Minutes of Spring 2012 Meeting of
Advisory Committee on Appellate Rules
April 12, 2012
Washington, D.C.

I. Introductions

Judge Jeffrey S. Sutton called the meeting of the Advisory Committee on Appellate Rules to order on Thursday, April 12, 2012, at 9:00 a.m. at the Administrative Office of the United States Courts in Washington, D.C. The following Advisory Committee members were present: Judge Michael A. Chagares, Judge Robert Michael Dow, Jr., Justice Allison H. Eid, Judge Peter T. Fay, Professor Neal K. Katyal, Mr. Kevin C. Newsom, and Mr. Richard G. Taranto. Mr. Douglas Letter, Appellate Staff Director and Senior Counselor to the Attorney General, and Mr. H. Thomas Byron III, Civil Division, U.S. Department of Justice ("DOJ"), were present representing the Solicitor General. Also present were Ralph W. Johnson III, Counsel to Senator Chuck Grassley (the Ranking Member of the Senate Judiciary Committee); Judge Jeremy Fogel, Director of the Federal Judicial Center ("FJC"); Mr. Peter G. McCabe, Secretary to the Standing Committee; Mr. Jonathan C. Rose, Rules Committee Officer in the Administrative Office ("AO"); Benjamin Robinson, Deputy Rules Committee Officer and Counsel to the Rules Committees; Julie Wilson, Attorney Advisor in the AO; Mr. Leonard Green, liaison from the appellate clerks; Ms. Marie Leary from the FJC; Holly Sellers, Attorney Advisor in the AO; Julie Yap, Supreme Court Fellow assigned to the AO; Milena Sanchez de Boado, Supreme Court Fellow assigned to the FJC; Michael Duggan, Supreme Court Fellow assigned to the Supreme Court; Judge Fausto Martin de Sanctis, a Visiting Foreign Judicial Fellow at the FJC; and Dr. Roger I. Roots. Professor Daniel R. Coquillette, Reporter for the Standing Committee, participated by telephone.

Judge Sutton welcomed the meeting participants. He introduced one of the Committee's new members, Professor Katyal, who replaces former Committee member Maureen Mahoney. Professor Katyal served as Acting Solicitor General of the United States, and now is both a partner at Hogan Lovells and a professor at Georgetown University. Judge Sutton also informed the Committee that Mr. Letter – long an indispensable member of the Committee – has been promoted to Appellate Staff Director of the Civil Division of the DOJ, and is also serving as Senior Counselor to the Attorney General. Mr. Letter introduced Mr. Byron – his colleague from the Appellate Staff of the Civil Division of the DOJ – who has long experience working on matters relating to the Appellate Rules Committee's agenda, and who was a classmate of Justice Eid.

During the meeting, Judge Sutton thanked Mr. McCabe, Mr. Rose, Mr. Robinson, and the AO staff for their preparations for and participation in the meeting.

II. Approval of Minutes of October 2011 Meeting

A motion was made and seconded to approve the minutes of the Committee's October 2011 meeting. The motion passed by voice vote without dissent.

III. Report on January 2012 Meeting of Standing Committee

Judge Sutton summarized relevant events at the Standing Committee's January 2012 meeting. The meeting included a very interesting panel presentation on class actions. Also at the meeting, Judge Kravitz appointed Judge Gorsuch to chair a Subcommittee that will consider the choice of language in the national Rules to describe activities relating to electronic filing and service; Professor Struve will serve as the subcommittee's reporter. It seems likely that the Subcommittee will consider, among other things, the language that the Appellate Rules Committee proposes for Appellate Rule 6's treatment of the record in bankruptcy appeals.

Judge Sutton noted that, on December 1, 2011, the amendments to Appellate Rules 4 and 40 and to 28 U.S.C. § 2107 took effect. He observed that Mr. Johnson's work on the amendment to Section 2107 was invaluable. The process of amending Section 2107 was challenging because Congress's agenda was so full.

IV. Action Items

A. For final approval

1. Item No. 08-AP-G (FRAP Form 4)

Judge Sutton invited the Reporter to introduce this item, which concerns proposed amendments to Form 4 (relating to applications to proceed in forma pauperis ("IFP")). The proposed amendments will remove the current Form's requirement that the applicant provide detailed information concerning the applicant's expenditures for legal and other services in connection with the case. In addition, the amendments make technical changes to incorporate amendments that were approved by the Judicial Conference in fall 1997 but were not transmitted to Congress. During the public comment period, the Committee received only one comment on Form 4. This comment – from the National Association of Criminal Defense Lawyers ("NACDL") – focused on an aspect of the technical changes approved in fall 1997. The current Form 4 directs "prisoner[s]" to attach an institutional account statement to their IFP applications. The proposed amendment, as published, would specify that this requirement applies only to prisoners who are "seeking to appeal a judgment in a civil action or proceeding"; this more specific language tracks the wording in 28 U.S.C. § 1915(a)(2) (a provision added to Section 1915 by the Prison Litigation Reform Act ("PLRA")). NACDL suggests that Form 4 should further specify that the requirement of the institutional-account statement applies to prisoners "seeking to appeal a judgment in a civil action or proceeding (not including a decision in a habeas corpus proceeding or a proceeding under 28 U.S.C. § 2255)."

The Reporter observed that the premise of NACDL's suggestion appears to be accurate, though there are a few doctrinal complexities. Caselaw in all twelve of the relevant circuits states that the PLRA's provisions concerning IFP litigation do not apply to state-prisoner habeas petitions under 28 U.S.C. § 2254. Seven circuits have, likewise, held the PLRA's IFP provisions inapplicable to federal-prisoner proceedings under 28 U.S.C. § 2255. Similarly, holdings in five circuits and dicta in two other circuits state that the PLRA's IFP provisions do not apply to habeas proceedings under 28 U.S.C. § 2241. An additional issue concerns how to categorize mandamus petitions arising in connection with habeas or Section 2255 proceedings. Caselaw in some circuits provides that the applicability of the PLRA's IFP provisions to mandamus petitions depends on whether the underlying proceeding is one to which those provisions would apply, but some cases suggest other possible approaches.

The Reporter stated that the caselaw refusing to apply the PLRA's IFP provisions to habeas and Section 2255 proceedings advances persuasive arguments for that refusal. Applying those provisions to such proceedings would run counter to the tradition of access to court for habeas petitioners. Moreover, the PLRA was directed toward suits challenging prison conditions, and habeas suits are not generally the proper vehicle for such challenges. And the Antiterrorism and Effective Death Penalty Act ("AEDPA"), enacted within days of the PLRA, addresses habeas and Section 2255 litigation (and specifically addresses the issue of successive petitions).

