other that, you know, all of the orders go to the clerks, the sheriff. They have to enter what they enter into their system, so you're really talking about that bail bond form, because the trial judge already set bond. Now it got reviewed and they're being told "you're wrong" maybe, and so we're letting them know, we get it, but you've got to do that form. Even though you don't like it, even though you set your original bond, you've got to complete the form because that leads to all other reporting that must be done in order for that bail to be reported to all of the

systems, so that's really what we're looking at, is that form.

HONORABLE PETER KELLY: That is the trigger for everything else that flows from it automatically?

HONORABLE MARIA SALAS MENDOZA: Well, we have to -- so the district judge has to do that form in every bond it sets, and so if they don't do that, you have this court of appeal order that doesn't take effect, and we kind of thought they might not like it, so that provision was really just to say, "Do the form."

MS. GILLILAND: I really think that comes back to that "any reporting systems." And I can see where you can have some county fights between different offices.

HONORABLE MARIA SALAS MENDOZA: And it's broader than what I just say.

MS. GILLILAND: Yes.

HONORABLE MARIA SALAS MENDOZA: It's the bail bond form, but this says "any reporting systems."

MS. GILLILAND: Yes.

CHAIR TRACY CHRISTOPHER: Any other questions?

One thing that we did not prepare in time for this meeting was a draft brief for the trial lawyer to do. I've started it, sent it around. We're going to get updates from the public defender's office. It's pretty

basic, sets out the main case or main statute that you have to look at, and most people have thought that this would be useful. I don't know whether this group wants to talk about that or just wait and we'll give it to the Supreme Court to decide whether they want to do it. If we did have it, then we would modify the service to say you have to serve that and the --

HONORABLE EMILY MISKEL: Form.

CHAIR TRACY CHRISTOPHER: -- form. So any thoughts on that, whether pro or con, on that? We figure the State knows what they're doing, but so we're going to give the defense counsel a little help. Yes.

HONORABLE ANA ESTEVEZ: Yeah, and I just want to articulate why I am in favor. I mean, we really want to keep the trial counsel to continue to be the trial counsel. We don't want to have them ask for appellate counsel. I only have -- I'm down to two attorneys that are on my appeal wheel, and the reality is the appellate counsel have different requirements to get on that wheel than the trial counsel, so we would have issues even with some trial counsel even knowing what to do or how to do an appeal if we didn't set this out, hand it all to him, make it as easy as we can.

They all know how to argue a bail bond reduction or a bail bond request for an increase or

insufficient -- insufficiency issue, but they don't know -- necessarily know how to appeal, and so that form would just take the stress away and give them what they already know and let them focus on the issues they need to, without trying to get off and asking us for appellate counsel. So I just strongly would advocate for having a form.

CHAIR TRACY CHRISTOPHER: Rusty.

MR. HARDIN: I don't think it's going to be that hard for lawyers to do. I think that you would need to preemptively help them out. It may turn out later that that's a problem we're seeing, but again, it's not going to happen in most of the counties represented around this table that people work in. It's going to be essentially a large city issue. And because of certain reality, they're closer to the people. They're not going to do things that their community is going to be outraged about. That's just a fact of life, and so I don't think that if the bond -- they're going to find that prosecutors are saying the bond is too low in most of the state.

And then where they do, it's not very hard for them to know what to put, because essentially they are verbally arguing that in front of the judge right now, because when the bond is set too high and the lawyer said he wants a lower bond, like the magistrate did in Harris

County jurisdiction, they're citing all of the reasons the bond should be lowered to the judge. I really don't think it's going to be difficult for them to lay out enough reasons for an appellate court to look and decide.

So I'm suggesting I don't think it's necessary to do that, but maybe a little premature and maybe in a year we find out it is a problem, but I think most lawyers are going to know what kind of things they want an appeal court to look at.

CHAIR TRACY CHRISTOPHER: I don't know, we have to put an Anders form on our website to help people know what they have to do to file an Anders brief, and they're appellate lawyers.

MR. HARDIN: Fair enough. Fair enough. But does it, in this situation -- well, I'll hold it back. Go ahead.

CHAIR TRACY CHRISTOPHER: Yeah.

HONORABLE EMILY MISKEL: I was also going to say, so the reason I snuck out between 10:00 and noon today is because I'm also on the Texas Indigent Defense Commission, and so I circulated this to TIDC, because a lot of counties have flat fee payment plans for appointed counsel, and so as we were doing this, we were talking about how are trial counsel going to get paid for these bail appeals, and so just FYI, like many things, these all

involve multiple committees.

But so TIDC has counties update their indigent defense plans, I believe, in November, and so they are now also working on some proposed language for counties to include in their defense plan to talk about how trial counsel are paid for this, but in the course of me talking with TIDC, they did think a form would be helpful because --

MR. HARDIN: They would know better than I.

HONORABLE EMILY MISKEL: Yeah, so the members may be intimidated by this new process, and anything that we can do to help trial counsel be competent to respond to this and feel competent to respond to it would be appreciated by TIDC.

MR. HARDIN: Can I say something?

CHAIR TRACY CHRISTOPHER: Yeah.

MR. HARDIN: Is the appellate court going to set the amount, or is it just going to say, "You're too low, you need to reconsider"?

HONORABLE EMILY MISKEL: Could do either.

CHAIR TRACY CHRISTOPHER: Either one. Yeah.

HONORABLE MARIA SALAS MENDOZA: So I don't -- I'm definitely not going to take issue with Rusty that the reason for the rule stemmed from certain political realities, but I will say that there are

prosecutors all over the state who have been unhappy with bond decisions forever and a day, so I think we are talking about these nine higher level offenses, and I think we'll see them here and there.

I agree with Justice Christopher that we can do it in 20 days, but I think I wanted to share with you that we shared it with a lot of people. I shared it with our local defense counsel folks and just today he e-mailed me, even though I said by June 20th, and the concern that they're sharing, that organization, is can we get more than 20 days. So even on the defense side, even though, I mean, their folks are going to stay incarcerated anyway, they would like to do this right. I will say that the leader of that group does do appellate work, so he may be thinking with that hat as well. But that's the big question, I think.

CHAIR TRACY CHRISTOPHER: And the kind of -- I mean, we've also talked about the fact that, you know, every time bail is set, something, you know, there could be a new appeal. You know, so, anyway, we've done our best on getting the process started. Yes.

HONORABLE TOM GRAY: Since your objective is to make it a singular rule and complete for the attorney or the defendant, why would you not put -- I think you just referenced the nine offenses that this rule applies

to. I know you referenced the statute, but why not just put in the nine offenses in a footnote or a comment or in the text of the rule? I mean, because you really are -- you're getting a rule, and somebody is not going to go look at the statute, and they're going to try to appeal, and it's going to be a whole bunch of other cases.

CHAIR TRACY CHRISTOPHER: Well, we're hoping the State knows better, but we could do a comment.

HONORABLE EMILY MISKEL: If you'll scroll up to (a). So the nine offenses are listed in 44.01(a)(7). That's where the list is, and really, our thinking was we don't need to help the State. The State is the one that chooses to file these or not, but once the State chooses to file it, we wanted the defense counsel not to have to get an appellate expert, so we're thinking the State should know the nine offenses that are in the statute that it's appealing.

HONORABLE TOM GRAY: It's a nice theory.

CHAIR TRACY CHRISTOPHER: All right. Do we have any other comments on the bail issues? Oh, and we did have Judge Newell at our last meeting, and we did briefly discuss what would happen if it went to the Court of Criminal Appeals, and we decided we didn't have authority to write a rule on that or limit them in any way on their consideration of it, and he agreed with us. So

in the statute dealing with State appeals, the State has always been able to appeal from the court of appeals decision up if they didn't like it. So we'll see what happens if they get any.

HONORABLE EMILY MISKEL: And he wasn't speaking on the record. He was there to, I guess, point out if we made any glaring errors.

CHAIR TRACY CHRISTOPHER: Right.

HONORABLE EMILY MISKEL: But we did get a firm answer that we did not need to worry about making rules for the Court of Criminal Appeals.

HONORABLE ANA ESTEVEZ: That's a nice way of putting it.

CHAIR TRACY CHRISTOPHER: So we chose not to.

All right. Any other comments on it? Jackie, anything that you need?

Okay. All right. Then we're finished with that one, and we will move on to Rule of Evidence 412.

PROFESSOR HOFFMAN: That's me. The good news is we have very little to talk about here, so this one will be relatively brief. I'll do a quick kind of contextual framing to get everyone up to speed of where we are, but, Chief Justice Christopher, I think maybe the questions that the Court wants voting on this would be the

last two paragraphs of part one there, which is we unanimously recommend the insertion of a comment, and then we have a second recommendation that in the summer of 2026 we should actually go about repealing 412. So if you're looking for votes, those would probably be the two votes.

All right. So Senate Bill 535 ends up disapproving of Rule of Evidence 412, which is referred to as the state's rape shield law, and so the question, the charge we were given by the Supreme Court, is to look at whether the Court should adopt an alternative rule of evidence or do something or -- as we interpreted that charge or do something else, so we ended up recommending doing something else.

So what's happening with 535 is perhaps somewhat surprisingly, to at least me, the state's law makes it more protective of victims of domestic violence as well as other sexual assault victims, and so that's really all that happens here with this law. There's no intended other substantive changes. I'm going to flag one procedural slight variance, but we think it's a variance without a difference. Okay. So all that happened so far is that the new law makes the protections in 412 broader, so it now applies in addition to -- specifically, to human trafficking cases and cases involving some child-specific sexual offenses.

So I guess that takes us to -- we've got two things in here that, if you wanted to look at, may be useful. One of them is we include current Rule 412, which you could reference back. The second is we intended to include the correct version of Senate Bill 535, but somehow -- and it probably was my mistake, I messed up, and that wasn't the -- this is not the enrolled version in our memo, so I e-mailed to everyone the actual enrolled version. That said, once again, it seems to be a modest change here, because we're not -- there's nothing in the enrolled version that's different from this that is part of our debate today, so I don't -- that may come up as a question, and I just wanted to make sure you had the correct version of the text.

All right. So here's what the subcommittee decided. I'm now into the second paragraph under Roman numeral I. This is, by the way, on page 103 of the notebook. So our subcommittee unanimously recommends that the Court should insert a comment that, because of this new statute's enactment, 412 only applies to criminal proceedings that were commenced before September 1st of this year, 2025, and that for any prosecutions after that date, the rule is abrogated. Going forward, new criminal prosecutions would be governed by the new statute, which is 38.372 of the Code of Criminal Procedure. So that's

recommendation number one.

Recommendation number two is that the Court repeal 412 in the summer of 2026, at that point, including leaving a comment about all of the history here to follow. So I think that's everything that's really of any substance. I would be happy to address some other things.

CHAIR TRACY CHRISTOPHER: So did the committee think of redoing 412 to meet the statutory requirements, and why did you decide not to do that?

PROFESSOR HOFFMAN: Sure. So I'll speak -- here's my version of our takeaway. Others from the group can add in. So one of them was, is that the statute doesn't expressly give rule-making authority to the Court, which many statutes do, which is not to say that they all do that, but in this instance, the -- it doesn't, and so we took that, along with the statute's express reference to doing away with -- I'll give you the exact language. The very end of the disapproving of Rule 412 as some signaling effect that our job -- the Legislature -- we thought that carrying out the Legislature's effect would be better accomplished by eliminating 412 entirely as opposed to tinkering with it.

Obviously, we could have gone in a different direction, but given that they have now wholly gotten rid of the statute's applicability for prosecutions commenced

after September 1, that was sort of how we read it. So anyway, that's my takeaway of what the subcommittee decided. Harvey, you want to add anything on top of that?

HONORABLE HARVEY BROWN: We were a little concerned that this is the second time the Legislature has revised Rule 412, and we thought that the Legislature showing an interest in it, and so rather than us changing it now, they revise it again, revise it again, it was easier just to put a comment and saying this is now governed by this statute. That way if they want to change it again, they can, without us having to go through a rule-making process.

And we also thought it was unusual, not only that they, quote, disapproved, which they've done very rarely, and didn't expressly give the Court the rule-making authority, but they -- they could have just said to us, like they've done in so many other occasions, please revise your rules to accomplish one or two or three. They didn't do that, and so it just seemed to us that it was just easier to just let them have the rule. If we want to do the rule, we could just basically copy and paste it instead of -- with one change of the word "article" is in their statute. We just change the word "article" to a rule, and we just copy and paste it.

CHAIR TRACY CHRISTOPHER: All right. Any

discussion on pros and cons? I mean, there's not much we can do, other than the suggested comment or a complete rewrite, according to the statute.

PROFESSOR HOFFMAN: Right.

CHAIR TRACY CHRISTOPHER: So any discussion of the pros and cons of whether we think we should rewrite it in the rule? You know, we would have to have two versions, you know, until the old one was gone, but any discussion on that point? Judge Miskel.

HONORABLE EMILY MISKEL: I was just going to say I think there's plenty of other exclusionary rules that are in statute that are not in evidence rules, and so I don't think it would be weird to leave it out, because there are certainly other exclusion -- it's not like our evidence rules are meant to be a complete source of any and all exclusionary rules.

CHAIR TRACY CHRISTOPHER: Okay. Any other thoughts on this point? Judge Gray.

HONORABLE TOM GRAY: I would do just the opposite. I would include it.

CHAIR TRACY CHRISTOPHER: You would have the two versions.

HONORABLE TOM GRAY: I like having the rule there. We used it -- had to deal with it a number of times at our court, and the lawyers -- I know they're

statutes and I know they should be familiar with the statutes, but it just works better if it's in the rules. They're familiar with the rule, and I don't see any reason that we shouldn't just go ahead and take the statute, redraft Rule 412 to read like the statute, and put it in place, operative as soon as the Supreme Court can make it operative.

CHAIR TRACY CHRISTOPHER: Lamont.

MR. JEFFERSON: I agree with that, and I mean, we're only talking a couple of months, right, since September for there to be parallel rules. So you've got to make --

CHAIR TRACY CHRISTOPHER: Well, it's for cases filed before, so it would take a little bit of time for those cases to get through the system.

MR. JEFFERSON: Understood. Understood.

HONORABLE TOM GRAY: That's statutory. We could make it effective sooner. I mean, there's no reason we can't amend the rule now to match the statute, and it's ASAP make it go into effect, and we could even say, "Legislature, what a brilliant idea, we like it so much, we're going to adopt it ahead of time."

CHAIR TRACY CHRISTOPHER: All right. Any other comments on this? Would the Court like a vote on which way to go?

HONORABLE JANE BLAND: I think we can take it from here.

CHAIR TRACY CHRISTOPHER: Okay. All right. Thank you. Then we are finished with that discussion, and we will move on to the summary judgment rule, which is an interesting one.

MR. ORSINGER: We're picking up steam, picking up steam here this afternoon.

MS. WOOTEN: Don't slow us down.

MR. LEVY: Well, we just got to you, Richard. Can we have the history of the summary judgment rule?

MR. ORSINGER: The first thing I would like to note is the computer that has our display is down to 16 percent.

MS. PATTERSON: I know, I'm monitoring it.

MR. ORSINGER: I can lend you my cord. Okay. Secondly, under the updated agenda, this is page 110, PDF page 110. If you're using the old one, it's page 91, and what happened is the Legislature passed a bill that affected a lot of different things, but one in particular had to do with summary judgment timing, and at the top on the screen you can see the referral to the committee from Justice Bland was to modify the rules to reflect the Government Code's requirement to impose

deadlines on trial courts for considering and ruling on motions for summary judgment.

So Judge Bland's assessment, mine as well, and I think many of the committee, was this was a bill that included a provision to supervise and motivate the judges to dispose of summary judgment motions, but not necessarily for lawyers to file and get settings on them. So this is something we're going to talk about, is the difference between requiring quick action by a judge versus requiring a quick setting by lawyer.

So having said that, let's move on down to what the bill says, and it should be back in a minute, but section 23.03 of the Government Code says, "A business court, district court, or statutory county court shall, with respect to a motion for summary judgment," two things, number one, "hear oral argument on the motion or consider the motion without oral argument not later than the 45th day after the response to the motion was filed." And two, "file with the clerk of the court and provide to the parties a written ruling on the motion not later than the 90th day after the date the motion was argued or considered."

So we have two timetables here. One is the court must rule on a summary judgment motion within 45 days after it's submitted by oral argument or submitted on

the record and must rule within 90 days after the submission. Now then, moving on to subpart (b) of the statute, we need to scroll up a little bit. Scroll down, I mean. If the motion for summary judgment is considered without oral argument, the court is supposed to record in the docket the date that the motion was heard by submission. So that is a starting date. Even if there's no hearing, that's a starting date for the 90-day clock for the court to rule.

Subdivision (c) is that the clerk of the court has to report the court's compliance with these timetables on no less frequently than once a quarter, and then subdivision (d) -- and they need to forward that information to the OCA, the Office of Court Administration, and under (d), the Office of Court Administration is supposed to prepare annual reports on all of the judges and to forward that to the Governor, the Lieutenant Governor, and the Speaker of the House.

