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MEETING OF THE SUPREME COURT ADVISORY COMMITTEE

JUNE 5, 2026

(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 5th day of June, 2026,
between the hours of 9:05 a.m. and 2:25 p.m., at the State
Bar of Texas, 1414 Colorado Street, Austin, Texas 78701.

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1 recodification project. And even in more recent decades,
2 we would hear him refer to the recodification project in
3 meetings when we were discussing some obscure point of
4 civil procedure. He had great intellect and a great
5 knowledge of the rules, because he was here for, you know,
6 all of the rule-making that this -- of the modern
7 rule-making that this group has done. So we're deeply
8 grateful to Professor Dorsaneo, and we send our
9 condolences to his family.

10 I don't have -- I haven't had word yet, but
11 there's supposed to be a memorial service at SMU at some
12 point, and when that happens, we'll try to send out that
13 information to everybody on the committee.

14 Another word about -- since we're talking
15 about our committee in particular, another word about this
16 committee. Terms are three-year terms, and so this set,
17 this round, retire -- I mean, ends on December 31st. If
18 you are interested in retiring from the committee, please
19 reach out to us and let us know. If you are -- if you
20 know someone in practice who has the, you know,
21 extraordinary skills that are reflected in this room in
22 one way or another and is willing to put the work into
23 this committee in terms of helping with drafting and
24 revising and reading the extensive amount of material that
25 you have to read to prepare for these meetings, please

1 send us names. We're also going to send out, on our
2 listserv, a call for people who might be interested in
3 membership, so that we can have a really good pool of
4 people to select from in January when we reconstitute this
5 committee.

6 Okay. Now, turning to the update, we had
7 the investiture of our two newest justices, Justice
8 Sullivan and Justice Hawkins, at the Legislature on May
9 7th, and Supreme Court Justice Alito swore in Justice
10 Hawkins, and so that was quite an exciting time for
11 everyone gathered. Our former members of the Court, Chief
12 Justice Nathan Hecht and Justice Boyd, both gave very
13 poignant remarks that I think reflected well on them and
14 the Court and their years of service. So it was a great
15 ceremony. It's available by video if you want to see it.

16 We have finalized the summary judgment
17 rules. They took effect on March 1st. They're just now
18 being put into practice, and I think there are
19 practitioners that are going to encounter questions or
20 hiccups in the rules that we hopefully will be able to --
21 hopefully will be sent in via public comment, and we will
22 be able to address as the rule goes forward. So the rules
23 make it clear in a comment that there is intended to be no
24 substantive changes to summary judgment practice, and I
25 even dropped that in a footnote in a recent opinion,

1 called H-E-B Grocery. So if you need a footnote, if you
2 have a published opinion that says that -- because I think
3 it's really important that both practitioners and trial
4 courts understand that the substantive rules haven't
5 changed. The main change is to the timing and deadlines,
6 and this is, of course, to comply with legislative
7 mandates that we received.

8 And I've gotten a couple of questions from
9 practitioners, why did you change the rule, you know, and
10 they're just completely unaware that the Legislature
11 mandated that we put together a process that would allow
12 for the timely disposition of summary judgment motions.
13 And so now the respondent has 20 days to respond from the
14 date of the motion, and the movant must reply within seven
15 days after the response's filing. Of course, by
16 agreement, you guys can work with each other on those
17 deadlines. The motion has to be heard, either orally or
18 by submission, within 60 days, or if certain conditions
19 are met, within 90 days, and then a ruling has to come
20 from the trial court 90 days after, and that's an
21 important deadline, because the Legislature has asked us
22 to keep track of that deadline. So it's Senate Bill 293
23 and House Bill 16. They require us to report to OCA
24 compliance with summary judgment ruling deadlines.

25 In another reporting task that we have

1 that's new, it's judicial time reporting. As part of
2 Senate Bill 293, the pay raise bill, the Legislature -- I
3 don't know how to frame this. I don't want to say
4 mandate, but asked, requested, mandated, taking no
5 position on the verb, that the Court adopt rules requiring
6 trial court judges to record their time. We have issued
7 preliminary Rule 6.3, the Rule of Judicial Administration,
8 in compliance with that piece of legislation, and it
9 requires each judge to report the time spent at court or a
10 courthouse facility. So time on the bench, basically, and
11 then time spent performing other judicial duties and
12 case-related duties that are not directly on the bench.
13 So there's two -- two blanks to fill in, and those are --
14 those are enumerated in the statute and separated in the
15 statute.

16 We are asking trial judges to record their
17 compliance in six-month increments. The rule is currently
18 out for public comment. We've already, I think, received
19 several good public comments about the rule. Well, it
20 just closed. It just closed June 1st, although we'll look
21 at your comment if it comes in later. We expect that the
22 rule, however, is going to go into effect July 1st, and
23 that's the beginning of the reporting period, so the first
24 reporting obligation that a judge will have will be next
25 January. January 2026.

1 We also, in connection with legislation and
2 some constitutional amendments, substantially rewrote the
3 judicial disciplinary rules, and those have to do with
4 conduct commission proceedings against a judge, and those
5 rules took effect April 1st.

6 We amended the Rules of Judicial
7 Administration, and in connection with central dockets,
8 for those counties that are affected, because they have a
9 central docket, it has three components. First, cases
10 must be randomly assigned to a judge by the trial court
11 clerk or a judge. Random assignment is an important piece
12 of eliminating forum shopping.

13 Second, the originally assigned judge is the
14 judge that's responsible for the case, so unless the case
15 is transferred for trial or some other reason, the
16 originally assigned judge will maintain responsibility,
17 and that judge will make the decision as to whether or not
18 to participate in exchange of benches through some central
19 process or otherwise. So, you know, if I'm trying a case
20 and I need to be out in an afternoon and I ask someone to
21 sit for me, it would be at my -- it would be my decision,
22 with the agreement of the other judge to sit for me, that
23 they could come sit, but I would maintain ultimate
24 responsibility over the case. And it's an important
25 accountability feature of cases that one judge ultimately

1 has oversight over the case from the time it's filed to
2 the time of final judgment.

3 The two counties that are affected, Bexar
4 County and Travis County, asked for extensions to the -- I
5 think it was originally July 1st -- July 1st deadline.
6 They have both asked for extensions to comply, because
7 there's some tech issues and issues that are unique to
8 those two counties. They -- the Court granted those
9 extensions to October 31st. So we should see changes in
10 those two counties coming somewhere this -- sometime this
11 fall. We haven't received anything from the Bexar County
12 district court judges. We received a request for
13 extension from the county court at law judges and gave
14 that. So, anyway, that's an update on the central docket.

15 Eviction rules, those have been rewritten
16 and took effect January 1st. We have continued to accept
17 public comments, partly because of the tight time frame
18 for -- due to legislative mandates for those rules. We
19 have tried to, you know, allow for comments post-effective
20 date so that we are aware of problems in the rules that we
21 may not have been aware of ahead, and we are reviewing
22 comments that we have received post-effective date and
23 will have to determine, based on those comments, whether
24 to make any changes, but they are in effect.

25 And then bail appeals, this committee did a

1 lot of great work on bail appeals. We finalized those
2 rules in connection -- in conjunction with the Court of
3 Criminal Appeals in February, and I think we've had, like,
4 one. Do we know if any others appealed? I think there's
5 been one, so good that we got the rules into effect. We
6 haven't had much of a track record yet to evaluate how
7 they're working for the Court of Criminal Appeals, but,
8 hopefully, they'll consult with us and let us know if --
9 if there's a problem.

10 Okay. The bar exam. As you all probably
11 know, there's a new bar exam coming out. It's called
12 NextGen Bar Exam, so to be really hip, and it's going to
13 replace the Uniform Bar Exam. It's supposed to be a
14 little bit more practice-focused. Our Court approved a
15 Texas component for the NextGen exam when we start
16 administering it, which I think the first will be in 2027,
17 so not until next year. We're one of the last adopters of
18 the NextGen, because we want to see how it works in some
19 smaller states before rolling it out here.

20 The Texas component will look largely like
21 it looked before we took it out in connection with the
22 UBE, and so it will test things that the NextGen exam is
23 not going to test, which is particular concepts to Texas
24 oil and gas, trust and guardianship, some aspects of
25 family law, since we're a community property state, and

1 then criminal law and criminal procedure are among the
2 topics that will be tested in the Texas component. So it
3 will look more like the bar exam that all of us took where
4 we took -- we had a Texas day.

5 PROFESSOR LONNY HOFFMAN: No Texas civil
6 procedure component?

7 HONORABLE JANE BLAND: Yes.

8 PROFESSOR LONNY HOFFMAN: Yes, there will
9 be?

10 HONORABLE JANE BLAND: Yes, there will be
11 Texas civil procedure. So it will look very much like --
12 like what it looked like before. And this is not going to
13 affect portability, so if someone has already taken the
14 bar, the NextGen bar, in one of the states that we have a
15 reciprocal agreement with, that bar exam result will be
16 portable. But, as I understand it, you will have to take
17 the Texas component, so those are all -- that's all in the
18 works, because we haven't rolled out final rules or
19 procedures for that yet, but we will have them ahead of
20 the 2027 July bar, which is when, I think, we're first
21 planning to administer it.

22 Okay. CLE for pro bono. The Court has
23 approved up to three hours of CLE credit for 15 hours of
24 pro bono, so one hour of CLE credit for every five hours
25 of pro bono. That, of course, is not going to incentivize

1 people. It's really, I think, sort of a thank you to the
2 people who are already working very hard on pro bono. I
3 have never really seen much pro bono work that can be
4 completed in only 15 hours. That would be kind of the
5 very easiest, but -- but we think that, you know, it's one
6 way to encourage and reward people who are devoting
7 substantial amount of times to pro bono. We expect the
8 amendments to take place on January 1st, so not for this
9 year, but next year you can claim CLE credit.

10 And then we proposed amendments to the
11 expedited action rules, and that's mainly to increase the
12 level for the various levels of discovery to match the new
13 jurisdictional limits for county courts, so it's changed
14 from 250,000 to 325,000. So those are out. Those just --
15 our order on that just went out a week or two ago, so
16 they're out for public comment. They won't take effect
17 for about 60 days.

18 So that's the update. Lots and lots of work
19 done by this committee. We're getting to the tail end of
20 the more than 15 projects that the Legislature -- the
21 legislative changes kind of -- the Legislature made
22 changes to the laws that affected the rules, and so thank
23 you to all of this committee's hard work to, first of all,
24 comply with all of the legislative deadlines that we had.
25 Some of them were pretty tight, and so thank you to the

1 committee chairs and to those of you that rolled up your
2 sleeves and got drafting quickly so that we could get
3 those rules in place.

4 Thank you especially to all of you who
5 worked on the summary judgment rules, because we kind of
6 had two very quick turnaround rounds because we had one
7 set of laws that went into effect and then those laws were
8 tweaked during the special session and, you know, quick
9 effective dates, one effective date already in place when
10 the other one was coming. And so, in any event, I
11 appreciate very much the hard work of this committee and
12 that subcommittee on those rules. But if anyone has any
13 questions about any of that, I'm happy to answer
14 questions.

15 All right. Great. And Justice Young is on
16 his way, and he said he didn't have anything to report
17 after that extensive report. Yes.

18 HONORABLE KENT SULLIVAN: Just a quick
19 question. You mentioned that the extension went into
20 effect for, what, Bexar County courts but --

21 HONORABLE JANE BLAND: So we received two
22 requests, one from Travis County --

23 HONORABLE KENT SULLIVAN: Right.

24 HONORABLE JANE BLAND: -- which we granted
25 to October 31st. And one from the Bexar County Courts at

1 Law.

2 HONORABLE KENT SULLIVAN: Courts at law,
3 excuse me.

4 HONORABLE JANE BLAND: Courts at Law. And
5 so it's the county courts. I would expect that we would
6 receive something from the Bexar County District Courts,
7 but we haven't so far.

8 HONORABLE KENT SULLIVAN: That was my
9 question.

10 HONORABLE JANE BLAND: Yeah. Yeah. But for
11 all I know, they're ready, so I don't know. I haven't
12 been in touch with anyone there.

13 CHAIR TRACY CHRISTOPHER: If I could just
14 add a little something on the summary judgment rule. I
15 made a presentation to the regional judicial conference in
16 April and May, and other than grumbling, everyone seemed
17 to understand the rule. The only big question was the
18 submission versus oral hearings on the summary judgments.
19 When I just took a show of hands, there are a lot of
20 judges that have never done a submission docket, right.
21 So they are now having some lawyers claiming they have a
22 right to a submission docket, and I told them, no, you
23 decide whether you want to have a submission docket or an
24 oral hearing docket. So that was kind of an interesting
25 reading that people -- that lawyers were making of the

1 rules, that it was giving them a right to a submission
2 docket.

3 I guess in some of these small towns, they
4 just didn't want to show up, right. They just wanted to
5 file their papers and not have to travel to wherever for
6 the hearing, but I told the judges, and I hope that I'm
7 correct, that if they want to have everything oral
8 hearing, that's perfectly fine, but that was an
9 interesting twist, I thought.

10 All right. Our first item on the agenda is
11 the landlord-tenant forms, and I think, Judge Chu, you're
12 going to be presenting that?

13 HONORABLE NICHOLAS CHU: Yeah. I am here
14 with Trish McAllister from the State Bar and Nelson Mock
15 from Texas Rio Grande Legal Aid. They have been on the
16 landlord-tenant task force. To give some folks some
17 background in this, just like for the last presentation,
18 almost a decade ago, the Legislature mandated that the
19 Court create forms for landlord-tenant issues. That work
20 was slowed down a little bit by COVID, changes of law,
21 significant changes in eviction statutes, things like
22 that, but the task force has been churning away at
23 submitting various forms. Last time we saw a good tranche
24 of those, and this is another tranche as well.

25 The ones that are up for review, just like

1 last time, I don't think are controversial in any sense.
2 I told Chief Justice Christopher I thought that this
3 presentation and questions and things like that would
4 probably take 30 minutes. Not because the issue is not
5 important, it's just that a lot of this has usually been
6 vetted, either with JP courts creating their own forms,
7 legal aid, various access to justice organizations, and
8 then the task force doing a lot of the yeoman's work in
9 this. Most, if not all, of it is statutory based.
10 Remember, these rules -- these laws and rules were written
11 for pro ses to kind of file on their own in justice
12 courts, so a lot of this kind of is in plain language
13 where it can be and using specific statutory terms when we
14 have to.

15 Let me pull up -- the plan is, is I'm going
16 to kick it over to Nelson and Trish to kind of go over the
17 substance in a broad view, and if anybody has any
18 questions or comments when we start going to specific
19 ones, just let us know, but we won't be going line by line
20 for each kit. The kits that we are going to be looking at
21 are writ of reentry kit. That's a situation where a
22 tenant has been unlawfully kicked out of their home and
23 they're trying to get back in. Utility restoration kit,
24 so when a landlord unlawfully disconnects a public
25 utility, tenant gets the water and electricity back. Writ

1 of retrieval, which is when a landlord unlawfully kicks
2 them out and they just want to get their stuff back.
3 Security device kit, so if a landlord is not fixing a lock
4 on a door, how will the tenant get court action to do
5 that. And then lastly is release of judgment, which I
6 think a lot of y'all already have some experience with in
7 your litigation practice. But in the JP/pro se world, it
8 is very hard sometimes to explain that a judgment that you
9 pay didn't get released until you file some paperwork, and
10 so this is kind of the easy explanation that JPs usually
11 give anyways to folks.

12 With that in mind, Nelson, do you want to
13 walk us through?

14 MR. MOCK: Sure. Sure. Justice Bland and
15 Chief Justice Christopher, members of the committee, thank
16 you for the opportunity to talk a little bit about these
17 forms that we have been creating with our chair, Judge
18 Villa, and, in particular, Trish keeping us on track. We
19 meet generally every month and draft these documents, and
20 as Judge Chu had mentioned, law changes have gotten in the
21 way. We actually submitted an entire tool kit on
22 evictions to the Supreme Court, only to have the law
23 completely change, and so that's one of the things that
24 we'll be working on in the near future.

25 But to go over specifically each area -- and

1 I'll start with each one that are in your materials and
2 talk a little bit about them and what happens. But they
3 are all -- the way we've drafted these are FAQs, which are
4 basically an explanation of the law, intended to be a
5 layperson's description of the area of law and then
6 instructions on how to fill out the form and then the form
7 itself, may be one form, may be multiple forms. And as I
8 go through each tool kit, I'll talk about that.

9 So the first one is writs of reentry. As
10 Judge Chu mentioned, this is one where a tenant, who has
11 been unlawfully excluded from the property, wants to get
12 back in, and there's a provision in the justice court that
13 allows -- as a remedy from the Property Code, allows a
14 tenant to -- to go to the justice of the peace and request
15 an order allowing them back in, and I will mention that
16 there -- generally speaking, a landlord can't exclude a
17 tenant from the property, with some exceptions that
18 include emergency situations and also repair, certain
19 repair situations, but there is a provision in the
20 Property Code that allows a landlord to change the locks
21 of the tenant who is behind on rent.

22 The confusing part about it is that there is
23 a whole series of notices that have to be given, and then
24 when the tenant requests a key, the landlord immediately
25 has to give the key. And if you're looking at me oddly,

1 it's -- you can imagine how confusing this ends up being
2 for landlords and tenants. And so -- and so the result is
3 that there needs to be this process to allow the tenant to
4 get back in when the landlord has thought that they had
5 the right to exclude them, but, in fact, they should have
6 been giving them access to the property.

7 The first document in the materials is the
8 form itself. This is the request for the writ of reentry.
9 The format is the format that we use for almost all of the
10 forms. The place and the venue in this case is only
11 justice courts. As I go through the different tool kits,
12 you'll notice that some of these also are for other courts
13 as well, but the focus, since this is landlord-tenant, for
14 almost all of these tool kits is for use in the justice
15 courts, and this remedy in particular is only for the
16 justice courts.

17 And I don't know if people have questions
18 specifically about the -- about the form itself, but the
19 instructions for filling out the form are going to be at
20 the last part of the FAQs. And I'll move on to the FAQs.
21 And the FAQs, they always start with --

22 HONORABLE NICHOLAS CHU: She has a question.

23 MS. WOOTEN: Yeah, I just have a couple of
24 real minor things on the form itself.

25 MR. MOCK: Sure.

1 MS. WOOTEN: On page nine, in the second to
2 last paragraph, I think everywhere except for there it's
3 "defendant/landlord." There's one reference to just
4 "landlord," so for consistency, maybe add "defendant"
5 before that.

6 MS. McCALLISTER: Which page?

7 HONORABLE NICHOLAS CHU: Oh, yeah, I see it.

8 MS. WOOTEN: Page nine.

9 HONORABLE NICHOLAS CHU: It's right here
10 where it says "On date of lockout, defendant/landlord."
11 It should say "defendant/landlord's agent."

12 MR. MOCK: Right.

13 MS. WOOTEN: Right. Right. And then this
14 is a super, super minor point, but the "versus" is kind of
15 inconsistent on the forms. Sometimes it's capitalized,
16 sometimes it's lower case V, so just to make it consistent
17 across the forms. And then I think there's a "to" missing
18 on page 10 in 4(f). It says, "For such other relief as I,
19 plaintiff/tenant, may be lawfully entitled until such time
20 proper notice and hearing is held." I just think there's
21 a "to" missing somewhere in there.

22 HONORABLE NICHOLAS CHU: Which one, Kennon?

23 MS. WOOTEN: 4(f) on page 10.

24 HONORABLE NICHOLAS CHU: Yeah. Okay.

25 MS. McCALLISTER: Yeah, I see it.

1 MS. WOOTEN: Now I'm getting ahead of where
2 we are, but on page 14, in the second to last paragraph --

3 MS. McCALLISTER: Kennon, we don't have the
4 exact same thing as y'all do, so --

5 MS. WOOTEN: Oh, you don't? I'm sorry.

6 MS. McCALLISTER: No. And when you're
7 referencing --

8 MS. WOOTEN: Okay.

9 THE REPORTER: Okay. We can't have just
10 general conversation. I need you to talk in order.

11 HONORABLE NICHOLAS CHU: Let me do this,
12 because the ones we have is on the packet, and it has the
13 Bates stamp on it, and they have just the document. Let
14 me send this to y'all.

15 MS. WOOTEN: The next comment I have is on
16 FAQs, and if you want me to wait until you've given a
17 preview on that, I'll wait, Nelson.

18 MR. MOCK: Yes. And, I'm sorry, can you go
19 back to the very beginning? You said page nine, which I
20 think is my page one of the form, right?

21 MS. WOOTEN: I believe so, but let me check.
22 It's page one of the form, paragraph 3, the second
23 paragraph under the heading "Facts."

24 MS. McCALLISTER: Okay.

25 MS. WOOTEN: The next comment is on page two

1 of the form.

2 MS. McCALLISTER: What was -- would you
3 repeat the comment, though?

4 MS. WOOTEN: It's simply to add "defendant"
5 before --

6 MS. McCALLISTER: Okay. I see it.

7 MS. WOOTEN: -- "landlords."

8 On the second page of your form, which is
9 page 10 of our packet, in paragraph 4(f), I think a "to"
10 is missing. So just to reread that and add.

11 MS. McCALLISTER: Yeah. I've got that one.
12 Thank you. Sorry about that.

13 CHAIR TRACY CHRISTOPHER: So Justice Gray.

14 HONORABLE TOM GRAY: To kind of pick up on
15 the same form, and this -- a couple of my comments are
16 going to be applicable to all of the forms all the way
17 through the release of judgment forms. The numbered
18 instructions do not match the numbers in the form, and I
19 think it would be -- I mean, I was sitting here trying to
20 look back and forth, and if we number the caption as its
21 own paragraph that gets its own instruction, then almost
22 all the way through they then match. A couple of the
23 forms I don't think are numbered. They were just bullet
24 points on the instructions. That could be fixed easily,
25 but the -- a correlation between the two numbering systems

1 would be ideal.

2 General comment, matching what Kennon was
3 focused on, in some places, it's "defendant/landlord,"
4 "landlord authorized agent" with slashes, and then in the
5 paragraph that y'all were talking about, it's
6 "defendant/landlord or landlord's agent." I don't care
7 which it is, but that causes me confusion when I'm reading
8 this, do you mean something different or whatever.

9 One other kind of issue that comes up with
10 the forms later is where this -- this form, the first one
11 we're talking about under paragraph 1, has what I think is
12 a -- is the perfect reference. It refers to "the property
13 I rent." So you're not talking about complexes, you're
14 not talking about units. You're talking about the
15 property I rent, and I'm assuming that these forms apply
16 to rent houses as well as apartment units.

17 MR. MOCK: Right.

18 HONORABLE TOM GRAY: And so for that reason,
19 the next form talks about "my property." I was trying to
20 put on my layman hat, which is pretty tough for me to get
21 all of this other crap out of my mind, and, you know,
22 legal stuff, and just read it, and I would have a hard
23 time understanding that "my property" means the property I
24 am renting. That's why I like that phrase that you use in
25 this first form of "the property I rent." That, to me, is

1 descriptive. I know exactly what you're talking about,
2 and then it distinguishes it from the recovery of
3 property, which is the property I own. It's my property,
4 it's my stuff that I want to get in there and get out.

5 The one other thing that confused me on this
6 first form is when I got over to your paragraph 4(f), and
7 there is the phrase "until such time proper notice and
8 hearing is held before this court," and I did not
9 understand if there is an entire proceeding filed and this
10 is just an interlocutory remedy that I'm seeking and
11 whether or not there is a full-blown separate proceeding
12 that --

13 HONORABLE NICHOLAS CHU: There is.

14 HONORABLE TOM GRAY: -- is generated.

15 HONORABLE NICHOLAS CHU: So what happens is
16 tenant files a writ of reentry. That's more or less like
17 an ex parte hearing.

18 HONORABLE TOM GRAY: Uh-huh.

19 HONORABLE NICHOLAS CHU: And then notice is
20 given to landlord, and a separate hearing is held, like,
21 later on. And so the -- I think this track -- that
22 language tracks either statute or the Rule of Civil
23 Procedure for this, to where we have to -- it's required
24 to have a hearing after the ex parte one.

25 HONORABLE TOM GRAY: It may have been in

1 there and I may have missed it, because I -- my eyes could
2 have glossed over while I was reading this, believe it or
3 not, and so they -- but in the instructions, it might be
4 helpful if there was something to explain to the person
5 this is not the end of it. You may get in. Because I
6 also didn't understand, from just the first brush of this,
7 reading it, does this just get me in one time or do I get
8 to stay? And I'm assuming I get to stay, but that was a
9 bit confusing to me, just reading this, trying to read it
10 as a layman, as a person who might be using this form.

11 MR. MOCK: Thank you. That's incredibly
12 helpful, and I think -- I mean, you touched on one thing
13 that we have struggled with. We -- our task force is made
14 up of practicing attorneys, judges, people that are
15 representing -- I mean, attorneys representing landlords,
16 attorneys that are representing tenants, and so what we
17 call a property has been an ongoing discussion, so we've
18 tried to be consistent, but point is very well-taken. I
19 don't know that we had ever thought about whether or not
20 property would be a question, so thank you for that.

21 And then the quick response with regard to
22 the hearing, the FAQs does mention this. The process
23 actually is, as Judge Chu mentioned, that the tenant can
24 immediately get an order, and it is an order allowing them
25 back in the unit so that they are permanently back in the

1 unit until they're, you know, judicially removed. So
2 they're back in the unit, and then after that happens, the
3 landlord can ask for a hearing. There's a right to a
4 hearing, but the landlord doesn't have to ask for a
5 hearing, and, of course, all of this can be appealed,
6 doesn't have to be appealed. But I -- that's mentioned in
7 FAQ 11, and I don't know what page it is, but it's page
8 four of the FAQs. The landlord can request a hearing on
9 the lockout within eight days after you gain reentry.

