

Exhibit

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McCALEB

vs.

LONG

MICHELLE CONSIGLIO-YOUNG

November 16, 2023



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1 IN THE UNITED STATES DISTRICT FOR
2 THE MIDDLE DISTRICT OF TENNESSEE
3 NASHVILLE DIVISION

4 DAN MCCALED, Executive Editor
5 of THE CENTER SQUARE,

6 Plaintiff,

7 vs.

8 Case No. 3:22-cv-00439

9 MICHELLE LONG, in her official
10 capacity as DIRECTOR of the
11 TENNESSEE ADMINISTRATIVE OFFICE
12 OF THE COURTS,

13 Defendant.

14
15 Deposition of:

16 MICHELLE CONSIGLIO-YOUNG

17 Taken on behalf of the Plaintiff
18 November 16, 2023

19 Commencing at 9:24 a.m. CST

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21
22
23 Lexitas Legal
24 Michelle Cessna, LCR, RPR
25 (615)595-0073

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E X H I B I T S

(None offered.)

S T I P U L A T I O N S

The deposition of MICHELLE CONSIGLIO-YOUNG was taken by counsel for the Plaintiff, at the offices of 500 Charlotte Avenue, Nashville, Tennessee, on November 16, 2023, for all purposes under the Tennessee Rules of Civil Procedure.

All formalities as to caption, notice, statement of appearance, et cetera, are waived. All objections, except as to the form of the questions, are reserved to the hearing, and that said deposition may be read and used in evidence in said cause of action in any trial thereon or any proceeding herein.

It is agreed that MICHELLE CESSNA, LCR, RPR, and Court Reporter for the State of Tennessee, may swear the witness, and that the reading and signing of the completed deposition by the witness are waived.

* * *

MICHELLE CONSIGLIO-YOUNG,
was called as a witness, and having first been
duly sworn, testified as follows:

EXAMINATION

QUESTIONS BY MR. DOUGHERTY:

Q. Good morning.

A. Good morning.

Q. Can you please state your name for the
record?

A. Sure, my name is Michelle
Consiglio-Young.

Q. And have you ever had your deposition
taken before today?

A. No.

Q. Okay. And do you understand that you're
under oath?

A. Yes, sir.

Q. Okay. And you're prepared to answer the
questions that I ask of you today?

A. Yes, sir.

Q. Are you represented by counsel?

A. I am represented by the Attorney
General's Office and our general counsel.

1 Q. Okay. And I know that we have Mr. Stahl.
2 If you want to share his name on the record.

3 A. Oh, John Coke, our general counsel for
4 the Administrative Office of the Courts.

5 Q. Thank you. And I probably should have
6 mentioned that, you know, it's really important
7 when you're giving a deposition that we -- we
8 all get in habits, I do it myself, where we nod
9 or give nonverbal kind of nodding our heads, so
10 it's important that we give verbal statements
11 so she can pick up everything. Okay?

12 A. I understand.

13 Q. And, you know, any time you need to take
14 a break, we can do that. I don't anticipate
15 this going, you know, all day, probably not.
16 Half a day at the most. But if you do need a
17 break, we can take it at any time. The only
18 stipulation or caveat I would have is if I've
19 already asked a question that you go ahead and
20 answer it first before we take a break --

21 A. Sure.

22 Q. -- okay?

23 A. That's fine.

24 Q. All right. Where do you work?

25 A. I work at the Administrative Office of

1 the Courts.

2 Q. And what is your position at the AOC?

3 A. I am a division director of the
4 Intergovernmental Affairs Division within the
5 Administrative Office of the Courts.

6 Q. And can you explain a little bit about
7 the Intergovernmental Affairs Division, what do
8 they do?

9 A. Sure. I oversee several programs within
10 my division. One being legislative affairs for
11 the Administrative Office of the Courts.
12 Another being juvenile matters within the
13 Administrative Office of the Courts. We have
14 the three judge panel system within our
15 division and also the Court Approval Program
16 is also within my division, which deals with
17 juvenile matters.

18 Q. Okay. When did you start your position
19 with the AOC?

20 A. I came to the AOC January of 2015.

21 Q. And what was your title or role in
22 January of 2015?

23 A. It was assistant general counsel and
24 legislative liaison.

25 Q. And then so did you get promoted or have

1 a different position after that?

2 A. Yes. I kind of gone up the -- the ranks,
3 but yes, I got promoted -- gosh, what year was
4 that? 2018? 2019? 2019, I believe.

5 Q. So what was your new position in 2019
6 with the AOC?

7 A. The director of the Intergovernmental
8 Affairs Division, which was newly created in
9 2019.

10 Q. So that's your current position?

11 A. Correct.

12 Q. So you've been in that role approximately
13 four years?

14 A. Yes.

15 Q. And you said that's a new position, so
16 you're the first director of governmental
17 affairs?

18 A. Yes.

19 Q. Okay. And when you were assistant
20 general counsel from 2015 to 2019, who was the
21 general counsel at that point?

22 A. When I first started it was David Haines.
23 And then shortly thereafter Rachel Harmon
24 joined the AOC and became it -- the general
25 counsel.

1 Q. And now Ms. Harmon is the deputy
2 director; is that right?

3 A. Correct.

4 Q. Who do you report directly to?

5 A. I report directly to Director Michelle
6 Long.

7 Q. And do you have employees under you that
8 report directly to you?

9 A. Yes.

10 Q. I mean, you don't have to give all their
11 names unless there are only a couple. How many
12 -- how many roughly do you have --

13 A. I have 11 total. But I have 3
14 supervisors that report directly to me, and
15 it's -- there are 8 that report to their
16 various supervisors.