And subdivision (e), which is on the next page, scroll down, "Notwithstanding section 22.004, subsections (a) or (b) may not be modified or repealed by the Supreme Court rule." So the timetables that are prescribed in this statute are not subject to the Supreme Court's modification. So that means that we have to consider what to do with existing Rule 166a on summary

judgments while respecting the Legislature's two timetables. One is the court must hear it within 45 days of when the response is filed, and the other is the court must rule within 90 days of when the motion is heard or submitted.

So if you go a little bit further down the page, you can see the current summary judgment rule, and look on (c), subdivision (c) talks about the motion to proceedings and the second sentence, "Except on leave of court, with notice to opposing counsel, the motion and any supporting affidavits shall be filed and served at least 21 days before the time specified for hearing. Except on leave of court, the adverse party, not later than seven days prior to the day of hearing, may file and serve opposing affidavits or other response."

So before we go any further, just recognize that this is a counting backward rule. The response is due to a motion for summary judgment no later than seven days before the hearing. Now, if the motion -- pardon me, if the response deadline is set by the hearing date, then we have a problem with the Legislature's tying the judge's ruling within 45 days of the response being filed when there's no deadline, until there's a setting and then you can count backward to when the response is filed.

I don't blame the Legislature for

overlooking this, because I've struggled with this more than many issues in recent months or years as to how to reconcile this issue about when to start the timetable and do you count forward or do you count backward, and then, most particularly, and I'd like to move on to go down two pages, if you would, to include the no-evidence motion, number (i). The no-evidence motion is the motion where the party who does not have the burden of proof can file a motion against the party who does have the burden of proof at trial and say there's no evidence to support this claim or defense and I want a summary judgment to knock it out.

And that motion is not supposed to be filed until after an adequate time for discovery has gone by, because if it's filed prematurely, you wouldn't expect parties to have all of the evidence they need for a claim or defense.

Now, if you go a little bit further down on the notes and comments, you'll see here about the second sentence, this comment is intended to inform -- on the '97 comment. Now, this comment is intended to inform the construction and application of the rule. "Paragraph (i) authorizes a motion for summary judgment based on one or more specified elements of an adverse party's claim or defense. A discovery period set by pretrial order should be adequate opportunity for discovery, unless there is a

showing to the contrary, and ordinarily a motion under paragraph (i) would be permitted after the period, but not before."

So the comment says that the motion for summary judgment, no-evidence motion, should not be filed ordinarily before the end of the discovery period. The way that this timetable is set, a motion that is a no-evidence motion that's filed, if we are not careful about how we handle the scheduling of the hearing, could require a response and, therefore, a submission and, therefore, a ruling before an adequate time for discovery has passed. So I think we need to be sensitive to that issue.

Now, we had an unusual situation with the summer vacation and everybody being in different places, and this wasn't even assigned to my subcommittee in the first place, but as it turned out, we needed to -- I didn't understand that, because my -- since 1994, when I first started on this subcommittee, it included Rule 166a, and I didn't notice this until my vice-chair pointed out that the summary judgment rule has now been excluded from this subcommittee and moved into a subcommittee of its own, which Pete Schenkkan is in charge of, and Pete is an administrative lawyer, and he doesn't do summary judgments, so --

MR. SCHENKKAN: And just a tiny bit of time. I won't take very much of your time, but it's really going to be worth it. We're in London, where we've gone to see the premier of our older son, the actor's, documentary *Everyone Is Lying to You for Money*, his crypto skeptic documentary; and before we arrived, Ben and his wife, the actress Morena Baccarin, have -- it's been managed so that they and King Charles will arrive at the opening events of the thing simultaneously; and our son greets the King and hands him a copy of the book and winds up on the front page of *The Daily Mail*. And then the moviegoers and a reporter from *Texas Monthly*, who is there to cover the expansion of South By Southwest into London, which isn't happening, they're just following the branding -- pivots to writing a review of the documentary, which is a rave.

So we're a little distracted, and I'm really not -- by the time I'm aware it's the committee I'm chair of that's responsible for this, it's hopeless that I'm going to learn enough about summary judgments to have any meaningful impact in this, so I'm basically just encouraging Richard to run with this.

MR. ORSINGER: Well, and as luck would have it, because of my own failure to notice the reassignment, I jumped on it right away and sent it out to everyone on my subcommittee, fortunately, including some well-spoken

judges as well as practicing lawyers, so I think everything is cool. We're here. We've got things to discuss, but as a result of all of this kind of disorganization, I guess, we don't have a majority view or a minority view. We just have different views.

And since I couldn't put in a majority and a minority, what I did was I took the e-mail correspondence and I broke up, I edited it somewhat for continuity, and I put it in here so you could see the process of the subcommittee and also the opinions and the statements and the counterstatements, and I won't go through all of them extensively. If you've read it before, that's great, but I do want to say we basically have to answer some questions, which appear on page 98 of the old draft.

But let's first go on to paragraph 11, if we can. We're going to need to go several pages here. There we go. Okay. So this was my attempt to try to get a vote, and, of course, it failed. I would present these questions for analysis here in this meeting. We've got to talk about a deadline. The Legislature has given us a deadline that runs from the response being filed, but we don't have a deadline for the response until there's a hearing, which counts backwards from the hearing, and so the question is, well, the only thing we can control at this point is when the response is due. We can't control

how soon the setting is after the response. We can't control how soon the ruling is after the submission.

But these are the questions we have. Do we start the deadline -- do we set a deadline to file a response based on the filing of the motion for summary judgment, or instead, the service of the motion for summary judgment, which seems fair to me, because we have three days normally for any other motion that's filed, or do we set it -- do we start the clock running, the 45-day clock of when it must be submitted, when somebody requests a hearing on the motion. It could be the movant, or it could be the respondent, but the deadline for filing the response could be triggered when someone requests a hearing, or we could just go with what the Legislature did, with the date the response is filed or some other date, and we didn't have a strong consensus on the outcome. I think that's something we would like to discuss today.

The second question is to what degree do we have parties autonomy? Could the deadline that the Legislature gave us be modified or extended by agreement? I think it's pretty apparent that a trial judge doesn't have the authority to do it if they're just acting in their judicial capacity, because the legislation doesn't afford any exceptions, but it does seem to me the parties

might be able to agree that a statutory mandate doesn't apply in their case, for whatever reason. But then remember the policy, the whole purpose behind this statute is to get data on the judges to find out who is timely disposing of their cases and get those reports to OCA and get them out to the public, and so if that's true, then parties maybe shouldn't be fooling with this timetable. Maybe it ought to be rigid, and you're going to have to find some other way to make accommodations in your individual case.

And then question number four is for a no-evidence motion, should the court have discretion to extend the response time or reset the hearing beyond 45 days, where the court finds that an adequate time for discovery has not passed? That was my particular concern. No one else seemed to share that concern with me, and so one thought would be, well, maybe the trial court could strike a motion, no-evidence motion for summary judgment, if it's filed before an adequate time for discovery, and then that gets around all of the extensions. It gets around the reply problem, because if you have a motion and you have a reply, but if the reply is "I haven't had enough time to finish discovery in order to respond to this motion," then we don't want the timetables running from that 45 days, so maybe you file a motion to strike

the -- maybe the court could strike the motion for summary judgment or at least strike the setting. I'm not sure where to go with that. So at any rate, we have -- I'm sorry.

MR. LEVY: They're not off the case or anything, so if they denied the motion, you just file a new one.

MR. ORSINGER: Well, that's a good point, Robert. The trial court, without regard to the merits, could just deny the motion by saying, "I'm denying the motion because it's premature, not because I think it's meritorious."

MR. LEVY: Right.

MR. ORSINGER: Well, okay, that's easier than striking the motion, so we'll keep that consideration for my --

MR. LEVY: Sorry to interrupt.

MR. ORSINGER: Okay. Move on down to page 10. We'll find a proposed rule. We have -- we have two proposals here, and neither one of them is a majority or a minority rule, but this basically is a counting forward deadline that gives a response deadline based on the day that the motion for summary judgment is served. You could say "filed" or you could say "served," but this proposal is you amend the existing rule, "except on leave of court

or by agreement of the parties," and that may be objectionable. It may be that we don't want agreement of the parties, because we may want a rigid framework here to measure the performance of our judges and not allow the parties to agree, but then if you say "on leave of court," well, the judge could give themselves an extension of the deadline.

Be that as it may, the proposal would be "Except on leave of court or agreement of the parties, the adverse party, not later than 21 days before the motion" -- "21 days after the motion is served may file and serve opposing affidavits or other written response." There did seem to be a discussion on the subcommittee whether it ought to be 14 days, 21 days, 30 days. We don't have a consensus on that. That's a point for us to discuss today, but this proposal settled on 21 days after the filing, not counting backward from anything. Counting forward from the filing.

And then we have the deadlines that came right out of the statute about the deadline to hear the submission, 45th day after the response was filed, and to rule 90 days after submitted. Now, this raises the question of when do you give notice to the court. Surely you must give notice to the court that a response has been filed, even though there's no setting, and so one

suggestion was tell the court when the petition is filed and then tell the court when the response is filed, and then someone said, "I don't need to hear about all of the motions that are filed." Some motions are filed just for tactical purposes. Some cases settle after a good motion is filed. I don't want to hear about the motion. I want to hear about the response, because the response is when the court's timetable starts. So it's something for us to consider.

On the next page, we have a proposal that would address the question of the no-evidence motion. The time deadlines in subsection (c) shall apply, except that when a motion is filed and a setting is requested before adequate time for discovery, the court may set the motion for hearing or submission on a date that is after an adequate time for discovery. Now, that's one possibility. Robert has suggested just deny the motion. Another one is to allow a court to reset it, so that's for us to discuss today.

The next page is proposed revision two, and proposed revision two is really basically just the statute put into our current rule, and one of the problems with just taking the statutory deadlines and putting it into the current rule is that the response is not due until there is a setting, and so you have to file a motion and

get a setting before there is a response, and then the setting (sic) is due seven days before the setting, and it's problematic as to the fact that the -- somebody, whoever doesn't -- whoever decides to get a setting or not get a setting is the one that triggers the timetable, and so that's not very workable.

I think we need to discuss the possibility of whether we want to force a response, which is really the only deadline we can control is -- that the court can control or what kind of latitude we want to give to the parties, and do we want to require a hearing within a certain period of time of when the petition -- when the motion is filed. So those are kind of the issues we discussed, and I would invite the Chair to open the discussion for the committee members to state their positions on these issues that we've got lined out.

CHAIR TRACY CHRISTOPHER: All right.

HONORABLE DAVID EVANS: The advice on this rule has always been that the response is seven days before the hearing, and so counsel calls up, gets the coordinator, sets the hearing, goes and finds the post office on the north side of Fort Worth to drop it into, and mails it with the hearing setting.

MR. ORSINGER: Right.

HONORABLE DAVID EVANS: Which sets off a

race for discovery discussions and everything else. Would the committee consider a rule that says that upon receipt -- upon the filing of the motion, the trial judge has 10 days or 14 business days to issue a scheduling order, setting the response date, the reply date, whether the case will be heard orally or on written submission. It will give the trial judge control of his or her calendar and allow them to program it in.

The second part of that motion should be that the respondent will have 10 days to object -- the parties will have 10 days to object to the scheduling order. Once it's on the court's calendar and docket in that fashion, everybody knows whether it's coming up on written submission. As a trial judge, what you could expect is a response would come in on seven days, and I mean just midnight type stuff, and it would be that high, and it would go with all of the mushroom feeding papers. And then the reply would come in, of course, because we're in the business of taking coup in the courtroom, would come in at 11:00 a.m. on an 11:30 hearing. You know, and the trial judge has never read a single word of it by the time it gets there.

So if the trial judge established the scheduling order on a summary judgment motion, which are dispositive, the trial judge then has control of the

calendar and has the opportunity to be prepared for argument or written submission. This order, by the way, that if you use it, establishes all of the data that OCA and the clerks need to report as to the response date, the submission date, the oral date, and the calculation, and could probably be put into the two main trial scheduling softwares that are available for civil litigation and family litigation in the state.

So I would just restructure the rule, and I don't think that violates the Legislature. I'd just put the burden on the trial judge to establish a schedule within a certain amount of days. Now, I may be running afoul of the Legislature, but that's it.

MR. ORSINGER: Well, I think that that would work, except that we have a directive from the Legislature that it must be set for submission no later than 40 days after the response is filed, so whatever latitude you give to the trial court to schedule a scheduling order, the responding party, by filing that response, triggers a 45-day clock that the Supreme Court can't shorten.

HONORABLE DAVID EVANS: Yeah, but the trial judge is controlling the response by setting the response date that it's due.

MR. ORSINGER: That's the deadline, but that's not the -- that's the latest, but not the earliest,

so if I'm a respondent and the judge sets this off six months --

HONORABLE DAVID EVANS: On the day I get an earlier response, I'll call. I will be the first one to call you, Richard, and we'll celebrate that moment --

CHAIR TRACY CHRISTOPHER: All right. Let me --

HONORABLE DAVID EVANS: -- but believe me, the trial judge can figure out how to set a hearing. No hearing is going to be less than two weeks after the response, and the trial judge is -- knows or should be educated by the Center for Judicial Education that in the scheduling order they're going to have to set that submission date, oral or written, by X date, within that date.

The whole rule structure is not conducive to a considered decision, because the reply can come in to you at 20 minutes beforehand, and so anybody that really thinks about these things just abandons the rule and starts setting them so they can read the file before -- I know that's a new idea, but we'll try it -- before you hear the argument and you do your written submission, and then you have the liberty, if you do written submission, if you need argument, you can call for it. You can do it all before the deadline. I mean, hopefully, you can.

CHAIR TRACY CHRISTOPHER: Pete, and then Judge Miskel.

HONORABLE DAVID EVANS: Huh?

CHAIR TRACY CHRISTOPHER: I'm calling on Pete and then Judge Miskel.

HONORABLE DAVID EVANS: Yeah, excuse me.

MR. SCHENKKAN: So I think this works, and what I want to focus on is you've got two sets of time limits in here, two of them imposed by the Legislature and two of them imposed in our existing rule. The two that are set by the Legislature we've got to follow. The two that we already -- we. The Court, with whatever attention it paid to our previous discussions of it, set, the Court gets to change, and that, I think, is all we need to know because the two that the Court gets to change are when is the hearing or consideration date. The court gets to set that. The Legislature hasn't attempted to say when that has to be. And the response date. The hearing date that the court sets has to be no more than 45 days after response date, but the court can tell you when the response date is going to be.

HONORABLE DAVID EVANS: And we can say in the rule when the reply is due.

MR. SCHENKKAN: And, therefore, so it seems to me what we really ought to wind up doing is working --

now that we know what we have to do, we have to wind up with a response date that works with the hearing date, that works for the court and the parties. And by works for the court and parties, we mean there's a reasonable amount of time between the time the motion is filed and the response date. There's a reasonable amount of time between the response date and the reply, as long as it's not 45 days. You can't use up all the time, but another week or something for a reply and then the hearing and then there's some time left, essentially.

HONORABLE DAVID EVANS: They're going to pay attention to this because they've got -- they've got these reports on performance that are coming in, and they don't want to miss any deadlines at this point. This is another one of these deadlines that's going to go into factoring whether they're an underperforming court and need a mentor.

CHAIR TRACY CHRISTOPHER: Judge Miskel, and then Tom.

HONORABLE EMILY MISKEL: So what I was going to say was, initially when I saw this, I thought we were going to have to micromanage and revamp the entire rule because, as Richard mentioned, one is a going forward deadline and one is going back, but I was actually really persuaded by Giana's -- is she still here?

MS. ORTIZ: Yes.

HONORABLE EMILY MISKEL: Oh, there you are. Okay. Response, which I think became approach two, but I found your response e-mail very persuasive, and I don't want to put you on the spot, but do you want to explain why you thought that was a better way to do it?

MS. ORTIZ: Sure.

HONORABLE EMILY MISKEL: Because I felt the opposite and then I read your e-mail and changed my mind.

MS. ORTIZ: Well, thank you. So my memo is in the packet at page 122 of the PDF, and in short, obviously, we must incorporate the 45 days from the date of the response time line and then the 90 days thereafter on the ruling. However, I do not think that that mandates or requires the Court to add a default response date, and I would suggest that keeping practice the same for the lawyers is possible, and in that part of it, it is currently working. I think, I believe, I watched some of the hearings, and I couldn't actually find testimony on this point. However, what I have heard from the Bar is that judges will sit on a ripe summary judgment and not rule on it until the day before trial or something, when it's kind of -- you know, we've already done all of the work to get ready, and so we want those prompt rulings so that we can hopefully avoid the expense of further

litigation.

And so by keeping the practice the same, i.e., response is filed seven days before the hearing, the statute is still invoked. Like it's not meaningless. It's not rendered meaningless by keeping that part of the practice the same, because very often the hearing will be passed by a party or the court will have trial and have to reset the hearing on its own, and right then, then we start counting the 45 days, and so we have to have the hearing. We can reset it, but only within that 45 days.

So I'm in agreement with all of the work that Richard and the group has done, but I would suggest that the Court consider the rule amendment, but not adding a default response date of 21 or 14 days.

