

ADVISORY COMMITTEE ON APPELLATE RULES

May 21, 2020

Members in Attendance:

Justice Richard N. Palmer, Co-Chair
Chief Judge Alexandra D. Dipentima, Co-Chair
Attorney Jeffrey Babbin
Attorney Colleen Barnett
Attorney Jill Begemann
Attorney Kathryn Calibey
Attorney John DeMeo
Attorney Richard Emanuel
Attorney Paul Hartan
Attorney Wesley Horton
Judge Sheila Huddleston
Attorney Clare Kindall
Attorney Eric Levine
Attorney Bruce Lockwood
Attorney Jamie Porter
Attorney Charles Ray
Attorney Lauren Weisfeld
Attorney Carolyn Ziogas
Attorney Daniel J. Krisch
Attorney Giovanna Weller

Additional Attendees:

Judge Christine E. Keller

Recorded and Transcribed By:
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Court Recording Monitor
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1 JUSTICE PALMER: Hello everyone. Thank you for
2 coming. Clare, I have you sideways, I don't know if you?

3 ATTY. KINDALL: I logged off and logged back in
4 and I don't know why but my camera looks - so I apologize
5 for sleeping on the job here. I look like I'm sleeping.

6 JUSTICE PALMER: Do you want to log out and log
7 back in again or do you think that this

8 ATTY. KINDALL: This is from my laptop, I could
9 try it from my iPad. If it's really distracting I'll just
10 do that, I'll just log back in and log back in. I can try
11 it with my iPad, maybe that will be better because I tried
12 twice here on the laptop and it's not working. Earlier when
13 I did it, I heard some arguments and it went fine.

14 JUSTICE PALMER: Yes. Okay.

15 IT REP: Attorney Kindall, can you try turning
16 your iPad 90 degrees.

17 ATTY. KINDALL: I'm not on my iPad, I'm on my
18 laptop, so if I turn my laptop, that works. We can try
19 that.

20 JUSTICE PALMER: I want Joe Gigalon (phonetic)
21 and others who, you know, work on setting this up. I think
22 this is considerably more people than we've ever had on this
23 platform, so it could be a little challenging as time goes
24 on but we'll obviously do our best. If we could just with
25 regard to old business, just take one matter and that would
26 just be the approval of the minutes for the October 29th
27 meeting, is there a motion?

1 ATTORNEY HORTON: So moved.

2 ATTYORNEY WELLER: Second.

3 JUSTICE PALMER: Second, thank you. Any
4 discussion? All in favor?

5 (All members agree.)

6 JUSTICE PALMER: Opposed? Okay. All right. So
7 that's approved. We'll skip over the other matter for now
8 and move on to, just temporarily and address the first item
9 of new business because Judge Keller is with us to present
10 proposals with regard to the - in the aftermath of the In
11 re: Taijha case. Judge Keller, would you like proceed on
12 that.

13 JUDGE KELLER: Sure. After the decision was
14 released by the Supreme Court In re: Taijha B. that opinion
15 found that it was constitutionally necessary to have some
16 kid of procedural safeguard added to the procedures we've
17 been using in the Juvenile Court to determine whether or not
18 an indigent parent was entitled to appointed appellate
19 counsel. I just want to begin by saying that these rules
20 were drafted by a committee that included the Chief
21 Administrative Judge of Juvenile Bernadette Conway, Judge
22 Elgo, who was formerly a child protection attorney general
23 and also had a lot of experience as a Judge in juvenile,
24 myself, Justice Raheem Mullins, who also was a child
25 protection attorney for a time, and Judge Dipentima. Jamie
26 Porter also assisted quite a bit in cleaning things up in
27 comment. And I had met, I think with the task force prior

1 to finalizing the draft. Was that just a subcommittee or
2 was that?

3 CHIEF JUDGE DIPENTIMA: That was the work group
4 for this committee.

5 JUDGE KELLER: After meeting with that
6 committee, I sent the draft to the Attorney General's Office
7 and the Office of the Public Defender and also the Chief
8 Juvenile Public Defender and received comments from them and
9 we made more considerable changes. So this is the final
10 product of all of that review and then I have received the
11 comments that this group made when you received the draft,
12 and so I have some responses to some of those.

13 Basically we did not want to institute a full
14 Anders procedure because the opinion doesn't seem to call
15 for that and the problem with a full Anders procedure is
16 that we're under timelines mandate by federal and state law
17 to bring children to permanency probably the outside date
18 should really be two years form the date that they first
19 enter care either pursuant to a commitment order or an order
20 of temporary custody. Most of the TPR cases that get tried
21 usually begin with the child being removed pursuant to an
22 order of temporary custody. The decision itself says that
23 the state constitution requires a more limited procedural
24 safeguards then those set forth in Anders, so I think the
25 main premise was that the way it worked before was that the
26 trial attorney would notify the Office of the Public
27 Defender that upon conclusion of the trial the trial

1 attorney did not - that the client wished to appeal and the
2 trial attorney did not wish to handle the appeal. It is
3 very rare for the trial attorney to handle the appeal. Most
4 of the appeals in juvenile are handled by a special core of
5 appellate juvenile attorneys. Once the public defender
6 receives that notice, the public defender would appoint an
7 attorney who would review the transcripts. The transcripts
8 are supposed to be expedited, it doesn't always happen, but
9 hopefully they often are. And with reviewing - conducting
10 this review usually within the twenty day period with a
11 twenty day extension, so usually within forty days they were
12 conducting that review. If the appellate attorney reviewing
13 it for appeal found there was no merit, they would just
14 advise the client that the Public Defender's Office was not
15 going to be representing them on appeal and that they would
16 have to appeal on their own or find another attorney to take
17 an appeal. The big change now is that a Judge will be
18 reviewing that appellate review attorney's decision, the
19 client will have the ability to be heard, and there will be
20 a written notice to the Court that the appellate review
21 attorney believes that the appeal is without merit. And
22 then there will be a hearing and the Court will make a
23 determination, if the Court makes that determination, it
24 will be up to the Public Defender's Office to determine
25 whether the same attorney who reviewed it and found it
26 frivolous can still bring the appeal or whether they should
27 select a different attorney. I think that's really

1 something that we decided will best be left up to the Public
2 Defender's Office. So in other words, if the attorney finds
3 that the appeal has merit, there isn't going to be anything
4 further, the appeal will get filed. If the attorney finds
5 that the appeal - because the Attorney General's Office is
6 completely left out, in other words, the DCF representatives
7 are not going to be involved in these proceedings, so it
8 will be like an Ander's brief in a sense that things will be
9 sealed, only the client and the attorney and ultimately the
10 Judge will know the reasons why the attorney thinks the
11 appeal would be frivolous. The Court will review the
12 attorney's determination of that, if the Court determines
13 it's not frivolous, the Court will appoint - will instruct
14 the Public Defender's Office to appoint an appellate
15 attorney. If the Court agrees with the reviewing attorney
16 that it's frivolous, then the Court will deny the
17 application for appointment of an appellate attorney.

18 And because of the - we felt that there had to
19 be additional time for these hearings to be conducted, for
20 when a termination of parental rights appeals, we extended
21 the reviewing attorney or the trial attorney can immediately
22 ask for an additional forty as opposed to an additional
23 twenty days. We did not do that for other appeals. Judge
24 Conway was very much opposed to that. We have very few
25 appeals in Juvenile from anything other than termination of
26 parental rights, so she did not want to change the outside
27 of forty days for the regular appeals that aren't involved

1 in appeals termination of rights.

2 I do agree with the suggestions of Attorney
3 Clare Kindall from the Attorney General's Office. I think
4 in that I've addressed some concerns that some of you had,
5 Attorney Krisch and Attorney Ray, so if anyone has any
6 questions?

7 CHIEF JUDGE DIPENTIMA: Anyone have any
8 questions for Judge Keller? I think Attorney Weller, is
9 that right?

10 ATTY. WELLER: It is. Good morning, Your Honor.

11 JUDGE KELLER: Good morning.

12 ATTY. WELLER: I just have one question. It's
13 on the section 79a-3b(1) that has to talk about the filing
14 of the limited in addition to appearance?

15 JUDGE KELLER: Yes.

16 ATTY. WELLER: When I was reading it over I was
17 thinking should we refer back to the Practice Book section
18 and the Superior Court Rules about limited appearance and
19 that's in section 3-8, and when I read it over again the
20 last line in 3-8(b), it says that a limited appearance may
21 not be filed in criminal or juvenile matters.

22 JUDGE KELLER: Okay. So we would have to
23 possibly amend 3-8.

24 ATTY. WELLER: That's what I was thinking, yes.

25 JUDGE KELLER: May not be filed in juvenile
26 matters except as set forth in 3-8, and - may not be filed.

27 ATTY. WELLER: Thank you, Your Honor.

1 JUDGE KELLER: Thank you. Good point.

2 CHIEF JUDGE DIPENTIMA: Looking for other
3 questions, are there any?

4 ATTY. KELLER: Attorney Krisch.

5 ATTY. KRISCH: I guess I just want to understand
6 and maybe this was also a question for Lauren Weisfeld, why
7 the distinction for juvenile indigent appellants verses
8 criminal indigent appellants in terms of who's qualified to-
9 whether the attorney is qualified to inspect the merits of
10 the appeal, I understand that there's sort of a small group
11 of quality attorneys who handle indigent family juvenile
12 appeal, you know, my understanding, you know, and having
13 been told this by some Judges is that the quality of
14 representation for criminal appellants varied widely
15 depending on who they get as their assigned counsel. The
16 Court has expressed some concerns I think about that some of
17 the time. I guess I don't understand why we're carving out
18 this extra layer of review in a circumstance that is
19 certainly very important and, you know, important counselors
20 for - but not more important than a criminal defendant
21 rights to this sort of stuff and if we're going to change
22 this process, the juvenile appeals, what, if anything,
23 should we then do about criminal appellants in the same
24 position?

25 JUDGE KELLER: I don't know what you mean by -
26 the juvenile rule allows a trial attorney, if the trial
27 attorney wishes to to take an appeal, but if the trial

1 attorney does not wish to pursue an appeal, the trial
2 attorney's job is to notify the Public Defender's Office and
3 have another attorney appointed for review. I think the way
4 it's developed over the past decade or so was that the
5 appellate attorneys have definitely become very specialized
6 in doing these matters and many of the trial attorneys do
7 not wish to do them perhaps because maybe they don't feel
8 they have the writing skills or the research skills or
9 something like that.

10 ATTY. KRISCH: I'm not clear. Maybe I'm
11 misreading the rule, it seems to envision a limited
12 appearance by an attorney who in a very limited period of
13 time can look through the juvenile casefile, the
14 transcripts, and decide is there a frivolous appeal or not,
15 but then there will be a second appointment and maybe that's
16 going to be the same person, I don't know, but that's not
17 following our rule. A second appoint for an attorney to
18 actually handle the appeal, and you had talked about,
19 you know, sort of a core group of attorneys who regularly
20 handle juvenile appeals, is that going to be the same group
21 of attorneys who are going to be doing the review and are
22 going to do the actual appeal if there's a meritorious one
23 or is it going to - I'm just wondering how that will work?

24 JUDGE KELLER: Well if the attorney was first
25 asked to review it, finds it's meritorious, that attorney
26 will get the appointment to bring the appeal. If that
27 attorney finds it's non-meritorious, there is a hearing, the

1 client is present, and I think it will be up to the public
2 defender to determine whether if the Court does order that
3 there be an appeal because the Court sees merit where the
4 review attorney does not, then I suppose that would be a
5 discussion with the client and the Public Defender's Office
6 as to whether they wish to have the same attorney who has
7 just opined that their appeal has no merit or whether they
8 would have a different attorney. It would be from the same
9 group of attorneys, there's not going to be two separate
10 group of attorneys. I don't know, I mean, anyone here,
11 let's please hear from the Public Defender's Office?

12 ATTY. KRISCH: I just think that the first
13 scenario, the review attorney finds that there is a
14 meritorious appeal, it should be clear in the rule that that
15 attorney will handle the appeal. That's not clear -

16 JUDGE KELLER: It doesn't say that?

17 ATTY. KRISCH: Maybe I'm misreading the draft of
18 it but that's not clear to me that it's the same attorney.

19 CHIEF JUDGE DIPENTIMA: Attorney Weisfeld has
20 got her hand up, do you want to answer that?

21 ATTY. WEISFELD: I had brought your concerns,
22 Dan, to the Chief Public Defender and to Susan Hamilton who
23 is the head of our juvenile and child protection, they want
24 the agency to have the freedom to decide if it's the same
25 attorney or not. As a practical matter, this isn't really
26 rule related, but we in terms of assigned counsel, not our
27 own people, people are qualified either to do trials or

1 appeals, and very few people, some, but very few, are
2 approved to handle both. I don't know if that answers your
3 question.

4 ATTY. KRISCH: That part I understand, I guess,
5 if you appoint, I don't know, Jay Sexton, somebody who does
6 these regularly, could be the review attorney and he says
7 yes, there's a meritorious appeal, what is then going to
8 happen? It's not clear in the rule that then Jay Sexton is
9 automatically takes the appeal, it sounds like your office
10 wants the discussion to decide that, I just -

11 ATTY. WEISFELD: That's my understanding.

12 ATTY. KRISCH: Concerned about the works getting
13 dumbed up in that little -

14 ATTY. WEISFELD: That's my office wants the
15 discretion or my agency rather wants to be able to make that
16 decision.

17 JUDGE KELLER: I mean it could be a problem
18 where one particular attorney has enough time to do the
19 review but may not have enough time to take on the full
20 appeal and so they should have the option of deciding who
21 ultimately is appointed to handle the full appeal, does that
22 seem correct?

23 ATTY. WEISFELD: Yes.

24 CHIEF JUDGE DIPENTIMA: Okay. Any other
25 questions for Judge Keller? Attorney DeMeo.

26 ATTY. DEMEO: Yes. Hi. John DeMeo, Chief Staff
27 Attorney for the Supreme and Appellate Courts, Giovanna

1 pointed out that there's a Trial Court rule prohibiting
2 limited representation in juvenile matters. We just got our
3 own appellate rules straightened out to talk about child
4 protection and what we're talking about specifically right
5 now is termination of parental rights, but we have to keep
6 our nomenclature straight, we're not talking about juvenile
7 matters broadly, we're talking about termination of parental
8 rights appeals, right, am I correct? So if we go to the
9 Trial Court and get them to change their rule to allow for
10 limited representation in termination cases, it should not
11 be allowed for limited representation in juvenile matters
12 broadly. We just last meeting, I think, got our appellate
13 rules straightened out, talking about child protection which
14 encompassed (inaudible), so I just want to going forward be
15 clear on that so we don't get the nomenclature -

16 CHIEF JUDGE DIPENTIMA: Could I just - this is
17 Judge DiPentima, could I just remind everyone to identify
18 him or herself before you speak, because this is going to be
19 posted, just audio will be posted for the public, and we
20 need to know, and there will be a transcript, we need to
21 know who's talking even though we know who's talking, others
22 will need to know. Thank you.

23 JUSTICE PALMER: If I could ask you as well to
24 make sure that you're on - you're muted when you're not
25 speaking, that would be helpful, thanks.