17 Q. What are the three supervisors' names?

18 A. Charlie Baldwin, Stacy Lynch, and
19 Stephanie Etheridge.

20 Q. Okay. So you don't report directly to
21 Deputy Director Harmon and she doesn't report
22 to you, correct?

23 A. Correct, I do not report to her directly.

24 Q. Before you came to the AOC in 2015, what
25 type of work did you do before then?

1 A. I worked at the Attorney General's
2 Office.

3 Q. In what capacity?

4 A. I was an assistant attorney general in
5 the criminal division.

6 Q. How long were you in that role?

7 A. I was in that role two years.

8 Q. So that takes us back to, like -- about
9 ten years to 2013, I guess?

10 A. Correct.

11 Q. Were you in private practice or did you
12 do anything before your position with the
13 Attorney General's Office?

14 A. Before that I clerked for the Court of
15 Criminal Appeals for Judge Robert Wedemeyer.

16 Q. Okay.

17 A. And I had started that directly after law
18 school, so...

19 Q. Well, let's go ahead and get into your
20 education. That's a good segue.

21 So where is your undergraduate degree
22 from and what year?

23 A. I graduated from Boston University in
24 2005.

25 Q. And then how about your JD?

1 A. I graduated from University of Tennessee
2 College of Law in 2011.

3 Q. Okay. And what was the date of your
4 first Bar admission?

5 A. November 2011.

6 Q. And that -- that's in Tennessee?

7 A. Correct.

8 Q. Are you admitted to any other state Bars?

9 A. No.

10 Q. How about any other court admissions that
11 you might hold?

12 A. No. Just Tennessee.

13 Q. Okay. Have you ever been formally
14 disciplined by the Tennessee State Bar
15 licensing authority?

16 A. No.

17 Q. And have you ever been convicted of a
18 crime?

19 A. No.

20 Q. Have you ever been a party to a lawsuit
21 before?

22 A. No.

23 Q. Okay. You told us a little bit about
24 your position as intergovernmental affairs.
25 Can you kind of go into a little more detail,

1 kind of what you do and how that relates to
2 your role on the Advisory Commission?

3 A. Sure. You know, I oversee the
4 legislative process for the court system, which
5 is mainly the role that correlates with the --
6 the Advisory Commission and why I'm the staff
7 attorney/liaison for the AOC. And that is
8 because the rules package must go through the
9 legislative process to be approved. So it just
10 made sense within our office when liaisons were
11 changing to just add me to that so that I would
12 be aware of what was going on through the Rules
13 Commission and could carry that through the
14 legislative process which is required by
15 statute.

16 Q. So do you also report to anyone over in
17 the legislative branch?

18 A. No.

19 Q. Okay. You're there and you're -- as I
20 understand it, and correct me if I'm wrong,
21 you're there to kind of facilitate the Advisory
22 Commission and its rules package with the
23 legislative body; is that right?

24 A. That's correct.

25 Q. And what does that look like -- and we'll

1 talk about meetings in a second. But what does
2 that look like on a day-to-day basis? Do you
3 have to have -- do you go to sessions, to
4 legislative session? Do you have to testify?
5 What does that look like?

6 A. When legislature's in session, I do
7 attend daily on behalf of the court system to
8 various committee meetings, meetings with
9 legislators as requested and testimony as
10 requested within the Legislative Committee
11 meetings.

12 Q. Do they ever request testimony from you?

13 A. Yes.

14 Q. And have you given testimony before the
15 legislative body?

16 A. Yes, on a number of different topics. It
17 just varies depending on what's before the
18 Committee and what is of interest to the
19 legislators in that particular meeting.

20 Q. Is that -- are those transcripts
21 available with the Tennessee legislative body
22 somewhere?

23 A. Everything is filed online. They have a
24 pretty extensive record of all of the
25 Legislative Committees that occur within a

1 legislative session.

2 Q. Do you recall when the last time you gave
3 any testimony before the legislature?

4 A. It was this past legislative session,
5 which was in January. And that -- I guess the
6 last time was fairly close to the end of
7 session, which was in April of this past year.

8 Q. Is the legislative session -- what is it,
9 January through what?

10 A. Typically it's through April or May. It
11 just depends on when they -- how much business
12 they have and when they want to adjourn. This
13 past year ended in April.

14 Q. The testimony that you gave in April, was
15 that related to the Advisory Commission?

16 A. No.

17 Q. What was that related to?

18 A. It was related to legislation that we
19 sponsored, but -- that was filed within the
20 legislature, but it was not related to the
21 Rules Commission.

22 Q. When you say "we," are you referring to
23 the AOC?

24 A. Yes, I'm sorry, the AOC.

25 Q. What type of legislation does the AOC

1 sponsor?

2 A. We -- it varies. There are various
3 topics. A lot of times it has to do with
4 various procedures perhaps within the AOC. The
5 legislation that was the most talked about this
6 past year was adding new judges, so we do file
7 legislation requesting new judge positions when
8 we deem that necessary. And that was the topic
9 that I had testified on in April.

10 Q. And is that kind of in an advocacy role
11 that you're advocating on behalf of the AOC
12 that we need -- the AOC needs new judges and
13 therefore you're making that request; is that
14 how that works?

15 A. That's correct.

16 Q. Do you recall when the last time you gave
17 testimony to the legislature about the Advisory
18 Commission?

19 A. No. I -- I have not given testimony
20 about the Advisory Commission in my recent
21 memory.

22 Q. Do you know if any members of the
23 Advisory Commission have ever given testimony
24 before the legislature?

25 A. Typically it's the chair of the Advisory

1 Commission that will testify if requested;
2 however, that request does not -- I don't
3 believe in the past couple of legislative
4 sessions that they've requested any testimony
5 from any member of the Advisory Commission.

6 Q. And we'll come back, as I said, a little
7 bit in a moment about -- we'll go more in depth
8 about the Advisory Commission.

9 When did you first hear about the lawsuit
10 that -- the reason you're here today to
11 testify?

12 A. I don't recall the exact date, but it was
13 after it had been filed and when the Attorney
14 General's Office had notified our general
15 counsel about it. Our general counsel had
16 notified me and others within our office.