CHAIR TRACY CHRISTOPHER: Tom.

MR. RINEY: I don't like the statute for a lot of reasons, and mainly because its purpose is to create statistics. It's not about whether or not good motions for summary judgment should be granted or denied, and I think that these deadlines may lead to that. Okay. I can deny your motion for summary judgment. I get a good report and go on. I think -- I understand what you're saying, but I think I would kind of like a rule that says the response is due within 14 days, 21 days after the motion is filed.

The statute says the Supreme Court can't enter a rule to extend the deadline for when you're going to have a hearing or submission or when you're going to have a ruling after that. It does not say the parties couldn't agree to extend that response time. So if you have parties where it's a complicated motion, if you had a deadline for the response and it was a complicated deal, you know, you get over to problems with the hearing date, perhaps the parties could agree just to extend that response date and, therefore, give the parties some additional time to get it before the court.

I don't know what you do, though, if you've got a response, you go to a hearing, and there's a jury trial that took longer than everybody thought, and you simply can't get reached. I mean, what happens is you're going to lose your opportunity to have an oral argument if that's the way it's going to be. So I think there's a lot of problems with it, but I do think there is a possibility the parties can help by some agreement.

CHAIR TRACY CHRISTOPHER: Harvey.

HONORABLE HARVEY BROWN: I like proposal number two, but I want to suggest a couple of tweaks to it. First of all, I probably was not as sympathetic to this as I could have been earlier in my career, but I will say that doing mainly plaintiff's work, when you get a

motion for summary judgment kind of out of the blue and you only have 14 days to respond, my life changes. That's about all I can do for the next two weeks, and it's often a bit of a crunch. I know one of the federal courts gives you 21 days. I would suggest that 21 days would be a better, fairer time.

The defendants often -- and I'm using defendants, just because generally they file more of these, but it's both parties, obviously, but the moving party, I should say, could work on these motions for months before they file them and then I only have 14 days, and I, frankly, think that's unfair now that I have been on the other side of the docket in a lot more of my cases.

Second, I think it's unfair to the movant -- excuse me, to the respondent, when a reply is filed midnight before the hearing or 20 minutes before, and it's unfair to the judge. I think we need to put a deadline for the reply, so I would suggest we have 21 days for a response, and then the reply should be filed at least three days before the hearing. I think that just makes it better for everybody all around.

I think part of what the Legislature is trying to do is not only get judges to rule, but to get these off the docket, and so if we just leave it that it turns on the date of the filing of the response, that

might kind of destroy all accountability, because the judge could set that summary judgment hearing a year away. So I think what we should do is, upon a request in writing from the movant, the judge should have a deadline to set it within whatever we think is fair. 45 days, 60 days, whatever. But that the judge should have to set it rather than letting it languish on the docket for nine months, and I do hear complaints about that from parties.

CHAIR TRACY CHRISTOPHER: Judge Estevez, and Roger.

HONORABLE ANA ESTEVEZ: So I just wanted to bring up a different issue. So if I had someone call and say they wanted to schedule an oral argument, and they want two or three hours for my motion for summary judgment, so I have to go out 75 days, and so I set my hearing at 75 days, so, technically, they would have seven days before, but they decide, whoever the other opposing party is, that they don't want oral argument. They can just file their response three weeks later, and then I have to rule in 45 days, even though my hearing is after those 45 days.

So the statute says, specifically, it's after the response is filed. So we have to figure out a way to control when that response is filed. Whether that -- and they can agree. I don't have any problem with

the parties agreeing to move it or they -- asking by leave of court if they can't agree to move that response date, but I think that the only way we can really, in every instance, satisfy the statute one way or the other is by having absolute, you know, the response date is the date that somebody tickles the court and has to let the court know that a response has been filed, and so that we could put it down for 45 days to know that at that point we have to either rule on it by submission automatically, because nobody ever set it for hearing, or set it for hearing within those 45 days.

CHAIR TRACY CHRISTOPHER: Roger.

MR. HUGHES: Well, I think, Judge Brown put his finger on something that I'm about to comment on, is this whole sleigh ride starts when the nonmovant is forced to file a response, and what I suggest and ask the committee to consider is maybe working with the rule for asking for continuance of the setting, because, right now, your response is pegged to the setting, be it written or oral, and what I see all too often in my practice, if you are the nonmovant and you think you need discovery, it's almost impossible to get a deposition in in time and get it transcribed and filed as part of your summary judgment evidence seven days before the hearing.

So you file -- so, out of protection, you

file both a motion for continuance, hopefully well-supported, and file a response in case the judge says no way you're going to -- this -- you're on the sleigh ride. The date's not getting put off. You know, I might give you a day or two extra to get your stuff in, but that's it.

Or what I see all too often is the judge goes, oh, I'll take both under written submission and tell you later, and then you're -- then everybody is kind of up in the air. So what I suggest maybe is taking a look at getting a ruling early on a request to continue the submission date to gather evidence, be it for a no-evidence or for an evidentiary motion. Because I'll tell you what I think the alternative is going to be, the result is judges are going to just be mainly concerned about not being on the slowpoke report. That's what the feds calls it, the slowpoke report, because you'll never get a chance to explain the reason why I didn't rule on the motion was -- you know, in lieu of the deadlines was this. That's all -- you know, that's all they're going to report, not your reasons. So what we may get a lot of, what I call pro forma denials, which say basically, "I'm going to deny your motion without reference to the merits, with leave to renew it at a later date." The judge's deadlines are solved. The nonmovant is saved from

destruction, and the movant is left going, well, what are we going to do down the road when I refile my motion.

So my suggestion is that one way to deal with this, or to deal with this, is to take a hard look at getting a ruling for a continuance of the submission date, ruled on early in the game so the respondent knows he's either going to have to file a response or they've got some breathing room, and that's my comment.

CHAIR TRACY CHRISTOPHER: Judge Kelly, Judge Evans, Judge Miskel, Lamont.

HONORABLE PETER KELLY: As long as it's open season on 166a, my beef is actually that special exceptions are allowed on summary judgment motions. The nonmovant files special exceptions, but there's no way to enforce it; and I found in private practice, and on the bench, sometimes you don't know what the grounds of the summary judgment are, because they can say -- I had one that was traditional motion for summary judgment, evidence attached. The prayer for relief was traditional motion. The proposed order was traditional motion, but they had a subsentence in one footnote that said -- and it was all on duty, but it was "And there's no evidence of causation," just sort of stuck in a footnote. Was that a whole separate no-evidence ground being asserted? And had there been a meaningful special exception process, I would have

specially excepted to the motion for summary judgment and said "specify the grounds so I know what I need to respond to," and I don't know if Harvey has encountered that in his new found plaintiff's side practice.

HONORABLE HARVEY BROWN: Yeah.

HONORABLE PETER KELLY: But it is frustrating sometimes when you can't figure out what the grounds are, and in a perfect world, I would actually say when there's issues presented in an appellate brief, if you're going to move for summary judgment, you should state your grounds upfront, so the judge knows what they're looking for, so the plaintiff knows who to respond to, and so the court of appeals knows what it's reviewing when it finally gets it. It's a little more of a burden on a movant, but it streamlines the judicial process going forward.

CHAIR TRACY CHRISTOPHER: Judge Evans.

HONORABLE DAVID EVANS: One size doesn't fit all. The motion filed by Kelly Hart versus a credit card lawyer versus a motion filed by Richard Orsinger on characterization of property are totally different. We have enough deadlines with 91a venue and everything else to make sure we never try another case.

Now, the problem here is you're grading people and putting their careers on the line, and you need

to give them an opportunity -- there should be a deadline, Harvey, on how long out you can set the hearing.

HONORABLE HARVEY BROWN: I agree.

HONORABLE DAVID EVANS: You can't let it go for a year, and I never would have suggested any idea like that, but if I get a motion in that is this big, and when I look at it, it has all of the structural integrity of an add-on travel trailer where some God dang committee in some large law firm just kept adding on counts and I've got to make up a decision tree to go through it, I may choose to give the respondent maybe six weeks to get a response in that will nail that sucker down.

MR. HARDIN: That's a hell of an analogy.

HONORABLE DAVID EVANS: And, well, they look like that. You can just tell they're almost headed out the door. All right.

HONORABLE ROBERT SHAFFER: Where are the Kelly Hart lawyers here?

HONORABLE DAVID EVANS: Oh, I'm sorry, riding all the way back with me.

HONORABLE DAVID KELTNER: That's right. You're in trouble already.

HONORABLE DAVID EVANS: But that's a fact, and so let's give these folks -- let's grant them some discretion. As for certainty for lawyers, there's nothing

more certain than a scheduling order. It tells you exactly what you've got to do. You can pump those out.

Now, if you wanted to encourage the denial of a summary judgment, it's not going to have any comment about come back later. It's going to be just denied. There's no appeal off of it. You've met the requirement. You've done your job. So you want to try a few lawsuits, do that.

CHAIR TRACY CHRISTOPHER: Okay. Judge Miskel.

HONORABLE EMILY MISKEL: I was going to say --

HONORABLE DAVID EVANS: All right. I want to go home. Hold on. I'm sorry, Chief.

HONORABLE EMILY MISKEL: I was very persuaded by what Harvey was saying. I was buying what he was selling that the movant has infinity time to work on their motion and then if, by setting a deadline for the response, then we cram in a very short period of time, so I thought you were going to argue more for approach number two and not setting a response deadline, but then I heard you say it should just be 21 days instead of 14.

I would push even further to say a lot of people file summary judgments that don't want them ruled on right away, and nobody should have to do any work until

the movant requests a hearing, and so that's why I was persuaded by Giana to approach number two, is because I don't think we have to set a response deadline. There are many times they are filed strategically, or no one really wants to move forward with them or whatever, so wait for the movant to actually request action on the summary judgment and then you can still count backwards, and it may be exactly what Ana said, that a game playing nonmovant could just file basically an empty response the next day and cause it to have to be ruled on in 44 days, but they don't have any burden at all. Like, I kind of support that game playing, so I'm not sure that that's necessarily a problem and not a feature.

HONORABLE ANA ESTEVEZ: I might not know that -- so it's going to sit in my -- it's going to sit in my queue. I won't know the response was filed.

CHAIR TRACY CHRISTOPHER: All right. Lamont.

MR. JEFFERSON: I'm also going to jump on Giana's bandwagon. I mean, it seems to me like what the Legislature is trying to do here is say when both parties think there is a rule of law that needs to be ruled on, judges need to rule in a reasonable period of time, but if the parties don't think that it's ready to be ruled on, there's no reason to force it. There's no reason to have

a deadline to have a hearing or submission date or anything else.

And you're right. Summary judgment motions get filed for a variety of reasons, in a variety of times throughout the case, and lawyers don't think they'll ever get filed, but there's a lot of reasons why you would still urge the -- or file your motion and lay out your arguments. So I would have everything spring off it, just like it does now. The response deadline is fine. Seven days before the hearing is fine. It's a matter of law. You shouldn't need that much time to be able to raise a fact issue, if the only thing you're questioning is whether there is a real legitimate genuine issue of fact that needs to be tried, these aren't that hard. They shouldn't be that hard.

Yeah, there's a lot at stake, but the procedure, I think, has worked pretty well, and what the Legislature is focusing on is it does happen too often that a motion has been filed, it's been set, it's been heard, and then nothing happens for many, many months. That's the point where I would -- if I were a Legislature, I would say that's where we can get involved and urge judges to do something.

CHAIR TRACY CHRISTOPHER: Quentin.

MR. SMITH: I just want people to think

about the judge's control over the hearing date. I know people have mentioned it, but just because you set something for a hearing date doesn't mean it doesn't move. It moves all the time, and part of the problems we have in Harris County is just getting a hearing date within a reasonable time. Sometimes eight months for a summary judgment, right. That makes it ridiculous at that point. That's just a thing that's going to happen, so, I mean, even if you set a hearing date, it's -- you only have 14 days, you just call up the clerk and say, "Hey, I'm not available for that hearing date," and it just gets moved. So, I mean, I don't think that -- I think the proposed revision for two is fine, because all of this rush is not going to be that much of an issue if you just call the clerk up and move the hearing date.

CHAIR TRACY CHRISTOPHER: Harvey.

HONORABLE HARVEY BROWN: To be clear, Judge Miskel, I like number two, but what I wanted to change in number two is the first sentence. Or, excuse me, second sentence, where it says, "shall be filed and served at least 21 days." I want to make that 30 days. I want to give an extra week, and then I want to put a deadline in for the reply.

And to Judge Evans' point that there needs to be some deadline, I don't care if it's six months, but

I just think there should be some deadline that the judge should meet, because, otherwise, if you just have it totally off the response date, that response may not be due for a year.

HONORABLE DAVID EVANS: Remember, my proposal first structured it that the court would enter a setting order within 10 working days or two weeks of the filing of the motion.

HONORABLE HARVEY BROWN: Right, but what if they set it for a year?

HONORABLE DAVID EVANS: Well, that's what I acknowledged that you had a good point about, but the setting must be within so many days of the filing. Scheduled, so if you're looking at a trial judge and you've got a series of special settings coming and you've got some credit card summary judgments, well, you can set those pretty easily without a whole lot of thought. You can knock those off, but if you do have the large summary judgment motion, you know on the other side they're going to need plenty of time to respond, and you know that you're going to need plenty of time to read it.

I don't know why you think -- you concentrate so much on what the jury will hear, but you rarely concentrate on what the judge will hear. Do you really think you can read a response filed in seven days

when you don't have a clerk or anybody to brief it for you and you're in the middle of a trial schedule? I mean, it's just -- it's just scandalous. It doesn't even make any sense. And it is designed to fail, the way it's set up and practiced.

CHAIR TRACY CHRISTOPHER: Let me hear from a few new people. Rich.

MR. PHILLIPS: So I don't know what the recent statistics are as to how many cases, and it varies, I'm sure, county to county, but if the judge doesn't have time to read the summary judgment motions, then we're going to ask our district judges to comb through their thousands of cases and notice when somebody files a summary judgment motion and then within 10 days set this? I mean, I'm not sure that's a practical solution to this problem to put this on every district judge to find summary judgments when they get filed and enter a scheduling order every single time. I understand where he is coming from on that, but I don't see that as being a practical solution. I think I'm in favor of two. I think the parties have got to focus on getting the hearing set and then let's work on the deadline.

CHAIR TRACY CHRISTOPHER: But two does not cure the problem that a judge won't give you a hearing for eight months.

HONORABLE DAVID EVANS: Right. Yeah. That's a problem.

HONORABLE EMILY MISKEL: But if you think about it --

CHAIR TRACY CHRISTOPHER: We have some new people on this side. Go ahead.

MS. GILLILAND: I'm thinking along -- as a clerk, I'm thinking along the lines of our reporting requirements, and I don't want to see our judges on the slowpoke report. Is there a way that you could craft it to where the response, while it has a due date, it also has a cannot-be-filed-before date? So, Judge, when you're managing your docket, you say 45 days, but if we say you can't file it any earlier than five days of whatever the deadline is, your court coordinator is looking at a 40-day window, and you can't games -- it would probably be unintentional to say, hey, we've got our response, we're ready to go, but that way you're not triggering that 45 days accidentally, and the judge is kind of left in a corner, and now they're on this report that says they didn't timely decide this matter.

CHAIR TRACY CHRISTOPHER: Jim.

MR. PERDUE: I'm going to join in the strong preference for proposal two. I think you can honor the Legislature and what they were trying to get at, which is

ruling on something that's been submitted, without this massive reengineering. So, thank you, Ms. Ortiz, because I completely agree with your memo and the elegance of the solution.

This issue, I believe this is Senator Hughes' bill, is -- it's metrics on the backside of the judge, and there's a lot of conversation about that. I don't think that this was -- I don't think that the impetus behind this was the idea of not being able to get a hearing on a summary judgment in eight months. That may be true in some courts, but, fortunately, I think that is a very, very small -- if true, a very small instance. I think the bigger problem is a submission that has actually been heard and you don't get a ruling, and the ruling report on this deadline is achieved in proposal two without -- I mean, Judge Evans is dead right. There are summary judgments that are different. A no-evidence summary judgment that is hard to discern, but you're going to have to file a ton of stuff in response to be able to satisfy the -- while you're not supposed to have to marshal all of your evidence, that's exactly what you want to do, because you can't lose that.

Or, you know, in complex litigation, you can have somebody -- just like Judge Evans described, you can have a 75-page motion for summary judgment with a thousand

pages of attachments, on a traditional; and the idea that a response to that, which is supposed to be coherent and cogent, needs to be filed within 21 days of its filing; and then the court is going to need to assimilate all of that under some schedule that is invoked by the response date alone, where the parties may just be trying to tee something up, and all they want on the other side of the submission of it is a ruling. So I think proposal two achieves the purpose of the bill, and it achieves the idea of getting a ruling.

CHAIR TRACY CHRISTOPHER: Judge Schaffer.

