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MEETING OF THE SUPREME COURT ADVISORY COMMITTEE

August 27, 2011

(SATURDAY SESSION)

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Taken before *D'Lois L. Jones*, Certified
Shorthand Reporter in and for the State of Texas, reported
by machine shorthand method, on the 27th day of August,
2011, between the hours of 8:59 a.m. and 10:23 a.m., at the
Texas Association of Broadcasters, 502 East 11th Street,
Suite 200, Austin, Texas 78701.

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INDEX OF VOTES

(No votes were taken during this session)

Documents referenced in this session

11-15 Interim Report of Task Force for Post-trial Rules in
Cases Involving Termination of the Parental Relationship

1 this task force, and our immediate charge was since part of
2 the statute takes effect September 1st and the immediate
3 concern is what do we do about people proceeding as
4 indigent under the new statute and what do we do to TRAP
5 20.1. So right now the only proposal that's back from the
6 task force is in your material, the proposed changes to
7 20.1, and it would be this new sub (3) and then also on (c)
8 just some additional language that makes it clear that the
9 new section of the Family Code kicks in.

10 Now, I'm going to let Sandra explain to the
11 best of the committee's and especially her knowledge what
12 this new section in Chapter 107 of the Family Code means in
13 terms of indigence.

14 MS. HACHEM: Hi. Well, as you probably know,
15 for a long time we've had a very strange procedure on
16 appeals for parental termination cases that House Bill --
17 I'm sorry.

18 CHAIRMAN BABCOCK: Sandra, could you speak up
19 a little bit?

20 MS. HACHEM: Okay.

21 CHAIRMAN BABCOCK: Some of our hard of
22 hearing down there are --

23 MR. GILSTRAP: You can sit if you like. It's
24 okay.

25 MS. HACHEM: Okay.

1 CHAIRMAN BABCOCK: You can do anything you
2 want.

3 HONORABLE DAVID EVANS: Don't be nervous.

4 MS. HACHEM: Okay. We had a procedure where
5 you had to have a hearing within 30 days to determine
6 indigence, and sometimes the lawyers were not -- that were
7 appointed didn't know if they were supposed to continue.
8 House Bill 906 fixed that by making sure that the attorney
9 that is appointed at trial for an indigent parent is going
10 to continue for the appeal unless they get a substitution
11 or the case is over because they don't want to appeal
12 basically. The problem, though, in the new legislation was
13 it didn't address whether the person who has an appointed
14 attorney has the right to appeal without advance payment of
15 costs under Rule 20, so that's going to cause some
16 confusion on September 1 when that becomes effect.

17 Some lawyers may think they don't have to
18 file an affidavit of indigence anymore, so the task force
19 wanted to make sure that these appointed attorneys will not
20 have that problem by -- we added a rule or subpart to
21 (c)(3) of Rule 20 to ensure that if they had an appointed
22 attorney, that person also is considered to be able to
23 proceed without advance payment of costs under Rule 20,
24 even if they don't file an affidavit of indigence, and
25 that's all we're doing right now. We obviously want to do

1 a lot more to try to speed up appeals, as the Legislature
2 has asked, but this is the one we felt was most needed for
3 right now.

4 CHAIRMAN BABCOCK: Okay. And you're going to
5 come back in October and talk to us about the other --

6 MS. HACHEM: Yes.

7 CHAIRMAN BABCOCK: -- things, right?

8 MR. SPAIN: Correct.

9 CHAIRMAN BABCOCK: Okay.

10 MR. SPAIN: One of the things that's
11 important under this section 107 is, is that the indigency
12 under the statute is key to the appointment of an attorney
13 ad litem for the parent, you know, whose rights are up for
14 a termination, and so one thing that this proposal in here
15 won't change is, is let's say that you don't get an
16 appointment by the trial court judge for an attorney ad
17 litem and you're not indigent in the trial court, and
18 obviously the proposal here is, is that whatever this
19 indigency means it also carries forward into being indigent
20 for the purpose of having to pay for the appellate record
21 and any court filing fees so we can move on with the case.

22 Let's say, for instance, you're not indigent
23 in the trial court, but heaven forbid, by the time you are
24 finished with the trial you are now indigent, which we can
25 all easily foresee happening. In that situation, that

1 parent would have to file an affidavit of indigence just
2 like any other appeal. So that's going to be addressed
3 when the committee comes back with further recommendations.
4 Right now what we're trying to do is set up what the task
5 force thinks is logical, which is if you're indigent and
6 the statute says it continues throughout the case and on
7 appeal, it takes care of the cost issue as far as the TRAPs
8 are concerned, but it's not going to change the situation
9 for somebody who wasn't indigent at trial but is now
10 indigent.

11 Under the old statute that was taken care of
12 because the trial court had to hold a hearing, had to make
13 an affirmative finding on the record. It really was a
14 different procedure than TRAP 20. Now for those people who
15 weren't indigent originally but are now indigent, they're
16 going to be over in TRAP 20.1 land, and we'll have to deal
17 with some of that later. Do y'all have questions for us?

18 CHAIRMAN BABCOCK: Well, knowing this crowd,
19 I'm sure; and you are proposing, if I've got this right,
20 new language in 20.1(a)(3)? Is that the first place --

21 MS. HACHEM: Yes, that's correct.

22 MR. SPAIN: Yes.

23 CHAIRMAN BABCOCK: -- you propose new
24 language? Okay, so let's look at that. There is no
25 subsection (3) currently in the rule, I believe, correct?

1 MR. SPAIN: Correct.

2 CHAIRMAN BABCOCK: So this is all new
3 language. All right. So let's discuss this first.
4 Anybody have any comments about the language that's
5 proposed in 20.1(a)(3)? Yes. Justice Gray.

6 HONORABLE TOM GRAY: The first sentence I
7 don't have much comment about. The presumption is fine,
8 and it actually does something that from the appellate
9 court's perspective I wish we would do with all cases in
10 which a determination of indigence has been made, and I've
11 made that pitch before when we were adopting (a)(1), which
12 was the certificate, IOLTA certificate, carry forward. I
13 would really like to see it broadened. I understand the
14 exigencies of the circumstances that they want to do it
15 just with the parental rights cases, but nothing -- or very
16 seldom does anything change in these cases where they're
17 already determined to be indigent.

18 There is an interesting twist that has
19 developed in some cases out of our court that we do talk
20 about without the advance payment of costs. The question
21 becomes then at the end of the appellate process whether or
22 not you still assess costs, and this becomes real important
23 if the terminated parent also happens to be incarcerated
24 and a notice that goes over to the TDCJ regarding the
25 payment of costs out of an indigent -- or an inmate's

1 account, but, again, recognizing the indigence -- the
2 pressures, time pressures, I recognize that that issue is
3 not going to be addressed here.

4 The second sentence in the paragraph, I just
5 have out in my notes in margin, what in the world is this
6 doing in a rule on indigency about filing a notice of -- a
7 notice of who the attorney is. Is the parent going to -- I
8 mean, it says the parent is going to have to file it. Does
9 that really mean the parent's attorney? Otherwise we
10 always refer to a party position in these type rules, the
11 appellant shall -- would file with the appellate court the
12 sworn or certified copy. You're now filing another
13 document in an appellate court that is going to be a piece
14 of paper, and is this just going to be floating around
15 until we get a notice of appeal and find out whether or not
16 there actually is going to be an appeal? Do we go ahead
17 and file, open up a shuck, create an appeal and then never
18 get the notice of appeal? I do not understand the purpose
19 of getting a piece of paper filed before the notice of
20 appeal that designates or tells us who the attorney is
21 going to be.

22 CHAIRMAN BABCOCK: Okay. Judge Evans.

23 HONORABLE DAVID EVANS: I'm reviewing the
24 legislation and the rule. Do I understand that -- did the
25 Legislature consider whether or not court reporters could

1 challenge it? Did they reject court reporters challenging
2 this? Is it only the district clerk that can challenge it
3 as a nonparty?

4 MS. HACHEM: Well, actually, there's no
5 contest even permitted in this procedure, because basically
6 the only challenge would be what's currently authorized
7 under 107.016 of the Family Code, which is somebody would
8 have to file a motion to contest, and that would have to be
9 a governmental entity contesting the indigence for purposes
10 of the appointment of attorney. See, the -- see, what this
11 new provision does is it ties the ability to proceed
12 without advance payment of costs to the appointment of
13 attorney under the procedure of 107.013 of the Family Code,
14 and that's what was amended by House Bill 906.

15 So what we needed to do was make sure that --
16 and I, in fact, could address your question. We needed to
17 make sure appellate courts know quickly that this is an
18 appeal where someone is indigent and entitled to a free
19 record, because these are supposed to be accelerated
20 appeals, and if they don't know right away that this is an
21 appeal involving an indigent person they're going to start
22 sending out notices saying "Where is your money for the
23 fees," all this stuff, and they're also going to be
24 wondering why the record is not filed yet when it's the
25 responsibility of the appellate court to ensure the record

1 is timely filed.

2 HONORABLE DAVID EVANS: I'm not -- I'm not
3 sure that I made my question clear, and given my hearing
4 sometimes I'm not sure that I understood the answer, but
5 having said that, I'm looking at the Family Code amendment,
6 and it just says after any subsequent -- the presumption
7 continues and any subsequent appeal unless the court after
8 reconsideration of a motion of a parent, the attorney ad
9 litem, or the attorney representing the governmental entity
10 -- I assume that means the clerk -- can challenge, can come
11 in and challenge the status after trial for the preparation
12 of the reporter's record, but the reporter cannot? Is that
13 what was intended?