10 HONORABLE NICHOLAS CHU: That's 15 in our
11 packet.

12 MR. MOCK: Page 15. Page four on the FAQs.

13 HONORABLE TOM GRAY: Okay.

14 MR. MOCK: So, but -- and the struggle that
15 we have, I think, with a lot of these forms is that the
16 law can get a little complicated, and how much of it do we
17 actually flesh out. And we generally tend to try to give
18 more information than less, but with full understanding
19 that it can be confusing, so your comments are very
20 helpful.

21 HONORABLE TOM GRAY: And I tried to not
22 wordsmith every piece of it, recognizing that you were
23 trying to use helpful language, maybe not technically
24 legally precise, and so sometimes I may have defaulted
25 back to my other.

1 MR. MOCK: And there are times when we just
2 default to the statutory language, because they're terms
3 of art and we can't really change them. We try to explain
4 them. Did anybody else have questions that we can --
5 these are incredibly helpful.

6 CHAIR TRACY CHRISTOPHER: I have a -- one
7 question. At the appellate court, we see a lot of someone
8 is buying the property from, you know, owner and then it
9 gets foreclosed by the owner's mortgage company, so
10 they're not really renters. You know, they're claiming a
11 right as an owner of the property. Are these forms not
12 usable for them?

13 MR. MOCK: If your question is specifically
14 with regard to the writ of reentry, this form would not be
15 usable for them. It has to -- the right for tenants comes
16 from Chapter 92 of the Property Code, and Chapter 92 is
17 specifically for tenants of residential properties. And
18 so if they're not a tenant -- and tenant is described as
19 someone who has a lease for the exclusive -- exclusive
20 right to occupy a residential property, and it doesn't
21 have to be a written lease. It can be an oral lease, but
22 in those case, in the case that you're describing, if they
23 are not a residential tenant, they do not have the
24 right -- the right of reentry through this writ.

25 Are there -- are there any other questions?

1 Would you like me --

2 CHAIR TRACY CHRISTOPHER: Kennon, I think
3 you had some on the FAQs.

4 MS. WOOTEN: On the FAQ, it's page 14 of our
5 packet. It's number 11 in the FAQs.

6 MR. MOCK: Yes.

7 MS. WOOTEN: There's a statement, "You must
8 file with the justice court in the precinct where your
9 property is located." I have not found a website that
10 helps people understand the precincts, but if there were a
11 website of that nature, I think it would be really helpful
12 for self-represented litigants.

13 HONORABLE NICHOLAS CHU: The problem is
14 there are, but it's all specific county-based, and they're
15 subject to 10-year redistricting. So, yeah, that --
16 that's why there isn't that.

17 MS. WOOTEN: Okay.

18 HONORABLE NICHOLAS CHU: But what I will
19 tell you is if you go to a JP court or if you call up a JP
20 court, first thing they do is, is this our problem or is
21 this somebody else's problem, and they'll look it up for
22 you and say "Okay, you're in Precinct 1, actually."

23 MS. WOOTEN: They'll help direct people.

24 HONORABLE NICHOLAS CHU: Yeah. Yeah. And
25 it's a specific comment that it's in the Justice Court

1 Training Center's training, and there's a specific comment
2 in the judicial canons that says -- because we asked for
3 it to specifically say that it's not legal advice to tell
4 them where the property is located for filing purposes.

5 MS. WOOTEN: Another comment for all of the
6 FAQs, I noticed that you all very helpfully provide a link
7 to rules, a digital copy of the rules. I didn't see a
8 link to a digital copy of the statutes, and I know there
9 is a good free online source, Texas Constitution and
10 Statutes, so I just thought that would be helpful to add
11 for people.

12 MR. MOCK: Agreed. And you may have noticed
13 this, but the online access to statutes, you can now click
14 on the specific section, and it will give you that link,
15 so that's an excellent idea.

16 CHAIR TRACY CHRISTOPHER: Any other comments
17 on the FAQs for the first form?

18 All right. We'll move on to your second
19 form. Request to restore utility service is the next in
20 our packet.

21 MR. MOCK: Yes.

22 HONORABLE TOM GRAY: I didn't realize that
23 the instructions were going to be skipped, so I've got a
24 comment on that.

25 CHAIR TRACY CHRISTOPHER: Okay.

1 HONORABLE TOM GRAY: Can I go back? The
2 instructions on -- under heading, "Name of
3 Plaintiff/Tenants," this is more my ignorance question.
4 You say, "Write the name of the tenants listed in the
5 lease or the name of a person who is authorized to live in
6 the property," and I was wondering if it needed to say
7 "each person who is authorized," because -- okay.

8 MR. MOCK: No.

9 HONORABLE TOM GRAY: Not going to ask why.
10 I just -- obviously, you have considered that.

11 MR. MOCK: Yes. And I will say, just going
12 back to your -- one of your initial comments with regard
13 to the numbering, that is something that we -- we have --
14 we have struggled with a little bit, just because we have
15 numbered the instructions and then sometimes it's not
16 consistent with the forms. So I think that's an important
17 thing to go back and make sure that's consistent.

18 HONORABLE NICHOLAS CHU: Utilities.

19 MR. MOCK: Yes. Okay. So the right to
20 restore utilities. Texas law, it used to be the Texas --
21 under Texas law that a landlord could not cut off any
22 utilities for reasons that were not related to repair or
23 emergencies, and that's still the case with regard to
24 water and gas, but -- but now there's a provision that
25 allows for certain circumstances, multifamily properties

1 to cut off electricity, but only with certain notices and
2 then with certain rights that tend to be a little
3 complicated for the tenants. And that's -- and that's the
4 purpose of this form, and then the -- and then the FAQs.

5 And you'll notice that the initial part of
6 the FAQs is fairly simple; has to do with the ability to
7 get back in, like, to get the utilities restored. And
8 then it gets a little more complicated with regard to
9 electricity and the notices that are required and the
10 rights that the tenant has with regard to, for example,
11 medical emergencies, things of that sort. And I can go
12 into specifics, or I can just take questions at this
13 point.

14 HONORABLE NICHOLAS CHU: I do want to
15 highlight for everybody the -- in the instructions part,
16 those are in comment view mode, because there are two
17 comments in there for the justices to consider, which is
18 in the -- in page 24 of our packet, which is page four of
19 the FAQs, energy assistance. There's a comment about
20 maybe just putting the link to PUC about what those energy
21 assistance meant. And then on page 27 of our packet,
22 seven of the FAQs, there is a comment regarding -- it
23 says, "Landlord or landlord's authorized agent," and
24 that's kind of tracking the statutory kind of following of
25 that, so it's not just only landlords. You can specify

1 the landlord's agent as the defendant itself. So, with
2 that, any questions or comments?

3 CHAIR TRACY CHRISTOPHER: Justice Gray.

4 HONORABLE TOM GRAY: Under the FAQs and
5 instructions, your Item 3. For the rest of the members of
6 the committee, it's on page 21 of the package. It talks
7 about if I pay the bill directly to the utility company.
8 Is there a different rule, which seems to be implied by
9 this -- and maybe this is when I'm putting my legal hat on
10 and not my layman's hat -- if I don't pay the bill, but I
11 am billed by the electric company?

12 In other words, can -- if I don't pay my
13 Texas Utilities bill, my landlord still can't cut off my
14 electricity because of that or kick me out. That's
15 between me and Texas Utilities.

16 MR. MOCK: That's correct.

17 HONORABLE TOM GRAY: This seems to imply
18 that if I pay it, they can't cut it off, but if I'm in
19 nonpayment of my electric bill, maybe the landlord can do
20 something. And I could actually see that being a problem
21 if the tenant gets their power cut off by Texas Utilities,
22 but that's a whole other problem and issue. And that's --

23 MS. McCALLISTER: FAQ Number 3.

24 HONORABLE TOM GRAY: It's Number 3. And
25 what I would have suggested is "Can my landlord shut off

1 my electricity if the utility company bills me directly,"
2 and then in the comment under that, if you pay your
3 electric bill would need to be addressed as well.

4 MR. MOCK: Understood. I understand.
5 You're just pointing out that it could be confusing if you
6 haven't paid your bill, but you were supposed to pay the
7 bill, if the landlord or the tenant might think they have
8 the right to shut it off.

9 HONORABLE TOM GRAY: Yeah. The landlord may
10 try to take action based upon failure to pay a third party
11 vendor.

12 MR. MOCK: Right, which they don't have the
13 right to do.

14 MS. McCALLISTER: So we just need to specify
15 in here that your landlord cannot shut off your
16 electricity, but only the --

17 HONORABLE NICHOLAS CHU: The utility
18 company.

19 MS. McCALLISTER: -- the utility company, in
20 addition to owing or other. Okay, I got it.

21 HONORABLE TOM GRAY: And under Item 9, or
22 Instruction 9, whatever this is, I was confused under the
23 second bullet point. There's a phrase in there, "to
24 prevent your electricity from being shut off," but it's my
25 understanding, at this stage of the proceeding, the

1 landlord had already terminated your service. So it led
2 me to another question later in the instructions, must
3 have been under 12. Is there something that you can do to
4 stop the cutoff of services in here from the -- I mean,
5 because it seems like by the time you get notice, it's
6 already cut off.

7 MR. MOCK: No, that's actually -- that's not
8 true. And the process, the notice that they're giving you
9 must tell you what you owe and -- and by when you're
10 supposed to pay it, and that's the -- and that's the
11 notice.

12 HONORABLE TOM GRAY: Well, see, if you read
13 Number 9, it says "What do I need to know about the notice
14 my landlord must give me at the time my submetered or
15 allocated master metered electricity is shut off?" So is
16 that prospectively shut off?

17 MR. MOCK: No, no, no. So that is when it's
18 shut off, and the 8 has to do with before the shutting of
19 the -- 8 has to do with the notice that the landlord has
20 to give you before it's shut off. So there are two
21 notices that have to be given. One is when they -- when
22 they intend to shut it off, how much you owe, where you
23 have to pay, when you have to pay, and then when it's shut
24 off.

25 HONORABLE TOM GRAY: Okay. So the first you

1 described, Nelson, is Number 8.

2 MR. MOCK: Correct.

3 HONORABLE TOM GRAY: And then Number 9 is
4 after it's shut off.

5 MR. MOCK: Correct.

6 MS. McCALLISTER: At the time. At the time
7 it's shut off.

8 HONORABLE TOM GRAY: Then the phrase "to
9 prevent your electricity from being shut off" is
10 problematic, and it comes up later in Number 13 when it
11 references "to restore," is where I got to the idea that
12 it had already been shut off by the time 9 gets --

13 HONORABLE NICHOLAS CHU: Oh, okay. I see
14 what happened. So the notice provisions in 8 are copy and
15 paste for 9, but that "to prevent your electricity from
16 being shut off" should really be "to restore your
17 electricity from being shut off" in 9.

18 HONORABLE TOM GRAY: Or just that phrase
19 taken out of Number 9.

20 HONORABLE NICHOLAS CHU: Yeah. Where you go
21 to your bill during the form --

22 THE REPORTER: I can't hear you.

23 CHAIR TRACY CHRISTOPHER: Y'all need to not
24 mumble, because we're trying to keep a record here.

25 HONORABLE NICHOLAS CHU: Yeah. So we just

1 need to delete "prevent."

2 MS. McCALLISTER: And put "restore."

3 HONORABLE NICHOLAS CHU: And put "restore
4 your electricity." Okay. Sorry.

5 MR. MOCK: Agreed.

6 MS. McCALLISTER: Good catch. Thank you.

7 HONORABLE NICHOLAS CHU: And, Justice Gray,
8 anything else on there?

9 HONORABLE TOM GRAY: Well, I'm over on 15,
10 and this is probably getting too much into the legal, but
11 when they're talking about "fine the landlord and/or put
12 the landlord in jail," that's over in the contempt arena,
13 and, I mean, do we really need that in here?

14 HONORABLE NICHOLAS CHU: Yeah, kind of do,
15 because sometimes the landlord will just not realize --

16 HONORABLE TOM GRAY: Oh, you're doing this
17 for the landlord, not for the tenant. Okay.

18 HONORABLE NICHOLAS CHU: For everybody,
19 yeah.

20 MS. McCALLISTER: For everybody, uh-huh.

21 HONORABLE NICHOLAS CHU: Yeah.

22 HONORABLE TOM GRAY: Oh, okay. That's it on
23 my comments on that one.

24 MS. McCALLISTER: Thank you. Very helpful.

25 CHAIR TRACY CHRISTOPHER: So I have one

1 question. You've got a lot of detail in the frequently
2 asked questions. Is there a way to make a summary of it?
3 Like Justice Gray's reading this, and he's not sure where
4 it's all happening at one particular time. So my
5 understanding is they give you one notice for five days,
6 then they give you the notice day of, before they turn
7 off, but looking at it, that's not really apparent.

8 HONORABLE TOM GRAY: Maybe we could have AI
9 summarize it.

10 MS. McCALLISTER: Well, what we could do is
11 do a real short summary at the beginning. We could put,
12 you know, this is a complicated area, and here's a summary
13 of how the process -- and just do it first this, then
14 this, then this, and then the FAQs below.

15 CHAIR TRACY CHRISTOPHER: Because it's like,
16 okay, so the landlord gives me the first notice to turn
17 off my electricity, then they give me the second notice
18 that they're turning it off, and if you think it's
19 wrongful, you go to court. Okay. So when would it be
20 wrongful? Right?

21 HONORABLE NICHOLAS CHU: Okay. So --

22 CHAIR TRACY CHRISTOPHER: I mean, if I'm a
23 tenant and I'm looking at this, it's wrongful if I didn't
24 get the notice. It's wrongful if there's certain health
25 problems or weather conditions based on, you know, a

1 quick -- a quick review, but I don't think most tenants
2 could understand that, and, you know, it's wrongful if I
3 pay the electric company directly. You know, so because
4 that's what they need to know for, you know, whether it
5 was wrongful and whether they can file this request to
6 restore the utility service.

7 MR. MOCK: Agreed. FAQ 13 does -- does
8 address a little bit of that, but it does make sense. I
9 think we -- we ran it from the perspective of the tenant
10 needing the utilities back on, as opposed to the
11 violations, but you're absolutely right. I mean, anything
12 could be a violation, including failure to give proper
13 notice, failure to give notice, whether or not they have
14 the right to do -- to do a utility shutoff.

15 CHAIR TRACY CHRISTOPHER: Well, if they file
16 this form, does it get turned back on, whether or not they
17 had a legal cause of action for saying it was wrongful?

18 MR. MOCK: If the -- the judge will look at
19 it summarily, make a determination as to whether or not it
20 was wrongful, and then -- and then order it back on, and
21 then the -- like the writ of reentry process, the landlord
22 has the right at that point to ask for a hearing and
23 discuss whether or not they've --

24 CHAIR TRACY CHRISTOPHER: So in the form
25 itself, Number 3, facts, it says, you know, "The landlord

1 interrupted my utility service in violation of Property
2 Code, and it was not due to repairs, construction, or an
3 emergency." If I'm a tenant, I do not understand your
4 FAQs as to when there was a violation. And so, to me, it
5 would be very hard for the tenant to understand, yes, they
6 interrupted my utilities in violation of the Property
7 Code.

8 MR. MOCK: So maybe an FAQ that would list
9 examples of -- of how a landlord would have wrongfully
10 shut off the electricity.

11 CHAIR TRACY CHRISTOPHER: Correct.

12 MR. MOCK: I like that. I like that.

13 CHAIR TRACY CHRISTOPHER: Because that's a
14 lot of law you have to wade through under the FAQs to
15 understand what would be wrongful.

16 MR. MOCK: Agreed.

17 Other questions?

18 CHAIR TRACY CHRISTOPHER: All right. Then
19 we can move on to your next form, application to get
20 certain personal items.

21 MR. MOCK: Okay. So we've talked about the
22 writ of reentry. This is Chapter 24A of the Texas
23 Property Code, and it applies to a -- a situation where
24 a -- where a tenant -- it could be an occupant, could be a
25 tenant, could be someone who had permission to be in a

1 residential property, and -- and they have now been
2 excluded. This is not a situation that involves a
3 landlord, or seldom involves a landlord. I suppose it's
4 possible that it could involve a landlord if the landlord
5 was a roommate, but generally speaking, it's not involving
6 a landlord. And so this is a provision of the law that
7 allows the person to -- the former occupant -- current or
8 former occupant to get back in to retrieve certain
9 specific items.

10 You can see that this would happen within
11 the context of a -- you know, a relationship, perhaps even
12 a situation where the parties are in the process of
13 divorce. This law allows a party to go to any court,
14 county, district, or justice, but we focus specifically on
15 justice court, and -- and if there is a divorce, for
16 example -- and family lawyers will know this, of course,
17 but if there is a divorce or divorce decree, then the
18 party seeking those items needs to go to that court
19 specifically, and so those courts would be excluded.
20 Again, we created this form specifically for the justice
21 court. And --

22 HONORABLE NICHOLAS CHU: Oh, if I could
23 interrupt here.

24 MR. MOCK: Sure.

25 HONORABLE NICHOLAS CHU: You will see a list

1 of what you can get from a writ of retrieval. That is
2 statutorily based, so if you're thinking of what about
3 this or that, that's because the statute does not
4 authorize those.

5 MR. MOCK: Right. And this is not a -- this
6 is not a statute that allows someone to get back into the
7 unit to reoccupy the unit. This is only to retrieve
8 specific items that are statutorily allowed. And the way
9 that the process works is -- is that there is a hearing
10 that is required, unless there are certain requirements
11 that are met; and those requirements include, you know,
12 the health and safety of a person and the urgency of
13 getting the items; and if the judge determines that, then
14 no bond needs to be filed and the judge can issue an
15 immediate order. Otherwise, a hearing is required. And
16 then after the items are retrieved, the -- the occupant
17 whose -- who was currently in the unit can ask for a
18 hearing to contest the items that are taken. But this has
19 to do with that entire process, the writ of retrieval.

20 HONORABLE NICHOLAS CHU: Justice Gray.

21 HONORABLE TOM GRAY: Yeah. I'll just jump
22 in. "Use this form if" -- and I was looking down for
23 whether they were disjunctive or conjunctive, and I think
24 we need a phrase, "Use this form if all of these apply."
25 I was looking for it at the end of one of them, but it's

1 better, I think, if you just say it; and then "Do not use
2 this form if any of these situations apply," understanding
3 that those are not -- they are separated each
4 individually.

5 In connection with the first bullet point
6 under "Use this form if," I was concerned that the phrase
7 at the end "by another person with a right to live there,"
8 is that statutory, or is it even necessary? I mean,
9 because it seems like you should end the sentence, "but
10 you have been declined" -- or, excuse me, "denied access,"
11 period. And I even thought about the situation that I've
12 seen. Somebody leaves their guard dog, if you will, that
13 doesn't get along with the other person, and there's not
14 actually a person there preventing them from entering, but
15 they need in to get their medication, and so they've got a
16 problem, and would this form work, or does it have to be a
17 person, and does that person have to have a right to live
18 there?

19 Could they -- in other words, if there is a
20 trespasser -- maybe it's your apartment, and you've had a
21 guest, and now the guest has kicked you out. They don't
22 have a right to be there, but you need in to get medicine.
23 So can we eliminate that phrase and just say "access
24 denied"? And Nelson says no, because the statute is
25 worded that way.

1 MR. MOCK: I think the statute -- I'll have
2 to refer back. I'm fairly certain that the statute
3 requires that this is a right against a person who has a
4 right to live there, and I suspect that that's probably
5 intended specifically because you don't want someone who
6 doesn't have a right to be there to -- to be sued allowing
7 someone to get into the unit, but it's specific.

8 There's not a process -- if you don't have
9 anybody to sue, for example, this is not the process for
10 you. You have to -- you have to be suing someone who -- I
11 believe, who has the right to be there.

12 HONORABLE TOM GRAY: Okay. You use the term
13 "authorized to live at the residence." Is "live" a
14 statutory term?

15 HONORABLE NICHOLAS CHU: No, I don't think
16 it is.

17 HONORABLE TOM GRAY: Because --

18 HONORABLE NICHOLAS CHU: No, I don't think
19 it is.

20 HONORABLE TOM GRAY: A broader term that I
21 think would apply would be "stay," and because "live" has
22 certain connotations of permanency, longevity, and maybe
23 it's just a night or two that somebody has stayed there
24 with permission, and they need back in and are being
25 denied, and so that's a wordsmithing, I probably shouldn't

1 have mentioned, but --

2 MS. McCALLISTER: I do think it has somebody
3 who lives there.

4 CHAIR TRACY CHRISTOPHER: Trish, we cannot
5 hear you.

6 MS. McCALLISTER: I do think it has to be
7 somebody who has lived there, but we can double-check
8 that.

9 HONORABLE TOM GRAY: That's okay. We can
10 move on, because I know that we need to keep moving.

11 Second bullet point, under the "Do not use
12 this form," I would like to see something added at the
13 end, like you've added on the third and fourth bullet
14 point, that explains that a little bit more. It says if
15 you are a party to a pending divorce, you can't use it,
16 that you must file your request in the court that has the
17 jurisdiction of the divorce. Is there something like that
18 that you can add to the second bullet point to expand it?

19 Don't worry about it now, but just a
20 comment.

21 MR. MOCK: With regard to the protective
22 order?

23 HONORABLE TOM GRAY: Yes.

24 MR. MOCK: Is that what you're talking
25 about?

1 HONORABLE TOM GRAY: Under FAQ Number 2, you
2 have a command that makes me nervous when you say, "If you
3 need to get other items, see a lawyer." And that just
4 seemed to grate.

5 MS. McCALLISTER: Yeah, in particular.

6 HONORABLE TOM GRAY: And I would say, "If
7 you need to get other items, an additional legal
8 proceeding will be necessary." Under FAQ --

9 MR. MOCK: Or maybe simply remove it?

10 HONORABLE TOM GRAY: If it works, yeah.

11 Under FAQ 4, you put it as mandatory. Is it
12 mandatory that you attach a copy of the lease?

13 MR. MOCK: If we said "must," I can almost
14 guarantee you that it is.

15 HONORABLE TOM GRAY: Okay.

16 MR. MOCK: Or other -- or other documentary
17 evidence.

18 HONORABLE TOM GRAY: On Number 8, you can
19 file in "a justice court." That threw me. You can file
20 "in any justice court in the county."

21 Under 14 and 15, under 14, you say "officer
22 of the peace." Everywhere else you use the term, in 15
23 and beyond, "peace officer."

24 MS. McCALLISTER: I think I know why that
25 was, but thank you.

1 HONORABLE TOM GRAY: And that's all of mine
2 in regard to that form.

3 CHAIR TRACY CHRISTOPHER: Kennon.

4 MS. WOOTEN: Just very quickly, FAQs Number
5 2, there's a bullet point list under the phrase, "You can
6 only get the following things required by you or your
7 dependents." I wondered whether the "or" for the last
8 bullet point should be an "and." Because you can get any
9 of those things, so I think an "and" would be better
10 there. And this is real minor, but you have a semicolon
11 before the "or," but there isn't a semicolon at the end of
12 any of the other bullet items, so maybe just add a
13 semicolon after each one for consistency.

14 MR. MOCK: Oh, I see what you're saying.

15 CHAIR TRACY CHRISTOPHER: Kent.

16 HONORABLE KENT SULLIVAN: We're offering up
17 a number of comments about things that may be unclear to
18 us and making various suggestions, and that's all too
19 good. And let me also say the subcommittee is doing the
20 Lord's work, so kudos to everything that you've done and
21 improvements that have been made.

22 The one comment that occurs to me, it may
23 apply here, but perhaps it applies more broadly to
24 initiatives that we undertake that apply beyond just the
25 legal community, and that is, do we have a way of

1 surveying the actual intended audience? And by that, I
2 mean, you know, to get a reaction from people who are
3 representative of the tenant community, and perhaps, more
4 specifically, the tenant community that are most likely to
5 be in these circumstances, because I don't think the folks
6 around this table are terribly representative of them.
7 And we all try our best, but it would be a huge
8 advancement, it seems to me, to be able to do that kind of
9 work, you know, a organized effort, you know, that would
10 generate results not unlike a focus group or that kind of
11 thing.

12 Again, I'm not suggesting this -- this
13 committee should have to do that or has the resources to
14 do that, but I am thinking more generally that,
15 institutionally, we ought to be considering those sorts of
16 things, and the Court should be considering those sorts of
17 things, to the extent that this extends just beyond the
18 legal community where everybody has a law degree and a law
19 license. Just a thought.

20 MS. McCALLISTER: Well, one thing that the
21 committee might want to know is that Judge Swearingin, who
22 is in Tarrant County, is -- is conducting -- we're kind of
23 beta testing these forms. So there is going to be a loop,
24 a feedback loop, for people to allow them to provide
25 comments and to give feedback on what they found easy or

1 not easy. Because when we have beta tested forms in the
2 past, what we find is the places that we think that
3 they're going to get stuck, they don't get stuck. They
4 get stuck on some other thing where, you know, I guess we
5 all thought it would be fine, and they don't know what it
6 means, so it's very informative to do that.

7 The issue really has been that, you know,
8 there's so many forms that have been generated from the
9 Supreme Court, you know, landlord-tenant task force, and
10 various other task forces, that it can be kind of daunting
11 to get that feedback, but it is the best practice, and I
12 honestly highly advocate that it's done. And, frankly,
13 when these forms get released, I really do want them to
14 have feedback loops, because that's the only way things
15 get better. And you know, had you guys not read all of
16 these forms and caught these little, you know, even minor
17 things, you know, they would have been out there in the
18 world to use and been confusing, so I appreciate that.