HONORABLE ROBERT SCHAFFER: I would love to see us be able to rewrite this rule, because as a trial judge, I agree with what Harvey was saying about the 21 days. I had a hearing one day where I had three motions for summary judgment, the same case, and the total pages of all three motions was 140 pages, with thousands of pages of exhibits. Now, it was held off docket. It wasn't held within 21 days or anything like that, but I think the 21-day rule is ridiculous sometimes.

But if we were to just set the requirement to decide by 90 days after the hearing, the consideration, submission or hearing, and let the rest of the rule stay as it is, would that still not be in compliance with the 45-day requirement? I think it is, but it wouldn't give

consideration to the 45-day requirement because it wouldn't be any 45 days in the rule itself, but that's just my simple thought.

Full disclosure, I'd be on the slowpoke report on a lot of these summary judgment motions, because of the length of them sometimes, but they got hearings in my court, and they got hearings timely, but the 45-day thing is the thing that bothers me the most. The 90-day requirement to decide does not bother me as much. I can see where that would be a good idea, and so I think your ideas are good, and probably the second alternative is much better than the first.

CHAIR TRACY CHRISTOPHER: All right. Let's have some votes, nonbinding votes. The first thing that most people have expressed is that 21 days is too short. All right. 21 days' notice of a hearing is too short. So I want to see -- at least the people who have talked about it say too short. Harvey has suggested 30 days as sort of the minimum. Who agrees with Harvey that that setting should be changed to 30 days?

MR. SCHENKKAN: As long as we're not prejudiced in suggesting that perhaps it should be longer or decided on an individual case by the judge after the judge sees what kind of motion for summary judgment this one is.

CHAIR TRACY CHRISTOPHER: All right. Then we're going into Judge Evans' --

MR. SCHENKKAN: Because some of them are really short.

CHAIR TRACY CHRISTOPHER: Okay. It's pretty nearly unanimous. I didn't count. Most people think our current rule of 21 days is too short, no matter what we do with respect to the legislative guidelines. So then it sounded like we had consensus that most people liked version two, where -- and that the failure to get a hearing is an outlier. That's not what I'm hearing in Harris County, but, you know, we're writing a rule for the whole state; and if you can call up and get a hearing in two months, then, you know, you can get a hearing in two months. I don't know. Judge Evans, what do you think on that?

HONORABLE DAVID EVANS: Well, we have -- we have plenty of deadlines, like 91a, that we know we've got to trigger and get a decision in. So I guess I'm not going to cross that when the motion comes in, it's automatic that you've got to get it set within a certain period of time and you've got to set the schedule for it.

CHAIR TRACY CHRISTOPHER: Right, but that's not the way it is currently. Currently, you call up and say, "When's your next summary judgment hearing," and the

judge says "three months," and you send out a notice of hearing for that date.

HONORABLE DAVID EVANS: I don't think there's any problem on getting a hearing on a summary judgment in 60 days, if that's what you're asking me about docket. I would say sometimes, most of the times, 30, but we've got to give time for a response, so we've already built in the 30.

CHAIR TRACY CHRISTOPHER: Right.

HONORABLE DAVID EVANS: So I don't see that as an issue.

CHAIR TRACY CHRISTOPHER: All right. So how many people think we should stay with, essentially, version two where it keeps the old system of calling up the court clerk and/or court coordinator, clerk, whoever, and saying when is your next available date for a hearing for a summary judgment and then working from there? Who wants to keep that system in place? Take a count on that.

Well, that's -- I was about to say it's closer, but, no, that's pretty close to everybody wants to keep that system in place also.

Okay. So we change the 21 days to 30 days. We keep the current system of calling up and getting your hearing date. What else do we need to -- and then we put

in the rule you've got to rule within 90 days after that. Do we want to add in a reply deadline, since everybody was concerned about that, while we're tinkering with the rule?

HONORABLE ROBERT SCHAFFER: Yes.

MR. SMITH: No.

CHAIR TRACY CHRISTOPHER: Okay. All right. Yes, Judge Estevez.

HONORABLE ANA ESTEVEZ: We have to have something that triggers our 45 days. So we have to have somebody let us know that a response was filed.

CHAIR TRACY CHRISTOPHER: No, if you -- let me ask you, how does somebody get a summary judgment hearing in your court?

HONORABLE ANA ESTEVEZ: Well, they call, and they ask for a certain period of time, and it wouldn't be within 60 days if they're asking for three hours. It would be if they're asking for one hour, but, you know, my hearings are way out because of all of my trial dockets.

CHAIR TRACY CHRISTOPHER: Okay. So you would give them a date in 60 days.

HONORABLE ANA ESTEVEZ: Right.

CHAIR TRACY CHRISTOPHER: And then the response would not be due until seven days before that hearing.

HONORABLE ANA ESTEVEZ: Right.

CHAIR TRACY CHRISTOPHER: Under our current rule.

HONORABLE ANA ESTEVEZ: But if they file it, that response, before that, I won't know when my 45 -- or if they move that date. They can move -- they move the hearing dates all the time, because somebody is going to ask for additional time, so then they ask me again. They've waited two months, and they say, well, we need another two months. So for whatever reason, it's moved, and I don't know if a response was filed or not. They just needed one week, and, you know, they're filing their response, but they moved it out five or six weeks.

I need something to know when this 45 days starts if I'm going to be held accountable for this 45 days. I know when the hearing was, whether it was by submission or not, but I need to know when that response was filed, because if anything else moves and we're keeping everything else current the way it is, they can move it, they can call me, and I will ask -- I bump people. You know, I plan a vacation, and I bump them, and I don't get a visiting judge to just hear a motion for summary judgment just to get a whole bunch of objections.

HONORABLE DAVID EVANS: Well, they don't want you to, because they filed the motion in front of you, and so when you -- so you don't get a chance to

schedule it. They schedule it based on their schedule.

HONORABLE ANA ESTEVEZ: Especially if it's by submission.

HONORABLE DAVID EVANS: And so the court coordinator has to come back to you on summary judgments and --

CHAIR TRACY CHRISTOPHER: Judge Evans, I like your plan, but I think you're in the minority.

HONORABLE DAVID EVANS: I know it, but, you know, this is what I did, because I just set submission, and I get my stuff 14 days before the summary judgment so I could ask questions, and it was done.

CHAIR TRACY CHRISTOPHER: Richard, and then Judge Miskel.

MR. ORSINGER: To solve the problem of the early filed response, we could look to Rule 296, which has to do with the deadline for filing findings of fact and conclusions of law, because the rule is, is that the court has to file their findings of fact and conclusions of law within 20 days after the judgment is signed, but that's only if the request is made, who shall immediately file with the clerk, who shall immediately call the request to the attention of the judge who tried the case. So we could just have a standalone sentence or a phrase that when a response is filed the clerk will call it to the

attention of the court, and that way, if there's an early response, Judge Estevez will know that her clock has already started. We can do that.

CHAIR TRACY CHRISTOPHER: Judge Miskel, and then Rich.

HONORABLE EMILY MISKEL: Yeah, that's what I was going to say, so --

CHAIR TRACY CHRISTOPHER: Okay. Rich.

MR. PHILLIPS: The reference to what happens with late-filed findings and the fact you have to give notice and you can waive gets me to another question. What happens if the 45-day rule isn't complied with? What's the consequence?

HONORABLE ANA ESTEVEZ: We get in trouble, and we get a mentor.

MR. ORSINGER: I don't think it -- I don't think that affects the parties' rights.

MR. PHILLIPS: Well, that's what I'm trying to understand.

HONORABLE ANA ESTEVEZ: It's judicial accountability. This is all about judicial accountability.

MR. PHILLIPS: So it's only judicial accountability?

CHAIR TRACY CHRISTOPHER: Correct.

MR. PHILLIPS: It's not clear to me what the consequence is.

MR. ORSINGER: It also gives you a foundation, if somebody has had it under advisement for six months, you have a foundation for a mandamus.

MR. PHILLIPS: Well, that's the 90-day one, and that -- that piece, to me, is a lot easier to understand the consequence for, but the 45-day rule of I want a hearing, it's my motion, I can't get it. It doesn't get set. Now what do I, as the movant -- what's the consequence of that?

HONORABLE EMILY MISKEL: So --

CHAIR TRACY CHRISTOPHER: Judge Miskel.

HONORABLE EMILY MISKEL: What I was going to say is part of the judicial accountability bill that passed said it counts as willful and persistent misconduct for a judge to violate these deadlines.

HONORABLE MARIA SALAS MENDOZA: It's the official misconduct definition that has the performance measures under, and you could be grieved for willful and persistent misconduct.

HONORABLE EMILY MISKEL: But it says, like, violating deadlines now puts you in this judicial misconduct.

HONORABLE ANA ESTEVEZ: See, and that's not

fair, if I don't have control over that, to be judged for that.

CHAIR TRACY CHRISTOPHER: So you're going back to Judge Evans' that you want to control?

HONORABLE ANA ESTEVEZ: Well, I was just -- and it wasn't because I want it. It's because I don't see how it can actually work without it.

CHAIR TRACY CHRISTOPHER: Harvey.

HONORABLE HARVEY BROWN: I think that may be an academic problem more than a reality problem, because I can't see anybody filing a response 45 days before the hearing. You're going to file your response seven days or 10 days, whatever the rule is, at the last minute, because if I do it 45 days before the hearing, what do I benefit from that? Nothing. What does the other side benefit? Well, now they're going to file a reply that's a hundred pages, and they're going to file, under the current rules, the night before the hearing, and they're going to object to all of my evidence, and I'm going to have no time to respond to cure potentially technical defects in my summary judgment evidence. So I just don't think it's going to happen that anybody is going to file a response 45 days before a hearing. They're going to file it seven days before the hearing. The real question should be the reply so that you can at least address the reply or know

the reply is coming before you walk in the door.

CHAIR TRACY CHRISTOPHER: Well, if we did that, we would have to -- it would have to be, like, 37 days or 40 days.

HONORABLE HARVEY BROWN: Actually, I think 40 is a better rule, but I was going to be happy if I got 30.

CHAIR TRACY CHRISTOPHER: So 40 days' notice of the hearing, response due at day 30? No.

MR. ORSINGER: 10 days before the hearing.

CHAIR TRACY CHRISTOPHER: 10 days before the hearing.

HONORABLE HARVEY BROWN: 23 days, and then reply --

CHAIR TRACY CHRISTOPHER: Reply due --

HONORABLE HARVEY BROWN: 30.

CHAIR TRACY CHRISTOPHER: Three days, or do we want --

HONORABLE HARVEY BROWN: 37.

CHAIR TRACY CHRISTOPHER: Do we want reply a week, a week? So if we have one week, one -- that's 50 days. If the reply is due the week before the hearing, the response is due the week before that, then the motion, and we want -- we want to have three weeks to file the response, that's 50 days. Lamont.

MR. JEFFERSON: I mean, a response seven days in advance I think is fine, and reply the day of, the day before is fine, because the judge has discretion to say, "I've got now 45 days. I'm going to give you a chance to file a response to the reply brief." Happens all the time. So if you show up at the last minute with some kind of a surprise, the judge has the ability to handle that, and, again, we're talking about, you know, situations that should be decided as a matter of law. So it's a matter of research. It's not really a matter of fact, or shouldn't be a matter of fact, with the speed of it is, you're in a jury trial setting.

So, I mean, again, I think that the keying it off of the response date is fair for everybody, because if you have a response date, that means you have a hearing date, and once you have the hearing date, then you know what all of the deadlines are, and everybody has agreed by that point. If I'm not filing a response, it's because I'm not ready to file a response, and so the first thing I'm going to do when I get the motion is file the motion for continuance on the motion for summary judgment, and the judge then has discretion to say, yeah, you're right, this needs to mature more, for whatever reason, and you get more time at that point, but once you file the response, I'm in a position I understand the motion, I'm

going to get my response on file, I think I win on my response, but, you know, if there's additional briefing, I get it at the last second, give me a chance to respond to that.

CHAIR TRACY CHRISTOPHER: Yes.

MS. GILLILAND: I'm stuck on the 45 days, and I feel like everyone in here are ethical, very -- the top of our profession, and so you're not filing an early response for political reasons. You're filing a response when you're ready, and it may be at the last minute, but you're following the deadlines. I think there's an opportunity by having this 45-day report card on the judges' performance, if I'm going to run against Judge Evans, maybe I make sure all of my responses, no matter how substantively terrible they are, get filed early so I could start that slowpoke clock for him as a political issue so that his report card shows he's not getting them -- a response from the judge within that 45 days, and it feels like it takes a lot of control out of the judge's discretion to control his or her own docket and his or her own deadlines for judicial reporting and what is essentially a comment on are you doing your job.

CHAIR TRACY CHRISTOPHER: Pete, and then Giana.

MR. SCHENKKAN: Since we haven't had the

rule yet that was keyed to response date, we don't know what gamesmanship potential there is for it. Anticipating that lots of smart lawyers will be looking at that question, perhaps we should say it's no later than seven days before the hearing, but no earlier than 15 days before the hearing or 20 days before the hearing. So maybe then you've got an initial plan for when the hearing is. You've got an initial date for the response. It still leaves time for the reply and time for the judge then to consider the motion, the response, and the reply, and then at that point, motion, response, reply, one party or the other or the judge looks at this and says, "This isn't going to work. We need more time."

CHAIR TRACY CHRISTOPHER: Giana. Then Judge Miskel.

MS. ORTIZ: I don't envision this being an issue, but I do see where it's subject to being very minority gamesmanship. It could seem to me that a judge or the courts could deal with this by local rule that if you're filing a response, you need to provide a letter to the clerk or court staff or call the court staff and advise them that the response has been filed, if it is filed more than seven days before a set hearing, or something like that. It seems like it can be dealt with by the court in that way.

CHAIR TRACY CHRISTOPHER: Judge Miskel.

HONORABLE EMILY MISKEL: I was just going to respond. I think Harvey is saying no one is going to file this early, but I was thinking that filing early would help the nonmovant, because if you get a setting, and you call the court, "I need to get a setting on my summary judgment." The court says, "Gosh, my first available is in 60 days." The movant sends out the notice of hearing in 60 days. I think it's good strategy for the nonmovant to just file a response immediately upon receiving the notice of hearing, saying "Response, deny the summary judgment," because then the judge has to rule within 45 days, and realistically, they're probably just going to deny it. So I think that's a rule that helps nonmovants get summary judgments denied. I'm not saying that's bad or not. I'm just saying I do -- and then you can amend your response.

HONORABLE HARVEY BROWN: That's -- amendment is the problem. You're right.

HONORABLE EMILY MISKEL: Right, so I could file it immediately on receiving the notice of hearing and then amend my response later, just in case someone actually looks at it.

HONORABLE HARVEY BROWN: Yeah, that's true. Pete's suggestion --

CHAIR TRACY CHRISTOPHER: Yeah, that's a good point. Richard.

MR. ORSINGER: So I'd like to talk through what happens, which is not infrequent, that once you see the -- if you're a movant and once you see the reply, then you drop your setting, because you have to revise your motion or maybe you need to replead or something like that, but the statute doesn't allow for a motion to be -- a setting to be dropped.

CHAIR TRACY CHRISTOPHER: It does not.

MR. ORSINGER: And then that suspends the deadline. The deadline is there based on the response deadline. So what do we do if the movant drops their setting? Does the judge still have to rule on that by the 45th day, even though the setting has been dropped?

CHAIR TRACY CHRISTOPHER: I mean, maybe the only way to do it would be summary judgment denied at this time. Okay. If you're planning -- if you want to drop your motion, then the summary judgment is denied at this time, and then the new clock is when you file the new MSJ.

MR. ORSINGER: So we don't write that into the rule. We just let the judges know that they have an out, which is to deny the motion.

CHAIR TRACY CHRISTOPHER: I don't know how else you could do it, given the Legislature says it has to

take place within 45 days from the response. Even if it's -- you know, even if you don't want to go forward, you know.

MR. ORSINGER: This is why this very simple task ended up being incredibly complicated.

CHAIR TRACY CHRISTOPHER: Justice Kelly.

HONORABLE PETER KELLY: Part of what we're talking about is extremely large cases, sophisticated cases, where you're going to have a thousand pages of documents, whether commercial or catastrophic PI. There's been a willingness to divide cases by their size for discovery purposes in the discovery rules. Perhaps we should -- you know, a motion for summary judgment on a minimal limits car wreck, where the summary judgment is, you know, the defendant didn't own the car, is very different from a motion for summary judgment where you have a hospital and multiple doctors and a catastrophic PI case and med mal.

So maybe in the same way you have different tracks for discovery based on the damages alleged, you could have different schedules or deadlines for summary judgment based on the size alleged. One would be strict, as it is now, 21 days, seven days, that's really all you need for a small case, but for more complex cases, it would be at the judge's discretion or have the

Legislature -- or have us come up with some schedule that would handle that, 45 days, 90 days, whatever.

CHAIR TRACY CHRISTOPHER: Quentin.

MR. SMITH: Well, one response to that real quick. I think sometimes the issues in big cases are really simple, too. Sometimes it's a matter of law that this statute interpreted, and that's all you need for the parties to settle something, but I was going to focus on the practical reality that you raised, Justice Christopher, which is this is going to end up with a lot of summary judgments just being denied, because there's no remedy. There's nothing that anybody can do after that. So I'm not too worried about this rule, however we write it, because we're just going to have a lot of summary judgments being denied.