14 MS. HACHEM: Actually, it's only addressing
15 governmental entities in that provision so -- and normally
16 the reporter can be -- is a state employee, so I would --

17 HONORABLE DAVID EVANS: No, they're a county
18 employee.

19 HONORABLE STEPHEN YELENOSKY: And that needs
20 to be made clear. Judge Evans is right. The people with
21 the greatest incentive to challenge the indigency are the
22 court reporters, and I'm sympathetic to that, but in this
23 contest the decision has been made, it sounds like, that
24 they not be able to do that, and that needs to be made
25 clear here, and irrebuttable presumption or presumption --

1 even something that mentions the court reporters, make that
2 absolutely clear.

3 HONORABLE DAVID EVANS: When you have a
4 challenge on appeal in a trial court on a status, you have
5 two challenges brought, one by the district clerk for the
6 cost of the reporter's record and the second challenge
7 which dovetails in is somewhat sometimes silent because
8 it's your reporter, is that of the court reporter, and
9 there are two different entities -- or two different
10 parties that challenge that.

11 MS. HACHEM: Of course, the court reporter is
12 going to be paid for by the county. So their interest in
13 challenging is different than a governmental entity. The
14 governmental entity has more of an interest because --

15 HONORABLE DAVID EVANS: Well, maybe that's
16 how you -- maybe if they're going to accept that burden, I
17 think that's fine. The only thing I would say then is that
18 this rule probably needs to at least have some vetting by
19 the clerks as we implement it, since they're the ones now
20 responsible for paying costs. See, the district
21 clerk doesn't -- one problem that -- I guess there's
22 actually two parties now from your viewpoint. One is the
23 district clerk, an elected official, and the county
24 commissioners as the party who is going to pay the reporter
25 for the record.

1 CHAIRMAN BABCOCK: Justice Bland.

2 HONORABLE JANE BLAND: What you're talking
3 about is the trial court proceeding to determine indigency.

4 HONORABLE DAVID EVANS: Right. You see this
5 as --

6 HONORABLE JANE BLAND: When a case goes up on
7 appeal there's another indigency proceeding where somebody
8 has to file another affidavit saying "I'm still indigent"
9 and sometimes that has to get -- sometimes there has to be
10 a hearing and da-da-da-da-da. What this rule is intended
11 to do is stop that second proceeding and say we're going to
12 have -- we're going to keep the first proceeding, if the
13 trial judge has said that the party is indigent and
14 appointed a lawyer and had the proceeding with the court
15 reporter and the clerk and all of that and decides that the
16 party is indigent, we're not going to make them go through
17 a second process on appeal, and that's a very good thing,
18 because that second process is confusing to both the
19 lawyers and some trial -- just people in general because
20 people don't understand it's a second proceeding, and it's
21 a huge time suck. It takes a lot of time to determine
22 whether, again, on appeal these people are indigent, and in
23 the meantime you're not resolving the merits of the case.
24 So this rule doesn't really address what you're talking
25 about. It's intended to alleviate a different problem

1 about a determination of indigency on appeal. Is that --
2 that's right?

3 HONORABLE DAVID EVANS: But what I understood
4 was, is when that challenge is filed in the appellate court
5 it's remanded to me for the evidentiary hearing --

6 HONORABLE JANE BLAND: Right, but you've
7 already --

8 HONORABLE DAVID EVANS: -- and so I'm the
9 one that -- and I live in a county where the district clerk
10 challenges all of these.

11 HONORABLE JANE BLAND: Listen, you're not
12 alone.

13 HONORABLE DAVID EVANS: Okay.

14 HONORABLE JANE BLAND: You're not unique.

15 HONORABLE DAVID EVANS: All right.

16 HONORABLE TOM GRAY: Yes, he is.

17 HONORABLE STEPHEN YELENOSKY: Not in that
18 way.

19 HONORABLE JANE BLAND: Not in that way.

20 MS. HACHEM: If I could just address --

21 HONORABLE JANE BLAND: If it gives you
22 comfort, you would have already found -- in this case you
23 would have already found this parent to be indigent, and so
24 it's a -- I think the Legislature has looked at it and said
25 what's the benefit of the second indigency proceeding

1 because in most cases these people aren't going to find new
2 found sources of wealth in the short time that we're doing
3 these termination proceedings, and in the meantime we've
4 got a child whose parents and -- a child whose situation
5 remains unsettled.

6 CHAIRMAN BABCOCK: Sandra or Kin.

7 MR. SPAIN: Well, specifically I think the
8 legislation, you know, if all of us had been there
9 concerned about what this means for appellate costs, the
10 Family Code provision might be tweaked a little differently
11 because the task force spent some time talking about the
12 fact that this is clearly indigency for the purpose of
13 representation and does that also by -- you know, does that
14 also mean it needs to be indigency for the purpose of
15 appellate costs and the preparation of the record, and I
16 think logically that makes sense since what we're trying to
17 do is put these cases on a fast track, and that's the
18 reason why there's this language, "and is also presumed to
19 be indigent for the purpose of appealing in appellate court
20 without advance payment of costs," because when we talk
21 about indigency in the Family Code I don't think it's
22 entirely clear that the Legislature specifically had in
23 mind costs, but when we use indigency over in the TRAPs,
24 that's what we're talking about, and so that's the reason
25 why the task force wanted to go ahead and make sure that we

1 were using the word -- the indigency concept both in terms
2 of what the Family Code means and specifically importing
3 that concept into what indigence means for the TRAPs.

4 CHAIRMAN BABCOCK: Justice Bland.

5 HONORABLE JANE BLAND: Sandra, could you
6 address Justice Gray's comment about the second sentence of
7 your proposed language?

8 MS. HACHEM: Yes. The reason we need to have
9 some document filed as soon as possible with the appellate
10 court is to make sure the appellate court does know this is
11 a case where a parent has -- this special procedure where
12 they get a free record right away. Otherwise the appellate
13 court won't know to tell the district clerk and the court
14 reporter, "I want that record in, you know, 60 days" or
15 whatever the new time lines are for an accelerated appeal;
16 and what I've found, since I do appeals -- I do quite a few
17 every year in this area. My -- the biggest delay that I
18 find in these cases is because the appellate court is
19 unsure whether this person is indigent, and so they don't
20 get into the process. The clerk's office doesn't get into
21 the process of making sure the record is timely for an
22 accelerated appeal.

23 MR. SPAIN: And to follow up --

24 HONORABLE TOM GRAY: And to -- go ahead, Kin.

25 MR. SPAIN: If I could follow up on that.

1 Under the current provisions of the Family Code, which are
2 about to change on September 1st, the trial judge has to
3 affirmatively make a finding of whether the parent whose
4 rights have been terminated is indigent for the purposes of
5 appeal. The problem is that comes up in the clerk's
6 record, and so a lot of time is spent, you know, like where
7 is your 175-dollar filing fee, have you paid for the
8 clerk's record, and on and so forth, and by the time we get
9 the clerk's record and then you go, oh, that was decided
10 four months ago, and so the idea behind this second
11 sentence in here, and it may need to be tweaked, but is
12 that we get that information, you know, from the very
13 beginning, so we don't spend time on asking for money, and
14 we move forward.

15 HONORABLE TOM GRAY: The better place to put
16 that concept is in the notice of appeal in --

17 HONORABLE JANE BLAND: Yeah.

18 HONORABLE TOM GRAY: I was looking at the --
19 I think it would be item (8) in the contents of the notice
20 of appeal, but the practitioners are not going to know it's
21 over there. It's not going to get done, and therefore,
22 it's not going to achieve the purpose that you want it to
23 do. It's, I think, going to create some havoc at the
24 intermediate appellate courts if it is filed as a separate
25 document. In civil proceedings we are supposed to receive

1 a copy of the notice of appeal anyway. The notice of
2 appeal is supposed to tell us whether or not it's an
3 accelerated proceeding.

4 Frankly, we don't always get notices of
5 appeal that comply with the rules, but nevertheless, if
6 it's in there and that's what you're trying to accomplish,
7 I think the better place to try to accomplish it is going
8 to be over in the notice of appeal that is supposed to come
9 to us as the first document that we get that creates the
10 shuck, it vests us with jurisdiction. I mean, there's
11 going to be a whole subcategory of cases that get decided
12 about what -- does this invoke our jurisdiction, is it a
13 jurisdictional question. You know, let's just not go
14 there. Let's just put it in the notice of appeal as an
15 additional requirement in this kind of case. I was trying
16 to quickly find the specific provision in the --

17 MS. HACHEM: 26.3.

18 HONORABLE TOM GRAY: It would be 25.1(d),
19 specifies the contents of a notice of appeal for a civil
20 case. Item (8) could be some -- some factor of what you're
21 talking about there. "If this is an appeal under Family
22 Code, section 107.013, and they're being pursued as an
23 indigent."

24 MS. HACHEM: The only comment I would make
25 about that is that my experience is that the appellate

1 courts want proof that the person is indigent usually, and
2 I don't know in your court how y'all do that.

3 HONORABLE TOM GRAY: Frankly, if they make
4 that affirmation and we subsequently find out that there's
5 not already been a determination made in a trial court as
6 would be required in this circumstance, they're going to
7 have some bigger problems than what's happening in that
8 appeal, but I don't think that would be a -- I don't think
9 that would delay us proceeding on to get the record from
10 the clerk and the reporter, but yet in a process in which
11 you're trying to speed the process up, now there's another
12 piece of paper floating around, and I think it would be
13 real easy to just put that over in the notice of appeal and
14 achieve the result that the second sentence is trying to.