17 Q. So who would that have been? Would that
18 --

19 A. John Coke.

20 Q. Okay. So you think that was fairly close
21 in time after the lawsuit was filed?

22 A. Yes.

23 Q. When -- do you recall -- or let me ask:
24 Are you aware that there's a preliminary
25 injunction that was issued in this case?

1 A. Yes.

2 Q. When did you first become aware of the
3 preliminary injunction?

4 A. I became aware when it was filed after --
5 when the AG's Office had sent it to notify our
6 office.

7 Q. Did Director Long notify you of the
8 preliminary injunction?

9 A. No. General Counsel John Coke did.

10 Q. And what was your understanding of the
11 preliminary injunction at that point?

12 A. At that point it was that basically we
13 needed to have a -- a public option for the
14 next commission meeting that would occur, that
15 we need to either make that available via
16 livestream or in person.

17 Q. And by "public option" you mean public
18 access, right?

19 A. Correct.

20 Q. Have you ever seen a copy of the
21 preliminary injunction?

22 A. Yes.

23 Q. And was that when you were first notified
24 of it when you got a copy?

25 A. Yes.

1 Q. Who provided you a copy of the
2 preliminary injunction?

3 A. I believe that was our General Counsel
4 John Coke.

5 Q. What was your understanding of the
6 preliminary injunction in terms of who it
7 applied to?

8 A. My understanding is that it would apply
9 to the Commission as a whole, as well as our
10 office and the parties to the -- to the
11 lawsuit.

12 Q. Director Long, would it apply to Director
13 Long?

14 A. Yes.

15 Q. So you would agree then it was a fairly
16 broad preliminary injunction in terms of who it
17 applied to?

18 MR. STAHL: Object to the form.

19 THE WITNESS: Could you restate that?

20 BY MR. DOUGHERTY:

21 Q. Yeah. I think you said, and I don't want
22 to put words in your mouth, that -- you said --
23 well, let me just ask you this way: The
24 preliminary injunction applied to the members
25 of the Commission, right?

1 A. Yes.

2 Q. Did the preliminary injunction apply to
3 Director Long?

4 MR. STAHL: Object to the form.

5 THE WITNESS: I'm not sure if it
6 applies to her directly or it just with her
7 connection as far as her role as the director
8 of the Administrative Office of the Courts and
9 how it's -- our Advisor Commission is overseen.

10 BY MR. DOUGHERTY:

11 Q. Did the preliminary --

12 A. -- in our office.

13 Q. I'm sorry, go ahead.

14 A. Just within our office.

15 Q. Did the preliminary injunction apply to
16 AOC employees?

17 MR. STAHL: Object to the form.

18 THE WITNESS: As an employee of the
19 AOC, we would follow the preliminary injunction
20 requirements.

21 BY MR. DOUGHERTY:

22 Q. Did the preliminary injunction apply to
23 the Tennessee Supreme Court justices?

24 MR. STAHL: Object to the form.

25 THE WITNESS: I'm -- I'm not sure.

1 BY MR. DOUGHERTY:

2 Q. Did the Tennessee preliminary -- excuse
3 me, let me strike that question.

4 Did the preliminary injunction apply to
5 Director Long's attorneys?

6 A. As far as the Attorney General's Office
7 that who represents her, is that?

8 Q. Just in general, just attorneys?

9 A. I'm not sure if I can answer that.

10 Q. Okay. When's the last time you've read
11 that preliminary injunction?

12 A. I -- I did review it this week.

13 Q. What other materials did you review in
14 preparation for this deposition?

15 A. Just the preliminary injunction and the
16 original filing of -- of the lawsuit.

17 Q. Did you review the first amended
18 complaint?

19 A. Yes, uh-huh.

20 Q. Okay. All right. Are you familiar --
21 let's go ahead and deal with the Advisory
22 Commission.

23 Are you familiar with the Advisory
24 Commission on the rules of practice and
25 procedure created by TCA 16-3-601?

1 A. Yes, sir.

2 Q. And are commission members typically
3 listed on the AOC website?

4 A. Yes.

5 Q. Describe your role with the Advisory
6 Commission.

7 A. Sure. My role is the AOC liaison to the
8 Advisory Commission. It's -- primarily it's
9 logistical responsibilities. Like I had said
10 earlier, mostly so that there is a staff member
11 of the AOC that is aware of the commission that
12 can assist them in just various scheduling
13 needs or other types of needs for the
14 Commission, as well as making sure that that --
15 the ultimate rules package gets filed and is
16 sought -- seen through the legislative process.

17 Q. Are you considered a member of the
18 Advisory Commission?

19 A. No.

20 Q. So explain -- and you kind of talked
21 about it -- what does a liaison do to the
22 Advisory Commission? Which is what you are,
23 right?

24 A. Yes, yes. Because the Advisory
25 Commission is attached to the Commission of the

1 Administrative Office of the Courts for the
2 logistical needs and is appointed by the
3 Tennessee Supreme Court, the liaison role just
4 ensures that their work is -- that they are
5 able to do their work as far as having meeting
6 space and just other, you know, requests from
7 the Commission to be supportive of the chair
8 and the reporter and just to be in
9 communication with them throughout the rules
10 package process and then ultimately to take
11 that and make sure it gets approved through the
12 legislature.

13 Q. Do logistical needs include providing
14 public access to any meetings?

15 A. It -- it includes what is required or
16 what's needed for the Commission.

17 Q. If meetings were to be open, let's say
18 for example, would a logistical need that you
19 would provide in making sure that the public is
20 notified of a meeting?

21 A. I would be sure that that -- that the --
22 whoever within our office that would need to be
23 involved with that, that that would occur, yes.