CHAIR TRACY CHRISTOPHER: Harvey.

HONORABLE HARVEY BROWN: I just want to second Pete's suggestion that the response should be no sooner than the X number of days before the hearing and no later than X number of days before the hearing.

CHAIR TRACY CHRISTOPHER: You like that?

HONORABLE HARVEY BROWN: I like that idea because it does take care of the amendment or somebody trying to game the system by filing a one-page response that's obviously not very good but gets the time clock

running, and I think that will help the judges.

CHAIR TRACY CHRISTOPHER: Judge Keltner.

HONORABLE DAVID KELTNER: It seems the problem we all have is the 45-day ruling deadline from filing of the response, and that makes -- that makes sense, but what I sense the Legislature wanted and what we're trying to get at, and I think the Supreme Court's going to want to follow what the Legislature wants, is to make sure that summary judgment -- summary judgments are heard swiftly at some point in time during the case where it makes sense. I think that's the -- you can look at the little bit of legislative history on that. That's what they wanted. We're trying to get around that, and that's, one, a little bit problematic.

I want to go back, and I hate to agree with David Evans in public, since we are close friends and we argue all the time, but I do think perhaps a scheduling type of order done by the trial court, setting out the deadlines for the specific case, that collection is going to be different than merger and acquisition disagreement or an operating -- oilfield operating agreement, and think about this, folks. Those oilfield operating agreements that are being litigated now are being litigated in counties in which the judge sits in three counties and is going to be in that county once during a month, if that.

And we've got problems. We've got huge problems in the oil patch now with those issues, so unless the judge gets to decide when we're going to set the thing that -- or when you're going to file something that starts this deadline running, he or she can't modify the summary judgment proceeding to proceed fairly, considering the type of case it is. And, you know, we say, well, it was a car wreck case. Well, a car wreck with -- and forgive me for doing this, but has Chohan issues on issues related to mental anguish damages, summary judgments are going to be -- we're going to have huge arguments about those kind of things till the law settles.

We ought to have the judge controlling it to the type of case it is, because no one else can realistically do that. At least fairly. So I would do what David suggested. I do like option two better, because we are used to the backward ruling. That's always concerned me, and trying to explain it to people from out of state, it is a frustrating thing, at best, but in any event, I do think we need to have it where the judge has the ability to set when the response is due and then off we go. That way, we're not going to have summary judgments denied out of convenience and maybe reheard again.

Now, there's nothing wrong with the summary

judgment being reheard again in a complicated case. Happens all the time with very good judges, because if the judge gets a sense of what's going on, but I would -- that is the one thing that we can control and do everything the Legislature is asking us to do.

So I think we ought to have a scheduling order on this type of thing. I also think we ought to do what Richard's suggested on 296 about the clerk notifying the court so we can have that type of thing. I think we all ought to have a deadline for getting a scheduling order done, but I think that's a better view than the other options we are looking at.

HONORABLE DAVID EVANS: I'm going to just add one comment, and I won't go off the wheels, Tracy. All right.

Lamont, the objections that come in on seven days on the response on the evidence are time-consuming. Some -- some of those, under the rule you have to allow the movant to respond to the objections in writing, and, you know, we will go through that dissertation, and the reply comes in late, with someone who's probably got a trial docket, trying a case.

Now, I was reading a summary judgment motion the first week that I was on the bench, and a colleague came in and asked me, "What are you doing?"

"I'm preparing for this hearing. I'm reading a motion for summary judgment."

"Why?"

"Well, I thought I was ruling on it. What do you do?" David knows who it is, and he won't disclose. He said, "Well, I just go in there and listen to them and decide who ought to win, and then I let the court of appeals send me a message about what was supposed to be done."

I would urge you to think about if you want these cases presented to somebody that will consider them and that you want the opportunity to argue the objections and the surreplies and every other little piece of paper you can file at one time, and if you tell a trial judge I'm going to file a reply after argument, and I'm going to respond to objections after argument, and why don't you invite me to come back and argue again, you're not going to get there.

I really -- I know that we've got to do it within 45 days of the response, but build into it the advocacy argument where you get a proper argument on these cases. You're not going to need it on every one of them, but give the trial judge an opportunity. There's not an appellate justice in here that would tolerate a late reply brief, and you've got paper limits. Now I'm going off the

rail, aren't I? I saw that look.

CHAIR TRACY CHRISTOPHER: You are.

HONORABLE DAVID EVANS: I saw that look. I saw that look. Okay. I'll back down.

CHAIR TRACY CHRISTOPHER: Judge Miskel.

HONORABLE DAVID EVANS: Wasn't even looking at me for a long time. I'm sorry.

CHAIR TRACY CHRISTOPHER: No, no.

HONORABLE EMILY MISKEL: I was going to say to the extent that I disagree with the suggestion that we could set a response due date and say don't file it before this date, because the plain language of the statute says the date the response was filed, and I think we're not allowed to say you're not allowed to file a response, because that -- that goes to the purpose the statute was passed, which is if I was a bad acting judge, I could say, "Your hearing's in one year, and you're not allowed to file a response for 11 months," right, and you can't do that. The statute just says "date response was filed," so it was a creative idea to say we'll do a scheduling order and say you're not allowed to respond until X day. I just think if someone does, then the court still has to set it within 45 days.

CHAIR TRACY CHRISTOPHER: Richard.

MR. ORSINGER: I'd like to get a sense of

the committee on what, if anything, we should say about a no-evidence motion that's filed before an adequate time for discovery. Do we say nothing, and the only alternative -- since the court can't grant a continuance, the only alternative is to deny the motion, or do we give the court -- what do we say, because in the existing rule we have a comment that talks about when presumptively the pretrial scheduling order has been fulfilled, then presumptively there has been adequate time.

What's to stop someone, one week after the answer is filed, from filing a no-evidence motion? Is the only alternative we have is to strike it or to deny it? I'm just wondering, because version one of the rule said the time deadlines in subsection (c) shall apply, except that when a motion is filed and a setting is requested before the adequate time for discovery. "The court may set the motion for a hearing or submission on a date that is after the adequate time." I'm not sure the statute allows that.

CHAIR TRACY CHRISTOPHER: I don't think it does.

MR. ORSINGER: So our alternatives, I guess, is to file a motion to strike because it was filed prematurely, maybe that gets rid of it, or to just ask the court to deny it because it was prematurely filed. I

would be curious to hear if anybody has any suggestions of what we do in this situation.

CHAIR TRACY CHRISTOPHER: Harvey.

HONORABLE HARVEY BROWN: Well, the statute says there has to be a written ruling. Is a ruling that continues the hearing a ruling under the statute? Because we have that, not only for the no-evidence summary judgments, but even a traditional summary judgment there's often a motion for continuance, so you -- you're going to have that issue in both parts of the rule, and I would think a ruling would be "I'm continuing this for 60 days."

CHAIR TRACY CHRISTOPHER: Although I -- well --

MR. ORSINGER: Well, that would eviscerate the Legislature's effort to require judges to rule within 90 days.

CHAIR TRACY CHRISTOPHER: Judge Estevez.

HONORABLE ANA ESTEVEZ: I wanted to piggyback on what Judge Evans was talking about. Another issue that comes up with these summary judgments, let's just assume that the rule stays the same, so they file the response seven days before I'm having my hearing, and very often I ask for additional briefing. I mean, these are legal issues. It's supposed to be a question of law, not a question of fact, and I may just say, okay, I agree with

this, this, this, I need to see this, and so now my clock's ticking again and continues to tick. I guess there's nothing we can do about it.

CHAIR TRACY CHRISTOPHER: Okay. Our reporter needs a break, so we're going to take a 10-minute break.

HONORABLE ANA ESTEVEZ: And I would deny the summary judgment.

(Recess from 3:20 p.m. to 3:37 p.m.)

CHAIR TRACY CHRISTOPHER: All right. So this summary judgment rule is not due until March, so --

HONORABLE DAVID KELTNER: Or 45 days.

CHAIR TRACY CHRISTOPHER: So the good news is we're going to stop talking on it now, and we're going to send it back to Richard.

MR. ORSINGER: To Pete's committee.

HONORABLE ANA ESTEVEZ: What's the direction, though?

CHAIR TRACY CHRISTOPHER: I'm not sure we have a direction.

MR. ORSINGER: What I would do is --

CHAIR TRACY CHRISTOPHER: I mean, the consensus is to keep the backward time frame, but, you know.

MR. ORSINGER: We had a lot of proposals

that were kind of off topic, but we could make a recommendation to the Court to make changes other than what the legislation requires.

CHAIR TRACY CHRISTOPHER: Yes.

MR. ORSINGER: So perhaps you could invite people that have a strong feeling about how to rewrite the rule to send a sample rewrite, and then we can process that and then come back, and we can decide whether we want to change two timetables or whether we need to change the rule.

CHAIR TRACY CHRISTOPHER: Okay. Excellent.

MR. ORSINGER: Okay. Thank you.

CHAIR TRACY CHRISTOPHER: Make it so.

HONORABLE ANA ESTEVEZ: So I think our accountability starts on September 1.

CHAIR TRACY CHRISTOPHER: See, that's what I asked Jackie. She doesn't think so. Oh, she's checking.

HONORABLE ANA ESTEVEZ: OCA was going to start taking stats on that, I thought, unless the whole statute doesn't come into effect until --

HONORABLE EMILY MISKEL: The time sheets don't start until March, right?

MS. DAUMERIE: Right.

HONORABLE ANA ESTEVEZ: Yeah, but they were going to start gathering some data.

MR. ORSINGER: So the way the statute is written is that the Supreme Court is directed to adopt rules. It doesn't say that the statute is self-effective. It doesn't change procedure itself, so the way I look at it is the Legislature has given the Supreme Court a deadline to change the rules, at which point the rules then apply.

HONORABLE ANA ESTEVEZ: Let's go with the last day. Let's not do it early.

MS. DAUMERIE: There's no deadline for these particular rules in the statute.

CHAIR TRACY CHRISTOPHER: For this portion?

MS. DAUMERIE: For this portion.

CHAIR TRACY CHRISTOPHER: And the recordkeeping is in that statute that says the rules don't start until March. The recordkeeping is in that particular statute.

HONORABLE ANA ESTEVEZ: And that recordkeeping starts in March? Because my understanding was the statute started September 1, but I don't know about that.

HONORABLE JANE BLAND: Parts of it start September 1.

HONORABLE DAVID EVANS: We'll get that clarified on the 8th from OCA. We have a meeting with

OCA, and I'll ask them what they think, and then we'll put it on the agenda and find out what they have to say.

MR. ORSINGER: So the confusion, David, is that section 27, if we can go back to the second page of this memo, that would be great. It says that "This act applies only to a motion for summary judgment filed on or after the effective date of this act. A motion for summary judgment filed before the effective date is governed by the law in effect on the day the motion was filed."

So they appear to be making it seem like the statute applies to motions filed after September 1, but when you go to section 28, it says not later than March 1, 2026, the Supreme Court has to adopt rules to implement the statute, so --

HONORABLE DAVID EVANS: We have a scheduled meeting with the regional PJs, with OCA, representatives of the Supreme Court, general counsel will be on it, and Jackie is certainly welcome to attend, too, and we'll make sure of that. That's at noon on the 8th, and that will be on the agenda. I'm doing the agenda now, and I'll have it on the agenda to find out when they're going to start the reporting and then get back to you.

CHAIR TRACY CHRISTOPHER: Well, in any event, I think the Court wants to talk about this again in

August, but we have a little bit of time, we hope.

HONORABLE DAVID EVANS: And I imagine we'll go to the Court -- OCA will go to the Court for guidance on reporting, too. They likely are.

CHAIR TRACY CHRISTOPHER: Yeah. Jim.

MR. PERDUE: I just -- I misspoke and I conflated a conversation during this past session with Senator Hughes with this bill. This is Senator Huffman's bill. It's in the accountability overarching bill. Senator Hughes and I had a conversation about getting a ruling, but this was not his bill, and so I apologize for that on the record. Senator Huffman deserves full credit for this bill.

CHAIR TRACY CHRISTOPHER: All right. So we will move on to our next topic on the agenda, prohibiting the central docket. As I indicated to you, we had a very robust discussion at our previous meeting on the pros and cons. We had outside speakers that came and talked to us, urging us not to abolish the central docket. Many people here on the committee spoke against abolishing the central docket.

What I would like us to focus on today is only the proposed rule, not whether or not it should be done; and I would ask you to continue, if you feel strongly on the point and you feel like your voice has not

yet been heard, to write a letter to the Supreme Court on the substantive position. What I would like to do is to move into the subcommittee's proposal, and that is going to be Lonny.

PROFESSOR HOFFMAN: It is.

CHAIR TRACY CHRISTOPHER: And the subcommittee also is not saying that this is their proposal. This is the subcommittee is saying we were asked to write a rule, and we've written one.

PROFESSOR HOFFMAN: So I'll take it from there. I kind of wished it was more fiery, because I'm freezing and I was hoping for the heat, but I will do the best that I can do to stay warm and give some guidance. So I thought that what I was going to say was also going to be fairly straightforward, and it may very well end up being that way, but my dear friend Tom Gray does have a relatively new addition that he wants to talk about. Tom is on the subcommittee, but he wasn't able to participate in the meetings that we had, so he has a separate proposal, but I'm going to let Tom talk about that.

So before we get to Tom's, look with me, if you would, at -- if you're in the revised draft of the notebook, you can start at page 133. So the subcommittee is proposing changes to 7.2, Rule 7.2 and 8, of the Texas Rules of Judicial Administration. So I'll just kind of

highlight them briefly, but read along with me and see how they go. So under 7.2, we're proposing adding language to (c) that says that the district courts, the judges, should maintain full responsibility for each case assigned to the judge, directly after the case is filed, and that would include -- except as follows, and then there's some exceptions to that, and one of them is the exchange of benches or transfers.

And then if you'll jump over to Rule 8 on the next page, we tried to set up what we thought was a relatively clean and elegant way to accomplish what the Court asked us to look at, which is "In any county in which there are two or more district or county courts, a civil case has to be assigned randomly to a particular judge, authorized to preside over the case, when the case is filed." And then we have a couple of exceptions to that. Again, the main one being that judges can still exchange benches and transfer cases as law -- as allowed by law.

So my suggestion would be that we talk about this language first before we turn to Tom's suggestion. Tom, you may want to flag as part of this some of the concerns you have with this language, as a way to tee up yours, but let's sort of stay -- my suggestion is let's stay with this language first, and that will be easier to

follow. So that's mostly I think what I have by way of introduction.

CHAIR TRACY CHRISTOPHER: Could I interrupt and say does anyone know what that nice squeak is?

HONORABLE EMILY MISKEL: It's been happening, but it got worse when more people left.

MS. GREER: Could you turn the mics off, Mandy, make sure they're all off?

PROFESSOR HOFFMAN: It's not central heating.

CHAIR TRACY CHRISTOPHER: That's true. It does seem to be getting worse.

PROFESSOR HOFFMAN: So I guess maybe to open it up as comments or questions about anything that the subcommittee has drafted that we want to talk about first. Questions or concerns?

CHAIR TRACY CHRISTOPHER: Harvey.

HONORABLE HARVEY BROWN: Just a question. It says "maintain full responsibility." So what if the judge is going to miss a hearing one day or is out of town when something happens or a jury has questions when the judge is at lunch, stuff like that? Do you think that's adequately addressed by Rule 8, or do you think the language should be clearer? I don't consider that to be an exchange of benches when a judge just sits in for one

hearing or babysits my jury for a short time.

PROFESSOR HOFFMAN: I don't have a way to respond to that. I mean, I think Harvey's raising a concern of maybe "maintaining full responsibility" is not clear enough, and I think that links up to a concern Tom has, so I think "noted" is what I would say to that.

CHAIR TRACY CHRISTOPHER: Any other comments on that, maintaining full responsibility? Other people find that it's less than clear? Yes, Richard.

MR. ORSINGER: To me, that could embrace asking another judge to handle a hearing or part of a case, but the reporting responsibility remains with the original judge. To me, that's broad enough to allow that. So some other judge could rule, but it would have to be treated in the reporting or consideration of dispositions as if it was the judge who asked -- who maintained full responsibility without actually making the decision.

If what we want is to have a judge actually rule or try the case or rule on the motions, every motion that's filed in the case, to me, "maintain responsibility" is not direct enough. I also will say that, since the last meeting, I've talked to a judge who was in a rural county where they had three judges that were always rotating, and I was hoping he would have a written submission to this committee by the time of this meeting,

but he didn't, but he said it was going to make it very difficult, because they have different counties and different judges are in different counties on a rotating basis, and so they're only in a certain county for a certain period of time, and that can't always be predicted in advance, but sometimes the scheduling doesn't fit that, but I just toss that in as a footnote.

CHAIR TRACY CHRISTOPHER: Okay. Justice.