15 CHAIRMAN BABCOCK: Justice Bland, then Judge
16 Yelenosky, then Justice Christopher.

17 HONORABLE JANE BLAND: I agree with Judge
18 Gray, Justice Gray, that the second sentence probably
19 should come out, and what I'm wondering is I think you're
20 right that the appellate courts have requested -- required
21 proof in the past, but that's because we have to, and so
22 with this presumption we're not going to have to anymore,
23 and I'm wondering, Kin, what we do in criminal cases,
24 because those -- it seems like we -- we have plenty of
25 indigent defendants who are appointed by counsel in

1 criminal cases, and we don't go through any process at all.
2 Is it in the notice of appeal in criminal cases where they
3 say they're indigent, or do we just know they're indigent
4 because they're appointed, or what happens, do you know?

5 MR. SPAIN: Well, there's no appellate costs
6 in criminal case. So the only --

7 HONORABLE JANE BLAND: There's no filing fee.

8 MR. SPAIN: I mean, there's the cost of them
9 paying for the clerk's record, but we don't ever have to
10 ask for a filing fee, and so then it only occurs on the
11 have you filed the clerk's record and the reporter's
12 record.

13 HONORABLE JANE BLAND: There's a record and a
14 reporter's record.

15 MR. SPAIN: Correct. I'm just saying there's
16 no initial letter that goes out saying, "Where's your
17 filing fee," so we get past that in a criminal case.

18 HONORABLE JANE BLAND: But that's because we
19 know they're indigent.

20 HONORABLE TOM GRAY: In criminal cases there
21 is no filing fee at all at the appellate level.

22 HONORABLE JANE BLAND: No filing fee, but
23 there are other fees associated with it and --

24 HONORABLE TOM GRAY: The reporter's record
25 and the clerk's record come up because they -- the trial

1 court when they appointed counsel and did all of that,
2 they've already determined them to be indigent, and that
3 process is handled at the trial court. We don't get
4 involved in that.

5 HONORABLE JANE BLAND: Right, which is
6 exactly what we're mimicking over here. So I'm just -- I'm
7 agreeing with you. I don't see why we couldn't with a
8 statement of indigency in the notice of appeal just handle
9 it like a criminal case.

10 CHAIRMAN BABCOCK: Judge Yelenosky, then
11 Justice Christopher.

12 HONORABLE STEPHEN YELENOSKY: Well, two
13 things. One is do we really need somebody to file a
14 certified copy of what's already in the court's file at the
15 trial level. I don't know how that works, but if there's
16 an appeal of a termination case, could there merely be a
17 reference in the appeal notice that they proceeded by --
18 with appointed counsel, and if anybody really wants to
19 check that they can check it. It's in the court's file.
20 So do we really need this certified copy?

21 Second point is, is there some consequence of
22 not doing it within 10 days afterwards, and if that
23 consequence is to be a loss of the presumption of indigence
24 then I have a problem with that.

25 CHAIRMAN BABCOCK: Justice Christopher.

1 HONORABLE TRACY CHRISTOPHER: I just have a
2 question about the wording of that second sentence, too,
3 and I guess you're trying to capture the idea that
4 sometimes you have a different attorney on appeal than you
5 do at the trial court level with the way you have it worded
6 there, because it says "if the order of appointment is not
7 signed until after the filing of the notice of appeal." I
8 understand what you're trying to capture, but that strikes
9 me as confusing.

10 So you have a lawyer that's appointed already
11 to represent them at the trial court stage, and I think we
12 need to be careful in terms of the notice of appeal that it
13 doesn't get dropped because the trial judge is now
14 appointing, you know, appellate counsel instead of the
15 trial counsel being responsible for the notice of appeal.
16 You know, or so the way that's written we can fall into
17 that trap. The parent could fall into that trap because
18 the trial counsel is going to say there's this new
19 appellate counsel appointed, and, you know, the appellate
20 counsel is appointed past the 20-day time frame, and we've
21 had this happen, and then the appeal gets messed up.

22 MS. HACHEM: Well, that's why House Bill 906
23 added 107.016 to the Family Code so that the attorneys
24 understand that they continue to represent until the
25 court -- it does appoint someone else. So it won't -- you

1 won't be having the problems you used to have with respect
2 to that, but also that sentence was added really more to
3 address the situation where a parent might not have had
4 appointed counsel at trial but then after the appeal
5 there's another determination of indigence, and at that
6 point we wanted to have an opportunity that if they got
7 appointed counsel after the judgment was signed that they
8 would have an opportunity to proceed as an indigent. So
9 something happened in their financial circumstances.

10 HONORABLE STEPHEN YELENOSKY: Sandra, can you
11 address my question?

12 HONORABLE TRACY CHRISTOPHER: I'm sorry, but
13 if they're doing that there's a contest, right?

14 MS. HACHEM: That's true, and that's not
15 addressed in the proposed rule. If there's -- it can
16 happen, but it's not very common that you're going to have
17 -- as you've already mentioned, that there's a change in
18 status between the time of trial through to the appeal, but
19 we wanted to make some provision for if that possibility
20 occurred.

21 As to your question, which is do we really
22 need a certified copy, the reason that that was added was
23 really in light of the idea that an appellate court would
24 want proof early in the stage, but if the court --

25 HONORABLE STEPHEN YELENOSKY: It sounds like

1 the appellate judges, they don't want it.

2 MS. HACHEM: It sounds like you've got some
3 appellate judges here that don't care about it, so maybe we
4 were misguided in that thought, but if we don't need that
5 that obviously would be much more helpful, but we just
6 wanted to make sure we had something in the appellate court
7 file that they would accept so that they would start the
8 process quickly.

9 HONORABLE STEPHEN YELENOSKY: It sounds like
10 the appellate judges would be happy with an irrebuttable
11 presumption of a continued indigence by assertion, subject
12 to somebody --

13 MS. HACHEM: If they're happy with that I'm
14 happy with that.

15 HONORABLE STEPHEN YELENOSKY: What about the
16 10 days?

17 MS. HACHEM: Well, I guess if we're just
18 putting it in the notice of appeal --

19 HONORABLE STEPHEN YELENOSKY: If you take
20 that out.

21 MS. HACHEM: Yeah, then we're not going to
22 have that problem, and it looks like if you had a situation
23 where you were appointed counsel after you filed your
24 notice of appeal, say that happened, then I guess you could
25 amend your notice of appeal as the appellate rules provide.

1 CHAIRMAN BABCOCK: Justice Gaultney.

2 HONORABLE DAVID GAULTNEY: I just want to
3 make sure. You used the word irrebuttable presumption.

4 HONORABLE STEPHEN YELENOSKY: I didn't mean
5 that.

6 HONORABLE DAVID GAULTNEY: Is the purpose of
7 this to say that if you got appointed counsel for appeal or
8 at --

9 MS. HACHEM: For trial.

10 HONORABLE DAVID GAULTNEY: -- trial, that
11 there will be no contest?

12 MS. HACHEM: Correct.

13 HONORABLE DAVID GAULTNEY: Well, what --

14 MS. HACHEM: Well, there could be under the
15 procedure of 107.106. It would only be as provided by
16 107.106 because your right to the advance payment of costs
17 exemption is tied to the appointment of counsel, and so
18 under that procedure the only way that's going to change is
19 if somebody has the requisite standard met to file a motion
20 to challenge it and then the court decides at this point
21 they're not indigent. You know, say during trial, if it
22 turns out that we learn that they have a hundred
23 thousand-dollar house, and it's all paid off, and that's
24 all learned at trial. Then at that point the county would
25 have an interest in filing a motion because we now have new

1 information to indicate this person is not indigent and
2 that they shouldn't be entitled to proceed without advance
3 payment of costs.

4 CHAIRMAN BABCOCK: And you can't make the
5 presumption irrebuttable, can you?

6 MS. HACHEM: No, it's not irrebuttable.

7 HONORABLE STEPHEN YELENOSKY: No, I misspoke.
8 I'm sure the appellate judges would be happy with that
9 because they wouldn't have to deal with it, but I think --
10 I'm sure they recognize it has to be rebuttable, but they
11 would like it, it sounds like, to be by assertion.

12 MS. HACHEM: And that's great with us.

13 HONORABLE DAVID GAULTNEY: So in the absence
14 of a motion then the thing would just proceed with request
15 the court reporter's record without a --

16 MS. HACHEM: Everything would proceed as if
17 they had been able to proceed under an affidavit of
18 indigence procedure as an indigent, but it would be quick.

19 HONORABLE DAVID GAULTNEY: But could a court
20 reporter file a motion contesting it?

21 MS. HACHEM: No. Because the process really
22 begins earlier than at the appellate stage. It begins when
23 they were first appointed counsel, and under that procedure
24 for this specific type of case the Legislature wants to
25 have a procedure that lets that indigent party proceed

1 quickly through the process unless a motion is filed by the
2 governmental entity, which actually has the interest in the
3 costs, the county and the state. They would have an
4 interest in the costs to file a motion if there's new
5 circumstances.

6 HONORABLE TOM GRAY: I think it's an open
7 question on appeal as to whether or not they can come back
8 and challenge the presumption. I mean, she's certainly
9 asserting one position, but I think the clerk or the
10 reporter may be able to come back in under the presumption.

11 CHAIRMAN BABCOCK: Professor Hoffman, then
12 Kent Sullivan.

13 PROFESSOR HOFFMAN: So I'm not -- in light of
14 what Justice Gray just said and in your prior comment now
15 I'm a little confused. What I was going to say is, is
16 perhaps it would help -- or now maybe no -- to add in how
17 the presumption can be overcome. For instance, a
18 cross-reference to, what did you say, 107.106 where a
19 contest could be had? In other words, sort of as drafted
20 it's unclear what one does, you know, to overcome the
21 presumption.