The Reporter suggested that though the doctrinal premise of NACDL's suggestion appears sound, there are reasons to consider the proposal further before deciding whether to adopt it. The change proposed by NACDL might itself cause confusion for some applicants. For example, if an IFP applicant (erroneously or not) styled a challenge to prison conditions as a habeas petition, NACDL's proposed language would suggest to that applicant that he or she need not provide an institutional-account statement – yet that suggestion would likely be inaccurate. Admittedly, a litigant's confusion as to the nature of his or her suit is likely to have been dispelled by the trial judge prior to the time that the litigant attempts to take an appeal. But it bears noting that some district courts use a form – promulgated by the AO – that tracks Form 4 quite closely. In addition, the Supreme Court's rules direct the use of Form 4 in connection with applications to proceed IFP in the Supreme Court. Accordingly, the Reporter suggested that the Committee approve the amendments to Form 4 as published and add NACDL's suggestion to the Committee's agenda as a new item.

An appellate judge member noted that the relevant language of Form 4 as reflected in the published amendments had been fully considered in the rulemaking process in 1997. A motion was made to approve the amendments as published and to place NACDL's suggestion on the study agenda. The motion was seconded and passed by voice vote without dissent.

2. Item No. 08-AP-M (FRAP 13, 14, and 24 / tax appeals)

Judge Sutton invited the Reporter to present this item, which concerns certain amendments relating to appeals in tax cases. The proposed amendments to Rules 13 and 14 will

update those Rules to take account of permissive interlocutory appeals from the United States Tax Court under 26 U.S.C. § 7482(a)(2). Those amendments were developed in consultation with the Tax Court and the DOJ's Tax Division. In the course of those discussions, the Tax Court proposed a further amendment to Rule 24 (concerning applications to proceed IFP); that amendment revises Rule 24(b) to reflect the Tax Court's status as a court rather than an agency.

No comments were received on these proposed amendments. The Reporter suggested that the Committee approve them as published. A motion was made and seconded to approve the amendments to Rules 13, 14, and 24 as published. The motion passed by voice vote without dissent.

3. Item No. 10-AP-B (FRAP 28 & 28.1 / statement of the case)

Judge Sutton introduced this item, which concerns proposed amendments to Rule 28's list of the required contents of briefs (as well as a conforming amendment to Rule 28.1 concerning cross-appeals). During the comment period, only two commenters argued that the amendments should be abandoned; the other commenters agreed with the general purpose of the amendments. Judge Sutton noted that it makes sense to amend the rules so that briefs can present matters chronologically. However, some commenters expressed concern that the removal of some of Rule 28(a)(6)'s current language might be taken to suggest that the matters referred to in the deleted language can no longer be included in the brief.

Judge Sutton observed that the agenda materials proffered three options for the Committee's consideration. One approach would augment the Committee Note to address the commenters' concerns. Another approach would revise the amendment to the Rule text. And a third approach would simply revert to a different option previously considered by the Committee – namely, reversing the order of current Rules 28(a)(6) and 28(a)(7). That third approach has some appeal, but on the other hand there is much to recommend an approach that would bring Rule 28 into closer parallel with the Supreme Court's analogous rule. Lawyers have not had trouble understanding the requirements of the Supreme Court's rule. Judge Sutton recalled that a former attorney member of the Committee had argued in favor of keeping the Rule text relatively spare, in order to preserve flexibility for lawyers in drafting briefs. He observed that some of the specificity that commentators had proposed for the Rule text might be counterproductive; for example, a requirement that the brief specify the key facts giving rise to the claim would not make sense in the context of an appeal that concerns a purely procedural issue. Judge Sutton noted that Judge Newman had expressed the view that no amendment was needed, and also that Judge Newman had pointed out that judges and clerks want a place in the brief, with a heading, where they can quickly look to identify the rulings that are being appealed.

An attorney member observed that there are two different sorts of lawyers to consider; experienced appellate lawyers prefer flexibility, and for them, a simpler rule is better. Less-experienced lawyers may need a provision that spells things out. This member recalled that Professor Coquillette had stated that matters of substance should not be addressed in the Notes. Mr. Letter agreed that if the Committee wishes to specify more detail, that detail should go in the

Rule text rather than the Note. Some lawyers handle appeals only occasionally; and rules pamphlets usually do not include Committee Notes. Mr. Letter reiterated that it is important for briefs to be helpful to judges, and he noted that he has heard judges complain that briefs are not meeting this standard. He asked what the judge members of the Committee thought. An appellate judge member stated that he did not share Judge Newman's concern, and that he favored approving the proposal as published. Another appellate judge member agreed that the proposal should be approved as published; in his view, statements of the case under the existing Rule 28 are not helpful.

Judge Sutton asked whether it is inappropriate for a Committee Note to explain the intent of the amendment in the context of the prior rule – for example by explaining that the removal of a specific textual reference to a certain component is not meant to outlaw inclusion of that component. An attorney member questioned what aspects of the proposed augmented Committee Note would be substantive. The one change that he could see as possibly substantive would be the removal of a reference to the "course of proceedings"; the other changes seemed more like reordering and clarifying the present rule. He asked whether omission of any reference to procedural history might cause briefs to omit something that is important for understanding; but he noted that it would be almost impossible to indicate the "rulings presented for review" without discussing the relevant procedural history.

Turning to specific drafting issues, an attorney member questioned whether it is really appropriate to use the term "concise" in the proposed provision that combines the former Rules 28(a)(6) and 28(a)(7). He suggested deleting "concise." Judge Sutton observed that there is little risk that briefs will end up being too short, but he agreed that the use of the term "concise," coupled with the removal of references to specific components in a brief, might lead to an overly minimalist approach. An appellate judge member disagreed, predicting that there is no risk of undue minimalism in briefs; another appellate judge member concurred in this view. A participant asked whether the inclusion of the word "concise" in amended Rule 28(a)(6) would suggest – by negative implication – that other portions of the brief need not be concise. Members responded that similar words are employed in a number of the subsections of Rule 28(a).