HONORABLE MARIA SALAS MENDOZA: Well, I think that it's on purpose. I mean, I think that we drafted a rule that we think complies with what was required, but also takes into account that it's not realistic that things might happen and you would need assistance, but the case would still remain yours, and I think some of the examples that have been given are perfect, which is you're going to step aside and steal my case. I'm not transferring it.

Now, if what you end up doing disposes of the case, then I think the reporting would require a change, a transfer or something, but I think the idea that the cases are assigned to a particular judge and that judge is responsible for it is encompassed in why we left the language that vague, because the realities are that things do happen, and if you do have something minor or something unanticipated, and rather than cancel full

hearings or parties have traveled or whatever, you may have a colleague come in and take care of something. That's not a transfer. That's not an exchange of bench. It's -- you know, but the judge assigned initially maintains responsibility for that case. So it is vague on purpose.

MR. ORSINGER: Uh-huh. Yeah, I see that.

CHAIR TRACY CHRISTOPHER: Justice Miskel.

HONORABLE EMILY MISKEL: I was just going to say that is -- so what Harvey was describing, like a judge just signs a TRO for you because you're not there or takes a temporary orders hearing because you're in the middle of something else, that's exchange of benches. It's not a transfer of a case, and then to what Richard was saying, if, for example, I'm busy with something and next door hears a prove-up for me in a divorce case and next door signs the divorce decree, it still gets reported as a case closed by the 470th District Court. It doesn't get reported under that judge's stats. It was not transferred, and I don't know that it should be, but we did talk last time about reporting by judicial officer, which might still be an option, either way.

HONORABLE MARIA SALAS MENDOZA: I guess what I was thinking is that if the goal and the directive we were given is to make sure that our reporting is accurate

about who's disposing of cases, then that prove-up should get transferred because someone else disposed of it. I mean, if you heard, you know, a year and a half of custody things, and in the end everything works out just fine, that may seem unfair, but I guess that's what I -- that's what I think the requirement for the directive is, to see who's disposing of the case.

HONORABLE EMILY MISKEL: Well, I guess I would just -- I would just make a slight distinction. I don't think the case needs to be transferred. It lands in the 470th. It can be closed in the 470th, but we might also have a separate report of which judicial officer did what, and that doesn't necessarily require a transfer of courts.

CHAIR TRACY CHRISTOPHER: Judge Chu.

HONORABLE NICHOLAS CHU: I had missed the subcommittee meeting that drafted this, and so if somebody could kind of walk me through this part, and this is more of I honestly don't know how this will work, either way, so I'm just kind of curious. So say, for example, there are 10 district courts in a county, and in some of these counties, a lot of counties, they'll have a specialized judge do -- or one judge do the juvenile criminal docket or the juvenile docket, one judge do the CPS cases, and they're kind of like the specialized guys that they handle

all of them. They like doing that. They know all of that, and so they all assign those cases. So if (a) randomizes assignments to all 10 of them, I think, would that just mean that the -- those other, like, say, nine judges would transfer into the juvenile court their juvenile cases and then that 10th juvenile court transfers out their civil cases, or how does that -- basically, how does that look to where we can keep that specialization, if that's what the Supreme Court wants?

CHAIR TRACY CHRISTOPHER: In Harris County, the courts are specialized, so when a new case is filed, if it's civil, it gets randomly assigned to the civil judges.

HONORABLE NICHOLAS CHU: Yeah. Yeah.

CHAIR TRACY CHRISTOPHER: Or if it's criminal, it gets randomly assigned to the criminal judges. It seems to me if there was a specialty in a particular district, they could still continue to do that.

HONORABLE NICHOLAS CHU: Well, except the court that has a specialization is still a general jurisdiction or a civil preference court, so it's not like this is by creation of the docket -- or creation of that enabling statute, a CPS court, or --

CHAIR TRACY CHRISTOPHER: Well, but I think in Harris County we've done that by local rules.

HONORABLE NICHOLAS CHU: Yeah, by designation.

CHAIR TRACY CHRISTOPHER: I mean, and some cases are -- you know, so it seems like you could do it by local rule that all of the juvenile cases would go to that one court.

HONORABLE NICHOLAS CHU: And then, just to talk this out, it would then go to -- transfer back to the district clerk to reassign out randomization of those or -- Emily, or Justice Miskel.

HONORABLE EMILY MISKEL: Yeah. Sorry. I think this is one of the things that under Chapter 74 of the Government Code is assigned to the local administrative district judge, because how it worked in Collin County, we have general jurisdiction courts that have various preferences, and I think this is one of the -- I was trying to look it up real fast, but I think this is one of the tasks that's assigned to the LADJ, and then from the instant it's filed, it automatically gets diverted in the clerk's office to that court, so no transferring is necessary.

HONORABLE NICHOLAS CHU: Okay.

HONORABLE EMILY MISKEL: And because some courts might be half civil, half family, the case management takes care of how many should be going to which

court, but it's all still randomly assigned. So I don't think that is a problem with respect to this rule, because I think it's adequately addressed by what's reserved to the LADJ.

HONORABLE NICHOLAS CHU: Okay. So just to make sure I'm clear, we could still keep our courts that are specialized in these particular ways, but then all of the, say, general civil litigation or family law litigation goes to randomized --

HONORABLE EMILY MISKEL: Right.

HONORABLE NICHOLAS CHU: -- assignment. Okay.

CHAIR TRACY CHRISTOPHER: Right. Jim.

MR. PERDUE: In Harris County, how do we get the criminal courts? We've got designated criminal courts, but we have specialized -- I think we've got a drug diversion court, we've got a veteran court. How do cases get to those? Is that local rule?

CHAIR TRACY CHRISTOPHER: I think those are transferred, but I'm not a hundred percent on those specialty courts, how those work.

MR. HARDIN: I think that's right.

HONORABLE EMILY MISKEL: Specialty courts are transferred.

HONORABLE MARIA SALAS MENDOZA: Yeah. They

are transferred, because sometimes a decision going into one of those specialized dockets isn't made until after a few hearings, and then they are able to show that the person is a veteran, is entitled to that, you know, diversion, and so, yeah, so they're actually transferred court to court.

MR. PERDUE: So that would still be consistent with this?

CHAIR TRACY CHRISTOPHER: Yes.

HONORABLE MARIA SALAS MENDOZA: Yes. And I was just going to say one thing, that in the -- typically, we just look at civil stuff, but we did bracket civil because we -- we were not addressing this issue with regard to criminal cases.

CHAIR TRACY CHRISTOPHER: Richard.

MR. ORSINGER: Can I ask for a little bit of explanation on (b)(1), where judges may exchange benches and transfer cases, to the extent allowed by law? Is there a narrow area where benches can be exchanged, or is it broad?

HONORABLE MARIA SALAS MENDOZA: So my understanding is that has to do, like, with recusals and, you know, transfers like in this instance, where they're thinking that's permitted.

MR. ORSINGER: So this laundry list here is

about it then, huh? So, for example, if the case is docketed in my court and an emergency temporary hearing is scheduled at a time when I'm on vacation, don't I have the authority to have another district judge handle that hearing for me? Or does that violate this?

HONORABLE EMILY MISKEL: The Constitution says district judges may exchange districts or hold court for each other when they may deem it expedient.

MR. ORSINGER: Expedient, okay. So if I'm -- if I'm on vacation and an emergency comes up in one of my cases, it would be expedient for someone else to handle it.

CHAIR TRACY CHRISTOPHER: Yes.

MR. ORSINGER: Is that the exception that swallows the rule?

CHAIR TRACY CHRISTOPHER: Could be. But --

MR. ORSINGER: That would be good.

CHAIR TRACY CHRISTOPHER: But that would be contrary to maintaining full responsibility, if you are always -- it would seem to me that if you were always saying somebody else could rule on my cases, you would not be maintaining full responsibility over your cases.

HONORABLE NICHOLAS CHU: And, Richard, one of the backstops to that bench exchange would be that all of the bench exchange rules require the accepting judge to

agree to accept the bench exchange. So you can't just say, "Hey, Chu, go hear this case." I have to then agree to hear it.

MR. ORSINGER: Sure. And but you don't redocket it. You just have a hearing in your courtroom for -- instead of the absentee judge.

HONORABLE NICHOLAS CHU: Yeah. And I would be sitting in as Richard Orsinger's court.

MR. ORSINGER: Yeah.

HONORABLE NICHOLAS CHU: Yeah.

MR. ORSINGER: Even though you're in your own physical court.

HONORABLE NICHOLAS CHU: Yeah.

MR. ORSINGER: Yeah. And it's no redocketing or anything else, but that's -- and the judge who's absent has to, quote, maintain responsibility, but if it's expedient, the two of you can agree to do that?

HONORABLE NICHOLAS CHU: Yeah.

MR. ORSINGER: Okay. So but as to a random -- like a routine docket, like we have in Travis County and Bexar County, expediency, does expediency extend that far?

CHAIR TRACY CHRISTOPHER: I think that's perhaps what Justice Gray is concerned about, with the way the rule is written. I mean, I would think that the idea

would be that maintaining full responsibility means you rule on the case if you can, right? Now, that doesn't mean if you're not available or there's an emergency and -- or, like, Harris County has an ancillary docket. I would not say that that would not be allowed under this rule. So the ancillary docket, you have emergency TROs. They have one judge who's responsible for half the month to, you know, be there from 8:00 to 5:00 to handle the TROs. I mean, I would still think that that would be allowed under the way the rule is written. I would, but it's ultimately up to the Court.

MR. ORSINGER: So in Bexar County, they actually have a monitoring judge for all of the jury trials, and that judge handles the scheduling and also handles the continuances. Would it be permitted under this rule for Bexar County to continue to have a jury monitoring judge that's monitoring the whole docket for the whole courthouse and deciding how many cases can be set during that particular week and granting -- because we -- the lawyers show up, and they argue their continuances one after another, just like that. They take care of all of them, typically, in half a day. Would that be allowed under this rule, or would that be prohibited?

CHAIR TRACY CHRISTOPHER: I would consider that, you know, more of a central docket, I mean, if the

intent of this is to get rid of it. We used to have that in Harris County, too. But if the -- if you had somebody ruling on continuances, but the case was still going to be tried in the assigned judge's court, then maybe it wouldn't, but if it was going to be randomly put to somebody else, then maybe it would violate it. I mean, because then you, as the judge, would not be maintaining full responsibility over your case, because you've -- you know, on a routine basis you've said I'm not going to try my cases. I'm going to try whatever is randomly assigned to me or assigned to me by the docket judge, versus, you know, I'm trying my own cases, you know, until I have an emergency and somebody really wants to go and then I transfer it to somebody else.

I would read the rule that way, but maybe someone else would read it a different way. Lamont first, then Judge Miskel.

MR. JEFFERSON: I mean, with the caveat that I love the central docket as far as efficiency and everything, I think for all of the reasons that have already been expressed, I think we all know what a central docket is and what -- that's what's going on in Travis County and Bexar County and that Justice Gray's suggestion is really about all you would need to have a complete revamping of the procedure, which would be a huge shift,

at least in Bexar County. I'm sure in Travis County as well, but I think that's what we would need, rather than try to tweak the statute so that you can potentially find a way to do something that's very, very similar to what we all know as a central docket. That's not accomplishing what the Court wants, at least to look at. The Court wants something like what Justice Gray has drafted here that says no central docket.

CHAIR TRACY CHRISTOPHER: Justice Miskel.

HONORABLE EMILY MISKEL: I was just going to say, I like the approach that the committee took, which is to make sort of a standard rather than a rule, and the questions that I hear from Richard are more like, well, what about this and what about that, and I think, you know, going back to law school, we talked about the difference between standards and rules. Rules are -- or standard is like drive an appropriate speed for the conditions, and a rule is you can't go faster than 75, right, and the benefit to a rule is it's very clear, but the drawback is bad guys can go right up to the line, and then a standard is more vague. It may chill behavior that's still acceptable because there's some uncertainty about what the standard means, but what we have here is a standard of full responsibility.

So do we know exactly what that means, like

60 miles an hour, 70 miles an hour? No, we don't, but I think we can look at something and go that's not full responsibility, and we might prefer a standard that's more vague, but may chill some conduct that may technically be allowed, rather than a rule that has a lot of technicalities. Does that make sense?

MR. ORSINGER: Sure.

HONORABLE EMILY MISKEL: And so, again, I think the same thing. I think Tom Gray's rule is -- or I won't say rule. It's more of a standard, too, because it doesn't try to define central docket. It doesn't try to say it's this and not that. This much is okay, but that's one step too far or whatever it is. It's a standard that says if you're -- okay, if you're repeatedly going too far, we're going to educate you that that is violating the standard, and I agree that we should probably take a standard-based approach, because there are so many tiny reasons that we may or may not need to do it in special occasions, but when you go too far, we can all agree it's not responsibility or it looks like a central docket.

CHAIR TRACY CHRISTOPHER: Harvey.

HONORABLE HARVEY BROWN: Just for something to think about is would full responsibility be inconsistent with using a visiting judge for several weeks?

CHAIR TRACY CHRISTOPHER: Well, and it would probably be inconsistent with Judge Gray's language here, since it says "all judicial decisions."

HONORABLE HARVEY BROWN: Right.

CHAIR TRACY CHRISTOPHER: And that's a pretty hard rule, that one, but I would think "maintain full responsibility" is if -- like when I was a trial judge and I would get a visiting judge, everybody passed their hearing if they wanted to wait for me to come back, but if they needed their hearing to go forward, they went in front of the visiting judge. I mean, you know, so I would still say that was full responsibility, but --

HONORABLE NICHOLAS CHU: But it kind of goes to the nature of the appointment of a visiting judge sitting in for that court. That visiting judge is essentially Nick Chu in Nick Chu's court, and so that person is really sitting in that court; whereas, in a central docket system that's kind of outlined here, that judge -- that decision is not being made in Nick Chu's court. It's being made in Emily's court or somebody else's court. So I think it would be fine to have a visiting judge, with this rule, sitting in there and still be full responsibility of the home court.

HONORABLE TOM GRAY: Hooah.

CHAIR TRACY CHRISTOPHER: All right. Any

other comments? Judge Gray, why don't you explain your option?

HONORABLE TOM GRAY: Well, first I'd like to address two words that are used in the committee proposed. I focused on "randomly," as Judge Chu did, as a possibly removing this opportunity to do the specialized courts, because there are many counties in which there are multiple district judges, but the cases are assigned based upon some other metric, criminal, probate, family, domestic relations, civil, criminal; and so the point of that being, the way mine is drafted, it relies upon other things, like what you referred to as the local rules, that this court is a civil general jurisdiction court and that's the kind of cases that it's going to be assigned, not these others that go elsewhere.

So it handles that concept of specialized courts, and randomly, as I saw what the Supreme Court's instructions were, that wasn't the issue as far as how it got to a particular judge. But it did want it assigned to a particular judge at the time it was filed. And I just misspoke when I said to a particular judge. It's not a judge we're assigning these cases to. It is a court, and then there is a judge that is elected for that court, and that is a distinction that I think is important, and so in the proposed Rule 8, I would drop the word "randomly" and

use the word "court" instead of "judge."

But -- and I apologize for not being able to be active on the subcommittee. It just did not work, and so I just decided I would take a shot at drafting a rule and that, in my mind, in my reading of what the Supreme Court assignment was, more closely tracked what was proposed, and I tried to circulate it. I don't know if it stopped or made it all the way around.

MR. JEFFERSON: It made it to Eduardo.

HONORABLE TOM GRAY: Okay. All right. So it did make it all the way around. As you read it, the thing to me that is critical is the first sentence in the fact that that sort of addresses what we're doing, what the Supreme Court wanted. It, actually, with what the rest of the rule is, it may be a superfluous sentence, but I think it sets up what we were asked to do. And then it basically -- you can all read it. It requires the court, excuse me, the county, to create a system in which each case is assigned to a specific court "authorized," and that's where the "randomly" drops out of the mix if by local rule, if they're not authorized to hear family law cases, or if it is a family law case and they're authorized to hear the family law by local rule, then that's the way it gets to that court.

"To decide the case at the time the case is

filed," so that addresses the immediacy of the assignment process, and then it makes the judge of the assigned court is required to make all judicial decisions in regards to the cases assigned to the court.

Now, if you stopped there, when you go on vacation and you have a visiting judge come in for you, then those would not be authorized to hear. A visiting judge could not come in and sit for you under any circumstances, but we all know that there is a statute that allows, when properly utilized, the exchange of benches and courts; and we, as a rule-making body, aren't taking on the change or overruling of that statute, even if under the provisions of the code we might be able to. That was not what our -- I viewed our assigned responsibility was. Thus, we have the "unless" clause, "unless the judge consents," and this is a critical distinction between existing methodologies of the way that issues and cases are decided by other than the assigned judge.

As we know from San Antonio, the trial court judge did not want some of her cases reassigned or decided by someone else. She wanted to keep those on her docket, and they were effectively taken from her docket, and she did not want that to happen. That clause prevents that. So unless the judge consents to the assignment of the

matter, and by that, I mean something less than the dispositive ruling on a case, or transfer of the case to another court, pursuant to the statutes and rules regarding the transfer and exchanges of courts and benches.