19 CHAIR TRACY CHRISTOPHER: Justice Bland.

20 HONORABLE JANE BLAND: Yeah, I just wanted
21 to say the National Center for State Courts is aware of
22 this, and we are not the only state that has lots of
23 forms, and user comprehension is a very important piece of
24 it, and as a result, they have a lot of data about what
25 works and doesn't work with forms.

1 Jackie has attended a seminar, which we
2 affectionately call forms camp, for -- about drafting
3 forms that are more user-friendly and not -- to your point
4 Kent, not the legalese that we all are familiar with. We
5 will take the work of the committee, and Jackie and -- it
6 used to be we had another person, but right now I think
7 you're it -- who have kind of been trained in this, and we
8 will vet -- vet them according to the rubrics that the
9 center has developed based on data.

10 We did this for the will forms, in both
11 English and Spanish. And for those of you that followed
12 that, the committee's product was the -- was the basis,
13 with the foundation for those forms, but they looked very
14 different by the time Jackie and the Court got through
15 reviewing them. And it was all with -- you know, it has
16 to do with the look of the form and how much information
17 you put in each section and that kind of thing, so we'll
18 do that with these forms as well.

19 CHAIR TRACY CHRISTOPHER: Kent.

20 HONORABLE KENT SULLIVAN: For what it's
21 worth, and these are all great things. I mean, I have
22 heard something about the feedback loop before, and that's
23 a great addition, but I do think that there are two
24 elements to it. One is, do you understand the form, you
25 know, can you navigate it; and the second one I think that

1 is useful, and I assume that we're going to be oriented
2 towards it, is does it really meet the practical needs of
3 the intended audience. In other words, it may be I can
4 understand the form and can navigate the form and know how
5 to fill out the form, but it doesn't actually deal with
6 all of the practical problems that routinely come up. And
7 I do think that's another thing that is something that we
8 ought to be sensitive to, and perhaps that is already
9 being done.

10 This committee has been very proactive, and
11 I think very successful, but I just -- I make this comment
12 in part because we have other initiatives, not just this
13 one, and I think this is something we ought to be aware
14 of. It's great that the National Center is doing what
15 it's doing and that we're connected to it.

16 MR. MOCK: And very quickly, to respond to
17 that, one of the things that the -- as I mentioned, the
18 makeup of the task force itself, one of the things that we
19 have been looking at as we come up with lists of forms
20 over the years to come up with, is looking specifically to
21 the practicality of it. And I can tell you, kind of like
22 Judge Swearingin, people have been using these forms
23 already, introducing the concepts of these forms and these
24 tool kits to people.

25 CHAIR TRACY CHRISTOPHER: All right. Any

1 other comments on the personal items?

2 HONORABLE NICHOLAS CHU: Justice Gray, just
3 to get back to your comment or to close the loop on the --
4 for the record, on that part about, where is it, any other
5 person authorized to live at the residence, the statute is
6 specific that the person locking you out has to be a
7 current resident -- or a current occupant, so that's kind
8 of where that comes from.

9 Do you want to go through the security
10 devices next?

11 MR. MOCK: Yes. Okay. So security devices,
12 generally speaking, tenants tend to use the repair process
13 when dealing with security devices. And -- and so one of
14 the reasons why we -- why we developed this tool kit was
15 because there is this -- there is a very robust law of
16 Subchapter (d) of Chapter 92 of the Property Code that
17 deals with very specific requirements that a landlord has
18 regarding security devices, the security of a residential
19 property. Both the obligations that a landlord has with
20 regard to those and the remedies that a tenant has if a
21 landlord does not fulfill those obligations or if the
22 tenant wants a -- something, like a -- like feels insecure
23 in the property, wants to change the locks. They have the
24 right to do that. There's a process by which they would
25 have to request that and pay for that.

1 So this is all set out specifically to
2 address these issues. Again, not frequently used,
3 probably not known that well, and one of the reasons why
4 we -- why we developed the tool kit was because it is very
5 important information for both the landlord-tenant to have
6 this and to know.

7 CHAIR TRACY CHRISTOPHER: So this -- can I
8 just ask a question? Where would this tool kit be found?
9 Because this is not something where you go to JP court,
10 because this is just a request to the landlord. You're
11 not actually filing anything with respect to these.

12 MR. MOCK: Right. And that's -- that's the
13 case with some of these tool kits, generally. But I think
14 that the idea is that they would be available if -- if a
15 judge -- if the Court is willing to host them on their
16 website, that they could do that, or that they would be
17 available at places like Texas Law Help online or other
18 resources that pro se folks would be -- would have access
19 to.

20 MS. McCALLISTER: Yeah. A lot of counties
21 have Texas -- they have tenant rights groups and things
22 like that, where if you do an internet search, it's going
23 to pull up. Austin has one, Austin Tenants Council. They
24 could provide, you know, access to those forms, too, so --

25 MR. MOCK: And this area of law is, in

1 particular -- trouble with this is it is complicated.

2 MS. McCALLISTER: It is complicated. It's
3 very complicated. That's the reason why nobody uses it,
4 it's super complicated.

5 MR. MOCK: And some of it's not complicated,
6 but because --

7 MS. McCALLISTER: Concept isn't.

8 MR. MOCK: Concept is not, but you'll see
9 that there are four different forms in this -- for this
10 tool kit. One is -- the first one is the simple request
11 regarding the security devices. The second form is the
12 tenant's notice of deduction of security device cost from
13 rent, which is a right that the tenants have, a remedy
14 that they have if the landlord is not changing -- you
15 know, repairing the devices or hasn't done it initially.
16 There is a request for compliance, which is a statutorily
17 required notice, if the landlord has not fulfilled the
18 things that they need to do with regard to security
19 devices upon move-in for the tenant. And, you know,
20 talking about the complication of the law, this determines
21 -- whether or not the tenant gives this notice determines
22 some remedies that they have, and we walk through that in
23 the FAQs.

24 And then the last form is the notice of
25 lease termination, which is a remedy that the tenant has

1 if the landlord has not or refuses to make the repairs,
2 whether -- whether they're repairs that are requested by
3 the tenant or changes that are requested by the tenant
4 that the tenant's going to pay for, or -- or that the
5 landlord has not done upon initial move-in by the tenant.

6 I will note that the notice of lease
7 termination is not a required notice. It could actually
8 be an oral notice, but it's always important, I think, to
9 put things in writing, so we created this notice as a
10 result of that.

11 HONORABLE TOM GRAY: We ready to talk about
12 it?

13 HONORABLE NICHOLAS CHU: Yeah.

14 HONORABLE TOM GRAY: Security devices, first
15 bullet point, "Use this form to ask your landlord," I
16 haven't repeated this on every section, but, again, this
17 is parallel. Later in here you use "landlord" something
18 "or agent," and so just throughout these forms and
19 instructions and FAQs, pay attention to that noun,
20 pronoun, whatever, of how you label them so you're
21 consistent, because the inconsistency creates confusion
22 and questions.

23 MS. McCALLISTER: And sometimes some of
24 these statutes, it is just the landlord, and sometimes
25 it's both. That's also one of the reasons why it becomes

1 super confusing. This is a really old statute that
2 probably needs to be cleaned up, but, yeah, it's very
3 confusing.

4 HONORABLE TOM GRAY: And I'm assuming this
5 applies to rental property, houses, not just to
6 apartments.

7 MR. MOCK: Correct.

8 HONORABLE TOM GRAY: But we talk about
9 "units and complexes" and never talk about rent houses,
10 and so it might --

11 MR. MOCK: Anything for rent.

12 HONORABLE TOM GRAY: It might be helpful to
13 do that.

14 On FAQ 19, when you're looking at that, and
15 it may be just a gnat, but the question that popped up in
16 my mind is do I get my security deposit back as part of
17 the what I can do if I unilaterally terminate the lease
18 because they didn't do a security. I'm sure you do, but
19 it was not clear that that was a -- included in the
20 remedies.

21 Item 20, or FAQ 20, I was concerned there
22 that what about other breaches by the landlord. This is
23 what happens if I terminate the lease, but I haven't paid
24 for the security device as required. What about other
25 breaches by the landlord? I want to terminate the lease,

1 and one of the grounds was failure to do a security
2 device, but I didn't pay for it. Anyway, it was confusing
3 to me that I could terminate for other reasons. It's on
4 page 49 of our package.

5 It is under "Tenant's notice of deduction of
6 security device cost from rent" form, so it would be the
7 instructions.

8 Number 7, method of delivery. This occurs
9 throughout the forms as I recall. It says, "Method of
10 delivery. This request form to your landlord, manager, or
11 agent." It's not "your agent." It needs to be "the
12 landlord, manager, or agent." Just that might be a little
13 bit more wordsmithing than I should get into, but...

14 On the forms, so that you -- so it's
15 manageable, I would put a subject line on all of these
16 forms that are not pleadings, and the subject would be the
17 title of the form. For example, on the first one in this
18 grouping, "Subject, tenant's request regarding security
19 devices," and that way, you also -- when you number these
20 sections then, you can tie those back to your instructions
21 for those sections, and you'll have something to number,
22 but it won't require any modification.

23 MR. MOCK: And I think we were thinking that
24 the title did that as opposed to a subject line.

25 HONORABLE TOM GRAY: There's no title on

1 these.

2 MR. MOCK: Are you talking about the form
3 itself?

4 HONORABLE TOM GRAY: Yes.

5 MR. MOCK: I think we were thinking that the
6 title would --

7 MS. McCALLISTER: It got cut off, I think.

8 HONORABLE NICHOLAS CHU: There must have
9 been some issue with -- because our version that was
10 submitted to the Court doesn't have the title on it. I
11 think that's just a transcription error.

12 HONORABLE TOM GRAY: Okay.

13 MR. MOCK: Sounds like headings and footings
14 might have been removed, but every form has a heading
15 which has a --

16 HONORABLE TOM GRAY: Yeah, those are not in
17 our materials.

18 MR. MOCK: So it has a heading that
19 describes what the form is, and it also has a -- generally
20 has a citation to the law, the specific law.

21 HONORABLE NICHOLAS CHU: Jackie, we'll
22 double-check with you to make sure that's --

23 MR. MOCK: And point taken also about the
24 security deposit. I will mention that in the lease
25 termination form, it does -- it does address that issue as

1 a written -- a written pointing out that's required from
2 the security deposit, and that's included in here.

3 HONORABLE TOM GRAY: Yeah.

4 MR. MOCK: And I think maybe in instructions
5 it's referred to as well.

6 CHAIR TRACY CHRISTOPHER: Any other comments
7 on these letters?

8 MR. MOCK: All right. Last one, I'll try to
9 zip through this. I really appreciate the comments that
10 y'all have made and the care with which you've taken to
11 look at these forms.

12 Release of judgment is -- there are multiple
13 forms, because this is specifically having to do with
14 Section 31.008 of the Texas Civil Practice and Remedies
15 Code, which allows for a -- a defendant, a judgment
16 defendant, judgment debtor, to seek a release if the -- if
17 the judgment creditor is -- refuses -- is not able to be
18 located or refuses to allow payment and refuses to
19 accept -- refuses to submit a release of judgment, and so
20 this simply goes through the process.

21 The first form is if all parties agree and
22 they will accept the money and/or have already accepted
23 the money and will sign the release of judgment, that's
24 the first form. The second form is this is a notice
25 requirement that's required by the Civil Practice and

1 Remedies Code where the judgment debtor informs the
2 judgment creditor about the judgment in the statutorily
3 defined way to inform them, who has to be informed, and
4 then after that is -- a number of things will happen.

5 One is that they locate the creditor, and
6 the creditor says, "Yes, I will accept the money, and I
7 will sign a release." Or if they are not able to find
8 them, which happens sometimes, maybe the entity no longer
9 exists, and if that's the case, then the third form is a
10 request that is submitted to the court for the release of
11 judgment and the supporting affidavit informing the court
12 that the judgment debtor has gone through the process,
13 notified, has not received any notice back, and the
14 judgment debtor then requests the court to pay that amount
15 into the court registry, and then the court will then
16 issue a release of judgment.

17 And the last form is the release of judgment
18 that the court would sign. And then the fourth form is
19 the request for hearing and release of judgment and
20 supporting affidavit. That's the form that the judgment
21 debtor will use if the opposing side is refusing to accept
22 the payment or has accepted the payment and is refusing to
23 sign the release of judgment. And I can tell you, with
24 experience, that a lot of times courts are unaware of this
25 provision in the Civil Practice and Remedies Code, and so

1 they don't always have an exact process for dealing with
2 these things. But our hope is that with the FAQs and the
3 forms, that a pro se tenant or judgment debtor would be
4 able to go to court and -- and obtain a release of
5 judgment and be prepared to pay for it.

6 HONORABLE NICHOLAS CHU: One thing I wanted
7 to point out for record purposes, page 75, the letter to
8 the judgment creditor, it looks like we had the same
9 problem. It looks like all of the letters, the titles got
10 truncated out of the submission, so we'll clean that up.
11 Justice Gray.

12 HONORABLE TOM GRAY: On each of the -- I
13 don't know if it's in the FAQs or the instructions. I
14 think it's the instructions. You have a statement, "If
15 you need more room, attach another page." On all of the
16 other forms where you had this, you had an admonition to
17 the individual to keep it short and simple. I would
18 include that admonition on all of these forms as well.

19 The -- in an effort -- there is a part of me
20 that wants to talk about other ways of satisfying a
21 judgment, because there's -- I can see a lot of people
22 working out a rental, but it's not payment in the form of
23 cash, and so it's another consideration that has been
24 given, like, you know, they may do painting services or a
25 car or whatever. That's just not addressed, and I just

1 don't see a viable way to really do that, so I'll let it
2 go. But on the --

3 MR. MOCK: Would an FAQ that says something
4 to the effect that, you know, this is any agreement that
5 you come up with between the parties, you know, if that
6 is -- if that -- if that is sufficient for the judgment
7 creditor, then that would be sufficient for release or
8 something to that effect?

9 HONORABLE TOM GRAY: Something like that.
10 Basically, anything that you have given to satisfy the
11 judgment and the creditor agrees, then you can go to this
12 release of judgment form. Anything along that order.

13 MR. MOCK: Sure.

14 HONORABLE TOM GRAY: On page -- our page 71,
15 it is in regard to the last forms. You referenced a form
16 and an affidavit, a form judgment. I did not find that in
17 my materials, and I noticed that in section, Roman numeral
18 VI, Subitem 1, it says, "If you file either one of these
19 documents with the court," and there's only one of those
20 documents attached to my materials, and so I'm assuming
21 that something else got truncated from the documents.

22 MR. MOCK: Oh, goodness. So --

23 HONORABLE TOM GRAY: The last document in
24 our package is a release of judgment, but --

25 MR. MOCK: And then the previous form before

1 that is the request for the hearing?

2 HONORABLE TOM GRAY: Yes.

3 MR. MOCK: And then the previous one before
4 that is the request for the release of judgment?

5 HONORABLE TOM GRAY: Yes.

6 MR. MOCK: Those are the two forms that are
7 referred to.

8 HONORABLE TOM GRAY: Okay. But you
9 referenced a form affidavit, and there wasn't one. So in
10 the -- the materials just sort of stopped, it seemed like,
11 but anyway, that's a gnat. Don't worry about that.

12 MR. MOCK: I think -- and to be clear, it's
13 the affidavit is part of the title, but I see what you're
14 say -- I see what you're saying.

15 HONORABLE TOM GRAY: Okay.

16 MR. MOCK: I think -- I think that the form
17 itself is the affidavit, but maybe that needs some
18 clarification. I see what you're saying.

19 HONORABLE TOM GRAY: Okay. I'm done. I'm
20 sorry that it took more than 30 minutes.

21 CHAIR TRACY CHRISTOPHER: No, that's okay.
22 I think one other thing, "Do not use this form if you are
23 trying to contend that the judgment was wrong."

24 HONORABLE NICHOLAS CHU: Oh, yeah.

25 CHAIR TRACY CHRISTOPHER: Because I can see

1 someone using this to try and say, "Well, they never
2 should have entered this judgment against me."

3 HONORABLE TOM GRAY: That actually was in my
4 draft admonishment where, you know, don't go into the
5 histrionics or the background or --

6 CHAIR TRACY CHRISTOPHER: Right.

7 HONORABLE TOM GRAY: -- why the judgment is
8 wrong, but --

9 MR. MOCK: Agreed.

10 HONORABLE NICHOLAS CHU: Justices, and Chief
11 Justice Christopher, and Jackie, we have tracked a lot of
12 these suggestions made. Would it be y'all's preference
13 that we send that to Jackie and then that would be the
14 submission or -- okay.

15 HONORABLE JANE BLAND: Yeah, I don't think
16 we need to bring it back.

17 HONORABLE NICHOLAS CHU: Okay. Cool.

18 CHAIR TRACY CHRISTOPHER: Any other comments
19 on the release of judgment, notices, and forms? Kennon.

20 MS. WOOTEN: This isn't specific to that,
21 but it's a general comment stemming from concern about how
22 we get people to these forms, who can get them to the
23 forms. And I know that the proposal for paraprofessionals
24 provide limited scope services to low income Texans is
25 something that has not gone beyond a proposal, but I just

1 wonder whether some of the guidance in there about what
2 does not constitute the practice of law might be helpful
3 to set forth in relation to these forms when these forms
4 come out.

5 Specifically, this is in Miscellaneous
6 Docket Number 24-9050, and with respect to things that I
7 think are presented as not being the practice of law,
8 there are items, such as reviewing forms and other
9 documents for completeness and if incomplete stating why
10 the form or document is incomplete, and also directing to
11 legal resources, forms, and referrals. So I just would
12 wonder whether something like that, with the issuance of
13 these forms, could be helpful to the access to justice
14 community.

15 MS. McCALLISTER: That would be extremely
16 helpful, because there are many courts out there that do
17 these. And actually, I think there was a -- when I was
18 still the executive director of the commission, we brought
19 up policies, suggested policies and procedures, or
20 whatever, for courts and court clerks, because there is a
21 broad notion out there that pointing someone in the
22 direction of a form is a violation of UPL, and that is
23 because there is a case out there in some jurisdiction
24 that says that, because I had done a bunch of research on
25 this. So it would be helpful, I do think, if that could

1 go to just sort of a blanket statement for all of the
2 forms, not just these.

3 CHAIR TRACY CHRISTOPHER: The Court will
4 take a look at that. I seem to remember something with
5 respect to when we did our family law forms, simple
6 divorce forms, that we had something like that in there,
7 so --

8 MS. McCALLISTER: What's in those forms is
9 that -- and it's in the statement of inability to afford
10 payments of costs, that they have to make it available,
11 forms have to be made available; and if they are
12 submitted, they have to be received. But it is a
13 different thing to say that court personnel can choose the
14 form, which would be like in a justice court, if you're
15 going to make the forms available and someone doesn't
16 know, but they're coming to you and saying, "I've just
17 been locked out," you know, or I've just been whatever,
18 and the person -- "What can I do?" Then the court staff
19 would be able to say, "There's a form for that," you know.
20 That's different than -- than the way it's framed in the
21 forms that are currently existing. Or in the statutes,
22 actually, which is my bad, because I was the one who kind
23 of put those forward, but, yeah, it's a little bit
24 different.

25 CHAIR TRACY CHRISTOPHER: Okay. Thank you.

1 Any other comments or questions on these forms?

2 All right. Let's take a 10-minute break
3 before we move on to hallucinated citations. Thank you
4 very much.

5 (Recess from 10:40 a.m. to 10:51 a.m.)

6 CHAIR TRACY CHRISTOPHER: All right. Our
7 next topic on the agenda is hallucinated citations. You
8 are up, Robert.

9 MR. LEVY: Thank you. So your memo, which
10 is at Tab 2, discusses the update from the January
11 meeting. And just to give you a brief summary of what the
12 memo covered, at the last meeting, there was a -- appeared
13 to be a consensus to address in the TRAP, appellate rules,
14 a similar requirement that is in the Texas civil rules
15 dealing with certification. And the proposal that you'll
16 see in TRAP 9.1(e) will provide that when you file a
17 pleading -- or not a pleading, but a paper in federal
18 court, that that will include a certification that what
19 you state in that document has been -- is valid and has
20 been reviewed, meets both in terms of factual statements
21 as well as case law citations.

22 In addition, as the discussion at the
23 January meeting focused on how to address the issue in
24 Rule 13 -- and there was a lot of discussion there about
25 whether it should be bad faith or groundless. And so the

1 approach that we've taken in this memo and the revision to
2 Rule 13, as we'll talk about, focuses on using the term
3 "bad faith" to include citations to wholly fictitious case
4 law. And one of the other elements that came up in the
5 January meeting was something Richard Orsinger had
6 mentioned, that Rule 9.1 could and should track the
7 sanctions language that's in TRAP Rule 52.3(k) and 52.11,
8 which is the sanctions dealing with original proceedings.

9 In addition, I wanted to highlight the fact
10 that this problem continues to be an issue for --
11 nationally. Well over a thousand cases, and more cases
12 are being issued every day. It's now up to 1,080 cases,
13 and this is based upon one individual from France who is
14 tracking them. And it is an issue that has now hit Texas
15 courts of appeal, with multiple cases in the last three
16 months addressing this problem. Interestingly, a lot of
17 the Texas cases have been -- originally talked about the
18 issue and referencing the existence of hallucinated
19 citations, but then tried to address the merits issues.
20 But more recent cases have been determining that the
21 failure to cite to real cases is itself a basis to deny
22 the appeal as having waived error because there -- if you
23 don't cite to law to support your claims, then you
24 waive error.

25 The -- obviously, the problem becomes a

1 broader issue in terms of reputational harm. As you know,
2 a major law firm had a very embarrassing situation in
3 bankruptcy court, and it is also raising the risk of
4 impacting public confidence in the courts if this
5 continues to take place.

6 We pointed out two significant federal
7 courts of appeal cases. One was the Fifth Circuit's
8 decision in *Fletcher vs. Experian* from January. That did
9 involve sanctions. And the court laid out these issues in
10 a very helpful manner and also, coincidentally, talked
11 about the Fifth Circuit's decision not to adopt a rule
12 that required notification or disclosure of use of AI in
13 their pleadings, which, of course, is an issue that we
14 addressed previously.

15 But the case that I personally found
16 particularly concerning is the Sixth Circuit's case of
17 *U.S. vs. Farris*. The reason why that case is particularly
18 problematic is because, at least based upon the facts that
19 the court addressed or the arguments in the case, it
20 involved AI from Westlaw's CoCounsel application. And
21 just for those who haven't worked with it, there are two
22 tools that are embedded in Lexis and Westlaw. Westlaw's
23 is called CoCounsel. Lexis' tool is called Protégé, and
24 neither tool represents that every citation that they
25 provide or every answer that's provided is valid and you

1 can count on it. However, the understanding is that those
2 tools are -- the population or the language model in those
3 tools are real cases, real citations, and so it should not
4 be making up opinions, or at least that's the presumption,
5 I think, that a lot of people that use those tools have.
6 But the reality is, at least with CoCounsel, that is not
7 the case.

8 An interesting element is that both Thompson
9 Reuters, who owns Westlaw and Lexis, have the ability to
10 actually go in and look at this individual lawyer's work
11 and see if, in fact, the problem was with CoCounsel, their
12 tool, or with some other activity related to the use of AI
13 or some other problem with the way the lawyer prepared
14 their -- their paper.

15 Another element of this, which is also
16 important, is that not only did CoCounsel, according to
17 the decision, hallucinate cases, but it also hallucinated
18 arguments, and so that the lawyer, apparently, took the
19 answer -- or made a query into CoCounsel. CoCounsel gave
20 its response, and the lawyer just dropped that in the
21 brief. And some of the citations in that case were
22 references to "This is what the law is" were just wrong,
23 including citations to sentencing guidelines. That, too,
24 is obviously very problematic. And so when we went
25 through and made some adjustments to the proposed rules,

1 we took that into account so that it's not just
2 hallucinated citations, but it is argument that is not
3 supported by the law.

4 And, obviously, I've mentioned the issue
5 about the Texas appellate courts, so we propose changes to
6 Texas Rule of Civil Procedure 13, where, in the
7 certification language, it would add that a certification
8 includes that the citations and record references are not
9 fictitious and support the claims. We also redefine bad
10 faith to include citation to fictitious or nonexistent
11 authorities.

12 And then the issue of Rule 9.1, the TRAP
13 Rule 9.1, we are following the approach that Rule 52 has
14 and -- and as a side note, there was one suggestion. Rich
15 Phillips had suggested that we actually should follow the
16 Texas Rule of Civil Procedure 13 in the TRAP rules and not
17 follow the language that's in the Rule 52.3, because he
18 felt like that was a better standard. So that -- that's
19 an issue that we note to the Court, and it's obviously up
20 to the Court in terms of how it wants to address that. I
21 think, in general, we felt that it would be awkward to
22 have one sanction rule that uses the approach that 52 has
23 and then a different rule with a different setup for the
24 similar types of issues. So the answer might be to change
25 52 versus 9.1 tracking 52.

1 In terms of Rule 13, you'll see it on page
2 eight of the memo. It includes the language -- the
3 discussion of legal citations and references. We
4 actually -- I mentioned "to the record." We actually had
5 significant discussion about whether it should be the
6 record or it should be supporting evidence, and --
7 or some -- and Richard Orsinger had suggested "facts." We
8 were concerned that the use of the term "facts" would just
9 create a dynamic where you would end up having sanction
10 motions based upon disagreements about the facts, and we
11 felt like that would not be a productive reference, so we
12 used "supporting evidence."

13 Obviously, we want to be concerned about the
14 possibility that if an advocate makes a statement, an
15 allegation, or a representation about the facts to support
16 their claim, that if there is a disagreement about what
17 the facts are or what the facts prove, that that alone
18 should not be sufficient for a sanctions motion under Rule
19 13; but if, in fact, they are making reference to facts
20 that just simply do not exist and there is no supporting
21 evidence to support that, that statement, then that could
22 be a basis for sanctions.