26 CHIEF JUDGE DIPENTIMA: Judge Keller.

27 JUDGE KELLER: I just want to add that I think

1 we can, you know, any changes to 3-8 of course has to go to
2 a different committee altogether. We do have changes to one
3 of the rules in Chapter 35 of the Regular Superior Court
4 Practice Book being changed, but I think we could really
5 make it very clear in any amendment to 3-8 that we're
6 talking about allowing for limited appearances for the
7 purposes of appellate review in termination proceedings,
8 something like that so it would be very limited.

9 CHIEF JUDGE DIPENTIMA: This is Judge DiPentima,
10 I have a question about you indicated, Judge Keller, that
11 Attorney Kindall's suggestion to accept it, are they are
12 incorporated in the rules as proposed?

13 JUDGE KELLER: No. I would have to add them.

14 CHIEF JUDGE DIPENTIMA: Okay.

15 JUDGE KELLER: She wants to make the language in
16 35a-21, which is the Superior Court rule we're proposing to
17 amend to more closely pattern language in 79a-2a and she
18 wanted me to add email address to the list of contact
19 information to be obtained from the client, which makes
20 sense. And she just has comments with which I agree as to
21 why we don't need to extend the twenty day appeal period to
22 sixty days for non-termination parental rights appeals. And
23 she also indicated why we need a quicker process than the
24 Ander's process and that's because of the pressure from the
25 federals, it's actually the financing - it's a fiscal issue
26 because if the children seem to be languishing too long
27 they're not brought to permanency, they can cut off that

1 particular child's reimbursement from the foster care
2 funding that's being extended for any particular child.

3 CHIEF JUDGE DIPENTIMA: Attorney Kindall.

4 ATTY. KINDALL: Judge Keller did it beautifully,
5 I have nothing else to say and I'm delighted that the
6 comments were helpful. Thank you.

7 CHIEF JUDGE DIPENTIMA: Thank you.

8 JUDGE KELLER: Thank you.

9 CHIEF JUDGE DIPENTIMA: Is Judge Keller released
10 or should we wait for a vote, Justice Palmer?

11 JUSTICE PALMER: Are there any questions of
12 Judge Keller before we allow her to leave?

13 ATTY. LEVIINE: I just have one thing, Eric
14 Levine from the Reporter's Office, just wondering if we
15 would be able to review for style before the rules as
16 adopted by the Binary Committee go to the Judges and
17 Justices?

18 CHIEF JUDGE DIPENTIMA: I don't see why not,
19 this is Judge DiPentima, Justice Palmer, why wouldn't that
20 happen?

21 JUSTICE PALMER: That would be fine. That would
22 be fine - been on a reasonably expeditious basis, so that
23 would be fin.

24 ATTY. LEVINE: Sure. Thank you.

25 JUDGE KELLER: So any changes that we make
26 today, you would want to see, correct?

27 CHIEF JUDGE DIPENTIMA: Is that an answer,

1 Attorney Levine?

2 ATTY. LEVINE: Yeah, I mean, yeah, absolutely.

3 Eric Levine here, yes, absolutely anything that the
4 committee would need to see before it goes to the Judges
5 that would be fine, we can do it on an expedited basis.

6 JUDGE KELLER: What is the timeline in terms of
7 taking this to the Appellate Rules Committee?

8 CHIEF JUDGE DIPENTIMA: This is the Appellate
9 Rules Committee.

10 JUDGE KELLER: Just because the whole issue is
11 reeking a little bit of havoc in the juvenile courts, I
12 think Judge Conway is kind of instructing people to kind of
13 follow what's being proposed for lack of anything better
14 right now. But we'd really like to see the rules get
15 through this year.

16 CHIEF JUDGE DIPENTIMA: Justice Palmer, you want
17 to address that in terms of timeline?

18 JUSTICE PALMER: This is Justice Palmer, I'm not
19 a hundred percent sure about that. Eric, do you have sense
20 as to when we would need to bring this to a vote?

21 ATTY. LEVINE: Well, as soon as you want to make
22 it effective. I mean you guys have the ability to make this
23 effective whenever you want, you can do it on an interim
24 basis, you could do it, you know, with the normal procedure,
25 but ultimately entirely up to the Justices and Judges as to
26 how you want to proceed with that.

27 JUSTICE PALMER: This is Justice Palmer, oh, go

1 ahead.

2 CHIEF JUDGE DEPENTIMA: Judge DiPentima, I was -

3 JUSTICE PALMER: I was just going to say -

4 CHIEF JUDGE DIPENTIMA: Okay. I'm going to
5 speak. Judge DiPentima. I think our plan was to do this on
6 an expedited basis because Justice Palmer and I had talked
7 about the need to get this effective as soon as possible.

8 JUSTICE PALMER: Justice Palmer again, so we
9 would ask the Judges or we would do this on an interim basis
10 basically, expedited basis and move forward as quickly as
11 possible to accommodate Judge Keller's concerns.

12 CHIEF JUDGE DIPENTIMA: Jill Begemann.

13 ATTY. BEGEMANN: Yes. Even if they're on the
14 expedited basis, this is Jill Begemann, I'm sorry, what I
15 would see happening is that Eric would be in his office, the
16 Reporter's Office would get them ready, prepare them, and
17 then they would go to still the two Courts for vote for
18 approval on an interim basis and then the co-chairs, the
19 Court's would pick a date and as soon as practicable after
20 both Courts have voted, they can be adopted on the interim
21 basis. Eric do you agree? Eric Levine.

22 ATTY. LEVINE: Yeah, Eric Levine here, yes,
23 that's absolutely fine in terms of doing it that way.

24 JUSTICE PALMER: I think we're all set. Judge
25 Keller, thank you very much.

26 JUDGE KELLER: Thank you all. Thank you all for
27 your comments and your time on something that I think is

1 pretty crucial. It's something near and dear to my heart.

2 CHIEF JUDGE DIPENTIMA: Okay.

3 JUSTICE PALMER: Thanks for all your work on it.

4 JUDGE KELLER: All right. I'm exiting now.

5 Thank you. Have a nice holiday.

6 CHIEF JUDGE DIPENTIMA: Thank you.

7 JUSTICE PALMER: Thank you.

8 CHIEF JUDGE DIPENTIMA: Could I just add, this
9 is Judge DiPentima, Judge Keller had been Chief
10 Administrative Judge of Juvenile matters for a number of
11 years and she has been - and she was in the original
12 committee that I chaired expediting when we changed the
13 rules to expedite child protection, so she's really - she
14 means it when she says it is near and dear to her heart, so
15 anyway. Justice Palmer, sorry.

16 JUSTICE PALMER: Are we prepared to vote on the
17 proposal to whatever limited degree it was modified, it's
18 been modified by this discussion or? Anyone have any
19 questions or concerns about that?

20 ATTY. DEMEO: I guess I'm commiserating with Eric
21 there in about the process and we haven't, you know, we can
22 approve the language, then Eric is going to see some new
23 language and they'll edit it and then it will go the
24 Appellate and Supreme Court, I guess if that's okay with
25 everybody but it's kind of, you know, we are to approve
26 something we haven't seen yet, you know, but I'm fine with
27 it, I guess it needs to be expedited. Eric, if you're okay

1 with it and you think that this process we've been talking
2 about - I know that Eric doesn't want to make anything like
3 a substantive change only editorial changes, but, you know,
4 it gets into question sometimes as the way that something
5 it's just a style or editorial point or substantive change.

6 ATTY. LEVINE: Eric Levine here, yeah, we're
7 just looking at more of style thing, punctuation, any type
8 of typos or any of that nature, or just conforming to our
9 manual style, nothing else in the way of substantive or
10 anything like that.

11 JUSTICE PALMER: This is Justice Palmer, why
12 don't we leave it this way - go ahead Attorney Kindall.

13 ATTY. KINDALL: Just five changes were proposed
14 and sent to the full committee back at the end of March
15 beginning of April, I guess beginning of April, and they
16 were pretty modest, they were more wordsmithing other than
17 adding like email addresses. So I don't think that's going
18 to - so the committee has seen it, but also I don't think
19 that should have any reason to delay the adoption of the
20 rules.

21 JUSTICE PALMER: In view of everyone's interest
22 in moving this along, why don't we vote on it now,
23 presumably approve it and Eric and John will take a look at
24 it. If they have anything that even resembles a substantive
25 concern, then they'll bring it back to our attention. If
26 it's really just punctuation or grammatical stuff, then I
27 think that we can just go forward with it and really get it

1 done on this expedited basis, is that all right with
2 everyone?

3 (The committee responds.)

4 JUSTICE PALMER: Is there a motion then?

5 ATTY. LEVINE: So moved. So move that we adopt
6 it?

7 JUSTICE PALMER: Yes. Second? Any further
8 discussion? All in favor.

9 (Members of committee vote.)

10 JUSTICE PALMER: Any oppose?

11 ATTY. KRISCH: Nay.

12 CHIEF JUDGE DIPENTIMA: One opposed? Okay. Got
13 it.

14 JUSTICE PALMER: Okay. So that motion passes,
15 so that's all set. If we can go back to old business just
16 for a minute or two. It would be 1B, whether to 66-1,
17 concerning extensions of time so that it's consistent with
18 61-14. I want Carolyn or Jill would address if that's okay?

19 ATTY. ZIOGAS: Sure.

20 ATTY. BEGEMANN: Carolyn, you want to go ahead
21 with that one?

22 ATTY. ZIOGAS: Sure. Carolyn Ziogas, this is a
23 proposal that we made that during the discussion Wes Horton
24 had asked us to take a look at using the language in 61-11
25 which would make it a motion for extension of time would be
26 filed in the Appellate Court. Upon review with the work
27 group, we decided that this would probably be more

1 problematic in light of the fact particularly that the
2 motion for extension of time does not automatically stay the
3 execution beyond the ten day period. So the motion would be
4 filed in the Appellate Court, we would then have to send
5 notice to the Trial Court. Under our rules we hold for a
6 five day opposition period and it's also possible the
7 opposing party could file a motion for extension of time to
8 file the opposition taking it out of the ten day period. To
9 remove it would then have to go back to the Trial Court and
10 file a motion to further extend. So it just seemed to make
11 sense to have the motion for extension of time continued to
12 be filed there and have the Trial Court Judge look at the
13 motion for extension of time and any stays that were
14 necessary. Also I did want to include that the reason why
15 this was - was not because of any problem with the filing of
16 these motions for extension of time but rather to eliminate
17 the inconsistency between the rule 61-14 and 66-1, it's
18 where the motions for extensions of time are filed. So the
19 work group is now recommending that we go with the original
20 proposal.

21 JUSTICE PALMER: Anyone have any concerns about
22 that or anyone want to discuss that?

23 ATTY. HORTON: This is Wes Horton, that's fine.
24 I don't have a problem. Withdraw my concerns.

25 JUSTICE PALMER: Thank you. I don't know if
26 that needs a vote or not, I guess problem does, we're not
27 really do it. Paul does that need a vote? Carolyn?

1 ATTY. ZIOGAS: Yes. It does need a vote.

2 JUSTICE PALMER: Okay. A motion then.

3 ATTY. HORTON: West Horton, I so move.

4 JUSTICE PALMER: Jeff Babbin seconds. Any
5 further discussion? All in favor?

6 (The panel responds.)

7 JUSTICE PALMER: Any opposes. Okay. That
8 passes.

9 CHIEF JUDGE DIPENTIMA: Good.

10 JUSTICE PALMER: Okay. We can skip down now to
11 2B, whether to amend section 63-4, 63-8, 66-6, and 77-1,
12 regarding the procedure for the ordering of transcripts.
13 Paul or Jill, speak to that?

14 ATTY. BEGEMANN: I can. This is Jill Begemann.
15 I can start off with that. These were a packet of rules and
16 basically the intent of these rules that the branch is going
17 to an electronic transcript ordering process. So it will
18 require an electronic signature. These proposals are really
19 just necessary in order to facilitate the change to an
20 electronic process for ordering transcripts. I know they
21 were done by somebody in the clerk's office. I can tell you
22 the first change, you know, was in 63-4 eliminating the form
23 number because the form number is, you know, we're not going
24 to be using that form. Then the rest of the rules were
25 changed to follow that. Eventually once you order the
26 transcript on line, you will be able to print out a document
27 and file that and it will have the same information as the

1 current transcript, the order form, but the substance hasn't
2 really changed other than to make it so that it is an
3 electronic procedure.

4 CHIEF JUDGE DIPENTIMA: Paul.

5 ATTY. HARTAN: Paul Hartan. Just to give
6 everybody an update, I'm on that committee with Court
7 Operations, so the target date is July 1 and I spoke with
8 Court Operations last week and that target date looks like
9 it's going to go forward despite the current circumstances.
10 They don't see it as being problematic at least at this
11 point, so you can expect that electronic order processing to
12 begin at that time.

13 JUSTICE PALMER: Justice Palmer, any further
14 discussion about this, any concerns or thoughts? Hearing
15 no, is there a motion?

16 ATTY. BABBIN: Can I interject? I'm sorry, I
17 apologize, this is Jeff Babbin, a couple things. One is
18 will this new process then route any ordered transcripts
19 automatically to the relevant court reporter in a particular
20 judicial district since we're not going to be sending them
21 ourselves like we used to?

22 ATTY. HORTON: I don't know, something wrong
23 with the Wi-Fi here.

24 ATTY. BABBIN: Am I being heard?

25 CHIEF JUDGE DIPENTIMA: You're being heard but
26 so is Attorney Horton. So -

27 JUSTICE PALMER: I just want to alert Wes that

1 you've not said anything in any way inappropriate, but when
2 you're off the screen, we can still hear you, so just be
3 careful what you say about any one of us anyway.

4 ATTY. HORTON: I'm trying to get back on.

5 JUSTICE PALMER: Okay. There is a mute button.

6 ATTY. HORTON: I can't even get that.

7 JUSTICE PALMER: Go ahead, Jeff.

8 ATTY. BABBIN: My question was whether this new
9 electronic process is going to route the transcript orders
10 to a particular judicial district the way we would normally
11 just complete at this time send them directly using that,
12 you know, the form that's being abolished?

13 ATTY. HARTAN: I was in on these meetings, I
14 think they're going to phase this in, Jeff, I think the
15 first order of business is they try to manage the transcript
16 orders on the electronic piece. I think that piece that
17 they're talking about is just ordering it electronically, I
18 don't think there's - I think there may be some more
19 progression on this but I think in phase 1 I don't think
20 that's currently on the books. I think you're going to
21 order and then they're going to have somebody, you know,
22 filter all these or how it's actually going to work, we
23 didn't get that far in the discussions, I think right now my
24 understanding is that they'll simply order whether they're
25 electronically and Court Operations is going to make a
26 determination as to exactly how that's going to get
27 processed.

1 ATTY. BABBIN: Okay.

2 ATTY. KRISCH: This is Dan Krisch. So now I'm
3 confused maybe along with Jeff, we've abolished the form we
4 used to use to order the transcripts, what do we do now? Or
5 what do we do on July 1st if we want to order a transcript?

6 ATTY. HARTAN: You're going to order
7 electronically, they're going to roll that out and give you
8 instructions for exactly how to do it. I don't know all the
9 details to exactly how that's going to work, but my
10 understanding is that the folks at Court Operations are
11 going to roll this out, give you the instructions to say if
12 you're going to order a transcript, this is how you're going
13 to do it and however that electronically is going to work, I
14 guess the details are going to be forthcoming.