24 Q. So it would occur through the AOC, right?

25 A. Yes.

1 Q. And you used the term "logistical needs."

2 Is that kind of like -- is it fair to say
3 that's kind of the administrative support?

4 A. Yes, that's what I was going to say,
5 logistical administrative can be
6 interchangeable.

7 Q. Okay. What is your understanding --
8 let's back up.

9 How long have you served as a liaison to
10 the Advisory Commission?

11 A. I was trying to think back on that and
12 it -- it was either sometime in 2016 or 2017
13 that I became the liaison for the -- the AOC
14 with the Advisory Commission.

15 Q. And you started with the AOC in 2015?

16 A. Uh-huh.

17 Q. Do you recall --

18 A. Yes. Sorry, I didn't mean to --

19 Q. No, no, you're fine.

20 Do you recall who the -- when you joined
21 in 2015, do you recall who the liaison at that
22 time was for the AOC -- excuse me, for the
23 Advisory Commission?

24 A. Yes, her name is Jeana Hendrix, and she
25 was Assistant General Counsel with the AOC at

1 the time.

2 Q. Do you recall when you joined in 2015
3 when Jeana Hendrix was the liaison, do you know
4 if any Advisory Commission meetings were open
5 to the public?

6 A. I don't recall specifically, but there
7 were open meetings at that time, I believe.
8 But I wasn't involved then, so I couldn't say
9 definitively.

10 Q. So when you joined, you recall that there
11 were open Advisory Commission meetings?

12 A. Yes.

13 Q. And explain, how do you recall that?
14 What do you recall about those open meetings?

15 A. I don't recall specifics, it's -- I just
16 recall my involvement as far as when the rules
17 package was completed that I would then take
18 it, you know, to the legislator -- to the
19 legislature for that approval process. So I
20 would sit in on meetings here and there just to
21 have an understanding of the particular rules
22 package for that year.

23 Q. So even before you became a liaison to
24 the Advisory Commission you sat in on Advisory
25 Commission meetings?

1 A. Yes.

2 Q. What years were -- were those?

3 A. 2015, 2016.

4 Q. Were -- and you say they were open to the
5 public. Were they open to the public via
6 livestreaming or in person, how did that work?

7 A. I don't recall specifically which method,
8 because I was not the liaison at the time.

9 Q. Well, I mean, do you recall people from
10 the public sitting around a conference room?
11 I'm just trying to understand, do you recall
12 anything like that?

13 A. I'm sorry, I just don't remember.

14 Q. Assuming that the -- well, you say those
15 meetings were open to the public, right?

16 A. As far as I can recall, there were -- was
17 an open option for the meetings.

18 Q. Do you ever recall seeing a public
19 meeting notice in advance of one of those
20 meetings that you attended?

21 A. I do recall some being on our website,
22 but I couldn't tell you specifically which
23 meeting.

24 Q. Sure. Would -- would Jeana Hendrix be
25 the AOC person responsible for generating that

1 public meeting notice at that point?

2 A. I do not know if she specifically was the
3 one responsible or if there was another person
4 in the office at the time. I just couldn't
5 tell you definitively.

6 Q. But definitively it would have been some
7 AOC employee, right?

8 A. I believe it would have, but because it
9 wasn't me at the time, I -- I can't tell you
10 for sure.

11 Q. Was it announced at the meetings that you
12 were at that were open to the public that it
13 was open to the public? I mean, was there some
14 kind of communication on the record, do you
15 recall?

16 A. I don't recall, I'm sorry.

17 Q. Okay. Who was the chief justice in --
18 during this time period that you recall these
19 open meetings, do you know? Do you recall who
20 the chief justice was?

21 A. Justice Lee was the chief justice when I
22 had started the AOC. And she was the chief
23 justice for the first year, so that was there.
24 I don't know if that answers your question.

25 Q. Okay. Did you recall who the chair was

1 at that point during those first years of your
2 AOC employment?

3 A. I'm sorry, I just don't remember off the
4 top of my head.

5 Q. So when you became the liaison, did
6 Ms. Hendrix move on to something else? What
7 did she do?

8 A. There was just a shift within our office
9 of various roles and duties. And at the time
10 I -- because I had taken on the legislative
11 roles that there was just a -- a change made to
12 put me in that liaison role and move her to
13 other roles. But I couldn't say specifically
14 what her roles were at that time.

15 Q. So let's fast forward a little bit. You
16 go on the Advisory Commission. What year was
17 that again, please?

18 A. It was either 2016 or 2017. I'm sorry I
19 don't remember exactly.

20 Q. When you started in -- as the liaison on
21 behalf of the AOC for the Advisory Commission,
22 were meetings open at this point to the public?

23 A. Yes.

24 Q. Were you responsible for putting out any
25 advanced public meeting notices?

1 A. It varied because of the various
2 different people who worked in our office at
3 the time. However, I did notify the
4 communications division or if there was another
5 -- I think it had been a paralegal at the time
6 that had posted notices before. It just kind
7 of varied based on the people at the office and
8 what roles they were in, but I -- I would -- I
9 do recall requesting, you know, the notice to
10 be put on our website prior to meeting, yes.

11 Q. You did that as a liaison?

12 A. I would -- I told -- I would be sure to
13 relay that information to those in our office
14 who would post that information.

15 Q. And would -- who was the director of the
16 AOC at that point?

17 A. It was Deborah Taylor Tate.

18 Q. And did you report directly to Ms. Tate?

19 A. At that time I reported to our general
20 counsel, who then was Rachel Harmon. And then
21 that was my direct -- my direct report was to
22 her, so...

23 Q. So who assigned you to make sure that
24 public meeting notices got posted? Was that
25 Harmon or someone else?

1 A. It -- it was our General Counsel Rachel
2 Harmon that made the changes of who would be
3 the liaison to the Commission.

4 Q. Do you recall in those public meeting
5 notices that was posted then was there ever a
6 name of the AOC employee that was provided for
7 the public to contact?