23 We also spell out in more detail in the
24 proposed comment about the issue. We don't include
25 "hallucinations" specifically in the text of the rule, but

1 we do propose providing more detail in the notes and
2 comments, simply because the use of -- the reference to
3 hallucinated cases or citations means something to us, as
4 we've been dealing with it, but it might not be meaningful
5 to both self-represented litigants and the average lawyer,
6 and so we felt like reference to more generic definitions
7 would make sense. The discussions on 9.1 are set out
8 starting on page 9 and 10.

9 CHAIR TRACY CHRISTOPHER: Let's stop and do
10 13 first.

11 MR. LEVY: Okay. Great.

12 CHAIR TRACY CHRISTOPHER: The amendment to
13 TRCP 13, which is on --

14 MR. LEVY: Page eight.

15 CHAIR TRACY CHRISTOPHER: -- page eight.
16 Although, at the bottom, it says page nine.

17 MR. LEVY: Oh, I'm sorry. Yeah.

18 CHAIR TRACY CHRISTOPHER: Any comments on
19 the proposed change to Rule 13? Yes, Roger.

20 MR. HUGHES: I had some suggestions for word
21 choice. In the second part of the rule, where you try to
22 lay out bad faith, I would change "supported by the
23 evidence" to "supported by any evidence," and I -- the
24 reason I say that is we -- I gathered it was driven by the
25 not wanting to get into arguments over interpreting

1 evidence and inference of evidence, and I use the word
2 "any evidence" as opposed to "the evidence," because I'm
3 reminded of the line from *The Princess Bride* where Billy
4 Crystal says, "Mostly dead is not completely dead."

5 MR. LEVY: I use that reference as often as
6 I can.

7 MR. HUGHES: Yes. And so we're looking for
8 assertions of fact which are wholly fictitious. In other
9 words, the witness didn't say that. It's not in the
10 document, not at all. You can't deduce it. You can't
11 infer it, none of that. So that's why I say "any
12 evidence" instead of "the evidence." I think that is
13 better.

14 Second, in the comment -- just a second.
15 Let me call it up again. By the way, I just want you to
16 know my AI assistant keeps interfering with me reading
17 this on this.

18 MR. LEVY: Oh, while you're looking for
19 that, I can mention that we tried -- we included an AI
20 summary from the last meeting, just to give people a taste
21 of what that looks like. Noncurated also, so...

22 MR. HUGHES: In the comment, when you talk
23 in the first sentence, it ends with "verify the
24 authenticity and accuracy of all cited authorities and
25 supported evidence." I would change "supporting evidence"

1 to the word "factual assertions," because I think that's
2 what is meant.

3 When you talk about the accuracy of --
4 authenticity and accuracy of evidence, you get into some
5 of the things that have come up rarely in my practice
6 where -- for example, I had a case where, after the
7 hearing was held and the judge ruled, based on affidavits
8 submitted, turned out that one of the affidavits
9 supporting the motion -- the motion was granted. The
10 witness later said, "Well, I was wrong, I don't know that
11 anything I said in my affidavit was true. I was just
12 given that by a paralegal to sign." And it was like,
13 well, of course, you've got to tell the court, but I don't
14 think that's the situation we're dealing with. I think
15 what we're dealing with are cases not where maybe the
16 witness was -- the witness was who gave the statement and
17 the evidence was inaccurate or they were recorded
18 inaccurately or maybe they, God forbid, committed perjury.

19 I think what you're talking about is a
20 citation to something that isn't there at all. And so
21 what I'm thinking about is -- and I saw this in the video
22 of the argument before the Texas Supreme Court, when Chief
23 Hecht pointedly asked counsel, "Where in the record do I
24 find the support for the assertion you made in your brief
25 at page such and such?" And the lawyer -- of course,

1 there was none at that page. There was no record
2 reference, and the lawyer couldn't give Chief Justice a
3 pincite where to find it in the record. And charitably,
4 the Judge said, "Well, I'll give you five days to review
5 the record and submit the citations to the record where I
6 find this." The lawyer didn't.

7 That's what I'm talking -- I think we're all
8 talking about, where the cite is something that's just not
9 even there, et cetera, et cetera.

10 And, finally, the last sentence, where you
11 say "Parties must verify cited authorities and supporting
12 evidence," the rule only permits sanctions against a party
13 or a lawyer who signs the brief. And while I think in
14 context you wouldn't be able to use that sentence alone to
15 cite somebody who didn't sign the brief, but I don't want
16 that to be seized on. So I'm suggesting that that be
17 clarified, that the person who signs the brief, the party
18 or lawyer signing the brief, et cetera, et cetera, so we
19 don't get into people trying to expand who can be
20 sanctioned beyond the text of the rule.

21 CHAIR TRACY CHRISTOPHER: All right.
22 Emilio.

23 MR. LONGORIA: Yeah, well, I was looking at
24 the -- just the proposed change to Rule 13, and I was
25 wondering if the committee considered writing it

1 affirmatively instead of in the negative, because I got a
2 little confused with the double negative of "not
3 fictitious or nonexistent." And I'm wondering if instead,
4 something like that their "legal citations and supporting
5 evidence exist and are accurate" was considered. I'm not
6 tied to it in any way, but the double negative seems a
7 little weird to me.

8 MR. LEVY: Yeah. And that is noted. It is,
9 however, the history of Rule 13 that it is set up in a
10 negative fashion, and we thought that it would be awkward
11 to flip it just for this purpose, so we tried to be
12 consistent with the existing rule.

13 CHAIR TRACY CHRISTOPHER: Peter.

14 HONORABLE PETER KELLY: I had a similar
15 issue, as Roger did, about "supported by the evidence."
16 What evidence? The record evidence? Any evidence? And I
17 think a broader phrase would be "supported by or inferable
18 from evidence." Because sometimes conclusions or
19 statements are made that are inferences from or
20 conclusions derived from the evidence, and maybe -- you
21 know, and everybody is fighting whether it's actually
22 supported by the evidence. It could still be good faith
23 and merely be inferable from it.

24 And, secondly, just in terms of typos, the
25 dyad of "fictitious or nonexistent" has two different

1 forms in the Rule 13. First time it's "fictitious or
2 nonexistent," nonhyphenated, and the second time
3 "non-existent" is hyphenated.

4 CHAIR TRACY CHRISTOPHER: Kennon.

5 MS. WOOTEN: I wonder whether it might cause
6 some issues to have in the comment a directive that's not
7 precisely in the rule. Specifically, in the comment, it
8 states "to preserve the integrity of judicial proceedings
9 and the public confidence in the courts, parties must
10 verify cited authorities and supporting evidence,
11 regardless of source." It goes on to say that courts can
12 find the party acted in bad faith due to a failure to
13 verify AI citation.

14 In the rule, although it requires that the
15 legal citations and references not be fictitious or
16 nonexistent, it doesn't mandate that you verify, so
17 there's just a slight difference there. And I wondered if
18 that directive in the comments should be pulled into the
19 rule.

20 CHAIR TRACY CHRISTOPHER: Okay. Lonny, then
21 David, then Tom.

22 PROFESSOR LONNY HOFFMAN: So I guess one set
23 of comments I have are just much more global about
24 thinking about the problem. I'm not really sure where I
25 land there. I guess my overall comment is I have

1 concern -- sort of thinking about the conversation we had
2 this morning, earlier, right, we're trying to make it
3 easier for people to access the courts, and clearly
4 artificial intelligence allows that, and it also, in many
5 ways, makes stuff that's harder, that would have been
6 harder to read, easier to read. And so there are the --
7 these values to it. Anyway, but obviously, the -- some of
8 these problems are pretty significant, too, so I'm aware
9 of that.

10 In terms of maybe the specific rule, some
11 reactions. Why do we need to make the change at the
12 beginning of the paragraph of 13 if, at the end, you
13 define "bad faith" as you do? In other words, what would
14 happen if you just added the bad faith passage? So I
15 don't really sort of fully know. That's a question to
16 play with.

17 A second is I want to echo and maybe amplify
18 these concerns around -- and you named them, Robert, of
19 this devolving, and maybe being distorted or misused, when
20 we start fighting over the sufficiency of evidence. And
21 some of this maybe can be cleaned up with language, you
22 know, by tracking. Like, for example, like in the
23 definition of "bad faith," maybe it's we say something
24 like "bad faith is including the citation of fictitious or
25 nonexistent legal authorities or facts," like, and then

1 drop the "not supported by the evidence." At least
2 there's kind of a -- there's a consistency of we're
3 talking about made up stuff, whether that stuff is law or
4 fact or something like that.

5 And then, finally, I don't know, and maybe
6 this goes back to my comment I made at the beginning about
7 kind of trying to balance the virtues here and not, you
8 know, kind of scaring people off in ways. Maybe that
9 comment could reflect that the goal here is not to turn
10 this into, say, you know, some kind of a challenge to the
11 sufficiency of the evidence, but rather we're really
12 looking to deal with this problem that has recently arisen
13 of hallucinations.

14 CHAIR TRACY CHRISTOPHER: David, then Tom,
15 then Quentin.

16 HONORABLE DAVID KELTNER: I took a look at
17 what other states were doing, and I think, if I got it
18 right, Justice Bland, I sent you Florida's recent opinion
19 by the court and adoption of the rules that's not much
20 unlike Rule 13. So that, I think, indicates we're
21 probably going in the right direction.

22 I have a problem with the issue of
23 supporting evidence. We use that. We use "assertions of
24 fact." We use "supporting evidence." Those are different
25 terms used in different places. I think the reason for

1 that is Rule 13 applies to all pleadings. They could be
2 temporary restraining orders, temporary injunctions,
3 before anybody knows much about the case. Clients have
4 just talked to them. We are filing things before the
5 evidence is developed. Supporting evidence sometimes is
6 not really available in the true sense. So it's a little
7 bit problematic.

8 Lonny has a great comment about could you --
9 could you include "facts that are nonexistent," and the
10 like, in the sentence about legal citations. Yes, except
11 that's not really a problem we always have. It's
12 misstating facts, whether they're supporting or not. If
13 they're somebody else's facts, misrepresenting those, even
14 though they don't support the motion you were filing, is
15 equally problematic, and I think that we have to deal with
16 those types of things.

17 Generally, I like "fact" better than
18 "supporting evidence," and I'm not so sure -- Robert, I
19 think y'all did a great job with this, by the way. I
20 agree with Richard Orsinger that it's probably better to
21 use broader "fact" at this point, but this is a step in
22 the right direction, because we're seeing -- especially
23 when we get to appeals, we'll talk about it more. We're
24 seeing more and more problems with this on appeal, and if
25 we're having it on appeals, I can't help but believe that

1 we're seeing it in the trial court, too.

2 CHAIR TRACY CHRISTOPHER: Tom, then Quentin.

3 MR. RINEY: Well, like I'll kind of take it
4 from where David was and go a step further. I don't care
5 whether we call it "supporting evidence," "facts,"
6 "factual assertions." I've got a concern that it says
7 parties must verify supporting evidence, regardless of
8 source.

9 Now, David gave the example of a temporary
10 injunction. A lot of times we'll get an affidavit in
11 support of a temporary restraining order or temporary
12 injunction, and it is kind of early on. But more
13 importantly, all of us that have been doing this for very
14 long have had a witness who backed up on us, who just
15 collapsed. They will come into your office pounding on
16 the table, just righteously indignant about something that
17 occurred and how awful it is, and then when they get under
18 a little cross-examination, they backtrack, and it's kind
19 of like this couldn't be the same person that I talked to.
20 And am I supposed to -- does this put an obligation to
21 verify what a witness is telling me, to verify that what a
22 client is telling me is supported by evidence? Because it
23 says "regardless of source." I don't think that's the
24 intent of the rule. I'm just cautioning that we need to
25 be careful that we're not putting an additional burden on

1 the attorney.

2 CHAIR TRACY CHRISTOPHER: Quentin, then
3 Robert, then Judge Miskel.

4 MR. SMITH: My comment is I just want to
5 make sure it covers up made up quotations of actual legal
6 citations, because that's where we've encountered this, is
7 that the citations are legitimate, but the quotes are not.
8 And so I don't know if that would be covered by this
9 particular language.

10 CHAIR TRACY CHRISTOPHER: That was going to
11 be my comment, too, that I'm not sure "citation" is broad
12 enough. Robert, and then Judge Miskel.

13 MR. LEVY: So a couple of notes, and with
14 respect to Roger's reference about -- and I think, it
15 seems like, with Lonny's comment about -- or Justice
16 Kelly, going to any inferable evidence or facts would make
17 sense, the only concern that I would suggest on that is
18 that if you cite to some evidence or suggest that this
19 evidence supports your assertion of fact, that even if the
20 evidence is -- is obviously meager or contradicted by
21 other evidence, that it's clear and noncontroverted, then
22 you know, is that enough to get you out of a sanction.

23 The concern, also, I think can be addressed
24 in terms of the way lawyers, particularly lawyers, would
25 make assertions of fact that when you -- when it's early

1 in the case, and you would say, "We think the evidence
2 will show" or something like that, that would suggest that
3 you might not know definitively these are the facts, but
4 you are advocating that this is what you believe the facts
5 will show. And because it does make a difference, in my
6 view, that a lawyer will say it was raining outside of the
7 State Bar building on June 5th, and, yet, in fact, it
8 wasn't. And there is no -- and the weather report was
9 clear all day, that type of statement that this fact
10 existed on -- at this time at this place proves to be
11 simply not supported by anything. And that's one of the
12 issues that we see with respect to some of the issues with
13 AI.

14 And on your question about the reference to
15 quotes from real cases that are fictitious, that certainly
16 is the intent, and I think we probably capture that a
17 little bit better in the Rule 9.1 language. And, in fact,
18 also, Professor Hoffman, in talking about the issue about
19 citations, we're using that reference more as a term of
20 art in terms of cites to cases, and maybe that's not the
21 best term. We couldn't really envision a better term to
22 cover that specific situation, and I'm just -- I think
23 that's it.

24 CHAIR TRACY CHRISTOPHER: Judge Miskel, and
25 then Roger.

1 HONORABLE EMILY MISKEL: Okay. So I'm going
2 to make maybe a bolder proposal. After listening to this
3 discussion, it sounds like maybe the problem of citations
4 to hallucinated facts is really not that critical to
5 address in the trial court at all. And so, like, for
6 example, at the appellate level, I think it's important to
7 say "bad faith includes the citation of fictitious or
8 nonexistent legal authorities or fictitious or nonexistent
9 evidence," but trial courts are already sort of set up and
10 have procedures for addressing nonexistent facts. And so
11 maybe we don't need to mess with that at all in Rule 13
12 and just only make changes to Rule 13 to address
13 hallucinated legal authorities and leave in place the
14 court's current abilities to address made up stuff, right,
15 that they seem to be okay doing already.

16 And then in the appellate level, though, I
17 do think it's still important to address both hallucinated
18 facts and hallucinated authorities, but that's easier to
19 do because your universe of facts is already defined at
20 the appellate level.

21 And then the second thing I was going to
22 say, on the -- so the reason that we seem to be using
23 redundant words, fictitious and nonexistent, is because,
24 in subcommittee, we had talked about this issue of is it a
25 wholly made up case, or is it a real case that exists, but

1 when you look at it, it has nothing to do with that
2 subject matter. And so we were trying to use two words
3 that captured both of those, and we picked "fictitious"
4 and we picked "nonexistent" thinking that those had maybe
5 different senses and swept in more stuff, but we could
6 pick two different words or pick one better word.

7 CHAIR TRACY CHRISTOPHER: Roger.

8 MR. HUGHES: I think Justice Miskel just
9 beat me to the punch. My comment is, is that I think the
10 judges, under Rule 13, have already sufficient authority
11 as is to punish the lawyer who submits, shall we say, fake
12 evidence, false affidavits, et cetera, et cetera. And
13 just remember, I think one thing we're kind of getting
14 ahead of ourselves, this is based on sanctioning for a
15 pleading. And so usually the question focuses on what did
16 the lawyer know and when did the lawyer know it about that
17 pleading and the facts, and even if the facts change later
18 on, but the lawyer did due diligence beforehand, I don't
19 think that's bad faith, and I don't think anybody would
20 say it now, so I think we're already protected on that.

21 CHAIR TRACY CHRISTOPHER: Okay. Roger, then
22 Judge Schaffer. I mean Robert. Sorry.

23 MR. LEVY: I do tend to agree with Justice
24 Miskel that taking out the reference to facts is probably
25 the right approach. We did discuss and want to at least

1 flag the potential situation where, for example, the
2 transcript of this proceeding today is evidentiary in a
3 future case, and a lawyer says that I made X statement
4 during the discussion where, in fact, that wasn't the
5 case. And the lawyer says, "Well, I ran it through AI to
6 do a summary, and it told me that I said X." That is also
7 an issue that we felt -- or at least I feel, that lawyers
8 or litigants need to actually validate that if you're
9 making a statement based upon, particularly, an AI
10 summary, that the statement was, in fact, made as a
11 factual matter, not as a legal matter. But that possibly
12 or probably could be addressed under general sanctions
13 authority, and it likely will create too much consequence
14 to try to address that issue in the way we're drafting
15 this, based upon the great comments.

16 CHAIR TRACY CHRISTOPHER: Judge Schaffer.

17 HONORABLE ROBERT SCHAFFER: In looking at
18 this, I feel like that we're addressing made up stuff,
19 fictitious stuff, through AI and so forth. What concerns
20 me is in the comment, on the second line, where it says
21 "verify authenticity and accuracy of all cited
22 authorities." What concerns me is adding "accuracy of all
23 cited authorities" could lead someone to be interpreting
24 actual existing evidence and then the accuracy of how
25 you've interpreted that, and I don't think that's what

1 this rule is aiming for. And if I'm wrong, tell me, but
2 this rule, to me, is aiming to sanction someone for making
3 stuff up. Interpreting the accuracy of authority is not
4 really making stuff up. It may be wrong the way you're
5 interpreting it, but if you are, then allowing a
6 disagreement in whether or not something is accurate or
7 not.

8 MR. LEVY: If I could respond, just that is
9 one of the issues we're worried about, because AI will
10 tell you that *Nath vs. Texas Children* said X and gives you
11 a quote, and, in fact, it's the actual ruling is the exact
12 opposite. And it is hallucinated, but it's an accurate
13 citation, it's a real case, but you misrepresented it.

14 Now, if you read the case and misrepresented
15 it, you could -- you know, if it was something where you
16 read it one way and another lawyer would read it another
17 way, I think that is a response, but if you completely
18 misrepresent the outcome of a real case because it was
19 hallucinated by AI, that's the -- one of the scenarios
20 that we wanted to address in the proposed rule.

21 HONORABLE ROBERT SCHAFFER: I just don't
22 want this to be weighing judgments, weighing opinions on
23 what a case said in interpreting it. I get your point,
24 and that's going to be really a sticky subject you're
25 going to get into if you start talking about the accuracy

1 of the opinions.

2 CHAIR TRACY CHRISTOPHER: All right. Marcy,
3 then Judge Miskel.

4 MS. GREER: Well, one of the things that
5 happens with AI is even worse than what Robert described,
6 and that's where they will cite an opinion that exists,
7 but it has nothing to do with the subject matter, and so
8 it looks really good. I did an experiment with this with
9 a chapter of a book I read, and I cite checked it and
10 updated it the old-fashioned way. And I thought, well,
11 let's see what happens, and I was like, wow, I missed all
12 of these developments that are really interesting. Well,
13 half of them were made up. They were cases. Some of them
14 were cases that actually existed but had nothing to do
15 with the subject matter of my chapter. And so that --
16 that is as much a hallucination problem as the completely
17 made up fictitious cite, and so we have got to address
18 that, I think, with this rule.

19 And I hear what you're saying. We don't
20 want to take it too far, where there are judgment calls,
21 and we can kind of think about language, but that was,
22 again, to Justice Miskel's point about, you know, the
23 wording that we used was to cover both of those.

24 CHAIR TRACY CHRISTOPHER: Justice Miskel,
25 and then we're going to take a vote on whether to remove

1 the evidence portion and then keep going on whether
2 "fictitious" and "nonexistent" is descriptive enough.

3 Judge Miskel.

4 HONORABLE EMILY MISKEL: So Judge Schaffer's
5 concern was about accuracy and authenticity, and I think
6 it would be sufficient to say "existence." So this
7 amendment reinforces the obligation of counsel and
8 unrepresented parties to verify the existence of cited
9 legal authorities and evidence and if we take out
10 "evidence," right.

11 HONORABLE ROBERT SCHAFFER: Uh-huh.

12 HONORABLE EMILY MISKEL: And then just to
13 say in maybe more regular people language, "The use of
14 generative AI may increase the risk of citations to
15 authorities or evidence that do not exist," and so to keep
16 the focus on "does not exist" versus anything more
17 technical might solve the problem that you're referring
18 to.

19 CHAIR TRACY CHRISTOPHER: We're going to
20 take one vote on eliminating evidence. And then Justice
21 Mendoza.

22 HONORABLE MARIA SALAS MENDOZA: Just real
23 quick, I mean, that fix doesn't address what Marcy just
24 said, which is it could exist, but it's inaccurate. So I
25 think that's a problem when we're saying -- relying on

1 "existence".

2 HONORABLE EMILY MISKEL: I think what we
3 thought in the subcommittee was the principle that you're
4 citing for, if you go there, doesn't exist there or it's
5 fictitious there. Do you know what I mean? Like if
6 you're saying, you know, Texas has the theory of
7 constructive delivery of a gift, here's the citation, and
8 you go there, and it's not about that at all or it says
9 something, but not that, then your citation is fictitious
10 or nonexistent for that principle, was our thinking, and
11 we're open to different synonyms.

12 HONORABLE MARIA SALAS MENDOZA: My concern
13 is I don't think it does, right, because the citation
14 exists. Like you can find the case, but it stands for
15 something else, so that was it. I thought that was kind
16 of a change. And I was thinking Robert answered Judge
17 Schaffer by saying they were talking about
18 misrepresentations, and I thought maybe that's a good
19 word, but it's the same as accuracy. We're still kind of
20 taking that nuance of how it's being used, so I think all
21 the words are hard.

22 CHAIR TRACY CHRISTOPHER: All right. Let's
23 take our first vote on whether we think we should
24 eliminate the discussion of the evidence in this rule.
25 All in favor of that, please raise your hand.

1 PROFESSOR LONNY HOFFMAN: Eliminate you
2 said?

3 CHAIR TRACY CHRISTOPHER: Eliminate this
4 addition about the evidence. Okay.

5 All opposed? The ayes have it with a few
6 dissents.

7 All right. With respect to -- I think what
8 we're -- what kind of everyone is saying is how do we --
9 what is the definition of "fictitious." "Nonexistent,"
10 that's easy enough to understand, right, because you cite
11 a case that doesn't actually exist, but is "fictitious"
12 broad enough? Should it have a definition? Is
13 "authenticity and accuracy" what we want? Any more
14 discussion on that? Any further suggestions?

15 HONORABLE PETER KELLY: Isn't there some
16 sort of reasonability or assessment that has to go in?
17 Because I was joking with Macey that, you know, every
18 opposing counsel cites cases that don't apply, but there
19 is a difference between that and something that is a
20 property case, when you're talking about PI, or whatever.
21 So, I mean, where does it -- you know, because it's going
22 to be -- it's a gray line. Who draws the line between
23 utterly fictitious and just inapplicable, and is there
24 some adjective in there that could go unreasonably
25 fictitious? I mean, I don't know. Something to apply to

1 the judgment that has to be made.

2 CHAIR TRACY CHRISTOPHER: I think I saw Bill
3 and then Kent. Did I see you, Bill?

4 HONORABLE BILL BOYCE: I was thinking about
5 whether "misrepresented" is more in the neighborhood of
6 what's trying to be captured with this notion that it's an
7 existing authority, but it doesn't say what you say it
8 says.

9 CHAIR TRACY CHRISTOPHER: Kent.

10 HONORABLE KENT SULLIVAN: I'm going to
11 follow up on Bill's comment, because I'm headed in the
12 same direction. And that is, at the risk of
13 oversimplification, which is always a risk with me, is
14 there -- are we talking about an intent requirement here?
15 We're sort of focused on the result, but really, are we --
16 should we perhaps be more focused on the intent and the
17 standard for culpability here, since we're talking about
18 sanctioning a lawyer? Is that really what this should be
19 about? Are we worried about requiring a state of mind, if
20 you will, versus some kind of strict liability standard?
21 Again, that's perhaps oversimplified and not appropriate,
22 but that's the sort of concern that I am hearing.

23 CHAIR TRACY CHRISTOPHER: Robert, I know you
24 have to leave early.

25 MR. LEVY: I apologize, I have to leave.

1 CHAIR TRACY CHRISTOPHER: Do you have one
2 more comment you would like to make?

3 MR. LEVY: Yes. And, Justice Miskel, I'm
4 going to ask you to follow up on the TRAP rules, but,
5 Commissioner Sullivan, the answer is it's -- the problem
6 is that a lawyer can walk in and say, "Judge, I would
7 never do anything like this. I had no intent to mislead
8 you. I just used AI," and it -- so there's no culpability
9 in that sense, but the culpability is that you have a
10 responsibility to not trust AI and to actually do the work
11 yourself. And, you know, if you make that statement, "I
12 looked at every case and this is why I think it's fair," I
13 think that's a response and -- you know, just like any
14 other legal assertion would be. But that -- that's the
15 particular nuance of this situation, where if you cite to
16 computer output, you might think it's reasonable. It's
17 not, under these circumstances.