15 ATTY. CALIBEY: Hi, this is Cathy Calibey. Dan,
16 I think what they said before is that there will be a form
17 that you fill out electronically and then it gets - you can
18 just print it and then file the form it's that you're
19 ordering it electronically instead of ordering it by the
20 form.

21 ATTY. HARTAN: That's correct.

22 CHIEF JUDGE DIPENTIMA: Judge Huddleston.
23 You're muted. Now she's gone, oh, there she is.

24 ATTY. KRISCH: Judge Huddleston, you're still
25 muted.

26 JUDGE HUDDLESTON: Sorry about that. My
27 question about the electronic ordering of the transcripts is

1 what about self-represented parties who may or may not have
2 access to systems for ordering electronically?

3 ATTY. HARTAN: I don't know. My guess is that
4 they will have the service centers presumably will be
5 available at that point in time and then there will have to
6 be some accommodation for that and I know the target date
7 the indicated to me that still expect this to be July 1, but
8 that may get in the way and it may get delayed.

9 JUDGE HUDDLESTON: Thank you.

10 ATTY. LEVINE: I just want to, given the rollout
11 date for this is July 1, I assume this rule will need to be
12 adopted on an interim basis?

13 ATTY. HARTAN: That's correct. Then again, I'll
14 consent with Court Ops, I spoke with the last week about
15 this, so I'll have further discussion with them, I'll raise
16 Judge Huddleston's point and we'll see if they're going to
17 delay the rollout of this or not.

18 ATTY. BABBIN: Again, Jeff Babbin, oh, I'm
19 sorry, Clare, did you need to -

20 ATTY. KINDALL: I guess I would recommend that
21 we not delay it given the COVIS crisis, the fact that people
22 can go online to order their transcripts is going to keep
23 cases moving or as asking people to get forms and getting
24 them to the right court reporter is going to be much - and
25 more difficult for them that folks are not in the
26 courthouses. So I think we can make exception on the basis
27 that people who are pro se or don't have access to

1 electronics, to the extent we can expedite getting this on
2 to electronic system, I think we're all better off.

3 CHIEF JUDGE DIPENTIMA: This is Judge DiPentima,
4 the rule change that we're voting on simply has to do with
5 the form, doesn't it? I mean we're not implementing how
6 they're ordering the transcript, is that correct?

7 ATTY. HARTAN: That's correct, Judge DiPentima.
8 Court Ops will make the determinations exactly how this is
9 going to work and when it will get rolled out. I'm happy to
10 talk to them about the discussion that occurred today, you
11 know, if the committee wants me to make a recommendation,
12 I'm happy to make the recommendation from this committee,
13 but ultimately they're going to decide exactly how this is
14 going to work.

15 JUSTICE PALMER: Jill.

16 ATTY. BEGEMANN: I just wanted to give a little
17 bit of background on it, you know, the Court Operations
18 people came to us and said this is how we're going to be -
19 we're changing our procedures and this is how the
20 transcripts are going to be, you know, done going forward
21 and so they were looking at it and they came to us and said,
22 you know, what are the rules that are going to be impacted
23 by this. And so we kind of worked together with them to
24 identify the rules that were impacted by this change that
25 they were planning to make and hoping to make by July 1. So
26 it was, you know, a bit of an effort together that they
27 claim, again, that they called and they said well wait a

1 minute, we're doing this how will this impact appellate?

2 ATTY. KRISCH: Paul, if you're talking to them
3 anyway, could we get some guidance in advance of the rollout
4 or so that people know what they're doing on the rollout
5 date so there's not a gap where they know how it's done but
6 we don't?

7 ATTY. HARTAN: Absolutely. I will tell them the
8 need to make sure that we try to get some instruction prior
9 to the expected date. They've been very good, so I don't
10 anticipate there will be any issues.

11 JUSTICE PALMER: Jeff.

12 ATTY. BABBIN: Yes, hi, it's Jeff Babbin. So one of the
13 things I would just comment on is in a sense there's
14 somewhat of a substantive change going on here as well
15 because in the past when you filed your 63-4 papers which
16 were due ten days after filing your appeal form, you only
17 had to designate what you want and show that you ordered it
18 and then you would get at some later date an acknowledgment
19 form from the Court Reporter's Office from whatever judicial
20 district it was saying when the estimated completion date is
21 and then you would file that. My understanding of these
22 pages under 63-4 is that now and in conjunction with 63-8
23 changes is that you now have to order - know and order your
24 transcript in advance of that of that ten day deadline under
25 63-4 because you must now have the acknowledgment form with
26 the estimated completion date already in hand and filed that
27 with your 63-4 papers. And so it's not clear then how much

1 lead time we need when we submit the transcript request
2 electronically before we get an acknowledgment or what that
3 Acknowledgment document is now going to look like since
4 there's no longer this preprinted form that we've been using
5 for many years, but I just sort of pointing out that there's
6 going to be a requirement essentially perhaps even the day
7 you file your appeal to order your transcript because we
8 will need that acknowledgment form in hand by that ten day
9 deadline for 63-4.

10 ATTY. HARTAN: I will be happy to raise that
11 with Court Operations and to Dan's earlier, point out, I
12 will try to get all the details to exactly how this is going
13 to work long in advance of July 1 and get it out to
14 everybody either by email or some other way shape or form so
15 that you can at least present any further concerns or if
16 there's confusion as to how this is exactly going to work,
17 you can certainly comment on that, but let me meet with them
18 again next week and I'll tell them we had a meeting and
19 these are the issues that were raised and see what they come
20 up with.

21 ATTY. BABBIN: If I may follow up, it's also the
22 novice confusion, you know, obviously being in a different
23 format as well, but I have one wording comment, - given
24 changes that are being made in terms of the timing of the
25 filing of the acknowledgment which is not with the 63-4
26 papers, which used to not be and this is in the proposed
27 changes to 63-8 subsection B which is 17 in the packet that

1 we received, in the middle of subsection B, there's a
2 sentence that says the ordering party shall all file the
3 acknowledgment with the Appellate clerk, with certification
4 pursuant to section 52-7, I don't know if people see that
5 sentence?

6 CHIEF JUDGE DIPENTIMA: Yes.

7 ATTY. BABBIN: Okay. So now the acknowledgment
8 has a specific time frame in which it has to be filed not
9 just whenever you receive it so I was going to suggest so
10 that there's no confusion that we start that sentence in
11 compliance with section 63-4 subsection (a)(2), the ordering
12 party shall file the acknowledgment with the Appellate clerk
13 for certification. And that language in compliance with
14 section 63-4(a)(2) is parallel to the new language being
15 added to subsection a, at the very beginning of 63-8, where
16 it says prior to the deadline compliance with section
17 4(a)(2) you have to go ahead and order, so I was just
18 thinking that in compliance with here so people know when to
19 file that acknowledgment.

20 ATTY. HARTAN: I don't see a problem with that,
21 Jill.

22 CHIEF JUDGE DIPENTIMA: Anything further on
23 this? Okay. Justice Palmer. Okay. Justice Palmer, do you
24 want to have a vote?

25 JUSTICE PALMER: Sorry about that, yes, yes.
26 I'm sorry about that, I was frozen there for a second. Is
27 there any further discussion or concerns? Cathy, did you

1 have? No. Okay. Is there a motion then to adopt this?

2 ATTY. KRISCH: So moved. Daniel Krisch.

3 JUSTICE PALMER: Thanks Dan. Any second?

4 ATTY. HORTON: Second.

5 CHIEF JUDGE DIPENTIMA: May I just ask, are we
6 all in agreement with Attorney Babbin that that phrase ought
7 to be put in so the motion to accept I assume was
8 incorporating that change, Attorney Krisch?

9 ATTY. KRISCH: Yes. That's correct, Your Honor.

10 CHIEF JUDGE DIPENTIMA: Okay. Thank you.

11 JUSTICE PALMER: And there was a second?

12 CHIEF JUDGE DIPENTIMA: Yes.

13 ATTY. CALIBEY: I just have a quick question,
14 are we voting on adopting it as just amended and then we'll
15 just get information about it later or is this an interim
16 kind of adoption until we get more information because you
17 were going to, I think Paul was going to discuss some of the
18 changes that might be made later? I'm just not clear what
19 we're voting on.

20 JUSTICE PALMER: I think that we're voting on
21 the substance of it that this would be a final vote and you
22 know as in accordance with Jeff's = amendment and then Paul
23 will get back to us with some of the logistical, with
24 answers to some of the logistical issues, but I don't think
25 that should stop or delay the approval of this. Is that,
26 Paul, your preference as well?

27 ATTY. HARTAN: Yes. I think that, you know, to

1 Jill's point earlier, I think Court Ops approached us and
2 said this is what they're going to do, I think for the
3 committee and all members of the Appellate Bar, we need to
4 get some further instructions, operating instructions,
5 ordering instructions to direct how this is all going to
6 work. I'll inform the committee in advance, I think if the
7 committee has questions, I'm sure I can discuss them with
8 Court Operations, but it seems to me the rules that were
9 adopted are to effectuate this online ordering, it's - that
10 these rules can't go forward at this point in time, I think
11 if you got logistical problems or logistical concerns, then
12 I think we can certainly raise them and my hope is that we'd
13 be able to resolve them.

14 JUSTICE PALMER: Lauren.

15 ATTY. WEISFELD: I'm sorry, I should have spoken
16 up a little earlier, but can someone explain to me why the
17 acknowledgment should be filed within the ten days because
18 I'm anticipating my office turns out, you know so many
19 appeals and trying to get the reporters to give those to us
20 quickly, they have to talk to each of the people who took
21 down the transcript, try and come up with an estimate and
22 I'm just worried that we're going to repeatedly not be able
23 to get that filed within ten days.

24 CHIEF JUDGE DIPENTIMA: I'm just wondering, this
25 is Judge Dipentima, hasn't that always been the case that
26 the acknowledgment be filed within ten days? Carolyn, is
27 that true?

1 ATTY. ZIOGAS: Yes. It should be but they often
2 do and sometimes they don't, it's not something that we
3 would send, we just follow up on that, because generally
4 they do come in pretty quick.

5 CHIEF JUDGE DIPENTIMA: So that's not a change,
6 Attorney Weisfeld, right?

7 ATTY. WEISFELD: I'm not sure myself.

8 CHIEF JUDGE DIPENTIMA: Judge Huddleston. Would
9 you unmute please?

10 JUDGE HUDDLESTON: Okay. Hopefully I did. My
11 computer is giving me mixed signals here. I agree with
12 Attorney Weisfeld's concern because the lawyer who's
13 ordering the transcript or the party who's ordering the
14 transcript doesn't have any control over how quickly the
15 reporter's office is able to file the acknowledgment. In my
16 dim memory of what it was like as an appellate practitioner,
17 you know, we'd file the acknowledgment as soon as we got it,
18 but that might a few weeks after we filed the transcript
19 order form. And it seems to me that the change in the rule
20 is really only about the change in the manner of ordering,
21 so I don't agree that the additional language that Attorney
22 Babbin suggested is necessary, I think it may confuse things
23 and make it more difficult. To say you file it immediately
24 after you get it from the court reporter makes sense because
25 then you got, but the attorneys don't have any control over
26 how soon they get that from the monitors. And if it's a
27 long trial in particular and there's a number of different

1 court monitors involved, it can take a while for the
2 reporter's office to collect that information.

3 JUSTICE PALMER: Jeff.

4 ATTY. BABBIN: Hi, Jeff Babbin. So a couple
5 things and I appreciate that this was actually raised, as I
6 thought I had indicated, I feel that the change in 63-4 was
7 a substantive change in that the amendment in 63-4 now
8 requires that the transcript order acknowledgment be filed
9 as part of the 63-4 papers. It used to be and you simply
10 had to file the part one of the form, which simply would
11 show that you had ordered the transcript by that date and
12 that the acknowledgment came later. I have to say in, you
13 know, 25 years of doing appellate work, I have never filed
14 the acknowledgment with 63-4 papers, I've always just shown
15 that I've ordered the transcript and the acknowledgment.
16 Further if there's a delay the Appellate Clerk's Office
17 usually inquires or sends an order please get the
18 acknowledgment form in, which is why I had the concern about
19 how quickly we would get those acknowledgment forms. And
20 from my proposal for 63-8 while it's just a conformant to
21 the change in 63-4, which does require acknowledgment be
22 filed as part of the 63-4 papers, so I that if we were doing
23 that 63-8 simply conformed to that. But obviously, you
24 know, and I do share some of the concern about how quickly
25 we will get court reporters to tell us what the estimated
26 completion dates are, particularly if there are six or seven
27 different court reporters that they have to coral to find

1 out what estimated date is.

2 ATTY. ZIOGAS: Carolyn Ziogas, I just wanted to
3 give you some, a little bit of background and I think Jill
4 touched on this but Renee Robertson met with Rich Loffredo,
5 Laurie Petruzzelli, and I think the legal department as well
6 and - or Court Services and they all worked together. They
7 didn't have all their rules specifically written out yet,
8 but they thought that this would work, that their new
9 process, so I would suggest that maybe we wait to see where
10 they are with that with all before we make those changes
11 because according to them, you know, this was worked on
12 together, that this would work by what they're proposing
13 with the court monitors.

14 CHIEF JUDGE DIPENTIMA: Judge Huddleston.

15 JUDGE HUDDLESTON: It may be that in their
16 proposal they're using in 63-4, they're using the word
17 transcript order acknowledgment somewhat differently from
18 the way that its used in 63-8, it may be that they are
19 thinking only of some sort of electronically generated
20 response that says yes, we received your order as opposed to
21 the acknowledgment form that we all know and love that tells
22 you, you know, who the monitors are and when you could
23 expect to get it and how long you expect it to be. So it
24 may be that the 63-4 terminology needs to be clarified and
25 that it needs to be, the receipt for the order or whatever
26 the electronic response is that confirms the confirmation of
27 the order that's been placed rather than the formal

1 acknowledgment that gives all the information as to when
2 it's expected and how long it's expected to be. So I think
3 those may be two different things.

4 JUSTICE PALMER: Cathy.

5 ATTY. CALIBEY: Yeah. I think if you look at
6 63-4(a)(2) in the second paragraph, it's referring to
7 something else, but it says if the order for any - I'm
8 sorry, above that, a file, a transcript order acknowledgment
9 for an order placed in compliance with 63-8, so I think they
10 are using it differently because in the paragraph above it
11 says a transcript order acknowledgment shall indicate. So,
12 you know, maybe it should be consistent where a transcript
13 order acknowledgment for an order placed or something like
14 that so that you don't have to actually file the
15 acknowledgment but you just have to indicate or file
16 something that you placed an order. You then file it as
17 before, you just file your acknowledgment when you get it.

18 JUDGE HUDDLESTON: I think it might be better if
19 they change the language in 63-4 to say something like
20 electronic confirmation or something different from the word
21 acknowledgment which has taken on a special meaning in
22 appellate practice and what they're really talking about is
23 a confirmation of the order rather than a detailed
24 acknowledgment. So I just suggest that as a possible way of
25 clarifying what they mean in 63-4.

