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**From:** Alan Morrison  
**Sent:** Tuesday, April 13, 2021 6:03 PM  
**To:** Catherine T Struve  
**Subject:** FRAP 39

Cathie

Hope you are well as the semester is winding down.

I am writing because the Sup Ct has a case, City of San Antonio v Hotels.com, No. 20-334, to be argued soon. I am doing a moot court for one of the lawyers and the issue is FRAP 39, specifically which court, district or appeals, should decide whether certain taxable costs are excessive or should be denied for another reason. I have no dog in the fight, but it seems to me that the Rule is unclear, largely because the drafters did not envision a situation as presented in this case. The Court will decide this case, but I think that the FRAP committee ought to take a look at the Rule and see what it can do to make it clearer.

Several months ago I wrote to suggest that the committee or perhaps the FJC come up with some standards for when circuit judges should recuse based on participation by an amicus or its counsel. The issue has become more significant now that courts of appeals can, sua sponte, reject an amicus brief based on possible recusals. Is that proposal going anywhere?

Thanks, Alan