8 A. In the public meeting notices, them
9 specifically I cannot recall that; however, on
10 our website we do have and have consistently
11 had the AOC liaison name on the commission page
12 on our website.

13 Q. On the commission page of members?

14 A. Yes.

15 Q. Okay. In terms of public meeting
16 notices, if one went out, let's say, five or
17 ten years ago, would it still be on the AOC
18 website?

19 A. That is more of an IT question. But if
20 it -- if there were records kept of it, then
21 yes, there would be a -- a record of the ones
22 that were posted.

23 Q. Do you know how the Commission is
24 appointed, the members?

25 A. I do. I know that they are appointed by

1 the Tennessee Supreme Court.

2 Q. And are there attorneys in private
3 practice that are members of the Advisory
4 Commission?

5 A. Yes.

6 Q. Are there government attorneys that are
7 members of the Advisory Commission?

8 A. Yes.

9 Q. Are there law school faculty
10 attorneys/attorneys that are members of the
11 Advisory Commission?

12 A. Currently not members, but there --
13 there's a reporter.

14 Q. What is the reporter's role on the
15 Advisory Commission?

16 A. The reporter keeps the official records
17 of the Advisory Commission's business.

18 Q. And so, you as the liaison, try to help
19 me distinguish your role from the reporter's
20 role.

21 A. It -- I do not keep the minutes or the --
22 any record of what occurs in those meetings,
23 that is up to the reporter. That's within the
24 reporter's role.

25 My role is -- compared to the reporter is

1 purely administrative. Just to be sure that
2 the reporter has any information as far as
3 meeting space or Zoom links, access to the
4 meeting for the members just to be sure that
5 that reporter has the information that they
6 need.

7 Q. Are there minutes -- are they ever posted
8 publicly from the meetings?

9 A. Not to my knowledge.

10 Q. Where are they kept?

11 A. They are housed within the Tennessee
12 Supreme Court building and they are -- there's
13 electronic records. And I'm not sure if there
14 are paper records still or not, but that was
15 something that has -- a duty that's been within
16 the Tennessee Supreme Court building with the
17 Appellate Court clerk's office, I believe.

18 Q. When you say there are electronic records
19 of minutes of the Advisory Commission, what do
20 you mean?

21 A. Just the meeting records which would be
22 their agendas, minutes, any attachments any
23 proposals from the members. Those would be
24 included in the -- in the records that -- for
25 each Commission meeting.

1 Q. Have minutes been kept for every meeting
2 since you've been liaison?

3 A. Yes.

4 Q. Is that a requirement in the statute or
5 is that just practice?

6 A. I cannot recall if that is a statutory
7 requirement, but it has been the practice.

8 Q. Okay. So even prior to you being a
9 liaison, the meetings that you did attend, did
10 you observe someone keeping minutes?

11 A. Yes, the -- there has always been a
12 reporter of the Advisory Commission keeping
13 minutes and other documentation.

14 Q. How is the reporter selected?

15 A. The reporter is selected by the Tennessee
16 Supreme Court.

17 Q. Do the members -- like for example, let's
18 say there's a meeting, do they look back at the
19 proposed minutes and then approve them or how
20 does that work? How do the minutes get
21 approved?

22 A. The Commission approves the minutes from
23 the prior meeting at wherever their current
24 meeting is. So if they meet in June, they are
25 approving the minutes of the March meeting.

1 Q. Okay. Are there members of the judiciary
2 that are on the Commission?

3 A. They are not members, voting members, but
4 they are liaisons for their particular court.

5 Q. What's a voting member?

6 A. They are not voting members.

7 Q. I understand. I'm just saying what is a
8 voting member?

9 A. Oh, a voting member is the official
10 members appointed by the Tennessee Supreme
11 Court pursuant to their ability via statute to
12 do that.

13 Q. When the Tennessee Supreme Court appoints
14 someone, do they -- in an order, for example,
15 do they say that they're a member or do they
16 say that they're a voting member?

17 A. I don't recall. I would have to look at
18 one of their orders to -- to say that
19 specifically. I'm not sure.

20 Q. Does the statute make a distinction
21 between a member of the Advisory Commission and
22 a voting member?

23 A. I -- I do not know.

24 Q. And does the statute provide for the term
25 of those members that are appointed? Are you

1 aware of how that works?

2 A. I would need to brush up on the statute
3 language exactly, I can't recall.

4 Q. Okay. And so, does the Advisory
5 Commission have regular meetings?

6 A. Yes.

7 Q. And during your experience as liaison,
8 what's been the typical cadence of meetings
9 each year?

10 A. It's quarterly.

11 Q. And was it quarterly in 2015 and 2016
12 prior to you becoming liaison?

13 A. As far as I can recall, yes.

14 Q. What -- and you say quarterly. Can you
15 explain what that means?

16 A. Sure. At least recently and I do believe
17 prior, say the Commission has a meeting, for
18 example, March, June, September and December
19 each year.

20 Q. And as the -- do you know how long that's
21 been in practice, that March, June, September,
22 December cadence?

23 A. It has varied slightly over the years.
24 Sometimes it will be February rather than March
25 and sometimes it will be May rather than June,

1 depending on the members' availability
2 sometimes.

3 But as far as I can recall back to 2017,
4 2016, it was in that March, June, September
5 vicinity. But like I said, it may be February,
6 May. You know, just kind of depending.

7 Q. In 2022 did the Advisory Commission meet
8 in March?

9 A. As far as I recall, yes. However, I
10 would need to look to make sure that wasn't a
11 meeting that, you know, got cancelled or that
12 they didn't have.

13 Q. Did the Advisory Commission -- let's ask
14 it a different way.

15 Did they have quarterly meetings in the
16 calendar year 2022?

17 A. Yes.

18 Q. Did you attend all four of those 2022
19 meetings?

20 A. I believe I did. But to confirm, I would
21 have to look at my calendar to be sure I didn't
22 miss one. But I believe I was at all four of
23 those. I'm typically at the meetings unless
24 I'm scheduled out of town or there's another
25 conflict. But I do try to make those priority.