26 JUSTICE PALMER: Jeff.

27 ATTY. BABBIN: Yes, Jeff Babbin. I'm glad this

1 has come up because now that I see that, that the 63-8 does
2 talk about the detailed acknowledgment which is a term of
3 art which does have the estimated completion date, shows who
4 all the court monitors are, how many pages it's going to be
5 and it's something that could take a couple weeks with a
6 court reporter's office, in which case we wouldn't need the
7 change I'm talking about if 63-4 changes it to simply the
8 receipt confirming the transcript order or some such
9 language which is really what we do now under 63-4 and
10 therefore takes away this timing problem.

11 JUSTICE PALMER: Yes, Cathy.

12 ATTY. CALIBEY: I kind of like what Judge
13 Huddleston said, if you look at paragraph 1, if we say, you
14 know deliver prior to the filing appeal, the transcript
15 order confirmation shall indicate that an electronic - you
16 know, you just use ahead on the first sentence, transcript
17 order confirmation from the official court reporter pursuant
18 to 63-8.

19 JUSTICE PALMER: Does that seem to make sense
20 from everybody's perspective?

21 ATTY. RAY: The only thing, I'm sorry, Charlie
22 Ray, is the confirmation of the order coming from the
23 official court reporter is it coming from the e-filing
24 system and if it's just a matter of printing out a receipt
25 from the e-filing system, I don't think we should have
26 language in there saying that it's coming from the official
27 court reporter because then people are probably going to be

1 waiting for things that aren't ever going show up.

2 ATTY. HARTAN: It was my understanding at the
3 meeting that the ordering party is simply going to print out
4 the ordering form and that's what you would e-file, that was
5 my understanding, but again, this committee met and
6 obviously the pandemic struck and we haven't met since, when
7 I contacted the group last week to find out what the status
8 was indications were that, you know, they can make their
9 deadline, they're second - July 1. I'm certainly going to
10 bring all these issues to their attention, but that's - it
11 sounds to me that obviously the hang up is, you know, the
12 order acknowledgment or the estimated delivery date within
13 ten days may be a challenge, so, you know, I don't know if
14 they're also anticipating that things are going to move
15 quickly through the court reporters office now that these
16 are online orders, I don't know if they think they're going
17 to be able to turn these over quickly. So I'll try to get
18 some further clarification on that as well.

19 CHIEF JUDGE DIPENTIMA: Attorney Kindall.

20 ATTY. KINDALL: Clare Kindall. So then for 63-4
21 paragraph (a) (2), we're talking about changing all the words
22 that say acknowledgment to the word confirmation to avoid
23 the trigger the term of art or confusing -

24 ATTY. CALIBEY: Or something to that effect.

25 ATTY. KINDALL: Create a certificate stating
26 that no transcript is deemed necessary or a transcript order
27 confirmation pursuant to 63-8 and the appellant is to rely

1 on any transcript delivered prior to the filing of the
2 appeal, the transcript order confirmation shall indicate an
3 electronic version of a previously ordered transcript has
4 been ordered, if any other party deems any other parts
5 necessary, the transcripts are necessary that were not
6 ordered by the appellant, that party shall within twenty
7 days of the filing of the appellant's transcript papers,
8 file a transcript order confirmation in compliance with
9 section 63-8 in the order where a transcript is delivered
10 prior to the filing of an appeal, the transcript order
11 confirmation shall indicate that an electronic version has
12 been previously delivered, a transcript has been ordered.
13 And that way you take out who order - take out this
14 acknowledgment, acknowledge that an order had been placed
15 and put the work confirmation, I think it works.

16 JUSTICE PALMER: Cathy Calibey.

17 ATTY. CALIBEY: I think that would work except
18 like if you look at the second sentence in subsection 2
19 where you say, if you say order or confirmation, from just
20 our discussion it's not coming from the official reporter,
21 so maybe say confirmation to the official reporter, because
22 you're confirming that you're ordering it and they're not
23 actually giving you anything back, it's just your form. Or
24 we just change that language altogether in conformance with
25 what Jeff indicated earlier.

26 ATTY. KINDALL: If you had some confirmation the
27 order has been placed not that what is going to comply with

1 it. That it's not the traditional acknowledgment form that
2 - right?

3 ATTY. CALIBEY: If you change it just to
4 confirmation, it says order confirmation from the official
5 reporter and it's not going to be an official confirmation
6 from them, it's just going to be your e-filing form that you
7 placed an order.

8 ATTY. KINDALL: Right. In (a)(2), very first
9 sentence I would take out acknowledgment from the official
10 reporter and just replace those five words with the word
11 confirmation. Does that make sense?

12 JUSTICE PALMER: Jeff.

13 ATTY. BABBIN: Sure. Maybe and this is now
14 getting to the nitty gritty of wordsmithing but this is just
15 a suggestion, now in (a)(2), reciting a certificate stating
16 that no trust is deemed necessary or a receipt of a
17 transcript order made pursuant to section 63-8, a receipt of
18 a transcript order made pursuant to section 63-8, I would
19 stick with that. And then the next paragraph would be if
20 another party deems to be necessary that party shall within
21 20 days of the filing of the appellant's transcript papers
22 file a receipt of a transcript order for an order placed in
23 compliance with 63-8. I actually like that language. Use
24 that in the previous paragraph, a receipt of a transcript
25 order placed in compliance with section -

26 JUSTICE PALMER: Dan and then Clare.

27 ATTY. KRISCH: I agree with the general idea of

1 these language changes. We all know what we're talking
2 about. There will be attorneys and also self-represented
3 parties who have no idea what the word receipt means in that
4 context, so we either need to define the term, since it's
5 not a form, we could - or we need to be very clear what
6 we're talking about so the people do think anything, you
7 know, they didn't pay, so I don't have a receipt or what
8 service. I think we need to explain what it is for people
9 that are -

10 JUSTICE PALMER: Clare.

11 ATTY. KINDALL: I guess I simply would say that
12 what I like about all these changes is it changes - it keeps
13 section 2, the changes in section 2 not substantive but
14 simply adjusting for electronic system. So whether you use
15 the word confirmation or receipt, and I agree that I think
16 we need to be clear about, you know, so it doesn't have
17 confusion and I agree with Judge Huddleston, we have to
18 remove acknowledge, it's - of a term of art, but that it
19 gets us back to the purpose of the change which was simply
20 to adjust for an electronic system.

21 JUSTICE PALMER: Cathy.

22 ATTY. CALIBEY: What if instead of receipt we
23 use the - we just say a copy of the electronic transcript
24 order, that's what you're actually submitting, right?

25 ATTY. BABBIN: That's what we do now, this is
26 Jeff Babbin, we simply copy the paper form and file it to
27 show that it's been ordered.

1 ATTY. CALIBEY: It should be the electronic
2 transcript order, just say copy and the people don't have to
3 worry about receipt.

4 JUSTICE PALMER: Does that seem to work for
5 everybody? Okay. I'm not sure where that puts us in terms
6 of motions and stuff, but -

7 ATTY. LEVINE: I had one question, so that word
8 will get repeated very often throughout these provisions,
9 are we just going call it a copy thereafter, or do we have
10 to spell out every time copy of a transcript order?

11 ATTY. BABBIN: If I can, this is Jeff Babbin,
12 when we get to 63-8, we would - my understanding is we would
13 not be using that language anymore. Oh, I see what you're
14 saying, yes, you're right.

15 ATTY. LEVINE: They use it in other provisions
16 that are -

17 ATTY. BABBIN: Right. You're absolutely
18 correct. We would have to then conform we are now in 63-8,
19 it says the parties shall file the acknowledgment with the
20 appellant clerk, it's again it would be the copy of the
21 order, transcript order.

22 ATTY. LEVINE: Okay. I'm just wondering are we
23 going to be repeating that every time we have the word
24 acknowledgment that entire phrase?

25 ATTY. KINDALL: Clare Kindall, it does give you
26 a reason to go back to the word confirmation.

27 ATTY. CALIBEY: This is Cathy Calibey, I think

1 it's clearer for people that don't know what this means if
2 you just repeat that phrase.

3 CHIEF JUDGE DIPENTIMA: This is Judge DiPentima,
4 Cathy, you're saying repeat the phrase copy of the
5 transcript order?

6 ATTY. CALIBEY: You can either say that or copy
7 of the electronic transcript order, whichever is clearer or
8 the committee wants to do.

9 JUSTICE PALMER: Jeff.

10 ATTY. BABBIN: This is Jeff Babbin. Again, I'm
11 going to take back what I said before, I'm looking again at
12 63-8, again on page 17 of our packet, subsection B, that
13 acknowledgment is in fact the detailed acknowledgment that
14 comes after you've already filed your 63-4 papers where you
15 paid and the official reporter provides a written
16 acknowledgment of the order, the estimated date of delivery,
17 estimated number of pages in the transcript order. You can
18 see that. The order party shall file the acknowledgment
19 with the appellant clerk pursuant to 63-7, that's what we do
20 now and therefore we would not have to make any conforming
21 change in my view there because now we're talking about the
22 detailed subsequent document, we're (inaudible) filing, so
23 there we can continue to use the work acknowledgment because
24 that is in fact the current term of art, it's the
25 acknowledgment of the estimated completion date. And so I
26 think if we make that change in 63-4, we would not have to
27 touch 63-8, we can actually leave it the way it's been

1 proposed here.

2 ATTY. LEVINE: Eric Levine here. What about
3 like 66-6 in the second paragraph, is that acknowledgment
4 the same acknowledgment that we're talking about in 63-4?

5 ATTY. BABBIN: So in 66-6, which is page 19 of
6 our packet, that would be the receipt or just the proof of a
7 transcript order, it's the old just part one of the form,
8 it's not when you get that with the estimated date. That's
9 the way the rule currently reads and therefore we would have
10 to change that to the, you're right, we would have to
11 conform that to the 63-4 language.

12 ATTY. LEVINE: And then there is one other place
13 I think in 77-1a, at the bottom of that first paragraph and
14 77-1a, that's page 20 of our packet, where I think we would
15 also have to say copy of the transcript order.

16 CHIEF JUDGE DIPENTIMA: Yes.

17 JUSTICE PALMER: So where does that leave us?

18 ATTY. KRISCH: I withdraw my motion.

19 JUSTICE PALMER: I'm sorry, Dan.

20 ATTY. KRISCH: I withdraw my motion.

21 JUSTICE PALMER: Okay. Is there a new motion
22 that would adopt essentially the changes that we seemed to
23 all agree upon, Cathy?

24 ATTY. CALIBEY: Yeah. I can make a motion that
25 the language should be changed in 63-4 where it's
26 referencing acknowledgment at this point to state copy of
27 the electronic transcript order made pursuant to section 63-

1 8 and that change would also be made in sections 66-6 and
2 section 77-1.

3 JUSTICE PALMER: That sounds right. Is there a
4 second?

5 ATTY. HORTON: Wes Horton, I second it.

6 JUSTICE PALMER: Thank you. Any further
7 discussion? All in favor.

8 (The committee responds.)

9 JUSTICE PALMER: Opposed.

10 ATTY. KRISCH: I'm opposed.

11 ATTY. DEMEO: I'm opposed. I'm just going to
12 say why because I see this kind of ad hoc, you know,
13 jiggering things out at meetings, I'd rather see it get all
14 worked out so we can see it in another meeting. Unless
15 there's any need for urgency on this thing, I think the way
16 these things get put together we sometimes look back and say
17 how did that happen. I mean I don't really have a clear
18 picture of what's going on right now, but if there's no
19 urgency I wouldn't recommend okaying this right now because
20 we don't really know what it looks like. I've just seen
21 that before where things get, you know, fixed or adjusted or
22 modified or amended, I guess at the meetings and the
23 afterwards you realize oh, that's kind of ugly but it got
24 put together by a bunch of people in a room on the fly, it's
25 just an observation. So I'm voting against it.

26 JUSTICE PALMER: Okay.

27 ATTY. LEVINE: Eric Levine. I think we did

1 mention that there was some kind of urgency given that the
2 roll out date is July 1st, but I'm not necessarily sure that
3 that doesn't mean we can't do something between now and then
4 to sort of present what the changes are in a form to the
5 committee by email for their final approval.

6 JUSTICE PALMER: Where's Paul Hartan.

7 CHIEF JUDGE DIPENTIMA: And Carolyn has her hand
8 up.

9 JUSTICE PALMER: Oh, Carolyn, yes. Go ahead.

10 ATTY. ZIOGAS: Yes. In part I do agree a bit
11 with John on this, only that I was under the understanding
12 that the whole ordering process is going to be changed, you
13 know, very much so and if the forms are not going to be
14 called acknowledgments, so I'd really like to see what they
15 finalized and what they come up with before we start
16 changing the words here to adapt to something we're already
17 doing, because I really think that the whole process is
18 changing and I don't know what that is.

19 CHIEF JUDGE DIPENTIMA: May I just ask, this is
20 Judge DiPentima, so are you suggesting Carolyn that we
21 shouldn't vote at all at this point?

22 ATTY. ZIOGAS: I would like to wait until Paul
23 has that meeting to see where they are because when we put
24 this together they were at a different stage than they are
25 now, they're closer to that and because of the virus we
26 haven't met, Paul hasn't met with them and we don't know how
27 far they proceeded. I do know they were completely changing

1 the whole process and so we're changing the words now to
2 sort of adapt to what we're doing and I don't think it may
3 be anything like what they've done in the past or even the
4 forms, and I think why that's the generic terms are used so
5 to accommodate different scenarios. It happens to all the
6 form numbers and that's why they came up with that language.

7 JUSTICE PALMER: Cathy and then Clare.

8 ATTY. CALIBEY: I think I agree with you if
9 that's the case. The only reason I suggest and I think Jeff
10 was suggesting this change because initially we were told
11 that you would do it electronically but you would have to
12 then print what you filed and file that form, so it was just
13 a little confusing. But I think I agree with you to find
14 out exactly what they're doing before we vote.

15 ATTY. KINDALL: Let me unmute, Clare Kindall, I
16 guess I would say that I think - we've taken the vote, I
17 think the lawyers here are all pretty comfortable with what
18 the changes are and what we're doing is saying that you
19 still have to say you've ordered your transcripts when you
20 file your appeal and then later on you have to give details
21 and I think that if you can't roll your system out July 1 if
22 you don't change your rules to accommodate it. So I think
23 we have a little chicken and egg problem here and I think
24 the changes that we're proposing makes sense and the people
25 want the comfort of having the rule, you know, sent by email
26 and if there's a serious concern about point, then I say,
27 you know, we should reconsider, but at this point I think

1 the folks are fairly comfortable with what it's trying to do
2 which is to accommodate a system and the exact details of
3 that electronic system aren't going to impact what happens
4 in those rules, it's basically did you place your order and
5 did you get a receipt saying when you're going to get your
6 transcript. Or is it more complicated than that?

7 JUSTICE PALMER: We spent a fair amount of time
8 on this, I would suggest at this point that we hold off
9 taking a formal vote on this despite my efforts to the
10 contrary, you know, two or three times and I apologize for
11 that. But since some of us are a little uncomfortable in
12 voting on this right at the moment, why don't we just hold
13 off voting. We'll ask Paul and Carolyn, John to come back
14 to us via email with some language that I presume will
15 likely be quite consistent with what we're generally in
16 favor of now. We can vote via email as a committee. We
17 presumably can do that in the next week or two. If that
18 procedure is acceptable to people, I think we might just
19 want to go that route. I don't think there's any downside
20 in doing that and you know and kind of move this along I
21 think that that would make sense. You know, I don't feel
22 strongly about it, if anybody objects, you know, it just
23 seems like that makes some sense, kind of accommodate
24 people's concerns here. Is that all right. Does anybody
25 have any strong objection to that?