The attorney member also stated that he understood a commentator's concern about the published rule's use of the term "relevant" as centering on the fact that the published language refers to "*the* facts relevant to the issues submitted for review" – that is to say, the use of the word "the" might cause a reader to conclude that facts not mentioned in the statement may not be relied upon in the brief. He noted, on the other hand, that such an argument is not strong and that similar language appears in the Supreme Court's rule.

With respect to the question of procedural history, participants recalled that the Committee's motivation for proposing to delete Rule 28(a)(6)'s reference to "the course of proceedings" had been a concern that briefs discuss the procedural history in inordinate detail. Judge Sutton asked whether this concern could be addressed by referring, in the Rule text, to "the relevant procedural history." An appellate judge member stressed that procedural history is

important, but only as to the issues presented in the appeal. Judge Sutton agreed with a member's earlier observation that lawyers are likely to mention the procedural history when describing the rulings presented for review.

Judge Sutton asked for Committee members' views on the published proposal's use of the term "identifying" in the phrase "identifying the rulings presented for review." Would it be better to say "describing the rulings presented for review"? An appellate judge member stated that "identifying" was useful because it is likely to prompt a more concise description.

Judge Sutton asked Professor Coquillette for his views on the proposed augmented Committee Note. Professor Coquillette stated that he was concerned by the inclusion of detail in that version of the Committee Note, because some lawyers use rule books that do not include Notes. The Standing Committee prefers to avoid placing in the Committee Note anything that actually changes the operation of the Rule. A member asked whether the augmented Note changed the operation of the Rule or whether it merely directed readers not to draw a negative inference based on the changes made to the Rule. Professor Coquillette responded that the augmented Note language fell in a gray area and was not an obvious abuse of the Note. An attorney member stated that Professor Coquillette's guidance made him wary of placing in a Note something that could be placed in the Rule text. Judge Sutton asked whether the Note can be used, not to modify the Rule text, but rather to address a possible negative inference that might be drawn by a reader who was comparing the amended Rule text to the previous version of the Rule. Professor Coquillette responded that that could be a valid use of a Note.

An attorney member suggested that the question of whether the Rule should mention procedural history was potentially significant; by contrast, he suggested, the Rule need not mention the nature of the case because the components of the brief (e.g., the statement of the issues) will make clear the nature of the case. This member noted that the Committee cannot predict how lawyers will respond to the deletion, from Rule 28(a)(6), of the reference to "the course of proceedings." He suggested that it might be useful to include a phrase such as "any procedural history necessary to understand the posture of the appeal or the issues submitted for review." He asked whether participants could think of a more concise substitute for that language. Judge Sutton responded that his concern about that language would not solely relate to its unwieldiness; he would also be concerned that the language could lead brief-writers to be over-inclusive. However, he added that he did not feel strongly about this, and that the main goals of the amendments, in his view, were to provide that the statements of the case and the facts could proceed in chronological order and to give flexibility to lawyers in drafting their briefs. He asked participants whether they would suggest adding language to the proposed Rule text. Mr. Byron asked whether one might add to the Rule a reference to "relevant" procedural history and leave the detailed explanation to the Committee Note. An appellate judge member suggested that "necessary" is a more limiting word than "relevant." Judge Sutton observed that the proposed Rule would continue to use the word "concise" to modify "statement of the case."

Judge Sutton suggested that there appeared to be an emerging consensus that the best way to address the commentators' concerns was to augment the Committee Note, but that it

would be useful to amend the Rule text to refer to the relevant (or necessary) procedural history.

The Committee returned to this item after lunch; during lunch, the Reporter produced a revised draft that reflected the Committee's discussions prior to lunch. The revised draft would amend Rule 28(a)(6) to refer to "a concise statement of the case setting out the facts relevant to the issues submitted for review, describing the relevant procedural history, and identifying the rulings presented for review, with appropriate references to the record (see Rule 28(e))." A member suggested a conforming change to the Committee Note. A motion was made to approve the revised draft (as circulated at the meeting), subject to the change to the Committee Note. The motion was seconded and passed by voice vote without dissent.

B. For publication: Item No. 09-AP-C (FRAP 6 / direct bankruptcy appeals) and Item No. 08-AP-L (FRAP 6(b)(2)(A) / *Sorensen* issue)

Judge Sutton invited the Reporter to introduce these items, which concern proposed amendments to Appellate Rule 6 concerning bankruptcy appeals. The Reporter observed that the proposed amendments to Rule 6 have been developed jointly with the Bankruptcy Rules Committee, in the context of that Committee's discussions of proposed revisions to Part VIII of the Bankruptcy Rules. As part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), Congress created an avenue for direct permissive appeals from the bankruptcy court to the court of appeals under 28 U.S.C. § 158(d)(2). Initially those appeals were governed by interim procedures contained within BAPCPA, but some of those procedures have subsequently been displaced by an amendment to the Bankruptcy Rules, and it now seems worthwhile to amend Appellate Rule 6 to address the topic.

The Reporter noted that the Committee had already discussed the proposed amendments to Rule 6 in some detail at its fall 2011 meeting. She observed that several aspects of the proposed amendments seemed uncontroversial. The proposals would amend Rule 6's title, slightly restyle the Rule, update cross-references within the Rule, account for new Appellate Rule 12.1 (concerning indicative rulings), remove an ambiguity in Rule 6(b)(2), and add a new Rule 6(c) concerning permissive direct appeals. The Reporter observed that the draft Part VIII rules were included in the Committee's agenda materials and predicted that the Bankruptcy Rules Committee would welcome any suggestions that Appellate Rules Committee members might have on the Part VIII draft.

The Reporter suggested that one of the most significant decisions still facing the Committee was whether to attempt to tackle, in the proposed amendments to Rule 6, the question of the terminology that should describe the treatment of a record that is in electronic form. The Rule 6 draft presented to the Committee in fall 2011 had attempted to account for the shift to electronic records by using the term "transmit" (instead of "forward" or "send") to refer to the treatment of both electronic and paper records and using the term "send" to refer to the treatment of paper records. Members had quickly noted flaws in this approach, and the discussion during and after the fall 2011 meeting had focused on the possibility of using either the term "furnish" or the term "provide."