1 Q. And to the best of your recollection, in
2 2022 were the four meetings in March, June,
3 September and December?

4 A. Yes.

5 Q. And were the dates in 2022, was it the
6 second Friday in March, June, September and
7 December when they met?

8 A. Those were the dates -- that second
9 Friday of the month was the date set by the
10 chair. And unless there was some conflict,
11 those would have been the dates that they met.

12 Q. So that -- you recall that would have
13 been the case in 2022?

14 A. Yes.

15 Q. And was the chair in 2022 Mr. Bulso?

16 A. Yes, Gina Bulso.

17 Q. And in 2023, which is the year we're in
18 --

19 A. Uh-huh.

20 Q. -- had there been quarterly meetings of
21 the Advisory Commission?

22 A. There were -- I do know there was a March
23 and a June meeting. And then I was out on
24 maternity leave starting August.

25 Q. Did you attend the March 2023 Advisory

1 Commission meeting?

2 A. Yes.

3 Q. And was it open or closed to the public?

4 A. It was closed.

5 Q. And then the -- did you attend the
6 June 2023 Advisory Commission meeting?

7 A. Yes.

8 Q. Was it open or closed to the public?

9 A. It was open.

10 Q. Why was it open?

11 A. It was open due to the preliminary
12 injunction order.

13 Q. And do you recall seeing a public meeting
14 notice in advance of that June meeting?

15 A. There was a public meeting notice that
16 posted on our website, the AOC website.

17 Q. Is that public meeting notice still to
18 the best of your recollection posted?

19 A. I believe it should still be there, yes.

20 Q. Is that -- did that public meeting
21 notice, is that something that you kind of
22 oversaw or how did that take place?

23 A. I did inform our communications division
24 to post -- to one, create the link for the
25 livestreaming for that meeting, as well as

1 posted on the website.

2 Q. Were any of the 2022 quarterly meetings
3 open to the public?

4 A. They were not.

5 Q. Okay. And when did you go on maternity
6 leave?

7 A. It was August 21st of this year.

8 Q. So was there a September Advisory
9 Commission meeting of 2023?

10 A. I believe there was one scheduled, but I
11 was not -- I was on leave when it was scheduled
12 to occur.

13 Q. Do you know if that meeting occurred or
14 not?

15 A. I believe it did not occur.

16 Q. And do you know why it didn't occur?

17 A. I don't.

18 Q. Did anyone inform you that -- that it
19 didn't occur because they weren't able to get
20 out a public meeting notice in time?

21 A. No.

22 Q. Okay. You've not had any discussion with
23 anyone at the AOC about that?

24 A. No, I have not.

25 Q. How about have you had any discussion

1 with any of the Advisory Commission members
2 about that?

3 A. No.

4 Q. Is there -- are you aware of another
5 meeting in 2023 besides March and June? Is
6 there one upcoming that you're aware of?

7 A. There is a December meeting upcoming. I
8 believe it's December 8th.

9 Q. And does that follow that second Friday
10 cadence, quarterly cadence?

11 A. Yes.

12 Q. Is there a public meeting notice of the
13 December upcoming meeting on the AOC website?

14 A. Yes, I believe that it has been posted.

15 Q. Have you seen that or you just heard
16 that? How do you know?

17 A. I did check it because I will be back
18 from maternity leave for that meeting, and so I
19 wanted to check to see if there was one up --
20 if it had been put on the website, and it is on
21 there.

22 Q. Did you actually oversee that while you
23 were on maternity leave or did you just check
24 it just to make sure?

25 A. I did not facilitate that -- the creation

1 of that, but I was aware that it had happened
2 and I checked it to be sure it was posted.

3 Q. Do you know who facilitated that public
4 meeting notice at the AOC office?

5 A. It was both our General Counsel John Coke
6 and Charlie Baldwin, who has assumed my role
7 essentially while I've been out on leave.

8 Q. Let's kind of backtrack a little bit.

9 So I think you said 2015 to 2016 you sat
10 in on some meetings?

11 A. Uh-huh.

12 Q. And the -- your recollection, they were
13 open to the public?

14 A. Yes.

15 Q. At what point did those Advisory
16 Commission meetings become closed to the
17 public?

18 A. I believe it was 2018.

19 Q. I'm sorry?

20 A. 2018. It was after I had taken over as
21 liaison. There was -- meetings were open to
22 the public, as far as I can recall. And there
23 was a meeting that we had that there was a
24 member of the public who had attended in person
25 who was there and became unruly and combative

1 with the Commission. And after that, the --
2 the Tennessee Supreme Court took the matter up
3 for discussion and then the meetings were
4 closed after that incident.

5 Q. And what -- where was this particular
6 meeting in 2018?

7 A. I wish I could recall the exact date. I
8 do believe it was 2018 and the meeting was at
9 the Administrative Office of the Courts, it was
10 in our conference room. And members of the
11 public would come periodically, sometimes we
12 didn't have any and sometimes some would
13 request to come.

14 And that particular meeting there was a
15 member of the public who attended, and he was
16 interested in a topic that was being discussed
17 by the Commission. And during that discussion,
18 he was speaking kind of out of term, you know,
19 without being called on or outside of the
20 public comment period that was allowed and
21 essentially became very assertive with the
22 members and -- and the meeting was stopped and
23 he was asked to leave.

24 Q. Do you recall how many members of the
25 public were at that particular meeting in 2018?

1 A. I believe it was just that gentleman and
2 his son.

3 Q. Do you recall his name?

4 A. I don't. I'm sorry.

5 Q. When you say "combative," do you mean --
6 what do you mean? Was it verbal combativeness
7 --

8 A. Yes.

9 Q. -- or physical?

10 A. It was verbal. He did leave his chair --
11 or, you know, get up from his chair while he
12 was having this discussion, which kind of
13 escalated the -- the tone that was going on in
14 there in his interaction with the members. So
15 it -- yeah, it just became more of an
16 aggressive action on his part. Clearly he was
17 upset with a topic that was being discussed.