26 ATTY. HORTON: Can I?

27 JUSTICE PALMER: Yes.

1 ATTY. HORTON: The only thing I want to say is I
2 think we all agree that you shouldn't have to file detailed
3 statement of when transcripts are going to be filed within
4 that, that's the important thing I think everybody is
5 saying.

6 ATTY. KRISCH: Yes.

7 ATTY. DEMEO: Agreed.

8 JUSTICE PALMER: I don't remember who - think
9 Cathy you had made the last motion, would you mind
10 withdrawing that if you haven't already?

11 ATTY. CALIBEY: No problem. I withdraw.

12 JUSTICE PALMER: Okay. Thanks. Paul.

13 ATTY. HARTAN: So I will, so if it's okay, I'll
14 try to get some sort of meeting with Court Ops next week and
15 get some further details, I'll get an email out to
16 everybody. In the meantime, once I get that information
17 provided that they have further details as to how they're
18 going to do this, then I guess I'll consult with Carolyn and
19 John and the rest I need to consult with to see if there's
20 any heavy changes that they're do. My understanding from
21 all of this was, you know, from their perspective was that
22 instead of paper, it's just going to be online and make your
23 rules so that they can accommodate that and that's sort of
24 where all this began and I don't expect a lot of that has
25 changed from their perspective but let's see what the
26 details are and I'll get that out to you.

27 JUSTICE PALMER: Okay. Good. Thank you. Let's

1 move to 2C, which is whether to amend 61-16 to allow an
2 appearing party the opportunity to respond to the filing of
3 a bankruptcy notice. Jill, did you want to say something
4 about that?

5 ATTY. BEGEMANN: Sure. This is Jill Begemann.
6 This came about at the request of one and then probably two
7 Appellate Court Judges who on the eve of an oral argument
8 there's a bankruptcy filing and there is sometimes a little
9 bit of uncertainty is the case automatically stayed. And
10 one of the Judges had suggested that we should have a rule
11 that at least allows the other party, another appearing
12 party in the case, have the opportunity to say that the stay
13 does not apply and here is why and to reduce - provide
14 supporting documentation about that. We know right now
15 often if we get a bankruptcy, a notice of bankruptcy filing
16 the Court contacts the clerk's office, they look in Pacer,
17 they try to figure out if there's been other bankruptcies
18 and other circumstances to show whether the bankruptcy stay
19 does or does not apply. And so this is a way again to give
20 the parties the opportunity to tell the Court and to help
21 the Court to determine whether or not the bankruptcy stay
22 applies. The rest of it we just kind of reordered it to
23 make it a little bit so that it flows more in chronological
24 order, the notice of bankruptcy is (a) if you've gotten
25 relief from the stay is (b) and the resolution of the
26 bankruptcy is (c). Just so that it goes in the order of how
27 the proceedings would flow.

1 JUSTICE PALMER: Charlie.

2 ATTY. RAY: Hi. I question the use of the
3 phrase including any supporting documentation and it's in
4 here three times I think. I don't - correct me if I'm
5 wrong, but I don't believe that we have that anywhere else
6 in our rules and what we do have in certain circumstances is
7 a requirement the filing have an appendix that would include
8 certain things. I guess I just worry about this being
9 overly vague, and so that if there are certain things that
10 are necessary to file with a notice and there's some
11 specificity that's being included in the notice, there's
12 additional things like the (inaudible) there come to
13 bankruptcy court to specify what it is - that is used in a
14 vague term included in a supported document.

15 JUSTICE PALMER: John.

16 ATTY. DEMEO: Yeah. I share in that concern.
17 It talks about a notice, but really you're asking for an
18 argument by a party to say hey, the stay doesn't apply here,
19 this thing can go forward on appeal. So parties make
20 arguments by filing memoranda's, you know, they don't file
21 supporting documents to back up their argument that the
22 bankruptcy stay or the filing of the bankruptcy does not
23 stay this appeal, so I think the term hoarding documents
24 really alludes to your argument as to why this should go
25 forward or not go forward I suppose. But that's a motion,
26 when you have a motion and you have a memoranda in support
27 of it, this is a notice supporting documentation, it's like

1 I don't know what the supporting documentation would be
2 other than argument as to why federal bankruptcy law doesn't
3 require that this does or does not go forward.

4 JUSTICE PALMER: Jamie and then Jeff.

5 ATTY. PORTER: I think the problem that we've
6 had with these notices sometimes and because I deal with -
7 Jamie Porter, Appellate Court motions, supervising motions
8 attorney, I think the problem we've had is that people file
9 these notices with nothing. They don't give us anything
10 from the bankruptcy court at all, they don't give us any
11 other documentation, and we went with supporting
12 documentation because it varies depending on the bankruptcy
13 problem. If you have gotten in rem relief, you have an in
14 rem order from the bankruptcy court. Most of the time what
15 we were looking for was something from the bankruptcy court,
16 but we got nothing like that most of the time. When they
17 file these notices often we don't even get anything showing
18 the docket number for the bankruptcy filing. So I think
19 that was the intent here and people attached motions, all
20 sorts of things, and we don't say those are. I agree that
21 it would be nice to have a list but when we started looking
22 at the things we would list I think that's why we went with
23 the more vague attachments and I don't feel strongly about
24 it's going to be hard to come up with what those things are
25 in terms of a comprehensive list.

26 JUSTICE PALMER: Jeff and then Wes.

27 ATTY. BABBIN: Hi, Jeff Babbinn. I actually

1 thought the change was fine for that reason that if somebody
2 files a bankruptcy - files a notice of a bankruptcy, it
3 struck me that it made sense at minimum to actually include
4 with that the bankruptcy petition or order of a bankruptcy
5 court, you know, indicating that a petition has been filed
6 or there's some stay order, or at least a bankruptcy
7 petition itself and it seems in this context that people,
8 you know, at least you're encouraging to not just file a
9 notice and people can file what's essentially relevant to
10 the notice. You can say any relevant supporting
11 documentation but hopefully people will only file things
12 that are relevant anyway. I thought this change was fine
13 from that perspective.

14 JUSTICE PALMER: Wes.

15 ATTY. HORTON: I just suggested after the word
16 documentation you add five words, in the bankruptcy court
17 file or from the bankruptcy court file. That would
18 eliminate the vagueness.

19 JUSTICE PALMER: Charlie, does that address your
20 concern?

21 ATTY. RAY: Yes. I think that would be fine.
22 And I think it takes a lot of the vagueness out of this.

23 JUSTICE PALMER: Does anyone have any concerns
24 about that?

25 ATTY. DEMEO: Just one more point I'd like to
26 make looking at it now, it says this notice also will be
27 indicating the reasons why the automatic stay does not

1 apply, that's my point. You don't file a notice with
2 supporting documents. To indicate the reasons, that's
3 argument, you know, you have a federal bankruptcy, largely
4 as we know anytime, you now stops an appeal from going
5 forward, but there are exceptions, so I think it's weird for
6 a notice to indicate the reasons why an automatic stay does
7 not apply is asking a lot of a notice with supporting
8 documentation without argument. I suppose it's left to the
9 Appellate Court ultimately to look into the law and figure
10 it out, but if someone wants to argue as a matter of law
11 this should or should not go forward, they need to do it
12 with a supporting argument and not documents.

13 JUSTICE PALMER: Charlie.

14 ATTY. RAY: I think we can address that problem
15 by just changing the word notice to memorandum, any
16 appearing party seeking to challenge the application, dot,
17 dot, dot, dot, shall immediately file a memorandum with the
18 Appellate clerk including any supporting documentation from
19 the bankruptcy file indicating the reasons why the automatic
20 stay does not apply.

21 JUSTICE PALMER: Jeff.

22 ATTY. BABBIN: Once we go there the person who
23 has filed the bankruptcy notice may want to respond to that
24 memorandum because normally we would have a motion and
25 there's opposition to a motion, there's no reply. But here
26 the issue is really only teed up initially by that
27 memorandum and therefore normally the person filing the

1 bankruptcy notice wouldn't have any argument or explanation
2 and therefore they would never have an opportunity to
3 respond to that, so I think that there would have to be
4 where you say immediately file, even if you said a
5 memorandum that the person who filed the original notice we
6 could say shall have let's say ten days to file a responsive
7 memorandum indicating the reasons why the automatic stay
8 does apply.

9 JUSTICE PALMER: Dan and then Charlie again.

10 ATTY. KRISCH: Why don't we just take out the
11 last clause indicating the reasons why the automatic stay
12 does not apply clause and then if somebody is seeking to
13 challenge the application of the stay, they file a notice
14 with, including Wes's amendment, any supporting
15 documentation from the bankruptcy court file, period.

16 ATTY. BABBIN: And no argument.

17 ATTY. KRISCH: Right. And then there's no
18 argument. I'm sure Jamie would be happy not to get a whole
19 bunch more propositions, with respect with - pro se
20 litigant. Then there's the matter the opposing party is
21 filing irrelevant papers from the bankruptcy court file that
22 either shows this Court, the Appellate Court or not that
23 there's a stay.

24 JUSTICE PALMER: Jeff.

25 ATTY. BABBIN: Yes. I actually like Dan's idea
26 because then we're just simply saying any appearing seeking
27 to challenge the application of the automatic bankruptcy

1 stay shall immediately file notice with the Appellate Court,
2 period. And then now that there's a dispute I suppose the
3 clerk's office could maybe ask people to brief the issue if
4 there's a real doubt. I mean somebody might file notice and
5 it may seem frivolous on its face and the clerk can simply
6 decide whether to apply a stay from a, you know, because the
7 clerk's office often issues a stay as a clerical matter, but
8 if there needs to be a substantive briefing then maybe the
9 clerk's office can then request that and then Court itself
10 make that determination, so it would be through - process,
11 it would be a supplemental process, we don't have to
12 necessarily address here in the rule.

13 JUSTICE PALMER: John.

14 ATTY. DEMEO: That's just it, the issue whether
15 a bankruptcy stay prevents an appeal from going forward is
16 not a clerical matter, it's a legal determination that needs
17 to be made by maybe the Appellate Court or its staff or
18 whatever looking at it. If we're not going to have the
19 parties argue about then the Court has to figure it out, but
20 it can't be handled administratively or clerically because
21 the law just doesn't work that way. And I've seen confusion
22 that appellant over bankruptcy stays, you know, internally,
23 you know, and so either the Appellate Court can look at it
24 and figure out whether it could go forward or not maybe in
25 every case or you put it on the parties to argue about it, I
26 guess if the feeling let's not burden Jamie with any more
27 motions, I'm good with that, we won't have the party arguing

1 about it, but don't be under the illusion that it can be
2 handled clerically, it's still needs to be looked at by a
3 lawyer or a Judge an a recommendation needs to be made to
4 the Appellate Court as to whether it should go forward or
5 whether the stay applies. Jamie any thoughts on that.

6 ATTY. LEVINE: Eric Levine here. In light of a
7 foregoing discussion I wonder whether we should change the
8 word notice to motion to make it more of a sort of as she's
9 saying sort of a legal thing rather than a clerical thing?

10 JUSTICE PALMER: Judge DiPentima or Jamie.

11 CHIEF JUDGE DIPENTIMA: I think we're getting
12 back to the problem of trying to wordsmith and do a lot of
13 stuff that's going to have all sorts of consequences in a
14 not perfect setting for us to live with the decisions here.
15 I think it is appropriate to stay as a notice but I have a
16 bigger problem with what's happening with this discussion as
17 I did with the previous one, so, having said that.

18 JUSTINCE PALMER: We recently had a notice like
19 this, Jeff is aware of it. I think that if a notice like
20 this is filed, it should alert the Court to the potential
21 of, you know, that there's some question about this and the
22 Court through the clerk's office really doesn't have to ask
23 for something more if the clerk thinks that it's necessary.
24 So I think that Dan's approach may make - just sort of leave
25 it as a notice in the file and at that point that's really
26 all it is, is a notice that one of the parties believes that
27 the Court needs to be aware of something and then the Court

1 can take further action if that's what it wants to do.

2 Judge Dipentima, does that make sense to you?

3 CHIEF JUDGE DIPENTIMA: Are you suggesting that
4 none of this new language, are you suggesting then there is
5 no opportunity to challenge the validity of that notice or
6 the by the other side?

7 JUSTICE PALMER: No.

8 CHIEF JUDGE DIPENTIMA: Are you suggesting about
9 this proposed language in 61-16a?

10 JUSTICE PALMER: You know, a least my recent
11 experience was that if a party, you know, wants to respond
12 to the notice they'll ask for permission to respond to it or
13 the Court will ask for a response. Maybe that's not really
14 sufficient, you know, I don't know. Does anybody have -
15 Jill?

16 ATTY. BEGEMANN: I just want - a question, so if
17 we go with this approach, I'm a little unclear, does it say
18 any appearing parties who can challenge the application of
19 the automatic bankruptcy stay shall immediately file a
20 notice period or shall immediately file a notice including
21 any supporting documentation from the bankruptcy file
22 period, the later?

23 ATTY. KRISCH: The later.

24 JUSTICE PALMER: Yes.

25 CHIEF JUDGE DIPENTIMA: Yes.

26 ATTY. BEGEMANN: Even with documentation?

27 Right. That's what I thought, I just wanted clarification.

1 JUSTICE PALMER: Jamie.

2 ATTY. PORTER: I would agree with that I think
3 that's fine and if the Court, any Court, the Supreme Court
4 or the Appellate Court wants argument on that issue or wants
5 briefing on that issue, they can issue a briefing order. I
6 think that the intent of this was to have a formalized
7 process for the other side to file a response and so I think
8 that the rule modified that way would do so and I think that
9 would be okay. It would be a good start and we can see
10 where that goes.

11 JUSTICE PALMER: That's my view as well. Jill?

12 ATTY. BEGEMANN: I was going to say the same
13 thing, I think it is a good start. And speaking with the
14 Judges who first raised the question, they want to know,
15 they want to give the other side the opportunity and that
16 will start that process.

17 JUSTICE PALMER: My sense is that will probably,
18 it will serve that purpose and it will work because the
19 Court can then sort of take over from there to the extent it
20 wants to do anything. And my experience with this, that's
21 really what's happened so, if that's acceptable, Dan, would
22 you like to make that motion since you're the sponsor of
23 that, creator of that idea?

24 ATTY. KRISCH: I move that we amend 61-16 in
25 accordance with the written stuff on page 22 except with
26 section A modified as I proposed.

27 JUSTICE PALMER: Jill.

1 CHIEF JUDGE DIPENTIMA: You're muted.

2 ATTY. BEGEMANN: I just wanted to clarify that
3 any supporting documentation language is in C also, so are
4 we leaving it alone in C or are we also adding that language
5 from the bankruptcy court file in C?

6 ATTY. KRISCH: I would say yes, we're adding it
7 to C in my -

8 ATTY. BEGEMANN: Yes.

9 ATTY. HORTON: Yes. This is Wes, I agree and
10 there's two places in A at the very beginning.

11 ATTY. BEGEMANN: Right.

12 JUSTICE PALMER: May I take that as a seconded,
13 Wes?

14 ATTY. HORTON: Yes. I agree.

15 JUSTICE PALMER: Any further discussion.

16 ATTY. LEVINE: Yeah. I just wanted to clarify
17 we're saying documentation in the bankruptcy court file or
18 from the bankruptcy court file? I think we've kind of gone
19 back and forth, I just wanted to clarify which word from or
20 in?