The Committee's spring agenda materials presented two versions of the proposed amendments to Rule 6. The first version showed the terms "furnish" and "provide" as bracketed alternatives in each place where the Rule discussed the provision of the record to the court of appeals. If this alternative were to be adopted, the Committee would face further choices concerning whether to specify in the text of Rule 6(b) what acts constitute "furnishing" or "providing"; or whether to add in Rules 6(b) and 6(c) provisions inviting the courts of appeals to adopt local rules concerning the mode of provision of the record; or whether to place the detailed discussion of that issue in the Committee Note. The second alternative version made no attempt to update the terminology used to describe the treatment of the record, except where updating was absolutely necessary; this approach would leave for another day the question of the terminology that the Appellate Rules should employ to account for records (and other documents) in electronic form.

Judge Sutton recalled that, when the Committee discussed the question of word choice, it had focused on the fact that a record could be provided to the court of appeals in paper form, or as one or more electronic records, or in the form of links that enable a user to access the record in electronic form; the difficulty arose concerning the choice of a term that would encompass the third of these possibilities. Judge Sutton noted that the Appellate Rules Committee has commenced a project concerning possible amendments to the Appellate Rules, generally, in the light of the shift to electronic filing; but that project may not proceed as quickly as the proposed amendments to Appellate Rule 6. He observed that even when the shift to electronic filing is complete, the courts will still need to handle paper filings by some litigants. Professor Coquillette predicted that the Standing Committee would need to undertake a project, involving all the advisory committees, concerning the implications of the shift to electronic filing. Because technology is developing so rapidly, that will require some serious study and coordination.

Returning to the question of terminology, Judge Sutton stated that he did not think either "furnish" or "provide" fully addressed the question that had been troubling the Committee. An attorney member stated that he was indifferent as between "furnish" and "provide"; in his view, the key was to include a sentence defining the meaning of the term that was chosen. An appellate judge suggested that "transmit" was a good choice.

After further discussion, Mr. Green suggested a different word choice: Rather than referring to the lower-court clerk's "furnishing" or "providing" the record to the court of appeals, the rule could direct the lower-court clerk to "make the record available" to the court of appeals, and could direct the circuit clerk to "obtain" the record. An attorney member agreed that Mr. Green's proposed language would address his concern about instances in which access to the record is provided by means of electronic links. Professor Coquillette observed that it would be better not to include Rule text that invites local rulemaking. Judge Sutton suggested that it could make sense to modify the first alternative shown in the agenda materials as suggested by Mr. Green. An attorney member agreed that that was a promising approach.

Next, the Reporter sought the Committee's views on a point previously discussed by the Committee at its fall 2011 meeting. Proposed Rule 6(b)(2), as amended, would provide that "[i]f

a party intends to challenge the order disposing of [a tolling] motion – or the alteration or amendment of a judgment, order, or decree upon the motion – then the party, in compliance with Rules 3(c) and 6(b)(1)(B), must file a notice of appeal or amended notice of appeal." The next sentence, as shown in the Committee's fall 2011 agenda materials, read: "The notice or amended notice must be filed within the time prescribed by Rule 4 – excluding Rules 4(a)(4) and 4(b) – measured from the entry of the order disposing of the motion." At the fall 2011 meeting, the Committee discussed Professor Kimble's advice that "The notice or amended notice" in this second sentence should be replaced by "It." Some members believed that the longer formulation was clearer. After the fall meeting, Professor Kimble reviewed the Rule 6 draft and continued to maintain strongly that this was purely a question of style and that "It" was preferable. Thus, the Reporter asked the Committee to consider the issue once again.

A participant asked whether the issue could be addressed by using the formulation "That notice ..."; but the Reporter responded that referring only to a "notice" might cause confusion by omitting reference to an amended notice. Mr. Letter observed that the concern over confusion arises because a reader might wonder whether "It" referred to the notice (or amended notice) of appeal or to the order disposing of the tolling motion. The Reporter agreed that this accurately described the concern. She noted that a litigant would have to be relatively confused in order to take "It" to refer to the order rather than the notice of appeal, but she observed that the Committee often worries (when drafting) about litigants who are easily confused. And she noted that such concerns are heightened with respect to provisions that concern potentially jurisdictional deadlines. A participant suggested that the problem under discussion arose because the proposed amendment adds a period in the midst of what previously had been a single sentence, and he wondered whether a solution could be found by removing the period and merging the two sentences into one. Another participant responded that the resulting single sentence would be quite complex. A member asked whether the problem could be avoided by revising the second sentence to use an active rather than passive formulation ("The party must file ..."); that would make it less likely that a reader would believe "it" referred to a court order. A participant stated that the difference in length between the longer and shorter formulations was small, and that if there is a nontrivial chance that the shorter formulation might confuse some readers, he favored the longer formulation. A district judge member observed that bankruptcy proceedings often involve pro se debtors, and that for those litigants it is best for the rules to be very specific. An attorney member stated that he favored the longer formulation; an appellate judge member agreed. Professor Coquillette observed that the question was whether the choice was substantive or purely one of style. The Reporter suggested that the district judge member's concern about access to courts for pro se debtors sounded like a substantive concern. A motion was made to retain the longer formulation on the ground that the difference was one of substance rather than style; the motion was seconded and passed by voice vote without opposition.

The Committee next turned to the text of proposed Rules 6(b)(2)(D) and 6(c)(2)(D). As shown in the agenda materials, those provisions direct the circuit clerk to note on the docket the fact that the lower-court clerk has furnished the record, and the provisions state that "The date noted on the docket serves as the filing date of the record for purposes of [these Rules] [Rules 28.1(f), 30(b)(1), 31(a)(1), and 44]." Judge Sutton suggested that general wording was

preferable in this instance. The Reporter asked whether that would counsel in favor of ending the relevant sentence after "the record" – or whether truncating the sentence in that way might lead to unanticipated effects if the revised Rule is taken to define the record's filing date for purposes of, for example, a local rule. On the other hand, a participant suggested that if the provision defines the filing date "for purposes of these Rules," this wording might lead readers to wonder whether that definition in Rule 6 modifies the treatment of the record's filing date under Rule 12(c) (which will continue to apply to non-bankruptcy appeals). The Reporter noted that if the Committee chose to truncate the sentence after "the record," it could seek input (during the comment period) on whether that would create problems in any area of practice; on the other hand, she observed, this would be a relatively detailed point on which to seek specific comment. A district judge member stated that he expected that the definition in Rule 6 could technically affect provisions in local rules, but he also stated that he did not think this would cause a problem because, in practice, the same definition would likely be used anyway. Judge Sutton suggested that it would make sense to truncate the sentence after "the record" for purposes of publication, and that it would be useful to solicit comment on that choice. For example, he suggested, it would be very useful to learn what bankruptcy clerks think about the question.