18 HONORABLE KENT SULLIVAN: Yeah, but I don't
19 think that necessarily negates the point that we were
20 trying to make here in the sense that presumably you knew
21 you didn't check any of the citations. You've simply
22 thrown up what the AI had generated, and that -- if we
23 construct it correctly, that should satisfy a state of
24 mind requirement, if you will. That's my thought.

25 CHAIR TRACY CHRISTOPHER: Let's see. I

1 think we had Chris, then Peter, then Roger.

2 MR. PORTER: Yeah, just a quick question.
3 I'm just struggling a little bit, kind of following on
4 that, with what are we trying to solve here, because at
5 the end of the day, the good points have been made that
6 lawyers have been misquoting and misciting things for
7 years, well before AI was in existence. And there are
8 things that -- there are, you know, procedures that we
9 have in place to deal with that.

10 So I guess if you take Lawyer A, who uses
11 AI, and the case is real but it's miscited, okay, are we
12 saying we're going to punish that, but you take Lawyer B,
13 who just cites a case, doesn't use AI, and does the exact
14 same thing. Yes, the case exists, but misquotes it or
15 miscites it for the proposition, which, again, has been
16 going on for years. Are we punishing Lawyer A more than
17 Lawyer B? I mean, I guess, what are we really trying to
18 say? Is it really just the introduction of AI, and then
19 how do we account for that? Because we still -- you know,
20 we still have -- at the end of the day, it's still the
21 same outcome, which is that a person cited a case for the
22 wrong proposition or misquoted it, miscited it, whatever
23 the case may be. So I'm just really trying to see --

24 CHAIR TRACY CHRISTOPHER: So it might be
25 easier to stick with "nonexistent or fictitious" and not

1 go into the shades and phases of the explanation of the
2 case.

3 MR. PORTER: Because then you have to ask
4 them, "Did you use AI," and someone is going to have to
5 enter a declaration saying -- you know, Lawyer A would
6 have to say "yes." Lawyer B would say "no," and then does
7 Lawyer B get off because he or she did not use AI?

8 CHAIR TRACY CHRISTOPHER: Okay. Peter, then
9 Roger, then Kent, and then Justice Miskel, and then Judge
10 Chu.

11 HONORABLE PETER KELLY: Touching on the
12 previous two comments, setting aside which technology is
13 actually used, what the proposed rule does is actually
14 expand the mens rea from active bad faith, which is
15 previously what everybody thought was actually if you're
16 trying to lie to the court, to a more passive one, just
17 didn't really double-check all of the things that I cited.
18 Regardless of what technology you used to actually pull
19 the citations, you didn't -- it's more of an omission
20 rather than active bad faith. This is an expansion of bad
21 faith and what Rule 13 has traditionally been used for.

22 CHAIR TRACY CHRISTOPHER: Roger.

23 MR. HUGHES: Well, two comments or
24 observations. First, I think at this point we're straying
25 over into not so much has there been a violation of the

1 rule, but how should it be punished, and I think we're
2 already seeing the courts of appeals struggle with that.
3 Do we sanction the attorney? Do we make them rewrite
4 their brief? Do we consider the points anyway and see if
5 they can survive on their own without the bad citations?
6 And I suggest that we not get into how -- how we're going
7 to sanction such conduct. I think that's got to be left
8 to the courts.

9 But the second thing of it is I understand
10 Justice Kelly's remark about mens rea. And when I read
11 this, what I struggled with was that it reminds me of the
12 phrase "actual malice" in defamation cases, et cetera,
13 about where you basically have willfully turned a blind
14 eye to your obligations to speak the truth, so to speak.
15 And I think the lawyer who comes into court and says -- I
16 think the rule has to be structured in such a way that if
17 you've cited a case and there ain't no such case, it
18 doesn't exist on the face of the earth, or you've made
19 a -- you've taken a quote from an actual case, and it's
20 nowhere in there, you can't just say, "I trusted my AI."
21 If that's what your excuse is, then I think you have --
22 that's akin to actual malice, or what we might call some
23 form of bad faith, because you're supposed to check that
24 stuff. That's your job as an attorney.

25 CHAIR TRACY CHRISTOPHER: Kent.

1 HONORABLE KENT SULLIVAN: I was trying to go
2 at this from the point of view of what are we really
3 concerned about. If we really try and crystallize this,
4 what are we really concerned about. And I'm wondering if
5 it doesn't come down to a couple of basic things, and if
6 we -- if we were to agree on that, is it possible this
7 rule is a whole lot simpler to write? Are we worried
8 about two broad categories? One is citing things that
9 don't exist, false citations, imaginary citations, the
10 case does not exist. That would be category number one.

11 In category two would be simply false
12 representations. Either you've quoted from a case that
13 does exist and the quotation is false, or you are
14 representing the case says A and, in fact, the case says
15 not A, right, where there's no real dispute in these
16 categories. I had two, maybe you say those are three, I
17 don't know, but where the case doesn't exist, or, you
18 know, it's a -- it's a false quote. It's just entirely
19 made up, or the case has been cited for exactly the
20 opposite of what the case says, in which case we would go
21 around the room, and I think you would get a hundred
22 percent saying, yeah, it says exactly the opposite of what
23 this representation is.

24 Those are probably the things that we want
25 to sanction people for and put an end to. Once we start

1 wandering away from those categories, I think we're
2 potentially in some danger. That's my thought.

3 CHAIR TRACY CHRISTOPHER: Judge Miskel, then
4 Judge Chu.

5 HONORABLE EMILY MISKEL: I think the biggest
6 concern is we're not concerned, like we talked about last
7 time, with mediocre or even poor advocacy. What we're
8 concerned with is, like, clogging up the system by wasting
9 everyone's time with wholly made up stuff that doesn't
10 exist. So I think we want our rule and comment to
11 exclusively focus on fabrication rather than getting into
12 fights about mischaracterization. So I asked ChatGPT how
13 to solve this problem, and I thought it came up with
14 something pretty good. It is a large language model. So
15 it suggested that the comment say, "This amendment
16 addresses fabricated authorities, quotations, and
17 holdings. It is not intended to govern disputes regarding
18 interpretation, application, or persuasive force of
19 existing authorities."

20 CHAIR TRACY CHRISTOPHER: Oh, I like it.
21 All right.

22 HONORABLE EMILY MISKEL: The AI giveth and
23 the AI taketh away.

24 HONORABLE ROBERT SCHAFFER: In relation to
25 Robert's example of *Nath vs. Texas Children*, where they

1 cite it, but that citation is nowhere in the opinion,
2 where does that fall in your statement there?

3 HONORABLE EMILY MISKEL: Fabricated
4 quotation or fabricated holding.

5 HONORABLE ROBERT SCHAFFER: Okay.

6 HONORABLE EMILY MISKEL: And I using the
7 word "fabricating" helps us stay away from
8 misrepresenting, mischaracterizing, misleading, because
9 those are, like, too interpretive, and we don't want
10 fights about it, right, but "fabricated," I think, is more
11 is it fabricated or you just didn't finish reading the
12 paragraph. You know what I mean?

13 HONORABLE KENT SULLIVAN: Would you say
14 "fabricated" is identical to false? I guess it is, but --

15 HONORABLE PETER KELLY: No.

16 CHAIR TRACY CHRISTOPHER: All right. One at
17 a time. Judge Chu, then Judge Keltner.

18 HONORABLE NICHOLAS CHU: It's always hard to
19 follow Justice Miskel because she always gets right to the
20 point. Along that line, I do think we are kind of getting
21 too focused in on the weeds here because, procedurally,
22 you know, we'll have an issue where somebody thinks, hey,
23 this is a big enough issue to where the court sua sponte
24 or opposing counsel will have a sanctions motion and then
25 a hearing, and then, you know, I don't think we need to

1 litigate out like what is -- what is this, what is that,
2 what -- how strongly or what's the motive for that.

3 I think the trial courts will figure that
4 out, because they will figure out, like, okay, you just
5 miscited or you had this case that said X and it actually
6 said Y. But I can kind of understand why you did that,
7 or, all right, this is straight up made up, and so the
8 rule I don't think needs to address these nuances. The
9 trial court can figure that part out. So I -- I think in
10 base principle, just like how ChatGPT kind of figured it
11 out. It's just, you know, lawyers, don't fight -- don't
12 cite fake stuff and don't cite things that says one thing
13 when really it's not, and from there, the trial court can
14 figure it all out from there.

15 CHAIR TRACY CHRISTOPHER: All right. David.

16 HONORABLE DAVID KELTNER: I looked up a
17 couple of things to try to figure out --

18 THE REPORTER: I can't hear you. I need you
19 to speak up, please.

20 HONORABLE DAVID KELTNER: I'm sorry. I
21 looked up a couple of things to see -- definitions to see
22 what would fit here. "Fabricated" has an intent issue to
23 it, and it's something -- fabricated is fake or invented,
24 which is good. That's very close to "fictitious."
25 "Fictitious" does not have the intent issue to it. I

1 think partially -- and Kent pointed out, that's partially
2 what we are looking at, and I think that's where we want
3 to go.

4 I like Emily's suggestion quite a lot. The
5 only problem is Rule 13 has existed for a long period of
6 time, and we haven't had a whole lot of problems with it.
7 So maybe a just slight modification makes it better, but I
8 sort of like where Emily is going with the "fabricated."

9 CHAIR TRACY CHRISTOPHER: David.

10 HONORABLE DAVID EVANS: I haven't had a
11 problem with Rule 13 on dealing with fabricated cites. I
12 wanted to check before I spoke, but it's now final. I
13 issued a show cause hearing why a motion should not be
14 held to be groundless and brought in bad faith under
15 Rule 12, and there were three cases cited. One was cited
16 for a proposition. After reading the case, I could not
17 find the proposition located within the case.

18 The other two cites didn't exist, simply not
19 in the reporter system under any type of search. Issued a
20 show cause, pro se litigant, prolific filer of recusal
21 motions and lawsuits against trial judges. My favorites.

22 Here's the problem: The sanction is no
23 good. That's our problem, and that's why we're going to
24 meet as PJs, hopefully with the Court, about the fact that
25 we don't have a reasonable sanction to curb this behavior.

1 We get tertiary motions for recusal. We've got automatic
2 severance of lawsuits, but awarding attorney's fees
3 against the prolific offenders, nobody will bring the
4 motion. That's just for the record and off topic. Thank
5 you.

6 CHAIR TRACY CHRISTOPHER: All right. Well,
7 let's -- since you have raised this point --

8 HONORABLE DAVID EVANS: Here's the problem:
9 You can either impose higher filing fees, which will then
10 lead to a war over whether they are able to meet the cost
11 for prolific filing of that, and I guess you can, but the
12 problem is, this bill all originates -- Civil Practice and
13 Remedies Code remedies on tertiary motions and filings all
14 originated in 1999, and the legislative history says these
15 are clogging up the courts. Well, if they were doing it
16 in '99, they're really here today after AI.

17 CHAIR TRACY CHRISTOPHER: So I --

18 HONORABLE DAVID EVANS: We don't have a -- I
19 can't find good case authority that we can simply hold
20 somebody in contempt for doing this. And that's -- and
21 issue a fine that's payable to the court, and that's where
22 we have -- or curb future behavior on doing it so that we
23 can move things forward. That's the whole -- that's the
24 whole problem that I have with it. I can't get a party to
25 file for sanctions.

1 CHAIR TRACY CHRISTOPHER: I understand that,
2 with respect to the pro se world --

3 HONORABLE DAVID EVANS: Yeah.

4 CHAIR TRACY CHRISTOPHER: -- because that
5 happens at the appellate court, too.

6 HONORABLE DAVID EVANS: Right.

7 CHAIR TRACY CHRISTOPHER: I guess the -- but
8 both you and Chris have raised the question of whether we
9 need this change; does the existing rule cover it. And I
10 think people thought that it didn't, and that's why it got
11 brought to the advisory committee.

12 How many people think we should address the
13 legal citations, fabricated, fictitious, nonexistent in
14 Rule 13? If you could raise your hand.

15 HONORABLE PETER KELLY: Does that include
16 the comment? Could we leave the rule and --

17 CHAIR TRACY CHRISTOPHER: Just in concept,
18 the concept itself.

19 And those against? All right. That was an
20 overwhelming in favor of it. I didn't count the exact
21 numbers.

22 Okay. So we want some language in it. We
23 have talked about "fictitious." We've also talked about
24 "fabricated." Do we have an idea at this point whether
25 we're comfortable with one or the other word? Any

1 discussion about that idea?

2 All right. Justice Bullard.

3 HONORABLE JERRY BULLARD: I'm looking at the
4 Texas Lawyer's Creed, and I know that's aspirational, but
5 in Roman numeral IV, it says, "I will not knowingly
6 misrepresent, mischaracterize, misquote, or miscite facts
7 or authorities to gain an advantage." That's more than
8 one word, but that seems to be catching most of what we're
9 talking about. I don't know that that's the answer to the
10 question about what changes to make, but that's what I
11 think of when I think of what we're talking about now,
12 because that's what lawyers are doing, obviously, but it
13 would apply to pro se litigants, too. Just a thought.

14 CHAIR TRACY CHRISTOPHER: All right. Any
15 other comments? Kennon.

16 MS. WOOTEN: I think "fabricated" is a
17 better word in this particular context. And the more I
18 sit with it, the more I think the better way to address
19 this is via a comment, because I do think existing Rule 13
20 addresses the issue, albeit not explicitly in regard to
21 the issues with generative AI. And I worry a little bit
22 about including in Rule 13 a definition of bad faith
23 that's really kind of targeting what we're seeing stemming
24 from increased use of generative AI, when bad faith means
25 so much more, right? It feels partial, and I think if you

1 address it in the comment, it would be better overall.

2 CHAIR TRACY CHRISTOPHER: Judge Gray.

3 HONORABLE TOM GRAY: I don't know where to
4 begin, but I think the best place is a reference to *My*
5 *Cousin Vinny* and Melissa Tomei and her outburst on the
6 cabin porch, if you remember it. How much more stuff can
7 we put in Rule 13 and related comments? And I think one
8 of the problems that we're having is we've already got a
9 lot in there, and it needs to be broken out. It needs to
10 be completely rewritten, restructured, because right in
11 the middle of the existing rule, you have a sentence that
12 describes certain conduct and states, "If you do this, you
13 shall be held guilty of contempt." And then we talk
14 about, because it was added at some later date, sanctions
15 under the Rule 200s. And so I'm having trouble just
16 wrapping my mind around how all of this interplays with
17 what the rule was originally trying to prevent versus what
18 we are now grafting onto this rule.

19 I didn't think we needed to be tinkering
20 with Rule 13, because, as David said, David Evans, Judge
21 Evans, that he hadn't had any problem with this until we
22 got into this new area, and so maybe we need to focus on a
23 rule for the new area.

24 I wondered if holding someone in contempt
25 versus or -- and also a sanction was some type of due

1 process problem of double punishment for the same conduct,
2 or if that's an option. And I notice that David was very
3 specific in that a contempt fine gets paid to the court,
4 where a sanction normally is paid to the opposing party
5 for what they incurred in attorney's fees or other costs
6 in controverting something like this. That's kind of -- I
7 mean, in the Rule 13, you've got to talk about if you're
8 going to try to put it all in one rule, you've got the
9 aspirational conduct, required conduct, prohibited
10 conduct. There's negatives and positives, as in good
11 faith, bad faith, and then you get to a violation. And
12 then is it a contempt punishment, or is it a sanction type
13 punishment?

14 With regard to the specifics, I wonder if an
15 assertion of what a case said, i.e., quotation marks
16 around language, is that an assertion of fact that is
17 sanctionable? Because I'm -- if I'm the author of that, I
18 am saying the case holds this. Is that an assertion of
19 fact that is sanctionable?

20 But with regard to specific wording, and in
21 particular, the note, I'm a little bit bumfuzzled by the
22 fact that, in the first sentence, there's an obligation of
23 counsel and unrepresented parties to verify. So if I can
24 get counsel to do it, I'm in the clear if I'm the party,
25 but down under the next sentence, "To preserve the

1 integrity of the judicial proceedings and public
2 confidence in the courts," only parties, "parties must
3 verify cited authorities." So is that not unrepresented
4 parties? And it seems to me that that needs to be
5 specifically directed to counsel, because we are actually
6 there talking about the system, the judicial process, and
7 what our obligation as attorneys are to that system. And
8 I note that if "parties" there was changed to "attorney,"
9 that we would use the term "counsel," "lawyer," and
10 "attorney," all in the same footnotes, we've got all the
11 bases covered.

12 CHAIR TRACY CHRISTOPHER: Okay. I think the
13 Court is going to look at our discussions with respect to
14 this rule and hope to get something out. Justice Bland
15 said perhaps they'll have time to rewrite it completely,
16 perhaps they won't, but is in agreement that there are
17 some -- a lot of Band-Aids in this rule as opposed to one
18 rule the way we currently try to do it. If --

19 HONORABLE DAVID EVANS: Justice Christopher.

20 CHAIR TRACY CHRISTOPHER: Judge Miskel, if
21 you would send what you wrote to Jackie.

22 HONORABLE EMILY MISKEL: Okay.

23 CHAIR TRACY CHRISTOPHER: Or what AI wrote
24 that we all thought sounded pretty good, to Jackie.

25 HONORABLE EMILY MISKEL: I did not copy and

1 paste. I verified what the AI was writing.

2 CHAIR TRACY CHRISTOPHER: And we'll have one
3 more comment from Judge Evans and then we'll move on to
4 the TRAP rules.

5 HONORABLE DAVID EVANS: The only thing that
6 bothered me about this sua sponte motion I issued was that
7 the first sentence of Rule 13 says that it is -- "the
8 instrument is not groundless and brought in bad faith,"
9 and if I've ever wanted to modify a rule, I would have
10 said "an instrument or a portion thereof is not brought in
11 bad faith," and that's where you get into these cites that
12 make such a problem for the trial court judge without --
13 or for the appellate court -- without help, is going into
14 the actual portion of it and finding out, well, this is a
15 rabbit trail. So I would have felt a little bit more
16 comfortable with my order if I had had that there. But
17 I've looked at the case law and decided that it did cover
18 portions of it, and that's where we're getting into a
19 problem. It's these -- bang, those assertions. That's
20 just for the record. Thank you very much.

21 CHAIR TRACY CHRISTOPHER: Thank you. All
22 right. We'll start talking about TRAP 9.1 before our
23 lunch break.

24 Actually, we're going to take our lunch
25 break now, instead of going into 9.1. 30 minutes? Thank

1 you.

2 (Recess from 12:00 p.m. to 12:36 p.m.)

3 CHAIR TRACY CHRISTOPHER: All right.

4 Everybody ready? We did have Justice Bland, but she'll
5 catch up.

6 All right. We're going on to TRAP 9.1, and
7 I think Justice Miskel is going to take it from here on
8 page 9 or 10 of the report, depending on which number
9 you're looking at.

10 HONORABLE EMILY MISKEL: It's page 96 of the
11 PDF.

12 CHAIR TRACY CHRISTOPHER: 96, okay. I don't
13 even have that one.

14 HONORABLE EMILY MISKEL: No, if you're
15 looking at it online on the PDF, we are on page 96 of
16 the PDF.

17 CHAIR TRACY CHRISTOPHER: Okay, thanks.
18 Okay.

19 HONORABLE EMILY MISKEL: And I'm trying to
20 pull up the current 9.1 just so I can switch back and
21 forth, so if I can get there. So the update was, in our
22 last meeting, which I believe was January, we had talked
23 about -- part of our referral task was to make rules for
24 the civil rules and the appellate rules to deal with the
25 problem of hallucinated citations. And what I had

1 personally experienced, when our court had a case of
2 hallucinated citations, was although Rule 9.1 requires
3 that documents must be signed, the TRAP don't say that
4 signing a document means anything. And so the folks in
5 this room were kind of surprised that that didn't already
6 exist in the TRAP. And so it was pretty unanimously
7 suggested that it was a good idea to create that -- you
8 know, you have to sign the document and, by signing it,
9 you represent something, and so we went back to the
10 drawing board to consider what that something was.

11 I think, initially back in January, we had
12 proposed a version that just was a junior copy of TRCP 13.
13 I think Richard brought up in the January meeting that
14 current Rule 52.3, which only relates to original
15 proceedings, might set out a format. So what you have in
16 your materials is you have Section 9.1(d), which says by
17 signing -- you know, 9.1(a) is you have to sign it.
18 9.1(d), by signing it, you certify that you have reviewed
19 it and conclude that every factual statement is supported
20 by competent evidence, located in the appendix or record,
21 that the legal citations and references are correct and
22 substantiate the asserted contentions and that it's not
23 groundless and brought in bad faith or groundless and
24 brought for the purpose of harassment.

25 So to some extent, the problems that we

1 identified this morning in the trial court are not the
2 same on appeal, because your universe of facts is limited.
3 So we're not really talking about a witness changing their
4 story, because you already have the reporter's record and
5 the clerk's record. You should not be hallucinating
6 citations to them.

7 A real world example that we had was, in an
8 original proceeding in our court, the lawyer had
9 apparently fed the reporter's record into an AI tool and
10 asked the AI tool to draft the petition for writ of
11 mandamus because there were direct quotes in the petition
12 for writ of mandamus citing page and line from the
13 reporter's record that just didn't talk about that, that
14 used words that never appeared in the court reporter's
15 record. And so it was clearly, what we talked about last
16 time, a wholly fictitious, outright fabrication. And I
17 think that's much easier to police on appeal than,
18 apparently, as we discussed, it is in the trial court.

19 So then the second part of 9.1 is (e), which
20 does talk about bad faith, and this is what comes from the
21 copied language from TRAP 52. So as we're --

22 CHAIR TRACY CHRISTOPHER: Wait.

23 HONORABLE EMILY MISKEL: Oh, sorry.

24 CHAIR TRACY CHRISTOPHER: Let's just -- any
25 objection to (d), which is the same language that is

1 currently in 52.3?

2 HONORABLE EMILY MISKEL: Let's see. No, (d)
3 is made up in new. So let's talk about (d).

4 CHAIR TRACY CHRISTOPHER: Well, I thought
5 that was the certificate by signature.

6 HONORABLE EMILY MISKEL: Let's see. Let me
7 flip back and forth.

8 CHAIR TRACY CHRISTOPHER: Am I looking at
9 the wrong page?

10 HONORABLE EMILY MISKEL: 9.1. Oh, sorry.
11 Let me...

12 MS. GREER: (d) is adding from Rule 52 the
13 same requirement from the mandamus rule.

14 CHAIR TRACY CHRISTOPHER: Right.

15 HONORABLE EMILY MISKEL: Okay. Let's see.
16 Okay. That's 52.3(k) is what it's based on. Is that
17 right, Marcy?

18 MS. GREER: Yes.

19 HONORABLE EMILY MISKEL: Okay.

20 CHAIR TRACY CHRISTOPHER: Okay. So any
21 discussion or objection to adding subsection (d) to 9.1?
22 Roger.

23 MR. HUGHES: Well, it's more of a question.
24 You used the phrase "supported by," that every factual
25 statement is supported by competent evidence. No, I'm

1 sorry, further down, "and that the legal citations and
2 references to the record are correct and substantiate the
3 asserted contentions." I was wondering why you would use
4 the word "substantiate" instead of "support." That's the
5 first one.

6 The second one was there -- you don't
7 include anything in this rule about certifying that your
8 legal -- that your legal arguments are supported by
9 existing authority or a good faith extension. That may be
10 a bridge too far to include in this altogether, and that
11 merely saying "supported by legal authorities" is
12 sufficient. But getting back to it, I was wondering why
13 you use "substantiate" instead of "support the asserted
14 contentions" and then why you left out the -- you know,
15 from Rule 13, the whole thing about support -- supported
16 by existing law or a good faith extension.

17 HONORABLE EMILY MISKEL: So "substantiate"
18 came from the subcommittee, so we could pick a different
19 word easily. The rest of it is if you compare it to
20 52.3(k), it's basically that same certification, except
21 with the addition of the "legal authorities substantiate"
22 phrase. So, again, we could decide we prefer to use a
23 TRCP 13 model for this rather than the 52.3 model.
24 Subcommittee did not feel passionately about that at all.

25 MR. HUGHES: Well, I'm saying that may be a

1 wise choice, because it might be just freighting it down
2 with too much altogether. That's fine.

3 CHAIR TRACY CHRISTOPHER: Okay. So (d)
4 consists of three different concepts. The first up to
5 "appendix or record," comma, is identical to 52.3(k),
6 certification, so I assume no one has an objection to that
7 statement. Judge Gray does.

8 HONORABLE TOM GRAY: I don't know which
9 comma you stopped at, but the first line says "by signing"
10 and then "the person filing." Can we just take out the
11 word "filing"? "By signing a petition, brief, motion, or
12 other paper, the person certifies that"? And last time
13 there was a long discussion in the record about is
14 there -- do we mean something different by saying "by
15 signing" and "the person filing"? That could be two
16 different people. I mean, one, it's kind of confusing.
17 Who is the person that's doing the filing? Is it the
18 party? Is it the attorney? Is it the attorney that
19 prepared it? Is it all of the attorneys named on the
20 document? Have I completely lost you?

21 HONORABLE EMILY MISKEL: No, I'm keeping up
22 with the draft, and I have made that change.

23 HONORABLE TOM GRAY: Okay.

24 CHAIR TRACY CHRISTOPHER: Okay. So then the
25 second sentence of proposed (d) or second --

1 HONORABLE TOM GRAY: Clause.

2 CHAIR TRACY CHRISTOPHER: -- tranche, yes,
3 is "that the legal citations and references to the record
4 are correct and substantiate the asserted contentions," to
5 which Roger wondered why we didn't just say "support."
6 Any other questions as to -- any other comments as to that
7 phrase?