22 MS. HACHEM: Well, it does say "as provided
23 by 107.013" and then if you go back then to 107.013 you
24 know that the procedure allows a challenge.

25 PROFESSOR HOFFMAN: I see.

1 MS. HACHEM: So I don't think that it's
2 necessary, but if you think that we need to add that
3 language we certainly could.

4 CHAIRMAN BABCOCK: Kent Sullivan, then
5 Justice Bland, then Judge Evans.

6 HONORABLE KENT SULLIVAN: Real brief
7 question. Under this new approach who has standing to file
8 a motion?

9 MS. HACHEM: The government, and
10 unfortunately, I don't know why the Legislature did this,
11 but they said the parent can challenge it.

12 HONORABLE KENT SULLIVAN: Well, but when you
13 say "the government," I'm curious, can we be a little more
14 specific? What does that mean?

15 MS. HACHEM: That's a good question.

16 HONORABLE KENT SULLIVAN: Well, that's why I
17 asked it.

18 MS. HACHEM: Well, as you know, in these
19 parental termination cases the government is the state
20 filing the action, so they are one entity that would have
21 standing. I think the county would also have standing
22 since they are the ones that actually pay ultimately.

23 HONORABLE KENT SULLIVAN: Well, but I'm
24 trying to raise it for a practical reason, and that is, for
25 example, Judge Evans is saying that in his experience in

1 his county the district clerk would at every opportunity
2 file a challenge, and I'm just curious.

3 MS. HACHEM: You know, but the district clerk
4 is triggered -- you know, I work for Harris County.

5 HONORABLE KENT SULLIVAN: Right.

6 MS. HACHEM: So I'm one of those people
7 that's doing that for the district clerk.

8 HONORABLE DAVID EVANS: I favor the
9 irrebuttable presumption. I think that would work.

10 MS. HACHEM: Our district clerk does that.
11 As soon as they get an affidavit of indigence they send it
12 to our office and say "represent us." That's why it
13 happens automatically, but there's not going to be any
14 affidavit of indigence being sent to the district clerk, so
15 it's not going to be triggered like it would now under
16 present system.

17 MR. SPAIN: When they use "governmental
18 entity" in the statute, that statute specifically also
19 refers to the Department of Family and Protective Services,
20 so under the presumption that the Legislature knows what
21 it's doing when it chooses different terms, the task force
22 assumed that "governmental entity" is broader than DFPS, so
23 I mean, but it's kind of unclear what that means. I mean,
24 I think it does give the ability of the county and somebody
25 else, a governmental entity, because DFPS is actually the

1 state, which kind of jobs out its duties in certain
2 counties through the county attorney's office and in
3 smaller counties it does it directly. I think that term
4 "governmental entity" is broader than DFPS. I'm not sure
5 exactly what that means, and what we tried to do with this
6 interim report is use language from the Family Code because
7 we're not entirely sure.

8 The other thing that we're dealing with --
9 and I've said it before, but I just want to be real clear.
10 I think that it's possible, the task force thinks it's
11 possible, that somebody could do a traditional 20.1
12 indigency claim that does not have an appointed counsel by
13 the trial court, so we're having to deal with the fact that
14 over in 107 that this presumption -- that this indigency
15 that the Legislature has created, whatever that means, and
16 I think the proposal from the task force is to explicitly
17 say that includes advance prepayment of court costs and the
18 record costs, that's going to be separate from somebody who
19 does not have a trial court appointed attorney ad litem
20 under the Family Code who nonetheless finds himself
21 indigent, which they would just proceed traditionally under
22 20.1.

23 CHAIRMAN BABCOCK: Justice Bland.

24 HONORABLE JANE BLAND: I think that the
25 reference to the section is adequate to put people on

1 notice that if they want to carry this further they can go
2 back to the trial court and do that. I think in 99.9
3 percent of the cases if someone has been found indigent by
4 the trial court, they remain indigent for the appeal; and
5 if we put something in here about making objections to the
6 presumption or overcoming the presumption, we are inviting
7 the very process that the Legislature intended to remove
8 from the appellate proceedings because it does result in so
9 much delay. So I would not be in favor of adding anything
10 about moving, making objections, anything like that.
11 There's a statute that somebody can go look to if they are
12 the one in a million case where they truly believe that
13 somebody who couldn't afford to pay costs a very short time
14 earlier in the trial court all the sudden can, and they
15 want to pursue it.

16 CHAIRMAN BABCOCK: Judge Evans. Then Carl.

17 HONORABLE DAVID EVANS: Yes, I would just
18 suggest that we could put a period after the word "code"
19 and drop the last portion of the first sentence because I
20 believe it's redundant of what's stated in the first
21 portion of the sentence, and I would point out that the
22 first part of the sentence says that a person is presumed
23 to remain indigent during the duration of the suit and any
24 subsequent appeal as provided for in sections 107.10 -- 013
25 of the Family Code, and I would put the period there

1 instead of going on to say "and is presumed to be indigent
2 for the purpose of the proceeding in the appellate court
3 without the advance payment of costs" because we've already
4 said they're presumed for that purpose.

5 CHAIRMAN BABCOCK: Okay.

6 MS. HACHEM: I think that we would need to at
7 least add the statement that they are entitled to proceed
8 without advance payment of costs because that's what we're
9 trying to make clear, is that they can proceed without
10 advance payment of costs because they have the presumption
11 of indigence under the 107.103 for purposes of appointed
12 counsel, but we definitely want to make sure that everyone
13 knows they can proceed without advance payment of costs.

14 HONORABLE DAVID EVANS: Well, then I would
15 just rejoin that -- I thought that's what the Legislature
16 did.

17 MS. HACHEM: No.

18 HONORABLE DAVID EVANS: I'm just unclear
19 about it, but if that's necessary then -- then I would just
20 say that they -- then I would just change the language to
21 say "and may proceed without advance payment of costs,"
22 instead of double emphasis of the presumption.

23 MR. SPAIN: And I think that would be fine.
24 The task force spoke on that issue at length because it was
25 unclear that the Legislature was thinking specifically

1 about that, and we wanted to foreclose, you know, by rule
2 if that's what the Court decided to adopt, you know, a
3 whole set of litigation about what, you know, 107 means and
4 wasting a bunch of time on that if we could answer the
5 question through the rule to say this indigence under the
6 Family Code also means indigence for the purpose of, you
7 know, 20.1.

8 CHAIRMAN BABCOCK: Carl.

9 MR. HAMILTON: Current Rule 20.1(a)(1)
10 provides for a rescreening and a filing of an affidavit in
11 the appellate court, which is noncontested. Does this new
12 rule intend to replace that?

13 MS. HACHEM: The rescreening for purposes
14 of the -- that special tax, whatever it is.

15 MR. SPAIN: IOLTA.

16 MS. HACHEM: IOLTA. There's no IOLTA
17 involved here. This is just appointment of pursuant to
18 107.013 of the Family Code. So it's a special type of case
19 where you have an indigence termination that the
20 Legislature wants to carry through to the appeal. So it's
21 not IOLTA.

22 MR. HAMILTON: So that remains --

23 MS. HACHEM: The (a) part stays the same.
24 (a) doesn't change.

25 CHAIRMAN BABCOCK: Justice Gray.

1 HONORABLE TOM GRAY: And I agree with Judge
2 Evans that the language of the first sentence needs to be
3 tweaked, and the way I had thought it would work is to go
4 from where the presumption is mentioned "is presumed to
5 remain indigent for" and then skip to the "for" in the last
6 phrase so it would simply read "is indigent" -- "is
7 presumed to remain indigent for the purpose of proceeding
8 in the appellate courts without advance payment of costs,"
9 and I think "courts" need to be plural because that is
10 going to specifically capture the next level of appeal to
11 Justice Hecht.

12 CHAIRMAN BABCOCK: Frank.

13 MR. GILSTRAP: Since we're down to actually
14 drafting language we might be mindful of what Professor
15 Dorsaneo mentioned yesterday that there's kind of a
16 practice of trying to express cross-references to statutes.
17 Here we have an express cross-reference to 107.013 because
18 you don't want to have to change the rule every time they
19 renumber the statutes. At the same time there's plenty of
20 exceptions to that. Like there's an exception in
21 20.1(a)(1) where there's a reference to another rule, and
22 as Justice Bland points out, we probably need the reference
23 to let people know what they can do, but you might want to
24 consider moving it to a comment or a note.

25 CHAIRMAN BABCOCK: Fair enough. Justice

1 Christopher, you had your hand up a minute ago, did you
2 not?

3 HONORABLE TRACY CHRISTOPHER: Well, I
4 think -- my understanding of (a) is that there are three
5 different ways now that you can establish indigency, and so
6 perhaps that needs to be just a -- you know, beginning
7 sentence. You can do it either by the certificate method,
8 you can do it by the affidavit, or you can do this by this
9 presumption of indigence just to make it clear because we
10 don't have or's between these things, but my understanding
11 is it's or's between all three of them.

12 CHAIRMAN BABCOCK: Good point. Justice
13 Gaultney.

14 HONORABLE DAVID GAULTNEY: I just wanted to
15 join some of the expressions of concern about the last two
16 paragraphs. Two sentences, talking about when a parent
17 shall file. Now, is it true that this section only applies
18 to somebody who is going to be represented by an attorney?

19 MS. HACHEM: Correct.

20 HONORABLE DAVID GAULTNEY: So all we really
21 need is for the attorney to tell us that they're appointed,
22 right? Like attach a copy of the --

23 MS. HACHEM: If the appellate court would be
24 satisfied with that --

25 CHAIRMAN BABCOCK: Don't speak over each

1 other.