21 ATTY. HORTON: I think it's to be from, Wes.

22 JUSTICE PALMER: Okay. From it is. So we have
23 a motion, we have second, any further discussion, all in
24 favor.

25 (The committee responds.)

26 JUSTICE PALMER: Any opposed. Okay. Good
27 that's approved. I guess we're on D, whether you amend 86-1

1 concerning publication and effective date of the rules.

2 Eric, did you want to talk about that?

3 ATTY. LEVINE: Sure. In consideration of the
4 desire and/or need to provide notice and an opportunity to
5 comment before the Appellate rules are adopted and seeking
6 to confirm more with the way they do it with the Superior
7 Court rules, which is laid out in section 1-9, the working
8 group strived to amend or expand 86-1 to include provisions
9 setting out a requirement of notice before the rules are
10 adopted by the Judges and the Justices and an opportunity to
11 comment and that is in subsection A, I believe it this is
12 page 23 of our packet. Essentially it sets forth the
13 procedure for that and then it kind of maintains what is in
14 the rule already about the effective date for rules that are
15 adopted in the normal course and how that 60 day period that
16 you need to have before a rule becomes effective can be
17 waived and if the circumstances require. So section C deals
18 with rules adopted on an interim basis and sets for the
19 procedure for that. And basically the difference when rules
20 that are adopted on an interim basis is that they are made
21 effective before that notice and an opportunity to comment
22 is provide, but then the notice and opportunity to comment
23 are made before the interim rule is finally approved.

24 JUSTICE PALMER: Let me just ask, Clare, you're
25 back in for the moment?

26 ATTY. KINDALL: I'm back in for the moment, but
27 I've been kicked out four times.

1 JUSTICE PALMER: Sorry about that. When we have
2 fewer people on the screen, it's easier to discern if
3 someone's been kicked, but it's hard to know when we have
4 this many people.

5 ATTY. KINDALL: Well I apologize.

6 JUSTICE PALMER: No, no, it's not your fault.

7 ATTY. KINDALL: Ask for a repeat of what was
8 just said, I thought, you know, I vote yes for whatever we
9 did last time around, but I don't think I was there for your
10 vote and I haven't heard the beginning of what's happening
11 for 86-1.

12 ATTY. LEVINE: Okay. Eric Levine here, do you
13 want me to repeat about 86-1 or was there a concern about
14 what we did before regarding 61-16, do we need to talk about
15 that before we go into 86-1?

16 ATTY. KINDALL: No. I caught the prior one, and
17 I vote as amended. I wasn't here for your vote, but I just
18 wanted to let it register that I heard the discussion and I
19 do vote for it.

20 JUSTICE PALMER: Okay.

21 ATTY. LEVINE: Okay. Eric Levine, would you
22 like me to repeat the discussion on 86-1?

23 ATTY. KINDALL: If you don't mind, just making
24 it abbreviated, that would be great.

25 ATTY. LEVINE: Sure. In the interest of the
26 need for opportunity to comment and notice before an
27 Appellate rule or Appellate rules are adopted, we have

1 expanded 86-1 to include that. The way it was drafted
2 before, it did not include that. This kind of conforms to
3 the way they do I with the Superior Court rules. So sub A
4 and 86-1 kind of sets out that procedure for providing
5 notice before a rule is adopted and then an opportunity to
6 comment and then subsection C deals with the procedure that
7 we follow for rules that are adopted on an interim basis.
8 The only change there is that the opportunity to comment
9 comes after the rule is approved on an interim basis but
10 before the rule gets finally adopted by the Judges and
11 Justices.

12 ATTY. KINDALL: Thank you.

13 ATTY. LEVINE: Yes.

14 JUSTICE PALMER: Does anyone have any concerns
15 about that or questions? Sound good to everybody pretty
16 much? Okay. Is there a motion?

17 ATTY. HORTON: I move adoption of 86-1, this is
18 Wes Horton.

19 JUSTICE PALMER: Okay.

20 ATTY. LEVINE: I second, Eric Levine.

21 JUSTICE PALMER: Any further discussion? All in
22 favor?

23 (The committee responds.)

24 JUSTICE PALMER: Opposed. Okay, that's
25 approved. I think we're onto E, whether to amend 62-7 to
26 clarify that subsequent returns for the same filing will not
27 initiate a new filing period of fifteen days. Judge

1 DiPentima.

2 CHIEF JUDGE DIPENTIMA: Yes. Thank you. This
3 proposal came up after I had discussions with the clerk's
4 offices and Jamie about the problem of its often self-reps,
5 but sometimes lawyers who can't properly file or seem unable
6 to properly file the document or filing and what this makes
7 clear and in some places it's foreclosure appeals or
8 something there is a real time issue. So this just makes it
9 clear that you get that fifteen days when you can't get it
10 (inaudible) but I'm going to stop until the music stops.

11 JUSTICE PALMER: Yes. Someone -

12 CHIEF JUDGE DIPENTIMA: Can you mute whoever it
13 is?

14 JUSTICE PALMER: Yes. Just remember to mute
15 themselves when they're not speaking that would be helpful,
16 thanks.

17 CHIEF JUDGE DIPENTIMA: At any rate, this is
18 sometimes seen in foreclosure appeals when there is an
19 effort to file something, but whatever it is, we just want
20 to make sure that the fifteen day grace period to refile a
21 complying document doesn't keep going on and on and on.
22 Dan.

23 JUSTICE PALMER: Giovanni and then Dan.

24 ATTY. WELLER: My question from this is what
25 happens to the appellee's filings because the sentence after
26 the new one says the time for responding to any such papers
27 will not start to run until a complying paper is filed. So

1 if the appellant or whoever is messing up over and over
2 again doesn't get it right the second time, when will the
3 other party know when to file their responding?

4 CHIEF JUDGE DIPENTIMA: When it's actually -
5 when there is a document that's actually filed. What
6 happens is the document is not filed it's returned, that's
7 what, so the - I suppose it could be that the responding
8 party never gets to respond because there's never a filing,
9 but yeah, so that's the instant that they would know that
10 when it's actually filed. We're talking about documents
11 that are returned and not properly filed.

12 JUSTICE PALMER: Dan, yes.

13 ATTY. WELLER: Can I just follow, I'm sorry, it
14 took me, just one second, I apologize, it's Giovanna Weller
15 again, can we just say then shall not start run until after
16 the complying paper is filed? I'm just concerned that if
17 somebody is waiting - if somebody is on the other side of
18 it, they just won't know when to - when their filing is due
19 and so maybe that would make it clear, like it shall not
20 start to run until after a complying paper is filed. I
21 could be the only one not clear and if that's the case I
22 accept that.

23 CHIEF JUDGE DIPENTIMA: I'm sorry, I don't see
24 the need for it but I'm open to other, I don't mind being
25 out-voted on that.

26 ATTY. WELLER: And I don't feel strongly on it,
27 I think you explained it to me very well.

1 CHIEF JUDGE DIPENTIMA: Okay. Thank you.

2 JUSTICE PALMER: Dan, did you have something?

3 ATTY. KRISCH: Yeah. First of all, having been
4 on the other side many times, thank you for amending this
5 rule. There are people who are serial offenders on this.
6 My concern is that the change, it contemplates that even
7 though you don't get a new fifteen day period, you do get a
8 chance to correct your mistake and file a complying document
9 but now there's not time period specified, the second or
10 third or fourth time for how long you have to do it. The
11 people who are serial offenders, you should not be
12 encouraged to have an infinite or let's say undefined amount
13 of time when they've messed up once, they've gotten their
14 fifteen day grace period, it gets returned again, they're
15 told to refile it but not told how long they have to do it.

16 CHIEF JUDGE DIPENTIMA: So you're suggesting that
17 there needs to be something on that second return?

18 ATTY. KRISCH: The second or third or fourth
19 return I think needs to have some specified time period in
20 which to do it. A not immediately or in all due speed or
21 you now five day or three day, you know, whatever it is
22 otherwise there are people who will just not refile but then
23 say well there was no time period how was I supposed to
24 know.

25 JUSTICE PALMER: Jeff. You're muted, Jeff.

26 CHIEF JUDGE DIPENTIMA: You're muted.

27 ATTY. BABBIN: Sorry. I think part of the

1 problem here is that the initial fifteen day period is a
2 time period in which you can then refile and it relates back
3 to when you're originally filing was made, so your filing is
4 deemed to be timely. Once you have a second issue, it's
5 almost as if you can't do it again unless you also have a
6 motion for permission to file a late filing assuming it's
7 something that had a time deadline to begin with. If it
8 didn't have a time deadline to begin with then the whole
9 rule is sort of moot because you can just file it anytime
10 anyway. So I think what we're trying perhaps to say here is
11 we will not initiate a new fifteen day refiling period but
12 we will require instead a motion for permission to file the
13 paper late. Otherwise why else are we making this change?

14 JUSTICE PALMER: Jamie.

15 ATTY. PORTERE: I think we don't have motions
16 for permission to file things late anymore except Trial
17 Court motions. You now have a motion - you file your motion
18 and within that motion you have a good cause paragraph that
19 says why it's late, so I don't think we need to do anything
20 with that. I think that this rule would say you get one
21 fifteen day time period, and I understand Dan's problem, you
22 know, when are they going to refile this thing, but if they
23 refile it six months later and they don't put a good cause
24 paragraph in or we know it's untimely the Court will deal
25 with that. I think the problem was the people who do just
26 wait the fifteen days, file that motion and then keep doing
27 that, because we have some people who have done it five,

1 six, seven times and think they're just extending it out.

2 JUSTICE PALMER: Jeff.

3 ATTY. BABBIN: Yes. Thank you. Jeff Babbin.

4 Perhaps because I think that the connection to that new rule
5 and I know remember we voted on that new rule, will not be
6 obvious to those who are in fact having a problem here that
7 perhaps then we could still say not a motion for filing late
8 but will require a showing of good cause for a late filing
9 pursuant to section blankety blank, whatever that section
10 now has that language so people understand what why have to
11 do and that might make life easier for the clerk's office as
12 well.

13 CHIEF JUDGE DIPENTIMA: I'm sorry, you're
14 suggesting it would make what easier?

15 ATTY. BABBIN: I missed that.

16 CHIEF JUDGE DIPENTIMA: I said you're suggesting
17 it would make it easier for the clerk's office?

18 ATTY. BABBIN: Yes. That if there's a cross-
19 reference to what is required to be included in a refiling
20 at that point, now initiate a new fifteen day -

21 CHIEF JUDGE DIPENTIMA: Yes. Okay.

22 ATTY. BABBIN: Refiling period and shall include
23 the information required, I don't have the language in front
24 of me because I don't have that other rule in front of me
25 but it will include the information to show good cause for a
26 late filing pursuant to section whatever it is.

27 CHIEF JUDGE DIPENTIMA: Okay.

1 JUSTICE PALMER: That seems to me, you know,
2 that that would work if we have some language. Do you know,
3 Judge DiPentima, were can table this for the moment and ask
4 the working group to come up with some language around the
5 lines that Jeff had suggested, get it out to us via email
6 and we can perhaps vote on it that way?

7 CHIEF JUDGE DIPENTIMA: That's fine with me if
8 there aren't any objections to it. I mean the purpose of
9 the rule essentially is to stop the fifteen day abuse that
10 keeps coming up being used, so I don't think it's terribly,
11 we can get the language from the other rule and that would
12 be fine. Okay.

13 JUSTICE PALMER: It will be something that would
14 be good to do sooner rather than later but it's not, you
15 know urgent in the sense that if we don't do it today we're
16 going into a problem.

17 CHIEF JUDGE DIPENTIMA: Right. Correct. That's
18 true.

19 JUSTICE PALMER: We can handle it that way.
20 Okay.

21 CHIEF JUDGE DIPENTIMA: That's fine.

22 JUSTICE PALMER: Okay. Thank you. Then after
23 this, whether to amend 61-14 to codify the holding in
24 Wachovia Mortgage. John or Jill, do you want to address
25 this?

26 ATTY. DEMEO: Your Honor, I'll speak to that. John
27 DeMeo. Let me see if can get this kind of confusing

1 procedural history of the Wachovia Mortgage case simple.
2 The homeowner had appealed for the fourth time I think from
3 a foreclosure judgment and the Trial Court had reset the law
4 days and ordered that there would be no appellate stay in
5 place as the Trial Court is entitled to - and the defendant
6 basically moved to dismiss the appeal as moot saying hey,
7 the law day has passed during the pendency of the appeal and
8 he didn't - the debtor didn't redeem the law days and
9 there's appellate law saying the Appellate Court cannot give
10 relief there where the law days have passed. So the bank
11 urged to be, the fourth appeal I think it was by the
12 homeowner moot because they law days had legally passed,
13 well the Appellate Court ordered the parties to address the
14 issue whether the Trial Court could legally reset the law
15 days, and the Appellate Court said no, it couldn't, the
16 appeal wasn't moot, the law day hadn't legally passed
17 because the law day was illegal, why because the homeowner
18 had sought review of the Trial Court's order saying there
19 would be no appellate stay. And the Appellate Court had
20 denied relief on the motion for review. And the Trial Court
21 reset the law date during the period of time when the party
22 was seeking reconsideration of the Appellate Court's ruling
23 on the motion for review, I think he sought reconsideration
24 en banc. So what the Appellate Court ruled in Wachovia
25 Mortgage was no, it's not moot, the law day didn't pass, the
26 law day was effectively illegal because there was a stay -
27 and the Appellate Court (inaudible) any stays, 71-6 talks

1 about reconsideration and I think 71-6 was intended reply to
2 reconsideration of an Appellate Court or a Supreme Court
3 decision. (Inaudible) so therefore it is not moot the law
4 date couldn't pass because the law day was illegal because
5 the Trial Court set the new law days at a time when the
6 debtor was seeking reconsideration of the stay. I don't
7 know if this is making sense to everybody. But in any case,
8 the Appellate Court held the language of 71-6 (inaudible
9 section) (a) shall continue until the time for
10 reconsideration has passed and if reconsideration is denied,
11 for twenty days thereafter and that twenty days is intended
12 to allow someone to petition for certification to the
13 Supreme Court. In any case the Appellate Court said that
14 language applied here - now is to codify the Appellate
15 Court's holding but that 71-6 language applies here in this
16 instance that when you file a motion for review, let's say
17 the Trial Court is saying there will be no stay or
18 terminating the stay and the Appellate Court denies you
19 relief, the stay still stays in place until the time for
20 reconsideration, so if you file a motion for reconsideration
21 and its denied, still another twenty days, because that's
22 what 71-6 says. So the Appellate Court - that that language
23 applied here so the intent of that 71-6 language (inaudible
24 section) motions for review of orders (inaudible section).
25 So the bank by the way petitioned to the Supreme Court said
26 no, no, the Appellate Court got it all wrong, the Supreme
27 Court denied certification, by the way, the bank was in

1 agreement - the Appellate Court ended up dismissing the
2 appeal as frivolous so I would, you know, the fact that
3 Supreme Court didn't grant certification, I don't even think
4 the Supreme Court had jurisdiction, the bank wasn't - But in
5 any case this is the intent to codify the Wachovia Mortgage,
6 put it in the rule and so now everybody can know legally,
7 you know, how long the stay is good for, whether the law day
8 can pass and maybe any other instance where the importance
9 of knowing exactly whether the stay was in effect and
10 somehow (inaudible).