8 HONORABLE PETER KELLY: My question is what
9 is competent evidence?

10 HONORABLE EMILY MISKEL: That is Rule
11 52.3(k) language.

12 HONORABLE PETER KELLY: And the reason I'm
13 asking is that, especially when you get up to the Supreme
14 Court, you're not just talking about adjudicative facts,
15 but also legislative facts when you're getting into
16 policy-making and things that are not admitted into
17 evidence, not -- that are -- you know, there are studies
18 in academic journals that are not sworn statements
19 introduced in court, so I want to make sure that competent
20 evidence will encompass that.

21 CHAIR TRACY CHRISTOPHER: Are you talking
22 about in an amicus brief, for example?

23 HONORABLE PETER KELLY: No, even in a
24 straight-up party's brief. Sometimes when you're making
25 policy arguments, you are -- we go back to *Haygood vs.*

1 *Escabedo*, where the first half of the Court's opinion was
2 a survey of literature on, you know, the medical finance
3 industry and had nothing to do with any of the
4 adjudicative facts. So how does one counter that -- I
5 mean, how does the definition of "competent evidence" fit
6 into that type of policy argument and that type of
7 evidence you would be using to make a policy argument?

8 HONORABLE TOM GRAY: Because the policy
9 argument is not a factual statement.

10 HONORABLE PETER KELLY: Except it could be
11 supported by -- there's a distinction between legislative
12 facts, which you use to determine policy, and adjudicative
13 facts. So they are facts, but they're not specific to the
14 case. They haven't been ruled on as being admissible by a
15 trial court or a court of appeals, but they are key to the
16 formulation of the policy, which will determine how the
17 Supreme Court interprets a statute or changes the common
18 law.

19 CHAIR TRACY CHRISTOPHER: All right. Any
20 other comments on that, whether that would be problematic?

21 HONORABLE EMILY MISKEL: I would open the
22 comments on myself, which is, given the discussion we had
23 this morning about switching to more of "fabrication"
24 language versus "mischaracterization" language, do we want
25 to adjust this wording, or are we happy with

1 "substantiate"? Or "support"?

2 HONORABLE PETER KELLY: I would go back to
3 my comment, "supported by or inferable from."

4 HONORABLE EMILY MISKEL: I, again, want to
5 make sure we don't get into a dispute about whether that's
6 a legitimate inference or not, and I want to make sure
7 these rules cue to wholly fabricated problems, and so I
8 will turn it over to the group. Are we happy with the
9 language "substantiate the asserted contentions," or do we
10 want to wordsmith it to incorporate more of this morning's
11 discussion?

12 MS. BLISS: I see this one as more of a
13 broadly written rule, and the fabrication language going
14 more to the AI concerns, so I might leave the fabrication
15 with the specific AI concerns versus the broad
16 certification.

17 CHAIR TRACY CHRISTOPHER: I'm sorry, I
18 didn't get your name, and I can't hear you.

19 MS. BLISS: Oh, I apologize. I'm Jillian.
20 I am the new rules attorney, Jillian Bliss, for the Court
21 of Criminal Appeals.

22 CHAIR TRACY CHRISTOPHER: Nice to meet you.

23 MS. BLISS: I snuck in during the
24 landlord-tenant talk so didn't have a seat at the table
25 until now. But I guess my point was, I think that this

1 rule is more broadly written, whereas the fabrication rule
2 went more to the specific AI concerns we were addressing.
3 And by keeping this more broad as to relate to
4 certification, we can leave the fabrication with the more
5 specific concern.

6 CHAIR TRACY CHRISTOPHER: Which would be the
7 (e) paragraph.

8 MS. BLISS: Yes.

9 HONORABLE EMILY MISKEL: I agree with that.
10 So the certification can say, "I certify they are
11 substantiated," and then that's separate from the
12 sanctions that we would talk about in (e).

13 CHAIR TRACY CHRISTOPHER: All right. Any
14 other comments about that phrase?

15 All right. And then the final phrase, and
16 that to the best of their "knowledge, information, and
17 belief, formed after reasonable inquiry, the instrument is
18 not groundless and brought in bad faith or groundless and
19 brought for the purpose of harassment." That's straight
20 from Rule 13, correct?

21 HONORABLE EMILY MISKEL: I believe so, and I
22 can confirm. Yes. Yes.

23 CHAIR TRACY CHRISTOPHER: All right. Any
24 comments on that sentence?

25 All right. Then we'll move on to the

1 trickier one, which is (e).

2 HONORABLE EMILY MISKEL: Okay. So we have
3 two versions, because -- so now I'm looking at page,
4 alternatively, 10, 11, or 97, depending on how you're
5 viewing the document. So you'll see option 1 (e), which
6 basically imports the language from TRAP 52.11. Then
7 there's option 2 (e). So as we were doing this in
8 subcommittee, we were like, actually, I'd rewrite that to
9 be more clear in this, that, and the other way, and so we
10 couldn't decide whether it's better to have a rule that
11 just matches 52.11 or if we want to have best 9.8(e) that
12 we can have, even if the wording is different from 52.11.
13 So that's why there's two versions there.

14 The other issue with 52.11 was when we ran
15 into a case with hallucinated citations, 52.11 gives the
16 ability to sanction for grossly misstating or omitting a
17 material fact, but there was no explicit sanction
18 authority for grossly misstating a legal authority. So
19 that is one difference that we had to make in drafting
20 this version of 9.8(e), is that we want it to include
21 legal authorities as well.

22 HONORABLE NICHOLAS CHU: I had just a
23 verifying question. If the Court adopted option 2, is
24 that able to be imported and create a new 52.11?

25 HONORABLE EMILY MISKEL: We were cautious

1 about sort of the if you give a mouse a cookie and
2 creating more problems.

3 HONORABLE NICHOLAS CHU: Yeah.

4 CHAIR TRACY CHRISTOPHER: Which -- which
5 version should we talk about?

6 HONORABLE EMILY MISKEL: I think if I were
7 picking, I would start with 9.2(e) and have our task be to
8 make the best, most clear rule possible, even if it
9 doesn't totally match 52.

10 CHAIR TRACY CHRISTOPHER: So you would use
11 option 2?

12 HONORABLE EMILY MISKEL: Yes.

13 CHAIR TRACY CHRISTOPHER: Okay. All right.
14 Well, let's start with -- since that's the subcommittee's
15 proposal, let's start with option 2.

16 My first question is what kind of sanctions
17 are we talking about here? Because the TRAP sanction rule
18 is about, you know, attorney's fees to the other side. We
19 don't have a generic, I believe, sanction rule. And I
20 don't have my book, but Judge Chu.

21 HONORABLE NICHOLAS CHU: That -- that kind
22 of idea, along with what Judge Evans was saying on the
23 trial court level, I'm kind of concerned with, because,
24 you know, there is a situation where, if we're sanctioning
25 bad behavior and giving attorney's fees, then we need to

1 hear how much attorney's fees did this cost for this fake
2 pleading. But if the lawyer was like, "I didn't even
3 notice that this fake thing was in here," then directly
4 it's not supported; whereas, if there was some kind of
5 mechanism to punish somebody for having a fake citation,
6 that it's not really just the attorneys that are getting
7 messed up over, it's the court.

8 So allowing a sanction to be, essentially, a
9 fine, but not a contempt way, would be helpful, because,
10 otherwise, we would have to have support of the other side
11 saying, "I spent this much time trying to track that
12 down." And maybe if they're honest and say, "I looked at
13 the citation and it wasn't it, and it took me 10 minutes,
14 and it's only a hundred dollars," that doesn't seem like a
15 good way to deter that behavior.

16 CHAIR TRACY CHRISTOPHER: Judge Miskel.

17 HONORABLE EMILY MISKEL: So I'm going to
18 tell a story of a different problem than hallucinated
19 citations that I think is also going to be solved by this
20 rule. So there was some discussion in the courts of
21 appeal -- I can infer that someone was upset by repeated
22 frivolous, vexatious mandamus filings, and so the question
23 was, could there be a way to designate a litigant as
24 vexatious at the appellate level? I think there's a ton
25 of problems with that, and I don't think that's a good

1 idea. But what I said was, look, if we have a sanction
2 for frivolous or bad faith -- or what is the language that
3 we're using -- groundless, bad faith, and brought for the
4 purpose of harassment, then that would also encompass
5 frivolous, groundless bad faith repeated mandamus
6 findings. And one sanction that you could do is you can
7 then -- you know, as in the trial court, the sanction has
8 to match the crime and you have to do escalating penalties
9 or whatever, but at a certain point, you could just strike
10 a pleading, prohibit that litigant from filing more
11 pleadings. So those, in addition to attorney fees, would
12 be sanctions available to the court of appeals that might
13 also result from this bad faith and groundless new
14 sanctioning power that we're expressly incorporating.
15 Does that make sense?

16 CHAIR TRACY CHRISTOPHER: Yes, but I think
17 it needs to be in the rule if we're going to do that.

18 HONORABLE EMILY MISKEL: That they can
19 strike pleadings or prohibit you from filing future ones?
20 Is it expressly in the TRCP that trial courts have that
21 power, or is that just an inherent power?

22 HONORABLE DAVID EVANS: There's no --

23 CHAIR TRACY CHRISTOPHER: Judge Evans.

24 HONORABLE DAVID EVANS: As far as I know,
25 you can't do the sanction of striking a pleading in

1 advance. You can strike for one that -- you can nullify
2 the pleading on file, if that's what you're speaking to,
3 but I don't believe you can prevent them from filing. And
4 we have the same problem with these repetitive -- we'll
5 use repetitive mandamus. I don't know that having a
6 gatekeeper that reviews it for filing like we do with
7 vexatious litigants would work, but I will say this. We
8 do need a mechanism to declare somebody as vexatious for
9 filing a particular kind of motion or pleading in any
10 court, because it becomes so repetitive, and then we need
11 a meaningful sanction for it. I think I agree with you in
12 that regard. Maybe not on the remedy, but you're right,
13 it has to step up each time. It's work intensive.

14 CHAIR TRACY CHRISTOPHER: Judge Gray.

15 HONORABLE TOM GRAY: This is -- Judge
16 Miskel's comment, in particular, I need to respond to,
17 because we did hold a litigant on filings in our court as
18 a vexatious litigant under our inherent authority, and we
19 gave him notice and opportunity to explain why he
20 shouldn't be held, and we prohibited him from filing
21 anything, absent approval from a presiding judge of the
22 court. And there's still some reciprocal or hanging
23 issues on that, but we saved tens of thousands of hours,
24 because now everything that litigant files goes into a
25 file folder for that person. We don't have to set it up

1 as a case. We don't have to set it up as a mandamus. We
2 don't even have to see -- try to figure out what it is,
3 other than make sure that it's not something that is
4 needed to protect his person or rights from abridgment by
5 the -- by the prison system.

6 And that raises the question that I had,
7 concerns about this whole deal, is to what extent are we
8 killing our inherent authority by writing a rule that some
9 could argue circumscribes the scope of our inherent
10 authority? Are we handcuffed now by the rule? And I just
11 think that's a danger that we're wading off into here when
12 we talk about what it -- what conduct is it that we're
13 sanctioning and what are -- what is the scope of those
14 sanctions. Have we, in effect, ruled out the ability to
15 do anything else? So...

16 HONORABLE EMILY MISKEL: If we add to the
17 beginning of (e), "In addition to the court's inherent
18 authority," comma, because we didn't mean to replace the
19 court's inherent authority. The problem we had was panels
20 dealing with these issues didn't know if they had inherent
21 authority, and so it strengthened their confidence to give
22 them a rule, but we don't want to box out inherent
23 authority, so we could say something like "in addition to
24 the court's inherent authority," comma.

25 HONORABLE TOM GRAY: I think that would

1 address most of my concern. As I understood, your
2 question is what sanctions are there in, I think, what is
3 Rule 215 or something in the Rules of Civil Procedure.
4 Could we incorporate that by reference into our rule about
5 what -- what kind of sanctions we can impose?

6 CHAIR TRACY CHRISTOPHER: Right now, in
7 TRAP, we just have Rule 45, which is damages for frivolous
8 appeals, and that's when one party asks for it for
9 responding to the frivolous appeal. And, you know, there
10 are not a whole lot of times that we impose that at the
11 court of appeals, so I have always felt that, you know,
12 what exactly could we do, because we don't -- we don't
13 have Rule 13. We don't have Rule 11. We don't have 215
14 at the appellate level in terms of sanctions for appellate
15 conduct, so I do understand your concern.

16 You think maybe we have just inherent
17 authority? We have inherent authority to control our
18 docket, right. That's the inherent authority that a judge
19 has, at least certainly down at the trial court level.
20 I'm not sure what our inherent authority -- I mean,
21 obviously, if someone is misbehaving in front of us at
22 oral argument or threatening us, those would be the sort
23 of inherent authority things that we have, but I'm not
24 sure what we have beyond that without a rule. If you
25 think we have it --

1 HONORABLE TOM GRAY: It doesn't matter for
2 me anymore.

3 CHAIR TRACY CHRISTOPHER: Well, I mean,
4 that -- we've actually talked -- I'm sorry to hijack, but
5 we've actually talked about that at the intermediate
6 appellate courts, and I know Judge Miskel is against doing
7 vexatious litigant with the appellate court, and we
8 thought that perhaps if we found something frivolous, if
9 we found an appeal frivolous, that could be added to the
10 statute, the current statute, about dismissals to add up
11 the number of cases before they become a vexatious
12 litigant. Because, right now, it's just a certain number
13 of cases that they lose that were frivolous, and if we put
14 the appellate frivolous finding in there, that might help.

15 But I -- I agree with Judge Evans, that they
16 file frivolous motions over and over and over again, and
17 that's not included in the vexatious litigant statute, and
18 frivolous appeals that we get over and over and over again
19 are not included in the vexatious litigant statute. So,
20 you know, that's kind of what we've been thinking at the
21 intermediate appellate courts, trying to piggyback on that
22 statute. And perhaps Judge Evans could piggyback with
23 respect to frivolous motions in that current statute so
24 that -- but that's neither here nor there.

25 HONORABLE DAVID EVANS: There is -- there is

1 a direct need for a better approach. What we're finding
2 is an interaction between mandamus, recusal, and suing the
3 trial court judge is all designed to delay the
4 enforcement, usually of a family law judgment. That's
5 really where the problem is coming in. That's where
6 you're getting your repetitive mandamus, because as soon
7 as they file it, they'll file a pleading in the court
8 claiming that the appellate court has stayed it, and so
9 it's always in the 24-hour period before a hearing is
10 scheduled. It's not a full moon. You've just got to know
11 where these guys are set and what time of the day they're
12 going to file it. And that's -- that's got to be --
13 there's got to be a mechanism to prohibit that type of
14 abuse of constantly delaying the court proceedings, so I
15 join in that.

16 CHAIR TRACY CHRISTOPHER: So I know we
17 didn't ask the committee to look at what the sanctions
18 would be, so you're probably not prepared to talk on that,
19 but, for example, if we get in a brief and we see that
20 they are obviously fictitious citations, we would like to
21 just strike the brief without a hearing or notice and just
22 say, "Brief stricken because of these fake citations,
23 replead." Right? So is that a sanction? Is that a
24 sanction that we can do without notice? Is it a sanction
25 to say their point of error is waived because they've

1 filed, you know, no case law other than fictitious case
2 law?

3 HONORABLE EMILY MISKEL: I think what we do
4 now is we say, "Your brief doesn't comply with the rules,"
5 you give them an opportunity to amend their brief, and
6 then you can dismiss their appeal if their amended brief
7 doesn't comply with the rules under the Texas Supreme
8 Court precedent. And so I think, similarly, once we have
9 a certification requirement of signing it means something,
10 then you could use that same procedure, independent of any
11 sanction.

12 CHAIR TRACY CHRISTOPHER: I think it would
13 be good if it was spelled out, frankly, because,
14 otherwise, I'm afraid we're going to get people saying,
15 "Well, I didn't get notice and an opportunity to tell you
16 why I'm citing these fake citations."

17 HONORABLE EMILY MISKEL: But I think the
18 current rules and practice do require -- like, before you
19 can dismiss a party's appeal for briefing waiver, you have
20 to send them a letter with why they didn't comply with the
21 rules and give them a chance to amend their brief.

22 CHAIR TRACY CHRISTOPHER: Correct.

23 HONORABLE EMILY MISKEL: So that's notice
24 and an opportunity to respond.

25 HONORABLE PETER KELLY: What about costs

1 that go to the other party that are opposing -- there's
2 sanctionable conduct that the court of appeals can detect,
3 repeated filings, vexatious litigant, or something that
4 cited authorities, that they can strike their brief, but
5 then that also imposes costs on the other party that the
6 other party has to bear, in terms of delay or having to
7 reply to something that is clearly frivolous. And then
8 what is the appropriate sanction for that? That would be,
9 for instance, an award of attorney's fees as a sanction.

10 Well, then the court of appeals has to --
11 how do they determine that? And we had always thought,
12 well, if we were to do that, then we have to remand it to
13 the trial court to conduct factual finding on the
14 attorney's fees. I mean, how else does a court determine
15 what attorney's fees are the other party expended?

16 CHAIR TRACY CHRISTOPHER: Well, they usually
17 accompany the motion with an affidavit. Under Rule 45.

18 HONORABLE EMILY MISKEL: Ours didn't, but we
19 had a show cause in the court of appeals.

20 HONORABLE PETER KELLY: You can have a show
21 cause, but it's not clear that there's actually -- that's
22 sort of under inherent authority. You couldn't find a
23 rule to say you can specifically do that, and one remedy
24 was to remand it to the -- to a trial court to make
25 that determine -- to make any factual determinations.

1 CHAIR TRACY CHRISTOPHER: Well, you would
2 not think that this (e), the new proposed (e), would
3 require us to remand it to the trial court. This is
4 something that the court would do. Why couldn't the court
5 determine attorney's fees?

6 HONORABLE PETER KELLY: I couldn't find any
7 authority saying that we could make that factual
8 determination, and --

9 CHAIR TRACY CHRISTOPHER: So Rule 45 needs
10 to be changed. Because certainly we see -- we have cases
11 from our court where we imposed attorney's fees but did
12 not remand it to the trial court.

13 HONORABLE PETER KELLY: I think it's from
14 the court of appeals' inherent authority, but there's no
15 specific rule saying it's okay, and sometimes we got some
16 pushback from trying to make that determination.

17 CHAIR TRACY CHRISTOPHER: Roger.

18 MR. HUGHES: I guess this -- since I don't
19 normally handle these sorts of matters, what is the court
20 of appeals', or the appellate courts', authority to impose
21 fines for misbehavior? I mean, if this person has done
22 this and they file the motion or brief containing utterly
23 made up legal authorities, and now you had to spot this,
24 maybe on the court staff's own motion, which apparently is
25 happening, and then you have to give them a hearing, and

1 the person goes -- shows up and goes, "Oh, okay, I fall on
2 my sword, I did it," what are you going to do about it?
3 You know, I'll pay a hundred bucks to opposing counsel.
4 You can strike the brief, but you've got to give them a
5 chance to file.

6 I think this person has caused the court --
7 has imposed a hardship on the court. You've taken up
8 valuable clerk time, judicial time, et cetera, et cetera,
9 to spot this and now give the person a hearing where they
10 show up and, what, either they don't show up at all or
11 they fall on their sword? And all they have to do is, you
12 know, maybe pay some attorney's fees to the other side.

13 CHAIR TRACY CHRISTOPHER: Well, I know Judge
14 Elrod in the Fifth Circuit, the fine was payable to the
15 Fifth Circuit, but when we looked at that, we didn't think
16 that we had that ability.

17 HONORABLE TOM GRAY: Contempt.

18 CHAIR TRACY CHRISTOPHER: In the state
19 court.

20 MR. HUGHES: Well, I guess, could the
21 Court --

22 CHAIR TRACY CHRISTOPHER: And here.

23 MR. HUGHES: Can the Court give itself that
24 authority by rule, or is that going to require a statute?

25 CHAIR TRACY CHRISTOPHER: I don't know.

1 MR. HUGHES: Okay.

2 CHAIR TRACY CHRISTOPHER: I mean, you can
3 hold someone in contempt of court.

4 MR. HUGHES: Yes.

5 CHAIR TRACY CHRISTOPHER: As Judge
6 Miskel's -- the Dallas Court of Appeals did where you have
7 to issue a show cause and you've got to have a reporter,
8 and depending on what your potential, you know --
9 depending on what your fine or jail term would be, you
10 might have to appoint him counsel, so most of us at the
11 appellate court reserved that for really, really, really
12 egregious situations.

13 MR. HUGHES: So otherwise, it's death by a
14 thousand cuts for the court of appeals.

15 CHAIR TRACY CHRISTOPHER: Correct. Correct.

16 MR. HUGHES: Okay.

17 CHAIR TRACY CHRISTOPHER: Okay. So let's
18 get back to -- sorry, I've hijacked you and hijacked the
19 original subcommittee's work. Is (e) going to conflict
20 with the discussion that we've had already about authority
21 and fabricated evidence, et cetera?

22 HONORABLE EMILY MISKEL: Okay. So I
23 think -- I'm sorry that the one in the memo doesn't have
24 line breaks for the little romanette 1, 2, 3, and 4.
25 Maybe, as a result of that, there's one that's in there

1 twice. So as I was working on my revised copy, there's
2 actually only three things in there. The first is filing
3 a clearly groundless paper. I have a question about that
4 I'll come back to. The second and third ones in the
5 current draft are the previous language we talked about
6 already this morning, citing fictitious or nonexistent
7 legal authorities.

8 So what I have done in my revised draft that
9 I'm keeping to send to Jackie is replace romanette (ii)
10 and (iii) that are in the current option 2 (e) with the
11 language that we already did this morning. So it would
12 now say, "citing fabricated legal authorities, quotations,
13 and holdings or fabricated record references." Because
14 for the appellate stuff, we're going to keep in
15 hallucinated evidence in a way that we decided not to with
16 the trial court level. So that would be the proposed live
17 edit to that to incorporate the changes we already made
18 from this morning.

19 The other thing that I'm catching now, as
20 I'm looking at this -- and I apologize if I didn't bring
21 it up in subcommittee -- 9.8(d) says the same language,
22 "groundless and brought in bad faith or groundless and
23 brought for the purpose of harassment," but then in the
24 current 9.8(e), the first option for something that's bad
25 faith is filing a clearly groundless paper. So that sort

1 of reduces it to groundless and groundless, and I don't
2 know if we want to just delete that 9.8(e), romanette (i).

3 And, Marcy, do you remember if we talked
4 about this in our subcommittee? I think that's just a
5 copy and paste from the 52 that didn't translate well.

6 MS. GREER: I think that's --

7 HONORABLE EMILY MISKEL: So my proposal
8 might also be to delete that romanette (i) because we're
9 not -- it doesn't make sense to have something bad faith
10 be groundless if it has to be bad faith and groundless.

11 MS. GREER: Right.

12 HONORABLE EMILY MISKEL: That's just an
13 artifact of how we assembled the rule by combining 13 and
14 the 52.

15 MS. GREER: If we had used AI, it might have
16 gone better for us.

17 HONORABLE EMILY MISKEL: I know. AI might
18 have pointed it out to me.

19 CHAIR TRACY CHRISTOPHER: Well, in (d), we
20 defined it's either groundless and brought in bad faith or
21 it's groundless and brought for the purpose of harassment.
22 So those are two separate -- so I'm not sure (e) covers
23 that, your new (e).

24 HONORABLE EMILY MISKEL: Right. (e) is only
25 talking about what is bad faith. (e) is defining bad

1 faith. So I guess it might need to be broken out better.

2 CHAIR TRACY CHRISTOPHER: And I think we get
3 into the problem of what Judge Evans said, where the
4 pleading itself might not be groundless, but the citations
5 are, right, and what do we do with that?

6 HONORABLE DAVID EVANS: That's a real
7 problem, because it says the instrument is groundless. So
8 there could be good ground cited all the way through it,
9 but then this key portion is going to hang you up. That's
10 the problem I'm having with it.

11 CHAIR TRACY CHRISTOPHER: And I guess maybe
12 that's a question, if, you know -- and I think we --
13 Robert went through some of the intermediate courts of
14 appeals' decisions about this, and, you know, some of us
15 will say, "Well, they still have a good point, even though
16 they didn't file good cases," and, you know, rule on the
17 merits; and some will say, "Well, they didn't file any
18 good cases, so, you know, good-bye, you lose." And it's
19 not necessarily groundless just because you filed bad
20 cases. Yeah, Judge Miskel.

21 HONORABLE EMILY MISKEL: Okay. So what I
22 would propose is a rearrangement. This current problem
23 that we're facing is because we sort of tried to cram
24 Rule 13 stuff into the shape of TRAP 52, and I don't think
25 it harmoniously does that. So what I would propose is

1 let's leave (e) talking about the process, and then (d)
2 would be much more like Rule 13 where we would say, in the
3 first part of it, you sign it, your signature means
4 something, and then the second part of it defines
5 "groundless and bad faith," "groundless and harassment,"
6 and then we define "bad faith" like we did this morning
7 for Rule 13. I think that would more naturally flow than
8 the way it's divided up now because we were trying to mush
9 the two rules together.

10 MS. GREER: Mush being a highly technical
11 term.

12 CHAIR TRACY CHRISTOPHER: I kind of like
13 going back to what's in 52.11, "groundless petition or
14 misleading statement or record." And then you include
15 within that the fictitious citations.

16 HONORABLE EMILY MISKEL: Okay. So we would
17 remove from 9.1(d) the Rule 13 language, "the instrument
18 is not groundless and brought in bad faith or groundless
19 and brought for the purpose of harassment" or leave it
20 there because we're happy for them to certify that and
21 then we keep (e) like 52.11.