18 Q. Do you recall the topic?

19 A. No.

20 Q. Do you recall who the chair was at that
21 time at that meeting?

22 A. I believe the chair was Allen Wade then.

23 Q. Is Mr. Wade currently a member on the
24 Advisory Commission?

25 A. Yes.

1 Q. Were there four quarterly meetings in
2 2018?

3 A. Yes. As far as I remember there were.

4 Q. And you were at this meeting in 2018?

5 A. I was at that meeting, yes.

6 Q. Who was the chief justice of the Supreme
7 Court at that time in 2018?

8 A. It was Justice Jeff Bivins at that time.

9 Q. So did the Chairman Wade ask this person
10 that was being verbal -- verbally combative to
11 leave? Did he -- did the person leave?

12 A. I don't recall who exactly asked him to
13 leave; however, he was asked to leave. We did
14 have to have several people help escort him
15 out. And I can't remember if security was
16 called at that meeting or not. I -- I do
17 believe that building security was made aware.

18 Q. Do you recall if any formal charges,
19 criminal charges were brought against this
20 person?

21 A. I -- I do not believe that there were
22 formal criminal charges.

23 Q. So the person that was verbally combative
24 was never prosecuted to the best of your
25 recollection?

1 A. Correct, I do not believe that he was.

2 Q. And so, I guess, was there a member of
3 the Tennessee Supreme Court that was attending
4 that particular meeting?

5 A. Yes.

6 Q. And who was that?

7 A. It was Justice Holly Kirby.

8 Q. So Justice Kirby was the Supreme Court
9 liaison on the Commission in 2018?

10 A. She was.

11 Q. Justice Kirby is now the Chief Justice of
12 the Supreme Court?

13 A. Yes, she is.

14 Q. So you said something about the -- the
15 justices at that point, they made the call,
16 they made the decision to close meetings.
17 Explain what -- explain what happened after
18 that.

19 A. After the meeting where the person got
20 combative -- and Justice Kirby was in
21 attendance in that meeting, so she had seen it
22 firsthand, the -- as far as I am aware, she
23 took that matter back to the Supreme Court for
24 discussion, and we at the AOC were told that
25 the meetings would no longer be open after

1 that. And that was really my interaction with
2 that. They were -- I was informed that they
3 would be closed.

4 Q. How were you told? How were the members
5 of the Commission told that from now on they
6 were going to be closed, the meetings?

7 A. I don't recall exactly. I do know that
8 if our General Counsel Rachel Harmon at the
9 time had told me that there was no need to put
10 public notice out because they were going to be
11 closed the next meeting after that incident.
12 And I cannot recall if Justice Kirby told the
13 members directly or if a member of our office
14 told them that we -- that they would be closed.
15 I just don't remember exactly.

16 Q. But that decision would have come from
17 either the justices or the AOC office to the
18 Advisory Commission?

19 A. One of the two, yes, would have told
20 either the Commission as a whole or the chair
21 and the chair would have relayed that to the
22 Commission.

23 Q. So the Chair, Mr. Wade, didn't make that
24 decision?

25 A. No.

1 Q. Did -- was it reported, do you recall,
2 that meetings were going to be closed and
3 formally in the minutes?

4 A. I do not recall. I would have to look
5 back at the minutes to see if they were -- if
6 there was any mention.

7 Q. Where are the minutes kept?

8 A. Like I had said earlier, they're housed
9 within the Tennessee Supreme Court building
10 overseen by the Appellate Court Clerk's Office,
11 so there is -- whether they're electronic or
12 paper filed.

13 Q. And the clerk is James Hivner, I believe,
14 right?

15 A. Yes.

16 Q. And Mr. Hivner is a member of the
17 Advisory Commission?

18 A. Yes. I just couldn't recall if he was a
19 voting member or not voting member. He is on
20 the Commission.

21 Q. Did they have a distinction between
22 voting members and members when you first
23 became liaison?

24 A. I'm not sure if there was a formal
25 distinction, but the judge liaisons are members

1 but they don't -- they don't have a vote. So
2 sometimes the terminology "member," "voting
3 member" would be used just to distinguish,
4 okay, we're having votes and the voting members
5 would be the ones participating; however,
6 the -- like for example, the judicial members
7 are members of the court -- of the Commission,
8 they just don't vote on the matters that they
9 are -- that's presented within that commission.

10 Q. I -- I may not -- you may have answered
11 the question, I'm just not quite clear. Do you
12 know definitively when this voting member
13 versus member, when that became part of the
14 culture of the Advisory Commission?

15 A. No. I wouldn't say that there is a
16 culture of that, it's more just a -- the
17 Commission looks toward the judicial members
18 just for insight into various proposals or just
19 kind of on-the-ground experience within the
20 courtroom.

21 Q. Okay. That distinction is not made on
22 the AOC website, though, it list members,
23 right?

24 A. It lists members, and I believe it lists
25 the -- I know it lists the judge members, but I

1 believe it says for that the court, the various
2 courts that they're members -- that they
3 represent on the Commission.

4 Q. Does it say courts or does it just say
5 judicial liaisons?

6 A. It may just say judicial liaisons, but I
7 believe their titles have what their judge --
8 which court they're on.

9 Q. Does it make a distinction on the AOC
10 website between voting members and members?
11 And if you don't know, that's okay.

12 A. I should know, but I do not recall.

13 Q. Did you create the list of members that
14 are on -- that's on the website?

15 A. No.

16 Q. Did someone that you oversee or supervise
17 create that document?

18 A. There is an employee within our office
19 that maintains and creates all the rosters for
20 the various court commissions; however, that
21 person -- I do not oversee that person.