2 HONORABLE DAVID GAULTNEY: I'm sorry. By
3 attaching a copy of the order of appointment perhaps to the
4 notice or providing it to the court in some way? But
5 they're all going to be -- the presumption of this is
6 they're all going to have appointed counsel representing
7 them?

8 CHAIRMAN BABCOCK: Go ahead, Sandra. I
9 didn't mean to interrupt you.

10 MS. HACHEM: I'm sorry. I think he answered
11 my questions.

12 CHAIRMAN BABCOCK: Okay. Judge Yelenosky.

13 HONORABLE STEPHEN YELENOSKY: I don't know if
14 we're going to take any votes, but that does sound like
15 something that would be worth taking a vote on, which is
16 whether we want that sentence or instead want something
17 that just says in the appellate notice "the proceeding by
18 appointed counsel," so I'm just asking that either now or
19 before we end we take some vote on that.

20 CHAIRMAN BABCOCK: Justice Gray.

21 HONORABLE TOM GRAY: And what I would propose
22 in that regard is a 25.1(d)(8) read as follows -- and by
23 the way that's just the contents for a notice of appeal.
24 "(8), in an appeal of the termination of parental rights,
25 and if otherwise applicable, a statement that the appellant

1 has been determined to be indigent and is authorized to
2 proceed without the advance payment of costs." And that
3 from the appellate court's standpoint that statement
4 included in the notice of appeal until the state or
5 somebody came in and showed otherwise, would let us rock
6 and roll to get the clerk and the reporter working on the
7 record immediately.

8 HONORABLE JAN PATTERSON: That's in lieu of
9 the last sentence.

10 HONORABLE TOM GRAY: That's in lieu of the
11 last sentence that the task force proposes to be added to
12 20.1(a)(3).

13 HONORABLE STEPHEN YELENOSKY: Would it also
14 apply to the other two methods? I mean, would that
15 encompass those if you made that assertion?

16 HONORABLE TOM GRAY: I don't understand the
17 question.

18 HONORABLE STEPHEN YELENOSKY: Well, suppose
19 you're proceeding with a Legal Aid attorney, not appointed
20 counsel. Would your appellate notice say -- because it
21 sounded like a generic statement, "I'm authorized to
22 proceed without," and if that's fine for the appellate
23 court then perhaps that's what we should do. You just have
24 a statement that you're authorized to proceed without
25 payment of costs unless you want to specify whether it's

1 because I was appointed counsel or because I'm IOLTA or
2 because --

3 HONORABLE TOM GRAY: I would just be
4 surprised if there was an -- IOLTA was expending their
5 resources when they could get court-appointed counsel
6 through another venue, but, yes, I think the statement --

7 HONORABLE STEPHEN YELENOSKY: Yeah, well,
8 little conflicts there.

9 HONORABLE TOM GRAY: The statement is generic
10 enough to -- if an attorney is willing to make that
11 statement in the notice of appeal then we're going to go
12 with that until it's shown to be inaccurate.

13 CHAIRMAN BABCOCK: Justice Gaultney, then
14 Judge Evans.

15 HONORABLE DAVID GAULTNEY: I guess I wasn't
16 really sure about the question and the answer because there
17 is an affidavit procedure that would be separate. I mean,
18 I thought the proposal was specific to this provision; that
19 is, when you're appointed -- when you've got appointed
20 counsel, appointed counsel there is a separate affidavit
21 procedure that you can go through to establish indigency
22 and I'm not sure we want to just say, well, that's
23 satisfied by filing something in the notice. I don't think
24 you want to abandon that process, but if you've got an
25 affidavit from an -- I mean, if you've got a notice, a

1 statement from an attorney saying, "I'm appointed, and this
2 individual is entitled to proceed without payment of costs"
3 I think, you know, in that circumstance I think we're okay.

4 CHAIRMAN BABCOCK: Okay. Judge Evans.

5 HONORABLE DAVID EVANS: I just worry about
6 putting an evidentiary presumption in the rules of
7 procedure, but one question I would raise in that I don't
8 see this as excusing the filing of the affidavit under (2)
9 because it's not modifying that, and I'm not just sure that
10 (2) shouldn't be modified to provide that a person files an
11 affidavit of indigence or -- and the other language, or
12 shows that it's not applicable because of the application
13 of some other rule of law, but --

14 CHAIRMAN BABCOCK: Justice Bland.

15 HONORABLE DAVID EVANS: I suspect anybody
16 files an affidavit under this is going to say I'm
17 operating -- "I have the presumption in my favor," and once
18 the bar becomes familiar with it, it's going to be there.

19 CHAIRMAN BABCOCK: Justice Bland.

20 HONORABLE DAVID EVANS: You don't file the
21 affidavit?

22 HONORABLE JANE BLAND: So I think Judge
23 Christopher's fix of putting "or" would help for clarity,
24 and the other thing to remember is, this is for all civil
25 cases, Rule 20.1, not just for parental termination cases.

1 So I think that somebody that's operating in a parental
2 termination case is going to say, "Oh, I'm under (3)," but
3 for everybody else, they're either under (1) or (2).

4 CHAIRMAN BABCOCK: Judge Yelenosky.

5 HONORABLE DAVID EVANS: We need an "or."

6 HONORABLE JANE BLAND: Yeah, we need an "or."

7 HONORABLE STEPHEN YELENOSKY: Yeah, and my
8 question may have gotten it all balled up, because you're
9 right, what we're talking about is an assertion solely for
10 (3); and so it probably -- the assertion probably should be
11 not so generic and should say we're proceeding by appointed
12 counsel rather than -- "is authorized to proceed without
13 payment of costs," which is what I thought was being
14 proposed at first; and I do think substantively it is true
15 if you're proceeding under (3) it's "or." You don't also
16 file an affidavit. These are alternatives, and you just do
17 do that, the assertion.

18 CHAIRMAN BABCOCK: Justice Hecht.

19 HONORABLE NATHAN HECHT: (a)(1) allows for a
20 certificate to be filed, and I guess a concern there, too,
21 is the filing fee. Somebody shows up with a notice of
22 appeal, and they can file the certificate and then they
23 don't have to pay costs in advance, but when does that
24 certificate get filed? How does -- how does that play into
25 the appellate process?

1 HONORABLE TOM GRAY: We haven't seen one,
2 Justice Hecht, on --

3 HONORABLE NATHAN HECHT: You haven't seen
4 one?

5 HONORABLE TOM GRAY: Not an IOLTA certificate
6 in the Tenth Court, that I'm aware of.

7 CHAIRMAN BABCOCK: Justice Bland.

8 HONORABLE JANE BLAND: I've seen one attached
9 to the notice of appeal, filed in the trial court before
10 anything happens in the case. But it would seem like you
11 could even just certify it at the bottom of the notice of
12 appeal.

13 HONORABLE NATHAN HECHT: Well, the addition
14 of a new (8) made me think why wouldn't that cover
15 (a)(1)(2) also?

16 HONORABLE TOM GRAY: Well, if the person is
17 going in the trial court under an IOLTA determination as
18 opposed -- and that's covering the costs and aren't they
19 volunteering their services then under IOLTA certificate or
20 getting paid from another source?

21 HONORABLE STEPHEN YELENOSKY: Yes.

22 HONORABLE TOM GRAY: They're not -- they're
23 not proceeding as a true indigent, as I understood it.
24 They are proceeding, and they're trying to get their fees
25 waived, and it does seem that the --

1 HONORABLE STEPHEN YELENOSKY: Yeah, they're
2 indigent. They are indigent.

3 HONORABLE TOM GRAY: The new (8), though,
4 would cover only that select group of cases where they were
5 IOLTA lawyers and were proceeding in an appeal of a
6 termination case, if that's the way they wanted to do it.
7 They could alternatively file the IOLTA certificate and
8 also proceed. They could proceed under either, but --

9 HONORABLE NATHAN HECHT: I'm just wondering
10 why you would want two ways of doing it.

11 HONORABLE TOM GRAY: Well, you don't
12 necessarily want two ways. It just happens that the second
13 way does allow the first way to use it, too, but the second
14 alternative is most of these appointments are not IOLTA
15 lawyers. I mean, the vast majority are just
16 court-appointed just like in criminal cases, and they
17 wouldn't even -- they wouldn't even think to go look under
18 IOLTA. I mean, that would be a foreign concept to them.

19 HONORABLE NATHAN HECHT: I guess my question
20 is, if we're going to add an (a) -- if we're going to add a
21 subprovision (8) to the contents of the notice of appeal,
22 as long as we're doing it why wouldn't it include the
23 statement that's required by 20.1(a)(1)? Maybe there's a
24 reason.

25 CHAIRMAN BABCOCK: Justice Bland.

1 HONORABLE JANE BLAND: I think that's a great
2 idea, and we could just add it to Judge Gray's suggested
3 language for (8) and say -- and put an "or," "or include
4 the certification required by 20.1(a)(1)," and then that
5 just makes it very easy for a lawyer in another kind of
6 civil case, not a parental termination case, because I
7 agree with you that's not usually IOLTA lawyers, to go
8 ahead and establish indigency for appeal.

9 CHAIRMAN BABCOCK: Justice Christopher.

10 HONORABLE TRACY CHRISTOPHER: I'd go ahead
11 and delineate (1), (2), or (3) by either I've got the IOLTA
12 certificate or I'm filing an affidavit or I've got the
13 presumption, and put that right there in the notice of
14 appeal.

15 MS. HACHEM: I'm not sure you always would
16 have the determination of indigence by the time you file
17 your notice of appeal under the affidavit of indigence
18 procedure.