22 CHAIR TRACY CHRISTOPHER: It's interesting
23 to me that 52.11 doesn't include "bad faith" at all.

24 HONORABLE TOM GRAY: Thank you.

25 CHAIR TRACY CHRISTOPHER: And then so we're

1 importing bad faith into 9.1 and then defining it, but
2 52.11 isn't talking about bad faith at all. Judge Gray.

3 HONORABLE TOM GRAY: And bad faith is
4 different than not acting in good faith.

5 MR. HUGHES: Yes.

6 HONORABLE TOM GRAY: And that is -- it has
7 to do with placement of the burden of proof and other
8 things, but those are different, and I had that marked to
9 comment, if not otherwise raised. And I think your point
10 is spot on, that in the title we talk about -- we identify
11 it as bad faith, but then we don't use the term in the
12 rule itself.

13 CHAIR TRACY CHRISTOPHER: Roger.

14 MR. HUGHES: I also said I -- I liked
15 option 2 of (e), but the one thing I said is that it talks
16 "impose sanctions on a party or attorney who is not acting
17 in good faith," but in the preceding section, we talk only
18 about the duty falling on the party who signs the
19 pleading, motion, brief, et cetera. And I say that
20 because if you read a lot of government entity briefs,
21 you'll have a whole bunch of people listed as counsel. I
22 mean, when the AG or the SG files a brief, it will be Ken
23 Paxton and the SG all the way down to the attorney, the
24 assistant whatever, who actually ended up writing the
25 brief. Or in a large multi-law firm case, you know, there

1 may be three law firms listed, but only one person is
2 going to have the S backslash above that.

3 So are we opening it up that everybody on
4 that list is going to be at risk simply because their
5 names appear in the signature block, or do they have to
6 have electronically signed the brief, motion, or whatever?
7 And I say that because, once again, if you're old enough,
8 you remember a lot of stories. It was heard after the
9 famous Robinson opinion about importing Daubert, the
10 attorneys who lost the case filed what I heard to be an
11 insulting motion for rehearing.

12 HONORABLE JANE BLAND: Four Horsemen.

13 CHAIR TRACY CHRISTOPHER: The Four Horsemen
14 one?

15 MR. HUGHES: Yeah. And the result was that
16 they -- they ordered a show cause for every attorney whose
17 name was listed on the signature page. The only attorney
18 who got off was the attorney who said, "I never saw it.
19 My counsel never showed it to me. They put my signature
20 on this without asking my permission." That attorney
21 walked. And so I'm thinking is if you're the attorney who
22 just happens to be in the firm and happens to be there,
23 but you never -- I mean, you are running the risk of, so
24 to speak, having to do the show cause hearing just to show
25 up and say, "I never saw it. I didn't approve it. I

1 didn't know anything about it," or is only the ones who
2 sign, who quote-unquote electronically signed or
3 physically signed, are they the only ones that have to
4 worry about sanctions?

5 I'm not sure what the answer to that is. If
6 it was a collaborative effort, maybe they ought to, but I
7 think the rule shouldn't leave it to guesswork.

8 CHAIR TRACY CHRISTOPHER: Judge Miskel.

9 HONORABLE EMILY MISKEL: So one of the
10 issues that we're now kind of identifying is TRCP 13
11 requires that something be groundless and brought in bad
12 faith or groundless and brought for the purpose of
13 harassment. TRAP 52 has only required one or the other.
14 So under TRAP 52.11, you can do sanctions for groundless
15 or for delay or grossly misstating or omitting. You don't
16 have to be groundless and bad faith under the TRAP. You
17 just have to be groundless or bad faith under 52. So by
18 taking the standard from 13 and putting it into the 52
19 language, that's where we caused ourselves this problem.
20 So I am happy to leave it the way it's currently been in
21 the TRAP, that you don't have to prove that you're both.
22 You could be one or the other.

23 CHAIR TRACY CHRISTOPHER: So you would
24 eliminate "bad faith" and just keep it "groundless"?

25 HONORABLE EMILY MISKEL: No. So the way

1 52.11 currently is, you can be sanctioned for groundless
2 only, delay, gross misstatement, or omitting something
3 important, which we're taking that one to be kind of our
4 bad faith stuff. So whereas, 52.11(c) currently just says
5 "grossly misstating or omitting a fact," we're saying
6 "grossly misstating or omitting a fact or authority" is
7 kind of what we're wordsmithing there. And then (d) has
8 to do with filing an appendix or record that is
9 misleading.

10 So we could not bring in the Rule 13 concept
11 at all and leave it the way 52.11 has it and just
12 wordsmith (c) to be what we have talked about this
13 morning, citing fabricated legal authorities, quotations,
14 or holdings, or fabricated record references.

15 CHAIR TRACY CHRISTOPHER: And keep the
16 language in 9.1(d) or delete it?

17 HONORABLE EMILY MISKEL: Yeah. So I think,
18 because what we had originally talked about -- let me just
19 switch back to the notebook. We had originally imported
20 that Rule 13 language which had "and," but we could revise
21 that to say you're still certifying -- by signing, you're
22 still certifying that the instrument is not groundless,
23 brought in bad faith, or brought for the purpose of
24 harassment, which would be consistent with how the TRAP do
25 it. I'm sorry we don't have a screen, because I wish I

1 could display.

2 CHAIR TRACY CHRISTOPHER: You're very good
3 at doing that on the fly. Yes, Roger.

4 MR. HUGHES: Once again, I liked option 2
5 for section (e). I thought that it was lucid. My only
6 suggestion on actually -- and I'm sure it's a substantive
7 change. What is now as the last one, "filing a record or
8 appendix that is clearly misleading because it omits
9 obviously material evidence or documents," I think there
10 needs to be some sort of mens rea stuck in there, like
11 "willfully filing a record," that it's deliberate, because
12 I fully understand that as the relator, you're obligated
13 to bring up every part of the record that's material to
14 supporting or defending the judge's ruling, whether you
15 like it or not.

16 And I also understand that as the appellant
17 or -- I mean, in an ordinary appeal, you should at least
18 ask the clerk -- you should order the records from the
19 clerk and the court reporter, pertinent parts of the
20 record. That's how the record comes up, and it's the
21 party's obligation. And what I sometimes do -- what I
22 sometimes see is getting into arguments about, well,
23 what -- what's something -- whether something is missing.
24 And I have seen opinions which permit, but do not require,
25 the relator in original proceedings to simply state, yes,

1 there was an oral hearing on the motion, but no evidence
2 was offered. Well, do we want to get in a fistfight over
3 whether counsel's arguments constituted a material part of
4 the record, that they amounted to -- counsel made
5 statements or arguments which amounted to evidence,
6 because we still have fistfights over whether the argument
7 of counsel is or is not an admission or can be treated as
8 evidence.

9 I think, therefore, because this could end
10 up being a contention of itself is whether what appears to
11 be -- it can be contentious whether what appears to be a
12 nonevidentiary hearing actually had some evidence or not.
13 I think you have to say some sort of willfully filing a
14 clearly misleading record, that counsel -- counsel had no
15 reason to believe that the evidence or admissions, or
16 whatever, weren't at this hearing, and so the counsel
17 could say nothing happened or -- or there was no evidence
18 that was offered. It was just the argument of counsel.
19 So that's a suggestion to prevent those fistfights.

20 CHAIR TRACY CHRISTOPHER: I'm not sure we
21 need (d) at all under the briefing signature. Because
22 that's what 9.1 is, right?

23 HONORABLE EMILY MISKEL: Brief, motion, or
24 other paper.

25 CHAIR TRACY CHRISTOPHER: Because we have

1 rules about the clerk's record, about what you have to
2 order, what you don't, how more things can be ordered if
3 something is missing. We have rules about the reporter's
4 record, if you don't order it all. We have rules that,
5 you know, we just say, "You didn't order it all, so it was
6 material, and you lose." Or, you know, we presume that
7 everything in the record supported the verdict, so I'm not
8 sure it's as important as it is in the original proceeding
9 world where people are likely to cherry-pick and are
10 asking for immediate relief based on cherry-picked
11 records.

12 I mean, I suppose that, you know, we
13 could -- we could have something in connection with
14 motions for continuance that would, you know, be
15 deliberately misleading or something like that, that they
16 didn't clearly state what the record was, but I think that
17 our other rules on the clerk's record and the reporter's
18 record handle that. Yeah, Judge Miskel.

19 HONORABLE EMILY MISKEL: So the only thing
20 missing from 52.11 is it doesn't talk about "brought for
21 the purpose of harassment." Is that something we want to
22 add back in that might also relate to these repeated
23 vexatious man -- well, I guess mandamus would still be
24 covered by 52, but do we want to bring in the concept of
25 brought for the purpose of harassment into the sanction,

1 which if it's now down to two things, include filing a
2 petition that's clearly groundless or citing fabricated
3 authorities or record references?

4 CHAIR TRACY CHRISTOPHER: Well, no, I would
5 keep the delay of the underlying proceeding, because
6 interlocutory appeals are sometimes frivolous, and they
7 delay the underlying proceedings, depending on what type
8 of interlocutory appeal it is. So I would keep the delay
9 provision in there.

10 HONORABLE EMILY MISKEL: Under the first
11 one, which in 52, says "filing a petition that is
12 clearly groundless." Since this rule is applying to
13 petition, brief, motion, or other paper, should I say
14 "filing a paper that is clearly groundless" rather than
15 "petition" in our 9.8(e)?

16 CHAIR TRACY CHRISTOPHER: Probably.

17 HONORABLE EMILY MISKEL: And then similar --

18 CHAIR TRACY CHRISTOPHER: That's my thought.

19 HONORABLE EMILY MISKEL: Similarly, (b),
20 instead of just bringing the petition solely for delay, it
21 would be bringing petition or motion solely for delay. Is
22 that right?

23 CHAIR TRACY CHRISTOPHER: But what is not in
24 52.11 that is in what the subcommittee put up is "bad
25 faith," and do we want "bad faith" in there? Right?

1 Because 52.1 doesn't have a bad faith component.

2 HONORABLE EMILY MISKEL: Right, and the
3 subcommittee's proposal has "bad faith" in the title. But
4 I think if you look at the text of the rule of (e), it
5 doesn't say "bad faith." It leaves 52.11 "not in good
6 faith."

7 So I think what I would also do is change
8 the title or the heading of 9.1(e) to mirror 52.11 and
9 say, "9.1(e), Sanctions for groundless paper or misleading
10 statement or record." And then it harmonizes.

11 HONORABLE MARIA SALAS MENDOZA: I would just
12 add that I agree with Justice Christopher, that you can
13 leave off the record stuff.

14 HONORABLE EMILY MISKEL: Okay. That was --

15 CHAIR TRACY CHRISTOPHER: (d)

16 HONORABLE EMILY MISKEL: Yeah, (d).

17 CHAIR TRACY CHRISTOPHER: The Court is going
18 to try to do something within the next few months on this
19 issue, so we don't need the subcommittee to come back.

20 HONORABLE EMILY MISKEL: Okay.

21 CHAIR TRACY CHRISTOPHER: Do we have any
22 further comments in general from the committee about what
23 we've discussed? So we don't have exact language to vote
24 on.

25 Yes, Kennon.

1 MS. WOOTEN: The only comment I'll make is
2 I'm, frankly, struggling to understand whether it's
3 intentional in the existing Rules of Appellate Procedure
4 to use the phrase "not acting in good faith" as opposed to
5 a phrase getting into those rules that's a little
6 different from what's in the Rules of Civil Procedure
7 without the intention of having a different standard, and
8 if it truly is a different standard than what we're
9 contemplating the possibility of doing is having it
10 defined as bad faith in the Rules of Civil Procedure and
11 not acting in good faith in the Rules of Appellate
12 Procedure. So I just think figuring out the background of
13 the phrases and whether it should all be the same across
14 the board would be a worthwhile exercise.

15 PROFESSOR LONNY HOFFMAN: I agree with that.

16 CHAIR TRACY CHRISTOPHER: Okay. Yes, Judge
17 Miskel.

18 HONORABLE EMILY MISKEL: And I would say,
19 you know, it might be a choice to say that we have higher
20 expectations for the professionalism of appellate
21 advocates and --

22 MS. WOOTEN: It might be, but I would say,
23 as one who is a litigator and an appellate advocate, we
24 should expect the same standards across the board.

25 CHAIR TRACY CHRISTOPHER: All right. Do we

1 have any other comments on this section?

2 All right. Then we'll move on to our
3 third tab, which is Texas Rule of Appellate Procedure
4 53.7, and that's Judge Boyce.

5 HONORABLE BILL BOYCE: So by way of recap,
6 this is a -- what I would characterize as a follow-up or a
7 cleanup provision to be discussed, prompted by the change
8 in PFR procedure that previously went into effect on
9 January 1. So the PFR process is now front-loaded to have
10 grant determination made based on the PFR briefing, not
11 waiting for briefs on the merits.

12 53.7 is sort of a vestige, in a sense, of
13 the prior practice of going through the two-step process
14 of the PFR, then a request for a brief on the merits, then
15 briefing on the merits, then the determination about
16 whether or not to grant review. There's -- the referral
17 is set out in the memo that you have, and the referral
18 posits three scenarios, two of which are not, in my
19 estimation or in the subcommittee's estimation, not that
20 complicated. The third one is a little bit tricky.

21 One is -- the first one that's posited is
22 parties on the same side, and there's -- you know, in the
23 subcommittee's estimation, there's really not a -- a
24 strong reason to have parties -- to have the deadline for
25 parties on the same side to be keyed off of the first one

1 who files.

2 A second scenario that's posited is somebody
3 who is going to file a petition for review, regardless of
4 what the other side does, and again, kind of the same
5 consideration that there's really not a -- a strong reason
6 that we were able to discern why you would want to have
7 that be dependent on the first -- the first file.

8 And then the third one, which I'll unpack a
9 little bit here, is a conditional cross-petition for
10 review. And to invoke *The Princess Bride* again, it's sort
11 of like the Inigo Montoya line that "You keep using that
12 word, but I'm not sure that word means what you think it
13 means." We need to unpack a little bit about what a
14 conditional cross-petition is. But the bigger question
15 here is, in terms of front-loading the PFR process or
16 expediting the PFR review process, or however you want to
17 characterize it, if you are going to have some type of
18 conditional cross-petition, do you want to tie the
19 deadline for that conditional cross-petition to the
20 initial action taken by the first filing party, or do you
21 want to tie it to the Supreme Court asking for a response,
22 with the notion that unless and until the Supreme Court
23 asks for a response to the first filed petition, it's not
24 going anywhere, so there's nothing to be conditioned on
25 it. The PFR is not going anywhere because a response

1 wasn't requested, and it's going to be on the pathway to
2 denial.

3 So the referral suggests tying the deadline
4 to the request for a response. One wrinkle of that is you
5 may have a party who files a response without being
6 requested. You don't have to do that, but surely in the
7 great State of Texas, with all of the lawyers we have
8 here, some number of folks are going to do that, so you've
9 got to address that. But, really, the larger procedural
10 question is what do you want to tie the deadline for
11 filing a conditional cross-petition to? Do you want to
12 tie it to a response requested by the Court, or do you
13 want to tie it to some niche action?

14 And just by way of comparison, this is not
15 contained in the memo, but I put it out there for your
16 edification, which is if you compare how the rules in the
17 United States Supreme Court work, the operative rules are
18 Rules 12, 13, and 15. And, in summary, the way the U.S.
19 Supreme Court is doing it is it's -- the deadline for
20 filing the cross-petition is keyed off of when the initial
21 petition for writ of certiorari is docketed. In other
22 words, when it gets filed by the first filing party. It's
23 not keyed to the response in the fact that the deadlines
24 for dealing with it are extended by the cross-petition
25 before it gets to the Court.

1 So the referral, as framed, suggests or
2 invites discussion of tying it to the response that's
3 either requested by the Court or filed by the party, based
4 on a prior filed petition for review. And so we talked
5 about this in the subcommittee, and this goes back to the
6 point of what exactly do you mean by conditional
7 cross-petition? We identified at least two senses of
8 conditional cross-petitions, and I would call them, you
9 know, a formal one and a wait-and-see one.

10 A formal one would be a cross-petition that
11 says, "We don't think you should disturb the appellate
12 court judgment at all, Supreme Court, but if you do, then
13 we've got these additional issues that need to be
14 considered."

15 The informal one, or the wait-and-see one,
16 is the notion that you may have a party that is satisfied
17 enough with the appellate court judgment, they're not
18 going to be the first mover or party to initiate the
19 petition for review. But if some other party does or the
20 other side does, then they're going to do that as well,
21 and it may not be so clearly delineated as a -- as a
22 conditional cross-petition in the sense that it formally
23 says, "Please leave the judgment alone, but if you do
24 change it at all, then X, Y, and Z issues are also
25 raised."

1 So what you'll see on page four of the memo
2 are a proposed rule revision to 53.7(c) that has some
3 bracketed alternative language or conditional language for
4 discussion and then a further possible additional
5 definition that is more specific about what do you mean by
6 conditional cross-petition. And so if you take out all of
7 the bracketing and caveats and additional stuff, you come
8 out with a proposal for Rule 53.7(c) that says "A
9 conditional cross-petition for review shall be filed no
10 later than the date the response is filed, regardless of
11 whether the response is filed voluntarily or pursuant to
12 the Supreme Court's request." That's the bare bones
13 version of it, and you'll see bracketed possibilities to
14 give that a little bit greater meaning.

15 I may not be able to do it justice, but I
16 want to make sure that I try to convey the concern that,
17 in particular, Rich Phillips had identified. And he's not
18 able to be here today, but he had concerns that if you're
19 in the -- that the person who is -- or the party that is
20 thinking about filing a cross-petition, but kind of wants
21 to wait and see what happens and whether the other side
22 files, could wind up getting jammed up if the first filed
23 petition is filed, like, right at the end of the deadline
24 period and then there's not really time to do your own
25 cross-petition, so you, you know, have to file an

1 extension or scramble or do something like that. And I
2 may not be captureing fully what his concern was, but that
3 was -- that was part of the concern that he had.

4 So, really, the -- I think the questions
5 that I would put on the table for discussion are, you
6 know, number one, do we want to tie the deadline for a
7 cross-petition or a conditional cross-petition to the
8 request for the filing of the response to the initial
9 petition for review? If we're going to tie it to the
10 response, then how do we -- how do we most effectively do
11 that? Do we go with a bare bones version of what appears
12 on page four? Do we go with some of the additional
13 bracketed language for additional clarity? And do we try
14 to add the additional specificity by solving *The Princess*
15 *Bride* problem and explaining exactly what we mean by a
16 conditional cross-petition? So those are kind of the
17 topics for discussion.

18 CHAIR TRACY CHRISTOPHER: So I have a
19 question with respect to the proposal. If you are a
20 person who wants to file a -- who may want to file a
21 cross-petition, you're not necessarily the person who's
22 filing the response, correct? It could be a third person?

23 HONORABLE BILL BOYCE: Possibly, yes.

24 CHAIR TRACY CHRISTOPHER: And so they
25 wouldn't know what the deadline is if someone voluntarily

1 filed a response.

2 MS. REASONER STOKES: Yeah, Bill, this is
3 the same thing I raised on our call, that if you're
4 voluntarily filing, doesn't mean you're going to file on
5 the 30th day from the petition. You could file it on the
6 10th day and then -- then the conditional cross-petition
7 person, if it's not the same person, is caught flat-footed
8 and may not have their conditional cross-petition ready.

9 CHAIR TRACY CHRISTOPHER: And then my next
10 question would be would the Supreme Court want to know
11 that there was a potential cross-petition before ordering
12 the response? And if so, then it seems like it would be
13 better to say 30 days for the cross-petition.

14 HONORABLE BILL BOYCE: To say -- to say 30
15 days from --

16 CHAIR TRACY CHRISTOPHER: From the filing of
17 the original petition.

18 HONORABLE BILL BOYCE: Uh-huh.

19 CHAIR TRACY CHRISTOPHER: And, you know, is
20 that useful to the Supreme Court?

21 HONORABLE BILL BOYCE: That is -- that is a
22 valid question, and I think the balances here are
23 expediting the process, the process of the grant
24 determination, versus in the situation where you have
25 something that is expressly conditional, not waiting

1 around for it if it's going to be moot or irrelevant upon
2 the denial of the first-filed petition. I think those are
3 the balance of considerations.

4 CHAIR TRACY CHRISTOPHER: Right. Roger.

5 MR. HUGHES: Well, I'm not sure I favor
6 having a separate rule for cross -- conditional
7 cross-petitions, but if you are going to allow the beast
8 and give it a separate extended filing date, then I think
9 the definition should require the party filing it to say
10 "This is conditional, and I'm only interested in relief if
11 you give somebody -- decide to take the case. Otherwise,
12 you don't have to grant this." That way perhaps that
13 relieves some pressure on the Court to say "We don't need
14 to look at the cross-petition until we've looked at the
15 first petitions," and if they don't like those, then maybe
16 they don't have to read any further.

17 Now, taking this from an advocate, what I
18 see is a multiplicity of deadlines and interesting ways to
19 get around the word count limit. If you're the respondent
20 and you want to file one of these conditional
21 cross-opinions, cross-petitions, well, okay, so now you
22 get a response and a cross-petition under this rule. Does
23 that mean you can have two separate word limits, one from
24 each, or do you have to combine them, and then that's
25 what's the response?

1 Now, the original petitioner goes, "Oh, I've
2 got to file a response to the cross-petition and a reply
3 in support of my original petition." What are the
4 deadlines going to be to that? Are they going to be
5 staggered, or are they going to be simultaneous, and do I
6 get two separate word limits for that? And then, of
7 course, the cross-petitioner now gets the last word to
8 file a reply in support of their cross-petition.

9 I think these are all problems for the Court
10 about allowing this in the first place. But if this is a
11 useful thing to do, then I suggest fixing a specific limit
12 after the original petition is filed so that all of the
13 petitions at least hit -- are on the conveyor belt at the
14 same time and that maybe some thought be given about how
15 to deal with the possibility that this is a way to get
16 around or double the word limits for parties.

17 HONORABLE BILL BOYCE: So, Roger, if I'm
18 understanding what you're advocating, it's in terms of a
19 specific number of days limit? It sounds like the status
20 quo.

21 MR. HUGHES: Well, what I was thinking is if
22 you really -- if you're thinking about filing a
23 cross-petition, I think the way that the current rules
24 simply say you file it within 45 days or you ask for an
25 extension of time, and that way at least there's some

1 simplicity and that the conveyor belt of taking petitions
2 upstairs can then run smoothly. The alternative is to say
3 if you want to file a cross-petition, conditional
4 cross-petition, this is what the brief has to say so that
5 it truly is conditional, and then second, 15, 20, 30 days
6 after the first petition is filed, that's when it's due.

7 And then the Court will have to worry about,
8 well, how do we deal with a response to the
9 cross-petition, when is that due, and what do we do
10 about -- what do we do about page limit or word limits so
11 that people aren't using it to get around -- so that you
12 treat your cross-petition as an extended response.

13 CHAIR TRACY CHRISTOPHER: Don't we have that
14 same problem now?

15 MR. HUGHES: Well, yes, but --

16 CHAIR TRACY CHRISTOPHER: Okay.

17 MR. HUGHES: That's why I'm saying I'm not
18 sure a rule for cross -- special rule for conditional
19 cross-opinions is saving anybody time, trouble, and money,
20 and it specifically is not helping the Court and its
21 existing conveyor belt system. Whether it does or
22 doesn't, I don't know. I don't work in that office.

23 CHAIR TRACY CHRISTOPHER: Kent.

24 HONORABLE KENT SULLIVAN: I did not go back
25 and revisit this thicket of rules, so maybe this is a

1 misplaced comment, but I do wonder if this is not a
2 one-off problem and might not be resolved, as I think was
3 implied a moment ago, by filing an individual motion. It
4 could be a motion to extend time for the filing of an
5 additional -- or however, but then the Court could handle
6 it in a unique way, as opposed to a blanket rule that
7 opens all of this stuff for this additional complexity.
8 Just a thought.

9 HONORABLE BILL BOYCE: For clarification, is
10 your thought -- same question that I asked Roger. Is your
11 thought to maintain the status quo of a -- of a deadline X
12 number of days after the first filed petition for review
13 is filed, or is your thought to not have a specific
14 deadline at all?

15 HONORABLE KENT SULLIVAN: My thought was
16 that that would be the default, that we had one rule, one
17 deadline, and if it's going to be altered, it would be
18 altered on a unique one-time basis, based on the case and
19 circumstances.

20 HONORABLE BILL BOYCE: So, in other words,
21 not have a separate breakout deadline for a
22 cross-petition.

23 HONORABLE KENT SULLIVAN: And my thought
24 was, number one, how often does it come up, or should it
25 come up; and number two, is it worth the additional

1 complexity we're talking about, about the various
2 timelines and the like? Could we avoid all of that just
3 by dealing with this? And again, I defer to other people
4 about how often this is going to come up. Is this really
5 a problem that deserves this kind of a blanket rule or
6 not?

7 CHAIR TRACY CHRISTOPHER: I don't know. The
8 Court's asking us for it.

9 HONORABLE JANE BLAND: I think we get
10 multiple petitions in a case or two about every week or
11 every other week. There are -- there are a number of
12 cases where there are multiple petitions.

13 HONORABLE KENT SULLIVAN: But multiple
14 petitions where they don't meet the original deadline?
15 That's what I was curious about.

16 HONORABLE JANE BLAND: Yeah, I think so.

17 HONORABLE KENT SULLIVAN: Okay.

18 HONORABLE JANE BLAND: They don't come in at
19 the same time, let's put it this way.

20 MS. REASONER STOKES: Well, and I do know a
21 lot of people, if they're doing a conditional
22 cross-petition, they want to wait and see if the other
23 side files their petition because they don't want to spend
24 the money and time to draft their conditional
25 cross-petition, and sometimes the other side won't tell

1 them if they're going to file a petition. Like, you ask
2 them, "Are you going to go up," and they kind of hedge.
3 So I think that's -- but right now the rule is written so
4 broadly as to give anybody the extra 30 days, whether you
5 were planning to file one or not.