After lunch, the Committee considered a revised draft of the Rule 6 proposal – prepared and circulated during lunch – that incorporated the Committee's discussions during the morning session. An attorney member suggested some conforming changes to the Committee Note. Mr. Byron asked whether the proposal would be circulated to the Bankruptcy Rules Committee for its views; the Reporter stated that it would be circulated to the Bankruptcy Rules Committee and also to the Standing Committee's subcommittee that will consider questions of terminology relating to electronic filing. Mr. Robinson suggested a wording change to the revised Rule 6 draft; members concurred in the change.

A motion was made to approve the revised language circulated to the Committee members, with Mr. Robinson's change to the Rule text and with the revisions a member had suggested to the Committee Note. The motion was seconded and passed by voice vote without dissent.

V. Discussion Items

A. Item No. 09-AP-B (definition of "state" and Indian tribes)

Judge Sutton invited Justice Eid to introduce this issue, which concerns a proposal that Appellate Rule 29 be revised to treat federally recognized Native American tribes the same as states for purpose of amicus filings.

Justice Eid reminded the Committee that this item came to the Committee at the suggestion of Daniel Rey-Bear, who asked the Committee to consider adding Indian tribes to the list of entities that can file amicus briefs as of right. The Committee received letters in support of Mr. Rey-Bear's proposal from a number of groups. The Committee further benefited from a report by Ms. Leary, who examined the frequency of tribal amicus filings and the rate at which

leave to file was granted. Ms. Leary found that most such filings occur in the Eighth, Ninth, and Tenth Circuits and that leave to file is typically granted. At the Committee's request, Judge Sutton wrote to the Chief Judges of those three circuits to ask for those circuits' views on the adoption of a local or national rule authorizing filings as of right by tribal amici. The three circuits' responses varied, with the Ninth Circuit expressing support for a national rule, the Tenth Circuit expressing a contrary view, and the Eighth Circuit evincing mixed views. More recently, Judge Sutton wrote to the Chief Judges of the remaining circuits to solicit their views on a possible rule change that would add both tribes and municipalities to the list of entities that can file amicus briefs as of right. Among the circuits that have thus far responded to that letter, the views have been mixed. The Eleventh Circuit appears ambivalent; the First Circuit is more supportive of the idea of authorizing amicus filings by tribes, but also expresses concern about the possible effects of the change on recusal issues (especially if municipalities are included along with tribes); the Seventh Circuit has not expressed a view and does not receive many amicus filings from tribes.

Justice Eid observed that in the Committee's previous discussions, participants have expressed varying views. Justice Eid favors the proposal and views it as a question of dignity for tribes. She noted that she had practiced in the field of federal Indian law, that she lives in a state where two large tribes are located, and that her husband practices federal Indian law. She observed that some participants in the discussion had asked whether the inclusion of tribes on the list of those who can file amicus briefs as of right would place the Committee on a slippery slope by leading to requests to include other types of entities. Participants had suggested, for example, that if the Rule is amended to treat tribes the same as states then the expanded category should include municipalities as well as tribes. Participants had also asked what, if anything, the addition of tribes to the list would suggest about tribal sovereignty generally. Justice Eid suggested that, at this point, the Committee may wish to consider whether it has done all the research that can be done on this issue. Perhaps the Committee could ask Judge Sutton to write to the circuits, summarizing the Committee's research and discussions and leaving the question, for the moment, to each circuit for treatment on a local basis.

Judge Sutton observed that one reason the Committee's discussions expanded to encompass municipalities as well as states was that the Supreme Court's rule authorizes amicus filings (without court permission or party consent) by municipalities but not tribes. He noted that, if municipalities as well as tribes were added to the list of entities that can make amicus filings as of right, the change would not correlate with sovereignty issues because municipalities are not sovereign. Thus far, he observed, there did not appear to be support for adding foreign governments to the list. He noted that, when the Standing Committee has previously discussed this item, participants expressed varying views. Among the responses that the Committee has received thus far from the circuits, a negative response has been received from the Tenth Circuit; and the First Circuit has expressed concern about recusal issues (though that concern arose more with respect to the possible inclusion of municipalities). An attorney member asked whether the Committee knows what, exactly, the recusal practices are in each circuit. Mr. Letter responded that the practices vary from circuit to circuit, but that he can think of instances when a request to file an amicus brief has been denied because of a recusal issue, and other instances in which a

judge has recused from a case because of an amicus filing.

Judge Sutton asked whether – as an interim approach – Committee members favored writing to the circuits to report on the Committee's discussions to date. The letter would explain that the Committee thinks the issue warrants serious consideration but that the Committee is not sure that now is the time to adopt a national rule change on this issue, and that the Committee plans to revisit the issue in five years. A member stated that this approach sounds right to him, and that he would be very concerned about proceeding with a national rule in the light of the possible recusal issues mentioned by the First Circuit. Mr. Letter noted that the DOJ urges that the Committee consult tribes for their views on this issue. The DOJ, he stated, favors the proposed national rule change for tribes but not for municipalities; the DOJ considers this to be an issue relating to sovereignty and believes that the change would not burden the courts because tribes' requests to file amicus briefs are usually granted. On the other hand, Mr. Letter observed, the Committee's discussions have raised some very real practical considerations. The DOJ would not oppose a proposal that would allow circuits to study the issue and adopt a local rule on the subject if they would like. An appellate judge member expressed support for the approach suggested by Judge Sutton; another appellate judge member agreed. Professor Coquillette observed that, in the past, other committees have dealt with some issues in a similar way.

Mr. Letter suggested that Judge Sutton's letter should note that there is substantial support, within the Committee, for the proposal. Judge Sutton suggested that the letter could say that all members of the Committee believe that the proposal implicates serious dignity issues and think that the proposal warrants serious consideration. Mr. Letter asked whether the letter should say that the Committee believes that the idea of a local rule on the subject is worthy of consideration. Judge Sutton responded that it would be problematic to set a precedent of urging circuits to adopt local rules. A district judge member predicted that a letter from Judge Sutton, representing the sense of the Committee, would usefully generate discussion in circuits where the judges have not previously considered the issue.

A motion was made in support of the proposal that Judge Sutton write to the Chief Judges of each circuit. The motion was seconded and passed by voice vote without opposition. Judge Sutton promised to circulate a draft letter to the Committee members for their feedback during the spring.