19 HONORABLE TRACY CHRISTOPHER: Well, you could
20 just say, "I have filed the affidavit," and so that way the
21 appellate court will know that that procedure has to happen
22 and we don't have to start dunning them for appellate costs
23 until we know what happened under that procedure.

24 CHAIRMAN BABCOCK: Judge Yelenosky.

25 HONORABLE STEPHEN YELENOSKY: Judge Evans, if

1 it gives you any solace about putting an evidentiary rule
2 in the rules, we did that a long time ago with part (a),
3 not only put in an evidentiary rule but an irrebuttable
4 presumption, evidentiary presumption. So we've sort of
5 crossed that bridge.

6 HONORABLE DAVID EVANS: And I'm just saying
7 that --

8 HONORABLE STEPHEN YELENOSKY: I don't think
9 there's any comfort.

10 HONORABLE DAVID EVANS: I'm just saying that
11 in (a) you present a certificate that's been passed on by
12 somebody else. In this one instead of presenting the order
13 entered pursuant to the Family Code section you're
14 restating the presumption, and I think you could be
15 restating it incorrectly by the additional language.

16 CHAIRMAN BABCOCK: Justice Gray.

17 HONORABLE TOM GRAY: I was just going to say,
18 I think the additional proposals to bring maybe the
19 different types of indigency into the notice of appeal so
20 that we get notice earlier conceptually, great idea. To
21 implement something by Wednesday, it's a bigger idea than
22 that, and I'm focused solely on this fix to get whatever it
23 is that needs to be done by Wednesday, but I think there is
24 a lot more that could be done with this, because -- well,
25 there were some issues that the task force will be

1 addressing that I'd like to comment on that are completely
2 outside the scope of this, but I won't go there now.

3 CHAIRMAN BABCOCK: But is there any -- is
4 there anything you can think of today that would suggest
5 that changing or adding 25.1(d)(8) would be destructive to
6 any interest that we care about?

7 I mean, we are moving very quickly for us.

8 HONORABLE TOM GRAY: My only concern, Chip,
9 frankly, would be that if you do throw in subsection (a)
10 then the clerk is back in the position of not being able to
11 look just at the notice of appeal and know that the
12 indigency has already been approved. If you add -- I'm
13 sorry, (a)(2). If you add (a)(1), that's no problem.
14 That's a gimme, but the (a)(2) does require a procedure.

15 CHAIRMAN BABCOCK: Yeah.

16 HONORABLE TOM GRAY: And that potentially
17 could slow it down.

18 CHAIRMAN BABCOCK: I think the proposal was
19 just to put -- what I heard Justice Hecht saying was just
20 to put (a)(1) and (a)(3) but not (a)(2) in the notice.

21 HONORABLE STEPHEN YELENOSKY: Well, Justice
22 Bland suggested (a)(2).

23 HONORABLE TRACY CHRISTOPHER: No, I did, but
24 I would just say, you know, "I have filed the request."

25 CHAIRMAN BABCOCK: Right.

1 HONORABLE TRACY CHRISTOPHER: Under (a)(2).

2 CHAIRMAN BABCOCK: Okay. Marisa.

3 MS. SECCO: One comment that I have is it's
4 not clear to me that (a)(1) and (a)(2) are mutually
5 exclusive. (a)(1) refers to an affidavit of inability
6 accompanying the certificate, and that's not clear that
7 that's referring to the trial court affidavit, and in
8 20.1(a)(2) it says, you know, you can establish by
9 affidavit if the claim of indigence is not contestable, and
10 that would actually be a claim of indigence that was
11 established by IOLTA certificate, so I could be totally
12 wrong on that.

13 CHAIRMAN BABCOCK: Justice Bland.

14 HONORABLE JANE BLAND: The whole idea behind
15 the IOLTA certificate is that you never have to file an
16 affidavit with a court anywhere, because --

17 MS. SECCO: Okay.

18 HONORABLE JANE BLAND: -- you've been
19 screened by an IOLTA-funded organization, who has
20 particular guidelines they must meet with regard to income,
21 and the decision was made that if the person passes that
22 screening their Legal Aid lawyer can represent to a court
23 that they qualify for indigent status, so it -- it is an
24 alternative way of proving indigency that does not require
25 any kind of file of of an affidavit either with the trial

1 court or with the court of appeals if they reassert that
2 IOLTA status, or their lawyer, their Legal Aid lawyer,
3 reasserts that IOLTA status on appeal.

4 MS. SECCO: Okay. So I would just say that
5 (a)(1) is confusing, that at least the last sentence says,
6 "A party's affidavit of inability accompanied by the
7 certificate may not be contested," so --

8 HONORABLE JANE BLAND: I agree.

9 CHAIRMAN BABCOCK: Gene.

10 MR. STORIE: I was going to make the same
11 point. If it doesn't take an affidavit then we shouldn't
12 have an affidavit requirement in there.

13 CHAIRMAN BABCOCK: Yeah. See all those
14 little things we spot when we -- Justice Hecht is sighing.
15 Audibly, I might add. Yeah, Kin.

16 MR. SPAIN: And for the purpose of the task
17 force position, this sub (3) is only going to apply when
18 they have the appointed counsel. If for some reason this
19 terminated parent wants to go pro se and they're indigent
20 and they refuse to have a lawyer appointed then they're
21 going to have to use sub (1) or sub (2). And that's what
22 the Legislature has kind of created this strange creature
23 that this presumption comes from the appointment of the
24 lawyer, which obviously there's a set of circumstances
25 where they might be indigent and that doesn't happen.

1 CHAIRMAN BABCOCK: Okay. Judge Yelenosky.

2 HONORABLE STEPHEN YELENOSKY: Well, I
3 guess -- I guess we should point out that there is some
4 ambiguity, I mean, that's been noted, but I think when we
5 originally did 145 -- well, not -- well, the trial court
6 provision for IOLTA certificate, it was with an affidavit.
7 It was the certificate that made it uncontestable, made the
8 affidavit uncontestable, so it was an affidavit plus IOLTA
9 certificate making it uncontestable. I don't know what you
10 want to do at the appellate level, but that's why that last
11 sentence is in there, I think.

12 CHAIRMAN BABCOCK: Okay.

13 MS. SECCO: And what about this provision in
14 20.1(a)(2) that says, you know, establish by affidavit if
15 the claim of indigence is not contestable. My
16 understanding is the only claim of indigence that's not
17 contestable would be one that was already -- is established
18 by certificate, so to me the way the rule reads now it
19 looks like it requires both a certificate and an affidavit,
20 and maybe that's something we would need to change.

21 HONORABLE STEPHEN YELENOSKY: That mirrors
22 the trial court rule, but I guess the appellate rule
23 wouldn't have to, but I think that is the trial court rule.

24 CHAIRMAN BABCOCK: Justice Bland.

25 HONORABLE JANE BLAND: I think there is a

1 debate among some trial judges about how the IOLTA
2 certificate works and whether there can be an independent
3 examination of somebody's eligibility to proceed without
4 advance payment of costs, and I think I incorrectly spoke
5 when I said no affidavit, because I think what the rule
6 says is an affidavit, but the affidavit is simply an
7 affidavit that states that "I confirm that I screened the
8 party for income eligibility under IOLTA income
9 guidelines," and then that's adequate, and I think that was
10 the intent of the rule when we amended Rule 145, and we
11 have the sentence in there about it may not be contested
12 because there were trial courts that thought regardless of
13 a confirmation of IOLTA eligibility our standards can be
14 different about proceeding without advance payment of costs
15 and I want to undertake this independent examination of
16 income.

17 And when we said "may not be contested," what
18 we were trying to get across was if you certify that you
19 are a person that meets the IOLTA income guidelines we're
20 not going to have this whole proceeding about your
21 indigency status. We're going to just proceed with the
22 person as indigent, so I think that's the reason for the
23 sentence and so maybe it wouldn't -- in light of Justice
24 Gray's comments about tinkering too much on short notice,
25 maybe it's not a great idea to take it out, but I agree

1 with you that really the certificate should just be enough,
2 but it looks like when you read Rule 145 they -- it's an
3 affidavit certifying that you've met these guidelines, so
4 that may be something different than just a certificate.

5 CHAIRMAN BABCOCK: Judge Yelenosky.

6 HONORABLE STEPHEN YELENOSKY: Well, I think I
7 agree with half of that. I don't think that's right. I
8 think there is an affidavit that's signed by the person,
9 and then as the last sentence in 145 in that section says,
10 that affidavit accompanied by a certificate from the
11 attorney then makes the affidavit incontestable, so I agree
12 with the half that you don't have an inquiry, but I
13 disagree that there's not an affidavit from the person. As
14 I remember the debate, people wanted at least an assertion
15 by a person with firsthand knowledge and that would only be
16 the person claiming indigence, I'm indigent, and there were
17 people who weren't -- didn't like the IOLTA certificate
18 because what it did was then made that incontestable.

19 HONORABLE JANE BLAND: That's right.

20 HONORABLE STEPHEN YELENOSKY: Isn't that
21 right?

22 HONORABLE JANE BLAND: Yeah. So that part of
23 it -- I would like just the certificate, but --

24 HONORABLE STEPHEN YELENOSKY: She would like
25 that, but -- and I might like that, but that's -- I think

1 she's conceded now that's not what it is.

2 HONORABLE JANE BLAND: Yeah.

3 CHAIRMAN BABCOCK: The system is bigger than
4 just two individuals.

5 HONORABLE JANE BLAND: Right.

6 CHAIRMAN BABCOCK: Carl.

7 MR. HAMILTON: Well, if the idea is just to
8 continue the duration of the appointment of the attorney, I
9 think that needs to go in a different place because I think
10 this is confusing. When we put the presumption of
11 indigency there it sounds like we're trying to add to the
12 establishment of indigency rather than just continue the
13 duration of the appointment of the attorney, and I think it
14 needs to maybe go in a different place, and maybe we don't
15 need that presumption in there.