11 JUSTICE PALMER: Thank you, John. Anyone have
12 any thoughts or no one needs to have John repeat that, do
13 we? Okay. Jeff.

14 CHIEF JUDGE DIPENTIMA: Unmute.

15 ATTY. BABBIN: Thank you. Jeff Babbin here.
16 This makes sense, I just had some questions about the
17 wording because while I haven't gone back and looked at the
18 Wachovia decision, it was trying to adopt a rule that was
19 regarding stays after a marriage decision with a motion to
20 the motion for review context where you also have stay
21 issues, and I understand that, but my concern is that by
22 simply importing the actual word for word language of 71-6
23 that it doesn't quite match up with the motion for review
24 context. While the Appellate Court may have tried to sort
25 of apply in this situation for amending the rule, my thought
26 on this is that we would in fact then change the language to
27 more closely fit the actual motion for review situation. So

1 my suggestion is when I was looking at this prior to the
2 meeting, and I scribbled on this was where the additional
3 language in 61-14 first paragraph, the line that starts with
4 otherwise, we say otherwise, until the time for filing a
5 motion for reconsideration under section 71-5 as expired and
6 then we continue the same sentence or, if such a timely
7 motion for reconsideration is filed, until the motion is
8 decided. It takes out extra verbiage, it takes out the
9 section until the appeal is determined, that doesn't quite
10 fit, it should be until the motion is decided which fits the
11 language in the previous part of the paragraph which, you
12 know, the Trial Court stay order is stayed pending decision
13 of the motion for the review. And it gets rid of the extra
14 twenty days which doesn't make sense because once a motion
15 for review is decided or once a motion for reconsideration
16 of a motion for review is decided and denied, there is
17 nothing further, there is no petition for certification,
18 there's just nothing to be done at that point and if no
19 motion for reconsideration, I don't know, it just didn't
20 seem that there was any further time for it to be waiting
21 for anything at that point. In the stay situation that
22 could be very important.

23 JUSTICE PALMER: John and then Wes.

24 ATTY. DEMEO: Yeah. There was a concern that
25 about the superfluous twenty days and to be clear, we could
26 promulgate a rule here that would effectively overrule
27 Wachovia into that insofar as there's that superfluous

1 twenty days. I think a little bit of - and you know, we
2 could do that because I don't think that twenty days, you
3 know, it doesn't really fit here. But as far as other than
4 to change, you know, overruling Wachovia insofar, I think
5 Wachovia was smart and good insofar as it recognized for the
6 first time that a stay should continue until the time for
7 reconsideration, for seeking reconsideration is sought, you
8 could quibble with them about the additional twenty days,
9 the superfluous twenty days, but I think it's important that
10 the language be clear that when all relief is granted on
11 the motion for review the stay will then continue until
12 final determination of the appeal. But I don't think
13 insofar as aside from the superfluous twenty days excess
14 verbiage is kind of necessary in here and also mirrors what
15 is says in 71-6 to be very clear about how long the stay is
16 good for or how long it's in effect.

17 JUSTICE PALMER: Wes.

18 ATTY. HORTON: Yes. I have a more basic
19 problem. I don't agree with Wachovia, period, and I just
20 think it's wrongly decided. And I think it's bad policy
21 also because it's one thing a motion for reconsideration on
22 the merits of the appeal, there are mistakes made and I'm
23 sure that Justices and Judges say look, we missed something,
24 but on a motion for reconsideration of a motion, it's
25 horsing around 99 percent of the time. I'm sure Judge
26 DiPentima will agree with me on that, you know, on motions
27 for review and then a motion for reconsideration of a motion

1 to review, I think there should be no further stay in that
2 situation unless the Appellate Court says, oh, my heavens,
3 this is really good motion for review, because 99 percent of
4 the time it's just horsing around. I don't think we should
5 make Wachovia the law in a rule. I think we need to say
6 something because Wachovia is out there, but I think we
7 should say exactly the opposite. So there.

8 JUSTICE PALMER: Jeff.

9 ATTY. BABBIN: Thank you, Wes, because I didn't
10 know that that was an option, but we are talking about rules
11 and if Wachovia is simply, you know, construing rules, then
12 certainly the rules since I think ultimately Judges of the
13 Appellate Court have to approve the rule change I think that
14 would be fine if we had something that said a motion for
15 reconsideration under section 71-5 does not continue the
16 stay unless the Appellate Court decides otherwise.

17 ATTY. HORTON: That's what I would do, yes.

18 ATTY. BABBIN: I would be fine with that also
19 because then the Appellate Court has the option of
20 continuing the stay if the motion for reconsideration says
21 something that they say oh, goodness, we didn't think of
22 that.

23 JUSTICE PALMER: My suggestion here given the
24 encrypting in the lunch hour is to table this for the time
25 being and you know have the working group look at this
26 because we've got sort two diametrically opposed
27 possibilities and a third that's maybe somewhere in the

1 middle but I'm inclined to agree with Wes actually, but it's
2 not what's proposed hardly and I think that there may be
3 some Appellate Court, one or more Appellate Court Judges who
4 would like to add some input into this, I don't know, but I
5 think rather than debating this back and forth today, I
6 think it makes sense to just table this, put it over for the
7 next meeting and in the meantime have a report back from the
8 working group, does that make sense?

9 CHIEF JUDGE DIPENTIMA: Justice Palmer, I agree
10 with you as I so often do and I think in particular in light
11 of the changes coming that makes a lot of sense.

12 JUSTICE PALMER: Okay. Thank you for your
13 input. I know, Wes, it's not easy for you to be so
14 straight-forward like that, so, you know. Okay. G, whether
15 to amend 67-8 to require that the cover page and the
16 certification page be included with any transcripts included
17 in the appendix. Jill, did you want to address that
18 briefly?

19 ATTY. BEGEMANN: Yes. There are actually a
20 couple of changes in this, the first one is in subsection 1
21 and that was the clerk's office had requested that the
22 complaint be included in the documents in part one of the
23 appellant's appendix. So that was, we added that. But then
24 the other one came as a request on a couple of Judges on the
25 Appellate Court that when there is a transcript page in a
26 party's appendix that it include the cover page and also the
27 certification page just for their reference.

1 JUSTICE PALMER: Yes, Clare.

2 ATT. KINDALL: Why not the answer then as well?
3 And I guess I have couple of bug-a-boos about the appendix
4 anyways and I have a question for a judicial members of this
5 committee, how is an appendix helpful? I'm finding that,
6 you know, you have an appellant's appendix, an appellee's
7 appendix, special appendices, all with different page
8 numbering, all with different kinds of ways to reference
9 them. Often people just put in there all of their briefs so
10 that they could have triple the briefs of what they were
11 arguing below. And so when you say you want the complaint
12 and you want the answer, and you know, it just seems to me
13 it would be helpful to know how is an appendix helpful to an
14 Appellate Court Judge, what do you guys need for your
15 purposes because I see a lot of appendices that are bloated
16 and frankly not helpful, at least even when you're trying to
17 respond to a brief and just, you know, my own personal pet
18 peeve, I had no idea on how to like reference page numbers
19 because everybody starts with A and they're all different.
20 And so was wondering 9if this is an opportunity not to get
21 something else back to the table or to the working
22 committee, but you know, I'm fine with these changes per se,
23 though I have a question about the complaint, but do we want
24 to have a little uniformity about what's an appendix, how
25 are they labeled, how are they paged numbered, and frankly
26 that this is not an opportunity just to resubmit all your
27 briefs again. For what it's worth, so one practitioner's

1 concerns.

2 JUSTICE PALMER: Can I just ask you, are people
3 having some trouble with the screen at this point and
4 hearing Clare going in and out? Yeah. This unfortunately
5 has happened when we've been up and running for more than a
6 few hours and it looks like it's a little better, I think
7 we're going to see if we can bear with this for just a few
8 more minutes, but I'm not sure it's going to be completely
9 resolved during this session. I'm not sure what, the
10 broader concern, Clare, you've expressed about the
11 appendices is sort of beyond the scope of I think of what
12 we're going to do today, but I guess the question is should
13 we do something with regard to this proposal and then look
14 at the broader issue in due course or should we table this
15 all together, I don't - Judge DiPentima, wat do you think?

16 CHIEF JUDGE DIPENTIMA: I certainly can will be
17 able to address some of Attorney Kindall's concerns about
18 the appendix. They are sorts of frustration for the Court
19 in terms of their - the range of usefulness we encounter,
20 but I think that is probably for another day. But in terms
21 of this, I don't see the problem with just making sure we're
22 aware of what day the transcript excerpt is referring to
23 when we go through the exhibit - when we go through the
24 appendix, to have the title page is helpful. We know it's,
25 you know, who the parties are and who the Judge is, what day
26 it is, as well as it's a certified copy, and I think that's
27 really the issue.

1 JUSTICE PALMER: Yes. Cathy.

2 ATTY. CALIBEY: Yeah. I don't have any problem
3 with the transcript. I would think if you're putting all
4 the relevant pleadings including the complaint and if you
5 want to say answer, I would put in the operative complaint
6 and answer because in cases sometimes there are many amended
7 complaints and many amended answers and you're just going to
8 get a million of them, so I think that you need to put the
9 operative in front of that.

10 CHIEF JUDGE DIPENTIMA: Yes.

11 JUSTICE PALMER: Jeff.

12 ATTY. BABBIN: Yes. I'm Jeff Babbin, so I agree
13 about the transcript cover page issue, I think that's
14 actually been our practice and it is a good practice so why
15 not codify it, I can understand the certification page as
16 well. And when I first looked at this earlier, I also had
17 written in operative like Cathy was saying, but then I
18 realized that there are appeals where you may also in
19 addition to having appellate issues (inaudible) you may be
20 appealing from perhaps a denial of an earlier motion to
21 amend or there may have been a motion to strike an earlier
22 count or earlier version of the complaint that may also be
23 an appellate issue, so I was actually going to suggest that
24 we say including the relevant complaints and therefore not
25 just - because I was worried if you just said the complaint
26 then we're going to put in every version of the complaint
27 and so I thought if you put in including the relevant

1 complaints then hopefully people will understand that you
2 only put in those that are relevant which would be the
3 operative complaint and sometimes an earlier complaint if
4 that's relevant.

5 JUSTICE PALMER: You could say relevant
6 complaint or complaints, but I don't think either way, Judge
7 DiPentima.

8 CHIEF JUDGE DIPENTIMA: Can I just say we are
9 saying in hope, in aspirationally I will say all relevant
10 pleadings that parties would understand that means the
11 operative complaint, whatever is at issue, the answer, but
12 that didn't work obviously. Whatever that adage is about
13 putting in certain things and not others, I mean, this is a
14 problem, putting it in at all to me is a problem that we
15 can't just say all relevant pleadings, but I think we're
16 beyond that so.

17 JUSTICE PALMER: Carolyn.

18 ATTY. ZIOGAS: Yes. I just went into a little
19 history of this, since the attorneys started planning the -
20 and not the clerk's files, we've developed that working with
21 directions from the court, both the Appellate Court and the
22 Supreme Court the documents that absolutely want in the
23 appendices and we have a rather extensive check list. And
24 the complaint is one of the things that often has been
25 missed and you get a call, you have to get the complaint
26 notice. So that's why it's very important for us. When we
27 return an appendices because it doesn't have the complaint,

1 you know, attorney's often will refer to this rule, well
2 it's not included here so how can you return it even though
3 it's been directed by the Appellate Court or the Supreme
4 Court Judge or Justice. But that is why it is important for
5 us to have that there so we can say, no, this is a document
6 that is absolutely necessary for the Court. Something we
7 always put in the relevant and operative complaint in the
8 appendices, the record.

9 JUSTICE PALMER: Clare and then Cathy.

10 ATTY. KINDALL: I am completely in agreement in
11 the transcript cover page and certification, I think that's
12 just good practice. And if you're going to put in complaint
13 I would not put relevant I would not put relevant anywhere
14 because as soon as you do that every good lawyer says oh,
15 every single version of my complaint is relevant. I would
16 simply say operative complaint and to the extent someone's
17 got a complaint about an earlier version of the complaint
18 they can assume that's their operative complaint for the
19 purposes of the appeal. I would include the answer. I
20 think if you only have the complaint and not the answer I
21 think you only have half the story as far as - and so if you
22 feel the need for to say, you know, the operative complaint,
23 I would say the answer.

24 JUSTICE PALMER: Cathy and then John.

25 ATTY. CALIBEY: I was just going to suggest
26 using the language operative or earlier complaint at issue
27 or other complaint at issue or and other complaint at issue

1 because there's probably going to be, should probable be and
2 not or. So that way they just don't put in other complaints
3 for no reason. So they give you the operative complaint of
4 if there's an earlier complaint that's really at issue in
5 the appeal, then you put that in as well.

6 JUSTICE PALMER: John.

7 ATTY. DEMEO: I'll just point out that if
8 someone doesn't include something in the appendix that
9 should be there or vise-versa puts something in there and
10 shouldn't be there, it doesn't mean - the Appellate Court
11 can get and see everything, you know, that was filed in the
12 Trial Court and sometimes they have to go, you know, the
13 intent of the rule was to put the burden on the parties to
14 prepare the record that the appellate clerk used to prepare,
15 they were pretty handy back in the day, and we're getting a
16 lot of excessive stuff in there, but there's no, you know,
17 the lack of putting something in there doesn't mean the
18 Appellate Court can't see it, you know, it just means
19 they're not going to find it in the appendix.

20 CHIEF JUDGE DIPENTIMA: Eventually they see it,
21 yes.

22 ATTY. DEMEO: Eventually.

23 ATTY. ZIOGAS: But they directed us to look for
24 it and make sure that it's there.

25 JUSTICE PALMER: Yes. Clare, is Cathy's
26 suggesting is that okay with you?

27 ATTY. KINDALL: Yes. I think Cahty's suggestion

1 is fine. I think the operative complaint or however you
2 worded it which was I think that will work.

3 CHIEF JUDGE DIPENTIMA: Yes. I think it was
4 and.

5 JUSTICE PALMER: Any other complaint at issues
6 or words to that effect, yes.

7 ATTY. KINDALL: Correct.

8 JUSTICE PALMER: If that's okay, I mean this
9 could be subject to raising the issue of appendices
10 generally, you know, at another meeting perhaps relatively
11 soon, but for the time being perhaps we can vote on G, as
12 it's drafted with Cathy's friendly amendment, does that make
13 sense?

14 ATTY. HORTON: I so move with the amendment.
15 Wes Horton, I so move.

16 JUSTICE PALMER: Thank you. Is there a second?

17 ATTY. KINDALL: second.

18 JUSTICE PALMER: Okay. Thank you. Any further
19 discussion? All in favor?

20 (The committee responds.)

21 JUSTICE PALMER: Opposed. Okay. Thank you. And
22 then H, which it's really la discussion matter regarding the
23 changing the 11:30 time for releasing advanced opinions. I
24 think this is something that Dan had raised for discussion.