B. Item No. 10-AP-I (redactions in briefs)

Judge Sutton invited Judge Dow to report on this item, which concerns a proposal by Paul Levy of Public Citizen Litigation Group that the Committee consider questions relating to the sealing or redaction of appellate briefs. Judge Dow summarized the variety of approaches among the circuits. In some circuits there is a presumption that documents that were sealed below remain sealed on appeal. In the Seventh Circuit (and to some extent, apparently, the Third Circuit) there is a presumption that documents will be unsealed on appeal, so that a party must file a motion if it wants to maintain sealing on appeal. The Federal Circuit and the D.C. Circuit direct the attorneys to review the sealed portions of the record and identify the portions that need

not remain sealed on appeal.

Judge Dow observed that it may make sense to distinguish, for purposes of the treatment of sealing, between materials exchanged in discovery and materials that become part of the court record. It would be useful, he noted, to consult the circuit clerks in selected circuits – perhaps the Seventh Circuit, the D.C. Circuit, the Federal Circuit, and a circuit in which items sealed below presumptively remain sealed on appeal. He observed that evolutions in technology will affect these issues; relevant questions include, for example, how the Next Generation CM/ECF software will address sealing. He also noted that there may be differences in the approaches that one would adopt in civil and criminal cases. An overarching question, Judge Dow suggested, is whether a national rule would be appropriate, given that the circuits currently take at least three different approaches to sealing on appeal.

Judge Dow noted that Mr. Letter had volunteered to work with him and the Reporter on this project. Judge Sutton thanked Judge Dow for his work.

C. Item No. 11-AP-B (FRAP 28 / introductions in briefs)

Judge Sutton invited the Reporter to introduce this item, which concerns whether Rule 28 should be amended to mention the possibility of including introductions in briefs. This question dovetails with the Committee's earlier discussions – in connection with the pending proposal concerning the statement of the case – about the different constituencies that use the Rules. Experienced appellate litigators are well aware that they can include introductions in their briefs, and they do so to good effect. The question might be whether to amend the Rule to provide guidance for young lawyers or other lawyers with less appellate experience. A former Committee member had pointed out to the Committee that the proposed amendment concerning the statement of the case would make Rule 28(a)(6) flexible enough to permit a lawyer to include an introduction as part of the statement of the case. On the other hand, the flexibility provided by amended Rule 28(a)(6) would not serve the function of giving notice to less-experienced lawyers. Some participants in the discussion have questioned whether it would be practicable to provide guidance, in the Rule text, concerning the nature and function of the introduction. One possibility that had been floated – providing guidance in the Committee Note – would appear to run afoul of the principle, discussed earlier in the day, that Committee Notes should not be used for the purpose of providing advice to lawyers.

Judge Sutton observed that it would be hard to devise a rule that specifies what an introduction should do, and how to distinguish the introduction from the summary of argument. Professor Coquillette noted that traditionally, neither Rules nor Notes include advice for practitioners. An attorney member suggested that one would not necessarily wish to place the introduction within the statement of the case. On the other hand, if and when the proposed amendments to Rule 28(a)(6) take effect, that Rule will give lawyers flexibility in drafting the statement of the case – which diminishes the reasons to amend the Rules specifically to address the topic of introductions. A member noted that a bad introduction is worse than no introduction.

Mr. Byron suggested that the Committee Note to the pending amendments to Rule 28(a) could be revised to include a discussion of introductions. The Note could state that an introduction is not prohibited under the Rules and can be included either as the first item in the brief or in the statement of the case. (Mr. Byron noted that in his own practice he has alternated between those two placements for the introduction, depending on the circumstances of the case.) Judge Sutton noted that the benefit of mentioning those considerations in the Note would be to inform lawyers about the topic; the risk would be that this information would encourage the inclusion of poorly written introductions. A participant observed that – because the Standing Committee has the ability to make changes to Committee Notes when proposed amendments are presented to it for approval – one could be confident that the language of the Committee Note would be reviewed by the Standing Committee.

An appellate judge member said that introductions are helpful but not indispensable. Another appellate judge member noted that if the Rules invited the inclusion of introductions, they might elicit introductions that are similar to arguments to a jury. A member suggested that it might be preferable to wait and see how practice develops under the pending amendments to Rule 28(a). An attorney member stated that he would oppose adding language to the Rule 28(a) Committee Note to mention introductions.

A motion was made to remove this item from the Committee's agenda for the present. The motion was seconded and passed by voice vote without opposition.

VI. Additional Old Business and New Business

A. Item No. 11-AP-E (FRAP 4(b) / criminal appeal deadlines)

Judge Sutton invited the Reporter to introduce this item, which concerned a suggestion by Dr. Roger Roots that Appellate Rule 4(b) be amended to accord criminal defendants the same 30-day appeal period that applies to government appeals in criminal cases. The Reporter suggested that it would be difficult to argue that the difference between the defendant's and the government's appeal time is unconstitutional. A more significant question is whether the current 14-day appeal time period poses a hardship for defendants. Another question arises from the fact that the appeal times in Rule 4 depend on the categorization of the appeal as civil or criminal; at the margins, there is the possibility that the differential in appeal times between civil and criminal cases could give rise to difficulties if there is uncertainty over how to categorize a particular appeal. A third question is whether there should be symmetry between the appeal times that apply to the opposing parties in a given type of case.

As to the question of hardship, the Reporter suggested a few considerations. Fourteen days is a short period, and it is shorter than the period for civil appeals. The notice of appeal is a simple document. In some cases there may be challenges involved in identifying colorable issues for appeal, or difficult strategic questions where a defendant has received a lower sentence than he or she might receive if re-sentenced; but setting such instances aside, ordinarily the decision whether to appeal should not be a difficult one. Additionally, some safeguards exist. In

cases where there is a difficulty the defendant can seek an extension of the time to appeal under Rule 4(b)(4). At sentencing, the district court must advise the defendant of his or her right to take an appeal, and if the defendant requests, the clerk will file the notice of appeal on the defendant's behalf. When an incarcerated defendant files the notice of appeal himself or herself, Rule 4(c)'s inmate-filing provision would apply. These features, the Reporter suggested, might alleviate possible hardships. But she noted her lack of experience in criminal law; those with such experience are better situated to assess this question.