So I tried to look back at the assignment, which I quoted there at the beginning of the e-mail, and stay true to that assignment, but I also recognized that the statute allows for what I would characterize as a very liberal exchange of courts and benches and doesn't require a whole lot to document that. We have, at the Tenth Court, dealt with this issue between a county court at law and a district court in Navarro County, and once you get into those questions, it's kind of gnarly about exactly what type of documentation you need or should have in a file to document this exchange of courts and benches on any particular matter, but more so in connection with the disposition or trial of a case. So that's just an alternative proposal for the Court's consideration, and I will try to answer any questions.

CHAIR TRACY CHRISTOPHER: Yes.

HONORABLE MARIA SALAS MENDOZA: So I would just say that we did spend a lot of time working on the rule, and in defense of it, just because you said we missed the mark --

HONORABLE TOM GRAY: I did not say you missed the mark.

HONORABLE MARIA SALAS MENDOZA: Well, I would just say that there were reasons for a couple of those things in the proposed rule from the committee, and one is that we, I believe, were told that randomization was an issue and that that was a concern to the Court. So I don't know if that's the right place to put it, but that's why it's in there.

And then, I guess, what we understood -- and I'm not sure if this came directly from the Supreme Court or just our knowledge of sort of the concerns about judicial performance and how all of this stuff has come to, you know, so many of the things we've considered today. It's really not about the court. It's really about the judge, and I know one of the discussions we had at that last meeting was about being able to make changes to the electronic file management system so that the judge who was actually hearing a case, it's under their name, right, so you would know by hearing the particular judge who handled the case. So that's why we said "judge" instead of "court," because I think the issue we -- I guess I'll just say it was me, that it's about wanting to know what every particular judge is handling, so that's why we chose that.

HONORABLE TOM GRAY: And, see, that's part of the problem, is defining the problem here that we're trying to resolve and fix, because my understanding was that the concern was whether or not the same person, judge, was hearing all of the important motions as the case developed, and the way that I addressed that in my proposal was to tie it to the court and then the judge to the court, and so it's coming at a slightly different version of a problem from different directions, I believe. So...

CHAIR TRACY CHRISTOPHER: All right. I think the Court has got two good proposals in front of it to study, and we'll move on to our next point on the agenda, eliminating pre-grant merits briefing, and I think, Rich, you're going to be handling that?

MR. PHILLIPS: Yes. Thank you. This, I hope, will not take long. In the interest of moving along, I will skip over, in the memo, we talked about a whole bunch of rules that could be adjusted or things we could look at and rejected a number of things there in the memo. If anybody wants to discuss those, I'm happy to do that, but I think, in the interest of time, we'll focus on the proposals that we are suggesting for change.

The first thing I think is really important. This was discussed at the last committee meeting. The

rule, as it exists now, on TRAP 55.1 already gives the Court the ability expressly to request merits briefs, either before or after granting the petition for review. So given that, most of the changes that would need to be made to sort of change how the Court deals with petitions for review, we think are largely changes of internal procedure at the Court as to how they take votes and when they decide to vote on whether to grant or whether to request briefs on the merits.

And one of the things that was discussed the last committee meeting was concern about timing between a request for merits briefs and granting the petition and oral argument, which under the current system, your merits briefs are in before you know if you're getting argument, and then the argument, you may get 45, 60 days, sometimes longer than that, notice; and there was some concern about the ability to get a brief done with oral argument. Obviously, the Court will have to address that, as the Court grants arguments, requests merits briefs, and fills its argument calendar.

As we discussed at the last meeting, that may require some sort of hybrid approach from the Court in filling its argument calendar with cases that they already have merits briefs on and cases that they grant and request merits briefs, but again, that's all sort of

internal Court procedures.

So the things that we looked at as potential changes to the rules start on page three of our memo. The first is the length of the petition for review, which is currently 4,500 words. The U.S. Supreme Court, I think, as we talked about last time, allows 9,000 words. We don't think 9,000 is probably either palatable for the Court or really a good idea, but something more than 45, if the Court is going to be making grant or deny decision based on solely on those things, we think the Court should consider extending that word limit.

So what we suggested was 6,500, and the memo actually says for a reply 3,500. I went back and forth on that one, and later down it says 3,250, so you could go with either one of those. 3,250 is exactly half. I think when I was first putting this together, the length right now of a reply brief, as was discussed earlier, is 2,400, which is not exactly half of the current 4,500 word limit, so maybe I think I was kind of trying to keep those together, but I think 3,250 would work. I promise I didn't pick that just to keep it 250 words longer than the 3,000 words on the bail. That will still be one of the shortest ones and didn't know about that before I put this together. So our recommendation would be 6,500 and 3,250, and then you can see as you scroll down there where those

changes would need to be made.

One other comment I'll make is when we move from a page limit to a word limit, it's basically all of those limits are calculated based on an average of 300 page -- 300 words per page, so if you look at all of the other limits that are there, the page limit is the word limit, right around 300. That didn't really work well with 6,500 because it doesn't divide evenly by 300. So I've approximated that and what I propose, and this is something where actually this is kind of me, not the rest of the subcommittee, so if you have a problem with it, come after me. We didn't discuss exactly the page limit in our subcommittee meeting, but I've come pretty close to approximating it. That is one that I don't know if anybody actually uses the page limit versus word limit anymore.

So that's our proposal on the length. I don't know if we want to have any discussion on that before I move on to something else.

CHAIR TRACY CHRISTOPHER: Sure. Any discussion on length? Yes, Marcy.

MS. GREER: I just want to state for the record that I did a very scientific exercise and was able to demonstrate that good brief writers can do 350 words in a page, and I produced a number -- this was a SCAC meeting

several years ago before they addressed the word limit, went to word count, and it was a scientifically unrefuted study that showed that Pam Baron, in particular, can get a lot more into a page.

CHAIR TRACY CHRISTOPHER: Judge Schaffer.

HONORABLE ROBERT SCHAFFER: Does your word count include the signature block or not?

MS. GREER: No.

MR. PHILLIPS: This one does definitely not. Also, I just prefer word counts because I do have slightly larger margins, and I think it's easier to read, but that's neither here nor there.

CHAIR TRACY CHRISTOPHER: Anyone else on the word count before we move on to our second revision? Okay.

MR. PHILLIPS: All right. So our next one was on the contents of the merits brief. We talked a little bit about this at the last meeting. There doesn't seem to be a lot of reason to have a statement of jurisdiction in your merits brief if the Court has already granted your petition for review, so we recommend that you just take that out. That's a pretty easy revision. It's deleting TRAP 55.2(e) and renumbering the ones that come after. Although we dropped a footnote here, query whether a statement of jurisdiction in a petition for review is

really an important section anymore, either now that the Court's jurisdiction extends to any appealable order or judgment that the Court thinks is important to the jurisprudence of the state.

Back when we had to worry about distinct jurisdiction or complex jurisdiction, it made a lot of sense to have a statement about how the Court had jurisdiction over this particular judgment or order. Now, I -- pretty much everybody's statement of jurisdiction is the same. It invokes the statute and says this is important to the jurisprudence, so I'm not sure that that adds anything, and the Court could consider whether that even needs to be in the petitions for review anymore.

CHAIR TRACY CHRISTOPHER: All right. Any comments on that one? Okay.

MR. PHILLIPS: Next, we looked at briefing deadlines, and this is one that kind of catches people off guard, because it's different than the courts of appeals. So in the court of appeals, the opening brief is 30 days. The appellee gets 30 days, and then it's 20 for replies.

Default rules in the Supreme Court are 30 days for the petitioner's opening brief, then 20 days for the respondent's brief, and then 15 days for the reply. So the only recommendation we've got here -- and, again, the rule says you'll follow whatever the Court puts in the

briefing notice, which I think will become more important when you're looking at trying to get briefs in before an oral argument deadline, but we would suggest the Court consider changing those default rules to be consistent with what's in the court of appeals so that it's not a trap for them where people who are used to the 30/30/20 and now find themselves in 30/20/15 world, so that was just a consistency to catch.

CHAIR TRACY CHRISTOPHER: All right. Any comments on that? Okay.

MR. PHILLIPS: I like it when there's no comments. Last is the record, and this one really is less about the change for -- from when you're going to request merits briefing, but just a reflection of the world has changed since this rule was written. It's written so that the petitioner has to pay the cost of mailing or shipping the record to and from the clerk, the Supreme Court clerk, which really doesn't happen very much anymore, because it's electronic, but recognizing that there may be physical things in the record that may still be in the trial court, or the court of appeals requested it, things that may need to be moved, but we thought maybe "transmitting" the record to and from the court clerk rather than "mailing or shipping" might be a good change, but again, that's just a reflection of the change in the

way the record goes back and forth.

So that was our last proposed change, and I don't know if anybody wants to talk about any of the considered and rejected provisions, but that is our report on this assignment.

CHAIR TRACY CHRISTOPHER: Good? All right. We'll move on to court attorneys and pro bono, and I think Lonny is going to fill in for Kennon.

PROFESSOR HOFFMAN: I am filling in for Kennon. So in the revised notebook, the place to start is page 143. So I think maybe the most important thing to say -- and this may, in some ways, keep this very short also, is that we didn't come up with any recommendations. Our work so far has been to think about the problem, and the committee thought about the problem, and out of that, we generated a series of questions that all sort of fall into a few categories, and so that's kind of going to be the focus of my -- my brief report that I'm doing today for the subcommittee.

So the question we're trying to get to -- that we've been asked to consider is whether or not court attorneys should be permitted to perform pro bono work. So, immediately, the answer would appear to be no because of the Code of Judicial Conduct, which prohibits in 4(G), judges are not allowed to practice law, and in code -- in

the canon section 3(C)(2), the way we've written it in the memo says that staff are required to observe the standards. To be a little bit more precise, the standard is that judges, in 3(C), that judges should require staff to observe the same standards that apply. So we think it's the same thing, and indeed the Texas Ethics Commission reached the same result in this ethics opinion that they issued in which they said, no, that staff can't work on pro bono cases because that's practicing law.

And so out of that, we've generated sort of a few categories of questions that we think are worth thinking about. So one category, and I think maybe I'll flag it first because I think it's the most interesting one, which is if we are going to lift the prohibition in some way, do we want to think about the type of lifting that we might do? So, for instance, in sort of using the paraprofessionals rules as a guidepost, it may be that we want certain -- we're okay with certain things. Like a one-time clinic around drafting of wills or something like that, and that something like that that maybe is more broader based, that's not limited in particular to say an individual client, might be something that the Court could consider on one side of the line. And so, again, we might just suggest some of the exceptions that are built into the paraprofessional rules as things that are not being

prescribed might similarly inform thinking here if we weren't going to allow it fully, but we might allow it partially. So that's sort of one category of question that's listed here.

A second category of question probably relates to if you were going to be -- whether it's a more limited lifting of the prohibition or if it's broader, what are sort of the pros and cons that get raised here in terms of recusal issues and disqualification concerns and conflict of interest questions that get raised, and so we've tried to identify a series of questions that all sort of fall under that category, what would need to be disclosed. If you did bring a recusal motion, is it a recusal of the court attorney, or is it recusal of the judge? So those sorts of things all get implicated by, I think, that second category.

And then the final category is really more of a sitting back and thinking about to what extent is this idea really being motivated and by whom, and so the three kind of questions that come to mind there is, is there a clamoring among court attorneys to do pro bono work that they're not being allowed to do? What are the views of judges on this subject? Neither one of those we think has been kind of addressed yet.

And then, finally, while we certainly, all

of us, are in favor of doing, you know, any changes that we can to improve the -- close the access to justice gap, it does seem hard to believe that this would make much of a dent in it; and so to the extent that we're thinking about this in those terms, I think the subcommittee is already wondering out loud whether or not that is really a motivation, because it doesn't seem like it would address it in a substantial way.

So I think that's probably a decent enough summation of kind of what our initial thinking is and kind of what's in the memo, to kind of stop there for the group to question or comment.

CHAIR TRACY CHRISTOPHER: I have a question.

PROFESSOR HOFFMAN: Yeah.

CHAIR TRACY CHRISTOPHER: Are you sure Ethics Opinion 283 is the right number?

PROFESSOR HOFFMAN: Well, I'm certainly not, but, I mean, that is the one that's what the memo says. Why, have you looked it up?

CHAIR TRACY CHRISTOPHER: Yeah, because I was trying to read it, because I -- Canon 3(C)(2) says that the staff should observe the standards of fidelity and diligence that apply to the judge.

PROFESSOR HOFFMAN: Right, but it's Canon 4, if the -- right, but then if you go to Canon 4(G) --

CHAIR TRACY CHRISTOPHER: Well, yeah, but I mean, like, I would never think that my staff couldn't endorse a candidate if they wanted to, which is Canon 5. I mean, even though a judge cannot.

HONORABLE TOM GRAY: You would have --

CHAIR TRACY CHRISTOPHER: So I wouldn't necessarily think that every -- which is why I wanted to read the opinion, because I didn't know it existed, so...

PROFESSOR HOFFMAN: I can't help you on that, but there may be a typo on there, so I would have to get back to you.

CHAIR TRACY CHRISTOPHER: Okay.

HONORABLE TOM GRAY: I don't know about the canons, but on the endorsing of judges, I can tell you that there have been judges on the Waco court that viewed it as a prohibition on --

CHAIR TRACY CHRISTOPHER: On their staff?

HONORABLE TOM GRAY: -- staff. Yeah. Absolutely.

MS. GREER: The feds do, but they --

HONORABLE TOM GRAY: But that's what?

MS. GREER: The feds do, but they have different rules, obviously.

HONORABLE TOM GRAY: The feds do what?

MS. GREER: Prohibit their staff from

endorsing candidates.

HONORABLE TOM GRAY: Oh, okay.

HONORABLE MARIA SALAS MENDOZA: Chief, it's 283. I found it.

CHAIR TRACY CHRISTOPHER: Mine says whether a legislator may accept payment from a law firm, so anyway, I perhaps have a bad cite here for this particular 283. I'll look it up.

So we also had other concerns that you don't have here, which is if someone is doing pro bono work, they are not working for the State of Texas, and so it couldn't be on court time, and they would still be expected to do their, you know, 40 hours of work, so they would have to take vacation time, or if they had to go to do a hearing for somebody. And we were also concerned about insurance and being sued as their employer, so, you know, just kind of a nonstarter for us.

PROFESSOR HOFFMAN: Those are all good. I mean, some of that is captured by that broad last second bullet, which is what limits need to be placed on the time and the scope of the activity, but that's good to have that.

HONORABLE MARIA SALAS MENDOZA: Yeah, I want to take it back. You're right. 283 was the referral, which refers to 283, but that's wrong.

CHAIR TRACY CHRISTOPHER: Okay. All right. Well, I'll find it. Is there anyone on the committee that would speak in favor of allowing the staff attorneys to work -- to do pro bono? And I did take a survey of the court of appeals, and nobody allows their people to do it, so most of them thought they couldn't. Others thought it's just a really bad idea, just sort of in general on the issue. Is there anyone that thinks it would be a good idea? Harvey.

HONORABLE HARVEY BROWN: Well, I don't know if I think it's a good idea, so maybe I shouldn't have raised my hand, but I will say that I had a staff attorney who was interested in it, but I interpreted the rules as prohibiting it, so there may be some staff attorneys who would do it. I believe, although I'm far from certain, that if you do it for a group like the HBA, that you are covered somehow by their insurance, and I do know there's a number of night clinics, so it could be off hours.

CHAIR TRACY CHRISTOPHER: Yeah. Yes, Rich.

MR. PHILLIPS: That's what I was going to -- the only area I think that it would work would be going to help staff with these sorts of clinics, where it's like an intake clinic or an evening thing where you're not forming a long-term attorney-client relationship with the person that comes in the clinic. You're just helping them with

something. At that point, I think there isn't the malpractice issue. The insurance issue may go away with that as well. Trying to take on a long-term client where you may have to appear in court during work hours, I don't see how that would work, but an evening clinic may be one option if they're really wanting to do some of that. But I think that's the only way I could see it.

CHAIR TRACY CHRISTOPHER: Justice Kelly.

HONORABLE PETER KELLY: I had a situation where my staff attorney was on the pro bono committee of the HBA appellate practice section, and then people started raising questions, can you even do that. Even though she wasn't working on cases, the fact that she was helping place appellate cases was -- we just decided it was too much of a conflict, and just she moved to another committee. It was just easier than having even the appearance of impropriety.

CHAIR TRACY CHRISTOPHER: Richard, did you have your hand raised?

MR. ORSINGER: No. I had a second thought and decided not to say anything.

CHAIR TRACY CHRISTOPHER: All right. Justice Gray.

MR. ORSINGER: That's unusual, isn't it?

CHAIR TRACY CHRISTOPHER: It is.

HONORABLE TOM GRAY: I should probably follow that idea, but talking about whether you create a long-term relationship or not as a result of one of these clinics, all I can say, is back Dallas Bar Association had a program, Just Take One. I was in private practice at the time. A couple of us went down, we just took one, and I thought it would never die. You know, it's not that easy avoiding a long-term relationship, attorney-client relationship, because by its very nature, you know, the confidentialities never go away, and they never lose your phone number, so...