25 ATTY. KRISCH: Yeah. I emailed Jill about it,
26 this is purely a practitioner's gripe which is the morning I
27 have a decision coming out I get no work done because I sit

1 around to 11:30 depressed about, you know, how am I going to
2 get authoritaded and print this time around. I wanted to
3 know whether there's some logistical or Court Operations
4 reason for 11:30, but if there's not, I don't see the need
5 for 11:30, and can that practice be changed, that's why I
6 brought it up.

7 ATTY. LEVINE: Eric Levine, I can sort of speak
8 to this a little bit. So if opinions are released in their
9 ordinary course not by way of slip opinion, they are
10 released initially to the Trial Judge at 8:30 and then to
11 the public at 11:30, including the attorneys and everybody
12 else. And I think the reasoning behind it was to give the
13 Trial Court an opportunity to review the case before the
14 public sees it and is able to comment on it. That has been
15 a long standing tradition. I don't know if with three hours
16 that they're given to review the case is too much. As far
17 as official legal publications, I would have to speak to
18 them to see whether it would be an issue to move that time
19 earlier whether there are any logistics on their end. I
20 don't think there are, but I would definitely have to talk
21 to them before any final decision was made. But I think it
22 was mainly to give the curtesy to the Trial Judge to be able
23 to review the decision before the public becomes aware of
24 it.

25 JUSTICE PALMER: Paul.

26 ATTY. HARTAN: So to Eric's point, Justice
27 Palmer and Judge DiPentima, if you would like I'm happy to

1 speak to Judge Carroll or Judge Bozzuto, Court Ops to find
2 out about the long standing release to the Trial Judge in
3 advance. I do recall this when we first started, but I know
4 we can get some further information on that, you know, get
5 back to the committee. If that is still a priority, Eric
6 could follow up with - and then perhaps they will address
7 Dan's concern.

8 JSUTICE PALMER: Wes.

9 ATY. HORTON: This is all news to me. I assumed
10 there was some technical reason why we waited to 11:30 since
11 it's just curtesy to a Trial Judge, I don't know, I'm in
12 full agreement with Dan Krisch. I think we should get it
13 the same time the Trial Court Judge does.

14 JUSTICE PALMER: Rich and then Giovanna.

15 ATTY. EMANUEL: Yes. Richard Emanuel, I was
16 going to make the same point, I think it would be great if
17 the lawyers could get in advance copy when the Trial Judge's
18 do particularly because in criminal cases it's not always
19 that east to get a message, a phone call, a visit with an
20 incarcerated client and even a few hours would help advance
21 that objective.

22 JUSTICE PALMER: What I'll do is and Judge
23 DiPentima can do it with the Appellate Court is Paul can
24 check into this from a logistical prospective to the extent
25 there is one, but to raise the concerns that members of this
26 committee have about having to wait until 11:30 and the
27 reason behind it and stuff and see if the members of the

1 Court can be persuaded that that's, you know, in essence
2 unnecessary. Carolyn, did you have question?

3 ATTY. ZIOGAS: No.

4 CHIEF JUDGE DIPENTIMA: Attorney Weller did.

5 JUSTICE PALMER: I'm sassing Clare again, I
6 think. Giovanna, you and then Jeff.

7 ATTY. KINDALL: I'm here.

8 JUSTICE PALMER: Oh, there you are, sorry about
9 that.

10 ATTY. WELLER: Thank you, Your Honor. No
11 question, I fully support the discussion. I was wonder if I
12 may be excused, I pushed a call from 12:15 to 12:30 and I'm
13 getting a lot of very angry messages. Is there any way I
14 can be excused from the rest of the meeting?

15 JUSTICE PALMER: Of course. Thank you for
16 hanging there as you have, I appreciate it.

17 ATTY. WELLER: Thank you so much everyone.

18 CHIEF JUDGE DIPENTIMA: All right. Bye.

19 JUSTICE PALMER: Jeff.

20 ATTY. BABBIN: Yes, hi. Jeff Babbin. I think
21 that would be terrific if decisions could be a little
22 earlier that's fine. I'll just point out there's now kind
23 of a two part way of issuing decisions because there's also
24 slip opinions which are only posted in the afternoon and not
25 in the morning and under the current system there is a link
26 that is shown at 1:00 but is not made live until 3:00 p.m.
27 or slip opinions, so there's like a second time when you

1 have to look in the afternoon to see if something was going
2 out. And in the past there haven't been that many of those,
3 they've been in very specialized situations, but I will
4 point out from my experience since the pandemic hit with the
5 exception of one decision, every Connecticut Supreme Court
6 decision that's been issued from March 24th through the
7 current day which is almost a two month period has been
8 issued as slip opinion only in the afternoon and therefore
9 doesn't show up in the morning when you look at the advanced
10 releases and they have not been designated for any
11 particular law journal date, they haven't received any
12 endnote - or (inaudible) or Connecticut pagination. So I
13 don't know how much longer that is taken place but it raises
14 concerns in some respects as Dan as raised under this new
15 normality.

16 JUSTICE PALMER: I didn't realize, Jeff, that we
17 hadn't alerted the Appellate Bar generally that this is what
18 we were going to be doing, you know, over this period of
19 time, but I should have realized it. I think that's
20 something that we can take up with our Courts and generally
21 speaking and report back to you, you know, we'll see what -
22 I don't know if one of the reasons why, maybe Paul can shed
23 some light on this, one of the reasons why there was this
24 difference in the time that the Trial Judges were getting
25 the opinions and the parties was so that the parties might
26 end up commenting on it and the Trial Judge wouldn't have
27 had an opportunity even to see what had happened in the

1 case. So Paul.

2 ATTY. HARTAN: Yes. I can comment on both of
3 those pieces. It's concern for the Trial Judges in terms of
4 the media piece of this is if the lawyers are commenting on
5 them and the Judge doesn't know, that was a concern for the
6 Judge. And also on the slip opinions, the 1:00 notice is
7 also media driven because the media checks for the cases in
8 the morning and then they have no idea that some slip
9 opinions coming out, the idea is that now they have some
10 understanding that there will at least be a notice that says
11 a case is coming out, they know to check the website at
12 those times and then they can cover a story. We got some
13 pushback as to on high profile cases that got slipped and
14 the media had no understanding that that was going to take
15 place because they thought everything was out at 11:30.

16 JUSTICE PALMER: Dan.

17 ATTY. KRISCH: I might have misunderstood Jeff's
18 question, but I thought Jeff's question was why is
19 everything being released as a slip opinion at the Supreme
20 Court but not for the Appellate Court?

21 ATTY HARTAN: That was - I'll defer to Justice
22 Palmer on that. That was sort of from the Court's
23 perspective, opinion from the Court (inaudible).

24 JUSTICE PALMER: Yes. I'm trying to remember
25 exactly what the rationale for that was and I - Paul do you
26 recall what the rationale was or

27 ATTY. HARTAN: I'll let Eric speak to that.

1 ATTY. LEVINE: I am very sorry my battery went
2 dead so I was cut off for a while, so I missed a lot of the
3 conversation, but I can speak a little bit to that, it was
4 just at the initial stages of this COVID crisis staffing was
5 - the staffing and the time in the office had changed
6 dramatically and I think the Supreme Court was really
7 interested in prioritizing getting their opinions out as
8 soon as they could. We had no idea that this crisis was
9 going to last as long as it has and we're still dealing with
10 a lot of issues with respect to that without getting into
11 too many details, but the Supreme Court has decided to take
12 that approach with respect to their opinions.

13 JUSTICE PALMER: As I say, I will raise this
14 issue with the Chief Justice and the members of the Supreme
15 Court and see if I can, you know, have any additional
16 insight into what the Court may be doing in addition to the
17 8:30, 11:30 disparity with regard also to the slipping of
18 opinions generally and if and when that might change.

19 ATTY. LEVINE: Eric Levine. Can I ask because I
20 missed the part of the conversation regarding the concern
21 regarding slip opinions, so maybe if someone could reiterate
22 what the issue or the concerns are with respect to those?

23 ATTY. HARTAN: Sure I can. This goes back,
24 Eric, if you recall, this was when the Supreme Court issues
25 opinions in the cases that media would like the cover and
26 then the media did not know, this goes back to our
27 discussions with external affairs, so to have the idea that

1 was that when a notice gets posted at 1:00 then a slip would
2 be issued a 3:00, the burden shifts to the media to check
3 the website. The problem was that at 11:30 some advanced
4 released opinions would be issued and then we would slip a
5 case at 3:00 and they would no idea and then the calls would
6 come in and you know, the Court slipped the case on Friday
7 after noon at 3:00 and nobody knew it was coming out. This
8 was sort of driven by that and then there were some concerns
9 about some people heard there might be an opinion coming,
10 this was really to kind of harness the whole thing and to
11 make sure that notice was given. So that's what the
12 previous question of Jeff had raised.

13 ATTY. LEVINE: Eric Levine. So we did go and
14 discuss pretty extensively the slip and part one of the
15 reasons is slip opinions are a different creature because
16 the Court and the support staff are working up to possibly
17 the last minute to release these, so it's not something that
18 necessarily lends itself to being released in the morning
19 and that's why we have set out specific guidelines and this
20 is listed on the website in terms of when these cases get
21 announced and when they are released, so it's just a
22 different creature altogether that necessitates a different
23 timeline.

24 JUSTICE PALMER: Charlie.

25 ATTY. RAY: Could I just throw in I understand
26 you're working on them up to the last minute, it would be
27 helpful to us, I think if we could go on the site in the

1 morning and see that we're going to have these opinions
2 released at 11:30, and we're going to have this slip opinion
3 released at 3:00 so that we're not having to check the site
4 multiple times or remember to check the site multiple times
5 to pick up the slip opinions because the next day the
6 opinion disappears and then we got to go to the archives to
7 make sure that we're up to date if we forgot to check in the
8 afternoon and we missed the slip opinion. So if we could
9 just get one notice in the morning of everything that's
10 coming out that day I think that would certainly solve my
11 problem.

12 ATTY. LEVINE: Eric Levine. So as a concern
13 about getting notice as an attorney on the case or as a
14 general member of the bar or the public?

15 ATTY. RAY: If I'm a member of the public, I
16 would like to go in the morning and see that these opinions
17 are coming out today. Some are coming out at 11:30 and some
18 are coming out at 3:00 so that I don't have to check the
19 website multiple times to see what is coming out that day.

20 ATTY. LEVINE: Okay. I can respond to that. So
21 the problem is that we may not know with a slip opinion
22 unlike an opinion that's released in the ordinary course,
23 that case is actually finalized the day before, so we know
24 we can go final on it, the parties are given notice that day
25 but we do not indicate what the result of the case is. A
26 lot of you have litigated cases before the Court, so you
27 know this and then the case is released the next day. With

1 slip opinions it's not always - we're not always sure
2 whether we're going to be able to release the case that day
3 and the Court wants it out as soon as possible, so we may
4 not know until 11:00 or 12:00 whether we're going to be able
5 to release an opinion that day. As a result of that that's
6 why we need to have that extra time to notify or to do the
7 release - so that is why we can't always know for sure
8 whether a case, a slip opinion is going to be released early
9 in the morning that day because it could be being worked on
10 that day and we won't know, we have a certain deadline
11 during the day we can decide at that point whether a case
12 can or cannot be released. In which case if it can't, we
13 have to wait to the next day, next business day. I
14 understand there's a little bit of an inconvenience here,
15 but it's more for the logistics of how these slip opinions
16 work and I know it's a little bit inconvenient for the bench
17 and bar in that sense, but it is a necessity unless the
18 Court wants to say we will follow a different procedure with
19 respect to this in which case that might delay getting slip
20 opinions out. I mean, we've been told by the Court that in
21 some situations we need to get a slip opinion as soon as
22 possible, so that means we may be working to 11:30, we won't
23 know at 8:30 that that case is going to be released that
24 day.

25 JUSTICE PALMER: In this regard, we have to wrap
26 up here because a number of us have other places we need to
27 be. But I will take these issues up with the Supreme Court

1 and the Chief Justice and express the concerns that you have
2 expressed. There may be ways to resolve this and it may be
3 that if we don't know before 11:00 that we're going to be
4 able to get a case out, we just won't get it out until the
5 next day, you know, so that we can give you notice. That
6 will be sort of a policy decision that the Court will make,
7 but if it at least the Court ought to know what your
8 concerns are before we make a definitive decision about just
9 continuing on the same path. So it's something that we'll
10 look into and get back to you on. Clare, did you have a
11 comment?

12 ATTY. KINDALL: I think if we're going to have
13 further discussions, that's great. My complaint simply was
14 that in the AG's office I'm responsible for all the
15 decisions, but I'm not all of the cases because each
16 individual AAG has their appearance, it's not a firm
17 appearance, so to the extent that we don't have to check
18 twice and then go back to archives to figure it out, the
19 exceptional, slip opinion I understand, but if it becomes
20 sort of the practice of the Court, this is how you're
21 releasing your decisions, then that changes the circumstance
22 and then we're all kind of scrambling.

23 JUSTICE PALMER: Yes. And I think frankly this
24 may be the, I mean, slipping opinions like this may be the
25 approach that we take for some time, I don't know how long.
26 Then I think we can wrap up, I just wanted to say that had
27 hoped that we might be able to talk a little bit about the

1 experience some of you or other of your colleagues have had
2 with regard to the oral arguments and other things since the
3 pandemic hit, but I don't unfortunately think we really have
4 time to do that now. I was going to discuss that as other
5 business but I'm afraid really not feasible to do it right
6 now. But we'll have occasion to do that, you know,
7 relatively soon. Unless anyone has anything, I just want to
8 say, and I think Judge DiPentima may want to say something
9 too. This will be my last meeting as co-chair and I want to
10 just thank you all for, it's been a very enjoyable
11 experience for me, I learned a tremendous amount from all
12 of you, and I thank you for your really incredible service.
13 Some of you have been doing this for a really long time and
14 all of you are very good at it. And I want to in particular
15 thank, you know, those of you who volunteer but in addition
16 the staff who have just done a phenomenal job really many of
17 them over the years in working groups and other ways to
18 facilitate the business of the Appellate Courts, so I think
19 you all for that. Judge DiPentima.

20 (The committee applauds.)

21 CHIEF JUDGE DIPENTIMA: And I join Justice
22 Palmer in saying that this is my last meeting with you all
23 and I too have enjoyed it, have learned so much, and most
24 appreciative of all of your efforts and time and good cheer
25 and good humor. And it's been a real pleasure every, twice
26 a year I guess we're doing it, but to serve with Justice
27 Palmer these last few years has been a particular treat for

1 me and I look forward to seeing you all in the future, but
2 not in this role. So thank you, thank you all very much.

3 (The committee applauds.)

4 JUSTICE PALMER: I didn't say exactly the same
5 thing about Chief Judge DiPentima, it's been an absolute
6 pleasure serving with her in particular, so. All right.
7 Everybody, thank you again, everyone stay well and take care
8 everybody.

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THE ADVISORY COMMITTEE ON APPELLATE RULES

: MAY 21, 2020

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the Advisory Committee on Appellate Rules meeting heard at the Appellate Court, Hartford, Connecticut, on the 21st day of May, 2020.

Dated this 28th day of May, 2020, Hartford, Connecticut.

Lori Van Buren
Court Recording Monitor