With respect to the question of categorization, it turns out that, at the margins, there are some cases that may be difficult to categorize as civil or criminal. If a defendant errs by viewing the case as criminal when it is actually civil, then the harm would be that the defendant files a notice of appeal earlier than is actually necessary. A defendant who is aware of a difficult categorization question and is unsure whether the case counts as civil or criminal can protect himself or herself by filing within the deadline set by Rule 4(b). But a litigant who wrongly assumes that a case is civil when it is actually criminal could lose his or her appeal rights by filing too late. The Reporter observed that this concern had surfaced a decade ago, when the Committee last discussed a proposal to lengthen Rule 4(b)'s appeal deadline for criminal defendants.

As to the question of symmetry between litigants, the Reporter observed that there is an attraction to the idea that if one litigant receives additional time to appeal, their opponent should also have the benefit of the longer period. That principle is applied in Appellate Rule 4(a), which provides additional time to all litigants when one of the litigants is a United States government entity. Perhaps counterbalancing that, there are a number of asymmetries in criminal practice – such as asymmetries in discovery and asymmetries in rights to take an appeal.

The Reporter observed that if the Committee were to be interested in proceeding with this item, it would be important to consult the Criminal Rules Committee. Moreover, if one were to amend Rule 4(b) on grounds of symmetry, that might also raise a question about Civil Rule 12(a) (which provides federal government defendants with additional time to respond to the complaint).

A member stated that he was unpersuaded by the constitutional arguments and the arguments concerning symmetry. However, he suggested that it would be useful for the Committee to obtain data that would bear on the hardship argument. How often do criminal defendants fail to take an appeal, and why? For example, are appeals foregone for strategic reasons or are they forfeited due to lawyer incompetence? This member noted that there might be an alternative approach to protecting appeal rights; one could adopt a system in which the default is that there will be an appeal, and leave it up to the litigant to opt out if he or she does not wish to take an appeal.

Mr. Byron reported that he had discussed this item with Mr. Letter prior to the meeting; Mr. Letter had discussed the issue of hardship with a friend who is a federal public defender in the District of Columbia, who reported that in the experience of that office this typically is not a

problem. Most criminal defendants who wish to file appeals tend to do so expeditiously. A district judge member stated that he would have no objection to a rule that gave criminal defendants 30 days to appeal. He observed, though, that all criminal defendants are represented by counsel unless they decide, after a waiver, that they don't want a lawyer. And by the time of sentencing, the defendant and the lawyer have already had time (often, a lot of time) to consider possible issues of trial error. So the only issues that would arise shortly before the appeal deadline would relate to possible sentencing error. And, as noted, the judge informs the defendant at sentencing concerning the right to take an appeal. In sum, this member stated, he did not see the 14-day appeal time period posing a problem in his district; but, he suggested, a 30-day appeal time period could be useful if the defendant needs to think through a tricky sentencing issue. On the other hand, he noted, the latter sort of difficulty can be addressed under the current rules if the judge grants a request to extend the appeal time.

An attorney member asked why it is important to require the defendant to decide within 14 days whether to appeal; what events, this member wondered, turn on the date on which the defendant's appeal time runs out? A district judge member queried whether the timing had any implications for speedy trial requirements. The attorney member asked whether the expiration of the time to appeal would have implications for the timing of a remand to custody, or whether there is any similar systemic interest in getting the defendant's punishment started sooner rather than later. The district judge member responded that he did not think so; he observed that the question of whether the defendant can stay out on bond after sentencing is governed by statute. He noted that in a given circuit, the timing of the notice of appeal might affect the appellate briefing schedule.

Mr. Byron observed that the DOJ has an interest in the speedy resolution of criminal cases. Even the government's appeal time period in criminal cases, he noted, is shorter than the government's appeal time period in civil cases. An attorney member asked why one would not adopt a system in which the 14-day appeal time period applied to both sides in criminal cases; the government could file protective notices of appeal and then withdraw the notices if it decided not to appeal. Another member responded that there would be serious costs to a system that required the government to file a notice of appeal before it had had time to fully consider whether it wished to take an appeal. This member observed that to the public, the government's filing of a notice of appeal is not treated as merely an administrative act; it would be counter-productive if the government either had to decide whether to appeal within a very short time period or else withdraw a protective notice of appeal that it had previously filed. The attorney member who raised the question about applying the 14-day period to both sides suggested that if the 14-day deadline would impose those sorts of costs on the government, it was worth considering whether that deadline imposes similar costs on the defendant. The other member responded that he viewed those costs as asymmetric; when a criminal defendant files a notice of appeal it does not trigger the same sorts of public, institutional concerns that arise when the government files a notice of appeal.

An appellate judge stated that, in his experience, defendants in the Eleventh Circuit are not denied the right to an appeal due to a late notice. If the defendant asked his lawyer to file the

notice and the lawyer did not do so, then the court of appeals sends the case back to the district court for resentencing and the entry of a new judgment. He suggested that the Committee should be cautious about altering a time period that is so long-established.

Returning to the fact that the Committee had considered a similar proposal a decade earlier, Judge Sutton asked who had submitted the proposal on that earlier occasion. An attorney member asked what reasons had been given for the Committee's rejection of that prior proposal. Mr. Byron agreed to provide the Committee with the materials that Mr. Letter had submitted to the Committee in connection with that earlier discussion. The Reporter noted that she would locate the initial proposal that triggered the earlier discussion, and that she would update the Criminal Rules Committee Chair and Reporters concerning the Committee's discussion. By consensus, the Committee decided to retain this item on its study agenda. Judge Sutton thanked Dr. Roots for raising this issue with the Committee.

B. Other possible items for consideration by the Committee

Judge Sutton invited Committee members to suggest items for the Committee's consideration.

An attorney member suggested that it might be useful to clarify practice under Appellate Rule 8 and Civil Rule 62 concerning procedures for appeal bonds. The bonding process unfolds quickly and can be confusing. For example, Civil Rule 62(b) provides that "[o]n appropriate terms" the court may stay execution of a judgment pending disposition of a postjudgment motion, while Civil Rule 62(d) discusses the obtaining of a supersedeas bond to secure a stay of the judgment pending appeal. So there are two different episodes as to which security is an issue, and the would-be appellant will likely need to provide security both with respect to the time period when the postjudgment motions are pending and then also with respect to the time period of the appeal. Moreover, a would-be appellant, he observed, might not always get a bond; it might use a letter of credit, or let the other side hold a check, or pay the other side a sum of money. So the way that bonding occurs in practice will depend on what method is both cost-effective for the would-be appellant and satisfactory to the prospective appellee. Perhaps there is no reason to amend the Rules to reflect the variety of actual practices, but even an experienced practitioner can find the process opaque. An amendment to the Rules might bring greater order to this area of practice. The Reporter stated that she would consult Professor Cooper in order to determine when the Civil Rules Committee had last considered the question. The attorney member noted that in some state court systems the amount of the bond is specified by law (for example, a provision might set the bond at a certain percentage of the judgment); by contrast, he observed, in federal litigation no provision specifies the amount of the bond and thus the issue sometimes ends up getting litigated.