16 CHAIRMAN BABCOCK: Justice Christopher.

17 HONORABLE TRACY CHRISTOPHER: Well, we don't
18 need to get this done before next Wednesday, but when we
19 start fixing these two rules, the affidavit requirement of
20 145 and the affidavit requirement of 20.1 are different,
21 and they shouldn't be different, and that causes problems
22 in the trial court, so --

23 HONORABLE DAVID EVANS: It does.

24 HONORABLE TRACY CHRISTOPHER: They should
25 have the exact same requirements.

1 CHAIRMAN BABCOCK: Good point.

2 HONORABLE TOM GRAY: As far as that goes, in
3 fixing the rule in the future, subsection (c), that it has
4 to be filed -- the party timely files a notice of appeal,
5 that can be stricken, too, since they can actually be filed
6 well after the notice of appeal and they're not tied to
7 that anymore.

8 CHAIRMAN BABCOCK: Okay. Any more comments
9 about 20.1(a)(3)?

10 HONORABLE NATHAN HECHT: Let me be clear. So
11 with the change -- if a change is made in 25.1(b) to add
12 subsection (8) we don't need the second sentence of the
13 proposed change to 20.1(8)(3) in the task force's view?

14 MS. HACHEM: That's correct, because then you
15 would -- that would be your notification method.

16 HONORABLE NATHAN HECHT: Okay.

17 MR. SPAIN: That would be the last sentence,
18 is what you're talking about.

19 CHAIRMAN BABCOCK: Right. Right.

20 MR. SPAIN: "The parent shall file," that
21 whole sentence would go?

22 MS. HACHEM: Yeah.

23 HONORABLE NATHAN HECHT: Okay.

24 CHAIRMAN BABCOCK: Okay. Do we have clarity
25 on that?

1 HONORABLE NATHAN HECHT: Yep.

2 CHAIRMAN BABCOCK: Great. All right. Let's
3 go to 20.1(c)(1), and there is a proposed change by adding
4 language to 20.1(c)(1). Any comments on that?

5 MS. SECCO: I have a comment along the same
6 lines as what I was discussing before. If the exception to
7 the affidavit requirement actually applies to both (a)(1)
8 and (a)(3) as some courts apparently think that it's just,
9 you know, the certificate that needs to be filed, then
10 there should be -- this exception should apply to both,
11 right, so that's another thing that I looked at when I was
12 looking at the rule originally, is that if -- if they're
13 actually mutually exclusive you can do (1) or (2) or (3),
14 then these should also except things filed under (a)(1),
15 certificates filed under (a)(1), and they don't. So,
16 again, I'm still a little unclear. I don't think we can
17 make those three things separate if (1) and (2) are
18 actually required together at the appellate court level,
19 so --

20 CHAIRMAN BABCOCK: Justice Bland, who sharply
21 raised her hand in response to that comment.

22 HONORABLE JANE BLAND: Well, no, this is --
23 this is what Judge Christopher was getting at, because the
24 appellate Rule 20.1 says, "An additional certificate may be
25 filed confirming that the appellant was rescreened and

1 again found eligible." It doesn't say "an additional
2 certificate and an affidavit from the party," but I agree
3 with Judge Yelenosky that Rule 145 does talk about an
4 affidavit from the party. So --

5 HONORABLE STEPHEN YELENOSKY: So the trial
6 judges who are confused about that are just wrong.

7 CHAIRMAN BABCOCK: Well, they're confused.
8 They're not wrong.

9 HONORABLE JANE BLAND: Well, I think it's
10 confusing.

11 MR. HARDIN: I think it can be wrong to be
12 confused.

13 CHAIRMAN BABCOCK: That's my point.

14 HONORABLE DAVID EVANS: I don't mind being
15 confused. I just mind being without a coin.

16 HONORABLE STEPHEN YELENOSKY: The ones who
17 think you might not need an affidavit in the trial court I
18 think are pretty clearly wrong.

19 HONORABLE JANE BLAND: But the -- the problem
20 with adding it to (c)(1), Marisa, is that it does require a
21 second step, an additional certification that the person's
22 been rescreened. If you-all are comfortable with just the
23 representation of that then in the notice of appeal like
24 we're contemplating then you would include (a)(1), but I
25 just point out to you that there is this process that's

1 supposed to happen on appeal with respect to IOLTA
2 certificate, but it does not under this rule require
3 another affidavit from the party, like it does in the trial
4 court, so it could work.

5 MS. SECCO: Okay. The last sentence of
6 that -- of (a)(1) does say "a party's affidavit of
7 inability accompanied by the certificate may not be
8 contested."

9 HONORABLE JANE BLAND: Yeah, but it doesn't
10 require that that be filed or that be new.

11 MS. SECCO: Okay.

12 HONORABLE JANE BLAND: It says it requires an
13 additional certificate. So, yes, there's confusion.

14 MS. SECCO: Okay.

15 HONORABLE JANE BLAND: So somebody I think
16 could argue there needs to be a second affidavit.

17 MS. SECCO: Right. I just want --

18 HONORABLE JANE BLAND: Or somebody could
19 argue there does not need to be a second affidavit.

20 MS. SECCO: I just want, you know, us to have
21 a -- I guess a conclusion on whether or not we're going to
22 present those as three separate methods or whether we're
23 going to leave it the way that it is so that -- I mean,
24 again, I don't practice this procedure, so I don't know if
25 people typically file both an affidavit and a certificate,

1 but the way I read the rule was that both were required at
2 both levels.

3 CHAIRMAN BABCOCK: Justice Gray, and then
4 Judge Yelenosky.

5 HONORABLE TOM GRAY: Well, following up on
6 Marisa's comment, I think technically and after further
7 examining the IOLTA certificate part, which I hadn't even
8 looked at before the meeting because I didn't think it
9 would come up, but that just goes to show about the course
10 of these meetings, that (a) is comprised of sections (1)
11 and (2) and that what we have proposed as (3) should
12 actually be a subsection (b). It is a different way of
13 being indigent in a civil case. You have establishing
14 indigence by certificate by affidavit, and those are
15 somewhat combined, and then you have subsection (b) by
16 presumption, and this is only in termination cases, would
17 mechanically be the fix if you're not trying to bring part
18 of the IOLTA part back into the notice of appeal. Now, if
19 you're trying to do that then that complicates it a little
20 bit.

21 CHAIRMAN BABCOCK: Judge Yelenosky, then Jan
22 Patterson.

23 HONORABLE STEPHEN YELENOSKY: First let me
24 correct or -- correct my confused statement about
25 confusion. If there is confusion about what happens after

1 the appellate rule, that makes sense, because it isn't
2 clear, but at the trial court under 145 I think it is
3 clear.

4 But this other -- this other part, what was
5 the last one? Oh, yes, I don't think you need a new
6 affidavit. As I was saying, on the 145 debate, the bottom
7 line everybody said was in order to create a presumption we
8 need some evidence, not just a certificate that they've
9 been screened, so you have that primary -- that first
10 affidavit in the trial court accompanied by a certificate
11 from the lawyer saying they've been screened, which then
12 creates an irrebuttable presumption. Once you've had that
13 first certificate at the trial court and then at the
14 appellate level you have another certificate from the
15 lawyer saying they've been rescreened, I don't think it
16 would offend or shouldn't offend sensibilities as much not
17 to require yet another affidavit. I understand why the
18 first one is -- needs to be there and you can't go solely
19 with an attorney's certificate, but I don't know why we
20 couldn't write the appellate rule to simply require
21 recertification without a second affidavit.

22 CHAIRMAN BABCOCK: Okay. Jan, and then Judge
23 Evans.

24 HONORABLE JAN PATTERSON: Well, I think what
25 the task force is addressing is a narrow issue here today,

1 because the problem has always been relitigation of the
2 whole issue of indigence and where does that occur. I
3 think their drafting 20.1(3) without the last sentence
4 serves that interest and is well-stated, and I think that's
5 what (c)(1) also accomplishes, so I think to accomplish
6 this major large number -- or cases where the whole issue
7 is reraised, I think this accomplishes that and addresses
8 it. It may be that notices need to be re-examined and
9 IOLTA needs to be retweaked and see how it fits together,
10 but I speak in favor of how they have done it here for this
11 narrow purpose and to accomplish this major goal, because
12 the problem has been so much delay created by orders going
13 back and forth and uncertainty about where the issue is
14 litigated, whether it's contested, whether it's rebutted,
15 whether somebody has standing, and this accomplishes
16 removing that, so I think it's a good draft, and I think
17 that other things can be left for another day.

18 CHAIRMAN BABCOCK: Judge Evans, then Justice
19 Christopher.

20 HONORABLE DAVID EVANS: This comment is just
21 general. It's not -- I think we lose perspective as to why
22 we get contests on appeal for costs as opposed to at the
23 beginning of the trial -- at the beginning of the case.
24 There's actually three entities that are probably involved
25 in my viewpoint or three separate people. They are going

1 to be a court reporter, a district clerk, and the county
2 commissioners who are going to pay. Now, the county
3 commissioners pay some attorney ad litem costs and some
4 issues like that, but the clerks don't contest at the
5 filing of the lawsuit because we're not talking about
6 anything more than the filing fee of a lawsuit, and, of
7 course, from a cost standpoint it's not worth them going
8 down and getting an attorney from the district attorney to
9 go down and contest it. They become concerned when they do
10 reporter's records. That's when my district clerk takes
11 it, and when -- and that's when my district clerk presents
12 to his commissioners how much money he saves his department
13 by contesting on appeal and makes -- and believes that
14 that's part of his duties.