CHAIR TRACY CHRISTOPHER: Justice Miskel.

HONORABLE EMILY MISKEL: My preference would be not to have it at all, so I just wanted to join my voice to those, but to the extent it was going to happen, I would agree with Rich. I would say, like, no forming an attorney-client relationship and nothing that occurs during State of Texas business hours. So, for example, yeah, Dallas Bar Association does like a nighttime legal lines where you're not forming any type of attorney relationship. I still don't think it should be done at all, but, like, no forming attorney-client relationship and not during business hours I think are good rules.

CHAIR TRACY CHRISTOPHER: Judge Schaffer.

HONORABLE ROBERT SCHAFFER: 283 is in the

Judicial Ethics Opinions.

CHAIR TRACY CHRISTOPHER: Oh, okay. As opposed to the Texas Ethics.

HONORABLE ROBERT SCHAFFER: Right.

CHAIR TRACY CHRISTOPHER: Yeah, okay. I know Kennon had mentioned to me -- I don't know if she mentioned to you, Lonny, that perhaps if the paraprofessional work gets going more and the, you know, paralegals are not practicing law and are allowed to do certain things, whether court staff could be allowed to do that. I don't know whether that's something that the Court would want to consider. But, you know, I think under the rule, as written, there has to be some supervising attorney for those people. So I don't know if that would work.

All right. Any other discussions on this point?

Okay. All right. Our last tab, Harvey, back to you.

HONORABLE HARVEY BROWN: I really never thought I'd get reached today. Great job. All right. So at page 147 of the PDF, I believe is the correct page. You have the memo from the evidence subcommittee. Just for purposes of those that have been on the committee for a long time, normally the State Bar has an administrative

committee that gives us suggestions on rules first and would review these first, but they were unable to do that, so we have just gone ahead and done it on our own. So these are not recommendations from two committees. They're from our committee, plus an informal veto power, so to speak. That's an overstatement, to some extreme, some extent, but we always confer with Professor Steven Goode at UT, and he has reviewed this memo, and he has blessed it, so to speak.

So the first one, as you'll see on the first page, is Rule 107. This is a new rule. It was put in the federal rules. Oh, by the way, back up. All we're talking about is rules that were adopted in the federal federal courts, effective December 1, 2024. They went through the full process of the Federal Rule of Evidence adoption procedure. I know because I read some of those on some of these rules, and it's a quite lengthy process. Some of these took, I think, two years at least, maybe three. And the committees are huge, frankly, that work on them, and they have some of the most distinguished evidence experts in the country, along with many federal district judges.

All right. So Rule 107 is a rule entitled "Illustrative Aids." We've recommended adopting it with one tweak, which I'll talk about in a minute. Let me back

up and tell you the reason for it was there was a number of lawyers who thought that they -- that a rule was needed to cover things such as PowerPoints in the courtroom and illustrations and various types of charts that are presented during trial. So, after a lot of debate and, frankly, a lot of rewriting of this rule, they came up with this proposal. We think it's probably not necessary under the Texas rules, but we think it does not hurt and might help, to the extent that it distinguishes between illustrative aids and demonstrative evidence.

The phrase "demonstrative evidence" is sometimes used loosely by judges and practitioners. So this distinguishes between illustrative aids and demonstrative evidence, the second being evidence where you're actually demonstrating something, like a car wreck or something like that. So this is just illustrative aids.

You'll see in yellow and red the one change that we suggested from the federal rule, which is the federal rule says that an illustrative aid must be entered into the record. We changed that to "may, upon the request of any party." The reason we did that is a lot of things are used during trials that really would not be very conducive to this. For example, some people still write on a blackboard occasionally in a trial. More

frequently, a flip chart. Sometimes people will have a witness on cross-examination, and they'll use a flip chart for just noting certain things, or an economist writing down certain numbers, or in final argument they're writing down numbers, and we thought all of those things generally probably would not be helpful to the court of appeals or need to be in the record.

On the other hand, a PowerPoint might be important to be in the record, and so we thought "upon request of any party" would solve that issue. So that's our recommendation on Rule 107.

CHAIR TRACY CHRISTOPHER: Justice Gray.

HONORABLE TOM GRAY: By the use of the word "may," just because a party requests it doesn't get it into the record.

HONORABLE HARVEY BROWN: Yeah, it does give the trial judge some discretion.

HONORABLE TOM GRAY: I would leave the word "must" so that it -- in place of "may." "At trial, must, upon the request of any party, be entered into the record."

MR. RODRIGUEZ: I agree.

CHAIR TRACY CHRISTOPHER: Marcy.

MS. GREER: I second that, because when you're talking about PowerPoints, I mean, people are using

them to walk through the expert, and the jury saw it, the court saw it, and you can't understand it on appeal without the PowerPoint. It makes it very difficult, and I've been able to enter into agreements with opposing counsel, for the most part, to let both sides come in, but what if you have someone being an obstructionist and you've got a very complicated, you know, economic expert who you can't understand his or her testimony without the PowerPoint. It makes it very difficult, and I just think it helps the court of appeals.

HONORABLE HARVEY BROWN: I don't have a strong opinion on it. I think "may" is fine, because I think it's generally going to be exercised to put it in there, but if the committee favors "must," I'm fine.

CHAIR TRACY CHRISTOPHER: Richard.

MR. ORSINGER: I would strongly favor "must" because of my concern that if something -- it's not -- technically not evidence, but it's observed by the jury and the trial judge. I wouldn't want an appellate court to say the record is incomplete because it's not there. What is the cost of requiring that it be included? If it's ignored, it doesn't hurt anything, and if it's essential, it's in the record. To me, there's no gain to putting in "may" and no loss to putting in "must."

CHAIR TRACY CHRISTOPHER: All in favor of

"must"? All right.

HONORABLE HARVEY BROWN: One issue our committee also discussed is whether we should adopt this as Rule 107 or -- which there's already a Rule 107 in the Texas rules, or make this Rule 108. We did not, I think, have full agreement on that.

MR. PERDUE: Can I go back to 107? If you had a spinal model in the courtroom, how are you going to put that in the record?

CHAIR TRACY CHRISTOPHER: It would not be practicable.

MR. ORSINGER: You can use photographs, typically --

CHAIR TRACY CHRISTOPHER: Yeah.

MR. ORSINGER: -- for things like automobiles and things like that. You have to take a picture.

MS. GREER: But, like, we had a recent trial where we had the surgeon testifying, and they did a really cool MRI that was superimposed on top of the structure, so it was a video, basically, that was created that was incredible to show the jury what was happening, and, I mean, that would be something important. I mean, and to your point, the orthopedic surgeon brought in a spine, and we took a picture of it.

MR. PERDUE: You took a picture of it and put it in the record?

MS. GREER: I'm going to put it in the record. We haven't gotten the appellate record yet.

MR. ORSINGER: Am I right, Marcy? I think that the appellate court can require the physical exhibit be forwarded. Don't they have that power?

MS. GREER: They can, but I don't think the orthopedic surgeon would be happy about that.

MR. PERDUE: They're incredibly expensive. They're very, very expensive.

MS. GREER: Yeah, they're very --

MR. ORSINGER: I don't think you have to worry about being forced to do something that's physically or difficult because --

CHAIR TRACY CHRISTOPHER: Rich.

MR. PHILLIPS: That kind of stuff, these are demonstratives. They're not admitted into evidence. If they admitted it into evidence, right, then that is one of those physical things we were talking about, the cost of shipping it or whatever, but these are demonstratives. So the whole point is they're not admitted into evidence, so I think it's a whole different idea.

CHAIR TRACY CHRISTOPHER: Judge Miskel.

HONORABLE EMILY MISKEL: I was just going to

point out, even sometimes they admit like blood tubes into evidence, and I know the court of appeals isn't receiving tubes of blood, so there has to be a way to substitute a photograph or something.

CHAIR TRACY CHRISTOPHER: Justice Kelly.

HONORABLE PETER KELLY: To me, the point is preserving the error. If someone puts up a PowerPoint that is -- you know, that is incorrect or in some way mischaracterizes the underlying evidence, and one party wants to preserve the error, because the evidence has been shown, I don't think we were really thinking about skeletons being put in.

MS. GRAHAM: Right.

CHAIR TRACY CHRISTOPHER: Harvey.

HONORABLE HARVEY BROWN: I don't think the sole point was preserving error. I think part of the point was also to aid the court of appeals when there's a PowerPoint or some illustration that might really help them follow the evidence better.

MR. ORSINGER: I don't know if this is too off the topic, but sometimes more recently in my appeals I've been putting up excerpts of depositions that we use in hearing or trial and include them in the appellate record, apart from the testimony that the court reporter would write down, and we have the witness talking and then

you have the text underneath the picture. To me, that's more in the nature of demonstrative. It's not really evidence, and we're not marking that, but that's useful to the court of appeals, too.

CHAIR TRACY CHRISTOPHER: All right. Let's move on to our next number.

HONORABLE HARVEY BROWN: All right. You want to talk about the renumbering or --

CHAIR TRACY CHRISTOPHER: No.

HONORABLE HARVEY BROWN: -- just the Court can handle that?

CHAIR TRACY CHRISTOPHER: Yep.

HONORABLE HARVEY BROWN: The next one is the witness' prior statements. Texas has a much fuller rule than the federal rule, so we said ours is working great and let's just leave it. The federal rule did make one addition that we liked, was -- which was on the bottom of page three in yellow, highlighted, and in red, which says "unless the court orders otherwise." And there's a comment in the federal advisory notes that says in some rare occasions there's been instances where a party didn't know of the extrinsic evidence when the witness was on the stand, discovers the extrinsic evidence after the fact. Maybe they're surprised by the testimony, et cetera, so it gives the court some discretion to allow it to not be

presented to the witness before the witness is cross-examined. So we thought that was a good one. We adopted their language verbatim on page four, except we just made a tweak in the language to make it fit the way we write comments, but otherwise, we took that comment verbatim, and we were all in favor of that.

CHAIR TRACY CHRISTOPHER: Any comments about that suggestion? Okay. Rule 801.

HONORABLE HARVEY BROWN: Roger is going to talk about 801.

MR. HUGHES: 801, 801(d) has to do with statements that aren't hearsay, and both the State and the federal rule have said the opposing party's statement is not hearsay, and they include statements by the opposing party's agents, employees, or co-conspirators, of course, all within scope. What the feds have done, they have put in a new section, adopted an amendment that basically deals with predecessors-in-interest; and trying to cut through the wordiness of the federal, it basically says they can offer against you a statement by someone who you stand in their shoes, a predecessor-in-interest.

In other words, if your claim or defense derives from someone else and they want to offer a statement by that person or that person's agents, employees in the scope of their employment, or a

co-conspirator in the scope of the conspiracy, if it was admissible against the -- the person in whose shoes you were standing, it will be admissible against you. We feel that's a good one, and it's fair, and simply say when your claim -- if your claim or defense requires you to stand in someone's shoes, and there was a statement that would be admissible against the person in whose shoes you are standing, it should be admissible against you.

The difficulty I saw was the federal rule has a clause that has never been in ours, and that's the second recommendation. The federal rule says that when you have a statement by the opposing party's agents, employees, co-conspirators, the statement alone is not proof of scope and course, employment agencies, or course of conspiracy. We don't have that. And so what I saw was a potential hardship, is if, let's say, your claim or defense turns on a contract or a deed from Mr. Jones and they want to offer a statement from -- that's supposedly a statement by Jones' employee in the course and scope or Jones' co-conspirator in scope and course.

Well, what happens if Jones is dead? What happens if Jones is beyond the jurisdiction so that you can't drag in Jones to say, "Gee, I don't know this person who made -- allegedly made the statement on my behalf. That person was never my employee. There was no

conspiracy." In other words, it creates a hardship if they're trying to put a statement in -- use a statement against you by your predecessor and you can't bring in the predecessor to deny that that person was an agent, employee, or co-conspirator.

Like I said, the feds have it. We don't. We talked to Professor Goode. He saw no harm in adopting something, basically adopting the federal language into ours, and we would recommend it. So it's a two-step. First, adopt the new amendment to Rule 801(d), basically the if you stand in that guy's shoes, you are going to get -- statements admissible against that person will be admissible against you, and we recommend that.

Secondly, adopting the already preexisting federal provision that the statements alone will not prove agency, scope and course, employment, and then the conspiracy. That's our recommendation.

CHAIR TRACY CHRISTOPHER: Any discussion of that? I'm a little unclear, actually, from your memo, what it is that we're adding.

MR. HUGHES: First, we would be adding the language from the new federal rule, which is the new amendment that if a party's claim or defense or potential liability is directly derived from a declarant or the declarant's principal, a statement that would be

admissible against the declarant or principal under this rule is also admissible against the party.

CHAIR TRACY CHRISTOPHER: So that would be like a new (f)?

MR. HUGHES: No, it's just -- the federal rule did not have it as a subsection at all. It's just a part of the -- it's just part of the rule after the subsections (a) through (e). I think if you go to what's 151 of the memo, you'll see the federal rule, and highlighted in blue is what's the amendment to the federal rule.

CHAIR TRACY CHRISTOPHER: Okay. So the underline is the new amendment, and then the statement above it is what you want to add?

MR. HUGHES: Yes. You got it.

CHAIR TRACY CHRISTOPHER: Okay. Any discussion on that? Any disagreement? All right.

HONORABLE TOM GRAY: I'm sorry, I was trying to track it. Are we adding "The statement must be considered, but does not by itself" -- I would suggest that we need to change the word "must" to "may." The flip of my last recommendation. Because, to me, when you say "The statement must be considered," that sort of smacks of a comment on the evidence. And I realize this is in a rule, but the jury doesn't have to consider anything.

Some people say they never consider anything, but my point being that I think "may" works better. Is "must" what the federal rule used, Roger?

MR. HUGHES: Yes.

HONORABLE HARVEY BROWN: And if I can add there, remember, this is the rule for the court. The jury is just --

HONORABLE TOM GRAY: Yeah. As I was saying that, I realized that, but --

MR. HUGHES: I think the best way to support keeping "must" is the rule says it comes in. It just doesn't -- this is what it proves, and this is what it doesn't prove. In other words, the statement will come in, but it's not proof on its own of the declarant's authority or their employment or the existence of the conspiracy. You're going to have to come up with something else. Yes.

MR. ORSINGER: What if we were to say "must be admitted" rather than "considered," because we're talking about what a judge admits into evidence, not what a jury considers, right? I don't know if that eliminates your doubt.

HONORABLE TOM GRAY: Well, but then you have a whole other problem under 403 of whether or not it should be excluded for other reasons.

MR. ORSINGER: So "consider," even though you must consider it, you can still exclude it under 403?

MR. HUGHES: Well, yeah, remember, the statement is -- all subsection (d) says is these are things that are not hearsay.

MR. ORSINGER: Right.

MR. HUGHES: You may have other reasons for excluding the statement that have nothing to do with the hearsay objection. Maybe Rule 403, maybe something else.

MR. ORSINGER: Well, what does it mean when it says "the statement must be considered"? What does that mean? If it can be excluded for multiple reasons, what does it mean to say it must be considered?

HONORABLE HARVEY BROWN: I think that means that when an appellate court is reviewing this after the fact and are looking at the totality of the evidence, one thing that is part of that analysis is the statement itself, but that statement, while relevant, is not sufficient.

CHAIR TRACY CHRISTOPHER: I'm not sure either of those two paragraphs belong in a rule of evidence.

HONORABLE TOM GRAY: Well, especially since the federal court can comment upon the weight of the evidence and give instructions regarding that, and in

Texas, you can't. I mean, maybe even better than changing "must" to "may" or in lieu of taking the whole thing out, you could take out "must be considered, but" so that it just says, "The statement does not by itself establish declarant's authority." But the Court has this discussion, and it's a gnat that at 5:30 or 5:00 o'clock I'm not --

MR. PERDUE: I'm dying on this hill. That needs to come out.

CHAIR TRACY CHRISTOPHER: All right. Judge Bland says everyone is tired, so we're going to have to stop.

HONORABLE JANE BLAND: We've lost critical mass, so I think it's more important that we have fresh eyes.

HONORABLE HARVEY BROWN: So for next meeting, do you want to take up these last two?

HONORABLE JANE BLAND: Yeah. I think that's great.

CHAIR TRACY CHRISTOPHER: All right. Well, thank you for a good meeting, and our next meeting is August --

MS. DAUMERIE: 29th.

CHAIR TRACY CHRISTOPHER: 29th. And I'll send out an update, and we've got some new referrals and

more work.

(Adjourned)

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REPORTER'S CERTIFICATION
MEETING OF THE
SUPREME COURT ADVISORY COMMITTEE

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I, D'LOIS L. JONES, Certified Shorthand Reporter, State of Texas, hereby certify that I reported the above meeting of the Supreme Court Advisory Committee on the 27th day of June, 2025, and the same was thereafter reduced to computer transcription by me.

I further certify that the costs for my services in the matter are $ 2,449.00 , which was paid or will be paid by The State Bar of Texas .

Given under my hand and seal of office on this the 25th day of July, 2025.

/s/D'Lois L. Jones
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