6 I mean, what I heard Kent saying is maybe
7 just get rid of the rule entirely and then everybody has
8 to file on the same deadline and then there's no confusion
9 to the Court. But then you will probably get some
10 petitions that -- you know, you might get more preemptive
11 petitions than you otherwise would.

12 CHAIR TRACY CHRISTOPHER: Bill.

13 HONORABLE BILL BOYCE: I mean, I think we're
14 debating where does the risk of inefficiency come in.
15 Does it come in where the Court gets presented with a
16 bunch of potentially moot petitions when they otherwise
17 wouldn't arrive, because some of this is conditional, or
18 do we make the first filed petition the driver of whether
19 or not there's going to be more stuff that happens, and if
20 there is going to be more stuff that happens, that's when
21 cross-petitions come in. So I think that's part of it.

22 And in response to Macey's comment, or maybe
23 it's Macey's and Kent's comments together, I mean, I can
24 think of situations where it really does depend on whether
25 the other side files or not as to whether it's worth the

1 time, effort, money, or it strategically makes sense to
2 try to challenge some other aspect of the court of
3 appeals' judgment, if this part gets disturbed.

4 I'm not -- some of these, I'm not sure how
5 you would -- I'm not sure how you would file a conditional
6 cross-appeal before -- or cross-petition before you know
7 whether or not somebody is seeking to disturb the
8 appellate judgment in the first instance. I just -- I
9 don't know how that would be drafted. "In the event that
10 my opponent files a petition for review," comma, "and in
11 the event that it gets granted," comma, "then I'm
12 petitioning -- I'm cross-petitioning to ask you to look at
13 this other issue." It's just I'm not sure how that would
14 work.

15 I think that the concern that we had
16 discussed, among others, at the subcommittee level was if
17 you maintain a special rule for something that you define
18 as a conditional cross-petition, whatever that is defined
19 as, and you key that to the response, then the calendaring
20 starts getting potentially confusing, particularly if
21 somebody hauls off and files a response before one is
22 required. And, you know, as Kent and I were talking
23 about, the least asked question in law, and then what
24 happens?

25 And so, you know, we had touched on this in

1 the subcommittee discussions -- and I hope this doesn't
2 sound as -- like a punt, but it's probably a punt -- which
3 is, you know, one way is for the Supreme Court clerk's
4 office to tell you what the -- what the calendar is going
5 to be. And I guess I have some sense that that may be
6 some of the direction that I understand the clerk's office
7 to be moving in, based on some of the recent case
8 experience I've had, where instead of you get one motion
9 for extension granted at a time for each stage of it, you
10 get an order that says, okay, the extension is granted for
11 this filing and then the reply is due, you know, this
12 date, and not waiting for it to happen in serial, but kind
13 of doing it all at once, and maybe that's the direction
14 that it goes to.

15 CHAIR TRACY CHRISTOPHER: Does the current
16 rule not give the specific deadline or within 30 days
17 after any proceeding petition is filed, whichever is
18 later? I mean, wouldn't that be the -- under the current
19 rule, the date that you would file a cross-petition? 30
20 days after the first petition.

21 MS. REASONER STOKES: I think the rule,
22 yeah, does have that deadline in it, and now it just
23 applies to all kinds of cross-petitions, even people who
24 were going to file no matter what. And so one thing that
25 Roger suggested, and I think is worth considering, is do

1 you keep that rule but then confine it to conditional
2 cross-petition so that anybody who is going to appeal
3 anyway, they just need to meet the regular deadline, but
4 if you're going to tell the Court don't grant unless you
5 grant somebody else's petition, then you get the extra 30
6 days, and you don't waste the time filing a petition.

7 And to Bill's scenario, you could file a
8 conditional cross-petition if you have to -- if you have
9 to file in the 45 days, you could file it, and then the
10 other side doesn't even file their petition, so then you
11 end up having to withdraw it. So I think that's part of
12 the reason you have this original rule. So you could just
13 keep the rule, but confine it to conditional
14 cross-petitions and define what that is, because why does
15 somebody who knows they're going to appeal need -- need
16 the extra 30 days when somebody else has filed a petition?
17 They could always get an extension if they have a
18 fact-specific reason, but...

19 CHAIR TRACY CHRISTOPHER: So I guess I'm
20 just not understanding what is happening at the Supreme
21 Court that's causing problems with the way that it's
22 currently written.

23 HONORABLE JANE BLAND: So it didn't create
24 any problems under the old version, but under the new
25 version, we are forwarding petitions within about a week

1 of receiving them, so the clerk's office will look to see
2 what has been filed in the preceding week and put them on
3 the forwarding calendar, which doesn't mean they're acted
4 on right away, because we have about a four-week time
5 period of a forwarding calendar that goes out for about a
6 month, so it's about a month before votes are due. And so
7 if it was 30 days within the filing of the petition, you
8 might get your cross-petition on file in time for it to be
9 forwarded to the Court, but if you've asked for an
10 extension or anything like that, it will -- the petition
11 will be forwarded without the cross-petition.

12 MS. REASONER STOKES: Yeah, and one thing we
13 thought about, too -- and I agree that the Court doesn't
14 know if other petitions are going to come in, right, until
15 the 30 days has elapsed. I mean, one thing you could do
16 is, you know, once somebody files a petition, anyone else
17 who wants to file conditional cross-petition has to notify
18 the Court of their intent to do so, so the Court knows
19 it's coming, so the Court's not jumping the gun on either
20 denying or requesting a response before they've gotten --
21 gotten it in. I mean, that's one option.

22 HONORABLE JANE BLAND: Right. And just
23 under the old rule, the clerk's office did not forward a
24 petition --

25 MS. REASONER STOKES: Right.

1 HONORABLE JANE BLAND: -- until the deadline
2 for a response had passed.

3 MS. REASONER STOKES: Exactly.

4 HONORABLE JANE BLAND: And so then the Court
5 then could also request a response, but there was no --
6 the idea here is to basically save about a month of lag
7 time where nothing was happening, either by the lawyers or
8 by the Court, because we were waiting on this response
9 deadline. The idea is that if we forward the petitions,
10 the Court can make a decision about requesting a response
11 sooner.

12 HONORABLE BILL BOYCE: Is -- is the avoiding
13 dead time concern that you've articulated, is that
14 addressed by changing the number of days in the current
15 rule, or is it -- does it work better to have the
16 conditional PFR deadline linked to the request for a
17 response? And I didn't articulate that very well.

18 HONORABLE JANE BLAND: I mean, that's an
19 easier -- right, that's an easier fix, because that
20 process is already in place.

21 HONORABLE BILL BOYCE: So shorten the number
22 of days?

23 HONORABLE JANE BLAND: For the response?

24 HONORABLE BILL BOYCE: No, for the
25 conditional cross-petition. What I'm exploring is you've

1 got 30 days -- under the current 53.7(c), it's 45 days to
2 the last time the motion for rehearing being overruled or
3 30 days after a proceeding petition is filed. Is the dead
4 time problem addressed by adjusting those deadlines?

5 HONORABLE JANE BLAND: I mean, you could
6 definitely adjust the deadlines, and that would be
7 helpful, but, you know, probably at or with the response
8 is the best, right, because -- but that would dovetail off
9 of when a response is requested, and it may be then, and
10 it's delaying the case where -- well, if you're going to
11 file a petition no matter what, you probably needed to get
12 it on file ahead of time.

13 HONORABLE DAVID KELTNER: Right. Right.

14 HONORABLE JANE BLAND: So at or with the
15 response might work. Anyway, we can -- the Court will
16 look at all of this. I'm not going to try to --

17 MS. REASONER STOKES: Fix it today.

18 HONORABLE JANE BLAND: Or decide on behalf
19 of my colleagues.

20 HONORABLE BILL BOYCE: No, no.

21 CHAIR TRACY CHRISTOPHER: I have a question
22 about the same side --

23 HONORABLE BILL BOYCE: Okay.

24 CHAIR TRACY CHRISTOPHER: -- provision in
25 the rule. I mean, I could see a situation where a

1 defendant was 10 percent responsible and the other
2 defendant is 90 percent responsible, and am I really going
3 to make the 10 percent person file a brief on a petition
4 on day one until they know a hundred percent that, you
5 know, the 90 percenters are going to do that? Am I going
6 to have to coordinate with the 90 percenter? Because I
7 might be fine with paying my 10 percent. I mean, so,
8 I mean, I understand why we key it off the, you know,
9 seriatim petitions, until you see what the first one who
10 is really complaining files.

11 HONORABLE BILL BOYCE: Yeah, and you know, I
12 guess that's another distinction between just a "me too,"
13 PFR versus same side of the case, but --

14 CHAIR TRACY CHRISTOPHER: Different issues.

15 HONORABLE BILL BOYCE: -- differently
16 situated.

17 CHAIR TRACY CHRISTOPHER: Right. I mean,
18 you know, you see it sometimes.

19 HONORABLE BILL BOYCE: No, that's true.

20 CHAIR TRACY CHRISTOPHER: And for whatever
21 reason, you try to pay your 10 percent, and the
22 plaintiff's like "I'm not taking that 10 percent because
23 we've still got this appeal going on."

24 HONORABLE BILL BOYCE: Nobody wants to be
25 liable, but I'm not very much liable, so I --

1 CHAIR TRACY CHRISTOPHER: Right. Right.
2 And, I mean, we've certainly seen that at the intermediate
3 court where the 10 percenter doesn't play, and all of the
4 sudden the whole verdict is reversed, which I think is
5 unfair, but I couldn't convince anyone I was right on
6 that, but...

7 MS. REASONER STOKES: I mean, I think that
8 is a good point. There's the people who don't want the
9 Court to grant unless they grant the main petition, but
10 then there's people who, if their petition is going to be
11 filed, then they want -- then they're going to ask you to
12 grant it, too. They're going to file their own and then
13 say take it, not conditionally, take it. And then there's
14 the third category that's I'm going up no matter who goes
15 up.

16 CHAIR TRACY CHRISTOPHER: Right.

17 MS. REASONER STOKES: And it's hard to --
18 especially the last two categories, it's hard to make that
19 objective and have people tell you that, you know, in
20 their petition, or in their -- you know, as opposed to the
21 conditional. It's much clearer. We've been doing that as
22 an unwritten rule for a long time, don't take it unless
23 you take theirs.

24 CHAIR TRACY CHRISTOPHER: But, I mean, like
25 in my category, the 90 percenter and the 10 percenter,

1 under the way the rule is currently written, I would have
2 30 days --

3 MS. STOKES: Right.

4 CHAIR TRACY CHRISTOPHER: -- to decide
5 whether to file my own petition to worry about the 10
6 percent responsibility, right?

7 HONORABLE TOM GRAY: You would have 30 days
8 to get it done.

9 CHAIR TRACY CHRISTOPHER: Right.

10 HONORABLE TOM GRAY: But a lot shorter time,
11 obviously, to decide whether you are going to get it done,
12 and that's where I think Ms. Reasoner's idea about notice,
13 the 10 days, seven days, would that prevent the Court from
14 gearing up for the time that it's going to spend in
15 deciding to request a response, if it knew within seven
16 days of the filing of a petition that there were other
17 parties that were going to file a petition, conditional or
18 otherwise, that whether it's the "me too," somebody on the
19 same side with a different issue than what was filed.

20 It just seems to me that maybe that within
21 seven days of the first one, you have to file some type of
22 notice would prevent the Court from wasting the time or
23 spending the time. I won't say it would be a waste, but
24 it may be better considered after the additional petitions
25 are received than, okay, we're on the eve, we've all

1 prepared to vote, and now we know that here's another
2 petition that we've received.

3 CHAIR TRACY CHRISTOPHER: So it would be
4 kind of like a cross-appeal at the intermediate level.

5 HONORABLE TOM GRAY: Yeah. I'm looking at
6 thinking about what happens to us, because anybody that
7 wants to modify the judgment in their favor in any way has
8 to file a notice of appeal, so we have notice early on.
9 In these multiparty cases, especially when they're on
10 other sides of the case, the opposite sides of the case,
11 and we get these, but it happens, too, when they're on the
12 same side of the case, but have different issues, we try
13 to do a scheduling order, and I have yet to have one that
14 flowed nicely after that. It's all -- you know, because,
15 you know, you set them up for the response, and then they
16 still need -- somebody else needs an extension. Well,
17 nobody wants to file their response until all of the --
18 you know, and so all of the briefing is done on one side,
19 and it gets to be a really complicated scheduling thing.
20 And we don't have that nearly as often as the Supreme
21 Court does on those multiparty cases. At the small
22 courts, I'll put it that way.

23 And so I don't know if that would fix the
24 Supreme Court's problem, but it seems to me that your idea
25 about just a notice from the party within seven days of

1 the filing of the petition triggering this 30-day, you
2 know, period to file the petition would be --

3 MS. REASONER STOKES: Yeah, and the idea
4 being in the majority of the cases that don't have
5 multiple petitions, they can go up in the 10 days and be
6 clicking along, and it would just be the small amount that
7 you know another petition is coming. So it's just one
8 idea.

9 HONORABLE BILL BOYCE: My lawyer,
10 Mr. Keltner, suggests that we really look at the adjusting
11 the number of days to address the dead time problem that I
12 understand the Court's trying to address. You know, if
13 you switched to 30 and 20, without trying to carve out a
14 specific rule for conditional cross-petitions and the
15 complications that that potentially raises, if the
16 circumstance is that the PFRs are getting put in the
17 pipeline more quickly now under the new procedure without
18 waiting for a response date, a requirement to file
19 whatever flavor of cross-petition or copetition you want
20 to file within 20 days of the first one still gets it in
21 front of the -- in front of the Court quicker and maybe
22 cuts down on the dead time. I'm not sure if I'm
23 articulating that well, but I think --

24 HONORABLE DAVID KELTNER: You are. You are.
25 The problem is it would be wise to tie it to the response,

1 if we could. The problem with the response is neither the
2 Court -- the Court doesn't control that. Someone can
3 voluntarily file one, taking away the rights of the
4 cross-petitioner. I wish we could tie it to the response,
5 but it does not look like we can. As a result, the way to
6 speed up stuff, which I understand what the Court is
7 really seeking, is to shorten the time period for
8 cross-petition.

9 CHAIR TRACY CHRISTOPHER: But I'm just
10 speaking for the other advocates out there who would be
11 suddenly saying, oh, my gosh, I've got 20 days to file
12 this petition, and, you know, I kind of like the notice,
13 the notice it's coming, and keep my 30 days. Because even
14 though the Supreme Court could grant an extension of my
15 20-day time limit, it would cause a lot of angst.

16 HONORABLE DAVID KELTNER: That's a good
17 point. That's not a bad way to go either.

18 HONORABLE BILL BOYCE: So as a frequent
19 filer of motions for extension, I am very attuned to the
20 utility of the motion for extension and the necessity
21 therefore.

22 CHAIR TRACY CHRISTOPHER: But there's a lot
23 of angst until it's granted.

24 HONORABLE BILL BOYCE: Well, there didn't
25 used to be. So I guess the -- you know, if it's a -- I'm

1 just thinking out loud and reacting. If it's a 20-day
2 deadline, let's say from the first filed petition, but you
3 file your motion for extension of time of that 20-day
4 deadline, saying I do want to file a cross-petition for
5 review, that serves as notice to the Court that, you know,
6 there's more coming. And maybe in that -- you know, in
7 that subset of multipetition cases, maybe that impacts the
8 internal flow, but it doesn't derail the single filer
9 petitions for review that can proceed on under the new
10 procedure. Does that make sense?

11 MS. REASONER STOKES: Wouldn't they still
12 have to wait -- if Justice Bland was saying they normally
13 send things up within 10 days, but the cross-petition is
14 due within 20, you could wait until the 20th day to ask
15 for an extension. Frankly, in our rules, you could wait
16 until after the deadline passes, usually, and so you're
17 still bogging down. I mean, they wouldn't know for 20
18 days whether it was a single or multiple one. That's the
19 only problem I see with that. It's still bogging down on
20 the front end some, or could.

21 HONORABLE BILL BOYCE: I think that's an
22 internal --

23 CHAIR TRACY CHRISTOPHER: I think on the
24 same side, defining "same side" would be too difficult.

25 HONORABLE BILL BOYCE: Say again.

1 CHAIR TRACY CHRISTOPHER: I think defining
2 "same side" would be too difficult with your concept that
3 category one has to file at the original deadline, just
4 for, you know, the example I gave, too.

5 HONORABLE BILL BOYCE: Yeah.

6 CHAIR TRACY CHRISTOPHER: You know, because
7 the 90 probably wanted to put a whole lot more on the 10,
8 you know, and so --

9 HONORABLE BILL BOYCE: Yeah.

10 CHAIR TRACY CHRISTOPHER: -- they could be
11 really opposites on that issue.

12 HONORABLE BILL BOYCE: You can be on the
13 same side and very directly opposed. So, but at least you
14 know the current draft, for whatever it's worth, doesn't
15 try to define anything other than "conditional
16 cross-petition," so I don't know that you're trying to
17 define "same sides." You're setting out the deadline and
18 then carving out conditional cross-petition for
19 potentially different treatment.

20 CHAIR TRACY CHRISTOPHER: Right. But that
21 would require the 10 percent person to file their own
22 petition of review timely, or within the original time
23 frame, rather than the way the current rule is written of
24 30 days later --

25 HONORABLE BILL BOYCE: Which captures

1 everybody that might file, for whatever reason.

2 CHAIR TRACY CHRISTOPHER: Right. I like the
3 notice. Maybe, you know, notice of intent to and then the
4 Court knows that it's going to be more complicated, but I
5 don't know. I don't practice in front of the Supreme
6 Court, so I don't know what the conversations are.

7 HONORABLE PETER KELLY: Can the Court
8 sanction if you don't actually file your cross-notice?

9 CHAIR TRACY CHRISTOPHER: Your what?

10 HONORABLE PETER KELLY: Can the Court then
11 sanction if you don't actually file your cross-notice?

12 CHAIR TRACY CHRISTOPHER: No, because people
13 give up on their appeals all the time. Right?

14 HONORABLE BILL BOYCE: What would be the
15 contemplated deadline for filing a notice of intent to
16 file an additional or a cross-petition for review?

17 CHAIR TRACY CHRISTOPHER: I like the seven
18 days.

19 MS. REASONER STOKES: Yeah, because that
20 would get within the internal Court's awarding the
21 original petition, and that's not onerous for somebody to
22 have a week to decide. You don't have to draft your
23 petition. You just have to --

24 CHAIR TRACY CHRISTOPHER: Right.

25 MS. REASONER STOKES: -- say you are going

1 to do it. It's a letter or something.

2 CHAIR TRACY CHRISTOPHER: Right. Right.

3 Then if you change your mind, you just say, hey, I changed
4 my mind.

5 MS. REASONER STOKES: It's like when people
6 file their motions for sanction on time and then never
7 file the petition.

8 CHAIR TRACY CHRISTOPHER: Right. Right.
9 That happens.

10 HONORABLE BILL BOYCE: So if you file a
11 notice of intent, then when would your cross-petition be
12 due?

13 MS. REASONER STOKES: It would be due the
14 same, the 30 days that's now in the rule, 30 days after
15 the original petition. So you still have that same
16 deadline, but now the Court, in the majority of cases, can
17 still send the -- send the petition upstairs more quickly
18 than it used to, and it would only be the less common
19 multiple petition cases where they wouldn't get that, be
20 able to send it up as quickly, but they would know what
21 those cases are, is the idea.

22 HONORABLE BILL BOYCE: So I guess I don't
23 want to short-circuit the discussion, but I would ask for
24 guidance from the committee as a whole. Would you like to
25 see a proposal drafted along this notice line for further

1 discussion? Does the Court -- does the Court want to just
2 think about this?

3 CHAIR TRACY CHRISTOPHER: Judge Bland says
4 she's got enough.

5 HONORABLE JANE BLAND: Well --

6 CHAIR TRACY CHRISTOPHER: She'll move
7 forward at this point. She'll have the options to present
8 to her Court.

9 HONORABLE PETER KELLY: Seven days makes
10 sense, because you've already gamed it out anyway. If
11 you've already -- if you're already -- if you're
12 dissatisfied enough with the court of appeals' opinion
13 that you have something in mind and you decided to wait,
14 it's really no burden to actually just let the Court know,
15 because you've already thought it through. Writing it
16 might take some more time, which gives you the 30 days,
17 which is what the extension would be, but the notice
18 shouldn't be a problem.

19 CHAIR TRACY CHRISTOPHER: All right. Any
20 further discussion on this point?

21 All right. We had a fourth item on our
22 agenda that Tom is going to give us a brief report on
23 because we don't have any written materials at this point.

24 MR. RINEY: That's correct. You will
25 recall that in our January meeting, our subcommittee

1 proposed some amendments to the jury rules regarding
2 6-person and 12-person juries. We used to talk about
3 district court and county court. Now our county courts at
4 law in certain cases have 12-person juries, so we, I
5 think, all agree on those amendments.

6 Then the Court asked us for an update on the
7 remaining jury rules. Going back a little bit further, in
8 2021, we were asked to do that, and we presented and
9 discussed some proposals about modernizing the rules, and
10 now the Court has asked us to modernize them in the sense
11 of updating the language to be in accord with other rules,
12 primarily in accordance with the Bryan Garner standards.
13 So we discussed as a committee some various issues,
14 including whether or not we ought to recommend some
15 statutory changes. That wasn't part of our mandate, but
16 we did discuss it, and we decided not to.

17 Part of it was an educational process. The
18 statutes are a little arcane, and they refer to a jury
19 wheel. Most of us think of that as like a bingo hopper
20 where you put a bunch of names in and turn it around, and
21 I think that's what the statute anticipates. But there is
22 an additional statute that says a county may use an
23 electronic system. I think even the smallest counties in
24 Texas all now use the electronic system. And I think John
25 was here earlier, but John Warren kind of confirmed that.

1 So we decided we would just leave that alone. So then
2 Kennon was not able to attend one of our meetings because
3 she was getting ready for trial, so we assigned her the
4 job of rewriting the language.

5 MS. WOOTEN: That's a true story.

6 MR. RINEY: And she waited until after her
7 two-week trial was over to do it, so she got it done, and
8 then I went on a two-week vacation, and so we -- she got
9 it done. She got it to us. I was gone. We have a few
10 little changes -- a few little changes to make. We did,
11 as a committee, circulate it and decided there were a
12 couple of things we need to tinker on, partly because we
13 made some recommended changes in 2021, and I don't
14 remember now why we did them. So we think probably one
15 more meeting, after everybody has had an opportunity to
16 look at them a little bit more, we will be able to bring
17 back a work product for y'all to look at. Yes, sir.

18 MR. HUGHES: Are we going to continue the
19 practice of the shuffle?

20 MR. RINEY: There has been no recommended
21 change with respect to the shuffle.

22 MR. HUGHES: Okay.

23 MR. RINEY: There was an e-mail from John
24 Kim about that, and candidly, I don't remember what it
25 was, but I think it had more to do with the language, but

1 we will take a look at that. Yes.

2 HONORABLE EMILY MISKEL: My recollection is
3 the shuffle language still requires names to be deposited
4 in a receptacle or something, so just the modernizing it
5 to allow a electronic shuffle.

6 MR. RINEY: I think we did that in 2021.

7 HONORABLE EMILY MISKEL: Okay.

8 MR. RINEY: Oh, we also have to take out the
9 language about the jury fee being paid. Since our 2021
10 revisions, the statute has been changed to eliminate that.

11 CHAIR TRACY CHRISTOPHER: So I know we have
12 had many a discussion about the jury shuffle, and I think
13 we just have to have another discussion when there are
14 just a few like-minded people here that will vote to say
15 "no" to the shuffle. But we -- and Justice Bland was the
16 back bencher with me when we tried to get -- to eliminate
17 the shuffle many, many years ago, and we have discussed
18 that over and over again, unfortunately, in this
19 committee, and it's always been a very close vote. But
20 it's always been a "no" in our committee, and the Supreme
21 Court has never disagreed with us, Roger. Just history.

22 HONORABLE PETER KELLY: I just did one last
23 week in Dallas County.

24 HONORABLE KENT SULLIVAN: That is not
25 embedded in a statute?

1 MR. RINEY: No.

2 HONORABLE KENT SULLIVAN: The shuffle? It's
3 not? It's all by rule?

4 MR. RINEY: Yes.

5 HONORABLE KENT SULLIVAN: Okay.

6 MR. RINEY: I've never had a shuffle help
7 me, but I've sure had the other side do it and it hurt me,
8 so I'm kind of neutral.

9 HONORABLE DAVID KELTNER: Back when I was
10 trying lawsuits and I had the other side do it, but never
11 for a legitimate reason.

12 CHAIR TRACY CHRISTOPHER: Justice Bland
13 says, no, we've already had this discussion.

14 HONORABLE JANE BLAND: Well, I am fine with
15 having it when it's on the agenda, but...

16 CHAIR TRACY CHRISTOPHER: And it's not on
17 the agenda. All right. Thank you, and unless we have
18 something else, we are adjourned.

19 (Adjourned)

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REPORTER'S CERTIFICATION
MEETING OF THE
SUPREME COURT ADVISORY COMMITTEE

* * * * *

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 5th day of June, 2026, and the same was thereafter reduced to computer transcription by me.

I further certify that the costs for my services in the matter are \$ 1,492.00, which was paid or will be paid by The State Bar of Texas.

Given under my hand and seal of office on this the 26th day of June, 2026.

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