A member asked why Rule 35(b)(2) sets the length limit for a petition for rehearing en banc in pages rather than words. The Reporter undertook to investigate this question.

VII. Other Information Items

A. *Gonzalez v. Thaler*, 132 S. Ct. 641 (2012)

Judge Sutton invited Mr. Newsom to introduce this item, which concerns the Supreme Court's recent decision in *Gonzalez v. Thaler*, 132 S. Ct. 641 (2012). In this 8-1 decision, the Court held that 28 U.S.C. § 2253(c)(3)'s requirement that a certificate of appealability ("COA") indicate which issue or issues meet the statutory test for issuance of a COA is not a jurisdictional requirement. Thus, the COA's failure to include that specification did not deprive the court of appeals of jurisdiction.

Mr. Newsom reviewed for the Committee the structure of Section 2253(c). Section 2253(c)(1) provides that "[u]nless a circuit justice or judge issues a [COA], an appeal may not be taken to the court of appeals" in a habeas or Section 2255 proceeding. Everyone recognizes that this provision sets a jurisdictional requirement because it meets the clear statement test set out in *Arbaugh v. Y&H Corp.*, 546 U.S. 500 (2006). Section 2253(c)(2) states that the COA "may issue ... only if the applicant has made a substantial showing of the denial of a constitutional right." That provision was not squarely at issue in *Gonzalez*. And then Section 2253(c)(3) states that the COA "shall indicate which specific issue or issues satisfy the showing required by" Section 2253(c)(2).

Mr. Gonzalez's federal habeas petition raised a Sixth Amendment issue. The district court denied the petition as untimely. Gonzalez sought a COA on both the timeliness issue and the underlying Sixth Amendment issue. A court of appeals judge granted the COA, mentioning timeliness but not the Sixth Amendment issue. The question was whether the COA's failure to mention the Sixth Amendment issue (as required by Section 2253(c)(3)) deprived the court of appeals of jurisdiction. The state first raised this issue in response to Gonzalez's petition for certiorari.

The Supreme Court – contrasting Section 2253(c)(3)'s wording with that of Section 2253(c)(1) – held that Section 2253(c)(3)'s requirement is mandatory but not jurisdictional. Justice Scalia, writing in dissent, argued that the relationship between Sections 2253(c)(3) and 2253(c)(1) was similar to the relationship between Appellate Rules 3 and 4. Rule 4 sets the deadline for filing the notice of appeal, and Rule 3 specifies the contents of the notice of appeal. In *Torres v. Oakland Scavenger Co.*, 487 U.S. 312 (1988), the Court held that Rule 3 – the content provision – was jurisdictional because of its relationship to Rule 4's jurisdictional deadline. In response, the Court stated that *Torres* presented a different question; in part, the Court observed that it had relied on the Committee Note to Rule 3.

One question raised by this case is whether the approach that the *Gonzalez* Court took to Section 2253(c) signals a retrenchment from the *Torres* rule. Another question is whether the *Gonzalez* Court's approach will affect the courts' views on whether Appellate Rule 4(a)(4)'s requirement of a "timely" tolling motion is jurisdictional.

B. D.C. Circuit Rule 35(a)

Judge Sutton invited the Reporter to introduce this topic, which was drawn to the Committee's attention by Mr. Letter. Mr. Letter pointed out that D.C. Circuit Rule 35(a) alters the time to seek rehearing. For criminal appeals, it lengthens the time from 14 days to 45 days, and for civil appeals in cases involving no federal parties, it lengthens the time from 14 to 30 days. Two other circuits also have rules that lengthen the time to seek rehearing to some extent. For appeals generally (other than civil appeals in cases involving federal parties), Eleventh Circuit Rule 35-2 lengthens the time period from 14 days to 21 days while Federal Circuit Rule 40(e) lengthens the time period from 14 days to 30 days. Perhaps these circuits feel that lengthening these deadlines will lead parties to be more judicious in their decision whether to seek rehearing; or perhaps these circuits prefer to avoid the need to resolve motions to extend the time to seek rehearing. At least two circuits (the Fourth and Fifth Circuits) have local rules that suggest a reluctance to extend the time to seek rehearing.

Mr. Byron explained that the DOJ has an interest in uniformity, because inter-circuit variations can pose pitfalls for those who practice in multiple circuits. A longer period for seeking rehearing would have the benefit of removing the need to seek extension of that period by motion. On the other hand, he said, the DOJ does not have a strong position on this issue and it defers to the views of judges and circuit clerks, who have to deal with these issues more directly. An appellate judge member observed that the Eleventh Circuit is willing to grant extension motions if there is a reason for the motion, and that the Eleventh Circuit's local rules include a provision stating that an attorney is not obligated to seek rehearing, and that lawyers should think before filing a petition for rehearing. Judge Sutton observed that some circuits might wish to expedite the time from the filing of an appeal to decision of the appeal. The Fourth and Eleventh Circuits, for example, are known to dispose of appeals swiftly. He asked whether the question of deadlines for seeking rehearing is one that implicates issues specific to local circuit culture, and he questioned whether judges would favor a rule that required national uniformity on this issue. An attorney member suggested that the question of time to disposition might not be affected by deadlines for seeking rehearing, because it depends on how one counts the time to disposition. Mr. Green observed that the usual calculus looks at the time when the case is finally disposed of after the disposition of any timely petition for rehearing. An appellate judge member suggested that there was no reason for the Committee to take action on the question of deadlines for seeking rehearing.

By consensus, the Committee decided not to add this item to its study agenda.

VIII. Date and Location of Fall 2012 Meeting

Judge Sutton reminded the Committee that it will next meet in Philadelphia, Pennsylvania on September 27 and 28, 2012.

IX. Adjournment

The Committee adjourned at 2:30 p.m. on April 12, 2012.

Respectfully submitted,

Catherine T. Struve
Reporter