15 On the reporters, don't become concerned
16 until you would call for a record, and they don't contest
17 it until that point. So most of the appeal -- most of
18 these contests that I've tried since I've been on the bench
19 have all related to appellate matters, and that's when they
20 come back down, and one rule may be clear, but when we
21 have -- when you're trying the case in the place of the
22 appellate court when you have to read the appellate rule
23 also, you can -- you can be some inconsistencies. It may
24 not apply directly in termination, but this is a hot button
25 issue for a lot of -- for a lot of metropolitan county

1 clerks. So I'd like you to --

2 CHAIRMAN BABCOCK: Justice Christopher.

3 HONORABLE TRACY CHRISTOPHER: I guess in
4 light of all of this discussion perhaps we shouldn't say
5 there are three ways and put or's in there, and so I guess
6 I would like to speak in favor of making it a separate
7 number. I don't exactly know where I'd put it, but
8 especially if you look at the way the rule goes with by
9 certificate, by affidavit, and then (b) says "contents of
10 the affidavit." I think it would be weird to plug it in
11 there as (b), you know, just in terms of how the rule
12 flows. I'm not exactly sure how to fix it, but it would be
13 weird to make it (b) and then have content of the affidavit
14 to be (c) when content of the affidavit follows (a)(2), you
15 know, in terms of here's the affidavit, here's what the
16 content should be. But I don't know where I would put it,
17 but we're kind of messing it up by throwing it in there.

18 CHAIRMAN BABCOCK: Okay. Justice Gray.

19 HONORABLE TOM GRAY: And that leads into
20 where you were trying to take us with regard to (c)(1) and
21 (2) and the changes they proposed to that, because the only
22 reason you need to change (c) is if somehow the new
23 requirements contemplate or have an affidavit. I don't
24 think those changes that are proposed are needed because
25 there is not an affidavit if you have a presumption of

1 indigence, if that make sense. If that presumption comes
2 from what happened in the trial court and you include the
3 new section (8) potentially in the notice of appeal, you're
4 not going to have an affidavit, so it doesn't matter what's
5 in the affidavit, because it's not going to relate to these
6 proceedings, and then, therefore, under (c) it -- of when
7 and where to file the affidavit, you don't have to worry
8 about that because you're not working with an affidavit
9 anyway.

10 CHAIRMAN BABCOCK: Yeah. Justice
11 Christopher.

12 HONORABLE TRACY CHRISTOPHER: Well, I'm
13 thinking that maybe we should call it 20.2, parental
14 termination cases, and because the way I'm just kind of
15 looking at the numbering of it, like, you know, all of
16 these things, like hearing and decisions in the trial
17 court, things like that, they don't really apply anymore
18 because we -- you know, it's a different procedure now
19 under the statute versus the way the procedure is outlined
20 in the rule, and it's kind of weird the way the whole rule
21 has been written since sort of the most important thing
22 with respect to this statutory change is subsection (j),
23 that the party establishes indigence, the trial court clerk
24 and the court reporter must prepare the appellate record
25 without prepayment. That's what we were trying to

1 accomplish. My understanding is that's what the
2 Legislature was trying to accomplish here with this new
3 rule, was to get those things filed without prepayment of
4 costs up at the appellate court, move the appeal along.

5 So, you know, I might make it 20.2 and then
6 specifically say, "Trial court and, you know, clerk and
7 reporter, get going on those records," basically.

8 CHAIRMAN BABCOCK: Eduardo, you didn't have
9 your hand up, did you?

10 MR. RODRIGUEZ: No.

11 CHAIRMAN BABCOCK: You were cleaning your
12 glasses.

13 MR. RODRIGUEZ: Yeah.

14 CHAIRMAN BABCOCK: Okay. Any more -- Justice
15 Bland.

16 HONORABLE JANE BLAND: I'm okay with standing
17 down on IOLTA certificate and all these other things that
18 might be good fixes because I think ultimately this
19 presumption is really important, and it's going to cut down
20 on the number of contests, but this rule is riddled with
21 problems about where these affidavits get filed, when a new
22 affidavit is required, and the proceeding -- the
23 proceedings that this rule engenders take up an inordinate
24 amount of time, delay the appeal, and they cost a lot, both
25 in attorney time and in judge time, trying to resolve

1 something that should be fairly straightforward and before
2 you can even get to the merits of the appeal.

3 CHAIRMAN BABCOCK: Okay. Any more comments
4 on either the (c)(1) or (c)(2), the language that is
5 proposed to be added to that -- to those rules? Any other
6 comments other than what we've already done? Need anything
7 else?

8 HONORABLE NATHAN HECHT: No, sir.

9 CHAIRMAN BABCOCK: Okay. Well, Sandra and
10 Kin, thank you so much for being here. Do you have another
11 comment, Sandra?

12 MS. HACHEM: Can I just say one thing?

13 CHAIRMAN BABCOCK: Do you have another
14 comment, Sandra?

15 MS. HACHEM: Yeah, I've never done this
16 before, but, you know, we feel like we have an emergency,
17 because if this is not changed by September 1 we're going
18 to have a problem on September 1, and today is late. You
19 know, we're late in the month, so I just want to know what
20 do I need to do now. I'm trying to solve this emergency.

21 CHAIRMAN BABCOCK: Yeah. I don't think you
22 need to do anything now. The way this process works is
23 after the full committee does what we do, then Marisa and
24 Justice Hecht and the Court will take our comments and will
25 break that into what they think is the right thing to do.

1 MS. HACHEM: Okay.

2 CHAIRMAN BABCOCK: Which sometimes is what we
3 think and sometimes is not what we think.

4 MS. HACHEM: Okay. Okay.

5 CHAIRMAN BABCOCK: But you raise a good point
6 because this is an emergency. Do you need the record
7 expedited on this?

8 HONORABLE NATHAN HECHT: No.

9 CHAIRMAN BABCOCK: Dee Dee is going "Yeah,
10 great." Yeah, Justice Christopher.

11 HONORABLE TRACY CHRISTOPHER: Well, in
12 connection with the greater more difficult proceeding that
13 you-all are working on, I just wondered whether you had
14 thought about having an Anders type brief for these
15 appeals.

16 MS. HACHEM: That's one of the issues to be
17 discussed.

18 HONORABLE NATHAN HECHT: Another issue is
19 what to do with Chapter 13 of the Civil Practice & Remedies
20 Code that is kind of a general provision about getting
21 records by indigence in cases and a determination by the
22 trial judge that the appeal is not going to be frivolous
23 and how that works in these cases, but how it works
24 generally and the cases that the courts have had, some of
25 the cases the courts have had, the lawyer was not the same

1 on appeal, sometimes the trial judge is not the same, in at
2 least one case the trial judge died after the case, no
3 connection with the case, but -- and so was not around to
4 determine whether it was frivolous or not, and so a brand
5 new judge, what does he look at? He wasn't even there. So
6 I think there are lots of big issues there that affect
7 these cases.

8 MS. HACHEM: Yeah, that's true.

9 CHAIRMAN BABCOCK: And that will be for our
10 October meeting, I think, if we remember that.

11 HONORABLE TOM GRAY: When you say October,
12 just for clarification, there's one that starts on the last
13 day of September.

14 CHAIRMAN BABCOCK: Yeah, our next meeting is
15 September 30 and October 1.

16 HONORABLE TOM GRAY: So are you calling that
17 the October meeting?

18 CHAIRMAN BABCOCK: No. No. No.

19 HONORABLE TOM GRAY: Okay.

20 CHAIRMAN BABCOCK: They will be back not next
21 meeting but the meeting after that.

22 HONORABLE TOM GRAY: Okay. Thank you for
23 that.

24 MR. SPAIN: And we actually have a meeting
25 scheduled here in Austin where the task force is going to

1 get together I believe on October 8th, and we're going to
2 try to at that point take everything we've had in our
3 telephone discussions and e-mails and finalize them.

4 HONORABLE JAN PATTERSON: If I could also
5 make a request because Kent's point yesterday about how the
6 numerous practices that have developed throughout the state
7 and the counties on all of these issues, I think it is a
8 good idea to kind of get a sense of what's going on around
9 the state, but to have some kind of common denominator on
10 these issues throughout the state, because the practice
11 differs so widely even in large -- between large counties
12 and small counties, so it's a really important area for
13 there to be some symmetry.

14 CHAIRMAN BABCOCK: Yeah. Okay. Well, I
15 think -- we thank you again for coming, and we look forward
16 to seeing you in October. Not September 30, but the
17 meeting after that, which is when, Angie?

18 MS. SENNEFF: I knew you were going to ask me
19 that.

20 CHAIRMAN BABCOCK: Well, sometime in October.
21 Well, there's been notice, and we'll give more notice, so
22 the only thing that is immediate is when we get this Rule
23 28.1 redraft we'll e-mail it to everybody, and the deadline
24 is Wednesday, so if you have any comments, give it to us by
25 e-mail, and happily we're done early today. So thank you

1 very much for coming.

2 (Adjourned at 10:23 a.m.)

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REPORTER'S CERTIFICATION
MEETING OF THE
SUPREME COURT ADVISORY COMMITTEE

* * * * *

I, D'LOIS L. JONES, Certified Shorthand Reporter, State of Texas, hereby certify that I reported the above meeting of the Supreme Court Advisory Committee on the 27th day of August, 2011, and the same was thereafter reduced to computer transcription by me.

I further certify that the costs for my services in the matter are \$_____.

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