22 Q. So up until that point of 2018 when the
23 one individual became verbally combative, had
24 there been any other problems with the Advisory
25 Commission meetings being open to the public

1 that you saw?

2 A. Not that I experienced, no.

3 Q. Was there any discussion at that point in
4 2018 when that incident happened about having
5 the public not physically be present but to
6 view it by any type of livestreaming?

7 A. I was not privy to those discussions or
8 involvement of them.

9 Q. Was the Advisory Commission doing
10 livestreaming in 2018?

11 A. I do not believe so. We did have option
12 for members to join virtually if needed;
13 however, majority of the people then would
14 come -- would travel to the AOC office here in
15 Nashville and majority were in person.

16 Q. So those meetings where everybody got
17 together at the AOC office --

18 A. Uh-huh.

19 Q. -- was that in 2017?

20 A. Yes.

21 Q. 2015?

22 A. As far as I can recall.

23 Q. 2016?

24 A. That was the norm prior to 2020.

25 Q. Okay. That -- I was going to go into

1 that.

2 A. Uh-huh.

3 Q. So it -- did that coincide with COVID
4 when the Advisory Commission meetings then went
5 by virtual?

6 A. Yes, when all the COVID restrictions
7 occurred and we were still having meetings,
8 they were a hundred percent virtual because of
9 what had occurred in 2020. But that was when
10 it shifted to a hundred percent virtual. Prior
11 to that, they were in person.

12 Q. So now from COVID on, the Advisory
13 Commission itself, they meet virtually, right?

14 A. It has continued to be virtual since the
15 2020 meetings, yes.

16 Q. Was there ever discussion about let's go
17 back to open meetings virtually since we
18 wouldn't have a problem with someone
19 interrupting?

20 A. There were not any discussions prior to
21 this lawsuit within the Commission that I
22 recall.

23 Q. That issue never came up?

24 A. It just didn't come up, correct.

25 Q. If we need to take a break --

1 A. No I'm okay.

2 (WHEREUPON, an off-the-record
3 discussion was held.)

4 BY MR. DOUGHERTY:

5 Q. How is that livestreaming working with
6 Advisory Commission meetings kind of post
7 COVID?

8 A. Livestreaming or the virtual meetings
9 with the members?

10 Q. Why don't you -- I'm using the term. Why
11 don't you tell me what do you understand by
12 virtual meetings? What does that mean?

13 A. So since 2020 we've had meetings via
14 Zoom. So our office would generate the Zoom
15 link and send it to the members. The Zoom link
16 typically had not been something that's been
17 given out other than to the members.

18 Q. Right.

19 A. And that's all that was generated was the
20 Zoom link sent out to the members. Post the
21 preliminary injunction, we did generate a
22 livestreaming link for this past June -- at
23 least when I -- before I went on leave it was
24 for the June meeting, which was the meeting --
25 the only meeting it would apply to post the

1 preliminary injunction based on the timing,
2 so...

3 Q. So to the best of your knowledge, post
4 preliminary injunction, there's only been one
5 meeting that's been open to the public by
6 livestreaming and that was in June?

7 A. Correct.

8 Q. And public meeting notice to the best of
9 your recollection has already been posted in
10 advance of the December meeting; is that right?

11 A. Yes.

12 Q. And so, that will be the second post
13 preliminary injunction meeting that will be
14 open to the public?

15 A. Yes.

16 Q. And you will be in attendance at the
17 December one?

18 A. That is the plan.

19 Q. In terms of your office, the AOC and what
20 you do with providing administrative support,
21 was there any additional labor or work or cost
22 associated with providing the Zoom link to the
23 public for the June meeting?

24 A. The livestreaming link --

25 Q. Yes.

1 A. -- to the public? As far as cost, no.
2 We did need to enlist a member of our
3 communications division to create that because
4 the way that the livestreaming is set up is
5 outside of my division or the Advisory
6 Commission, so the communications division
7 within our office sets all that up. And I --
8 one of the employees there I had contacted to
9 create a livestreaming link for it.

10 Q. To the best of your recollection,
11 providing that livestreaming link to the
12 public, did that -- is that going to cost the
13 AOC more funds than if they did not provide
14 livestreaming to the public?

15 A. To my knowledge, no. However, it does
16 require the use of a communications division
17 employee that was previously not involved with
18 the commission meetings.

19 Q. So that -- and you do that as the -- in
20 your role as the liaison?

21 A. I do communicate with the communications
22 department -- division employee.

23 Q. Okay. What goes on in the Advisory
24 Commission meeting? What's the purpose of the
25 Advisory Commission?

1 A. The purpose is to discuss rule -- court
2 rule proposals and/or needs and make
3 recommendations of possible changes to the
4 court.

5 Q. Do they -- does the Advisory Commission
6 discuss and make potential rule recommendations
7 regarding the criminal rules and procedure in
8 Tennessee?

9 A. Yes. If that is a topic that comes up
10 and is requested or -- by a member of the
11 public or another member of the government or
12 member of the Commission, they would discuss
13 the rules of criminal procedure and make
14 recommendations as to changes if there are any
15 to the Court.

16 Q. What about proposed recommendations to
17 the civil rules of procedure, does that come
18 up?

19 A. Yes.

20 Q. What about the rules of appellate
21 procedure?

22 A. Yes.

23 Q. What about the rules of evidence?

24 A. Yes.

25 Q. And what about the juvenile rules of

1 procedure?

2 A. Yes, occasionally.

3 Q. So is it fair to say that those are the
4 five categories of proposed rules that the
5 Advisory Commission discusses?

6 A. Yes, those are the five.

7 Q. Are there any more other than those five?

8 A. No.

9 Q. Okay. Let's -- walk me through, in
10 general, how this happens in terms of the
11 proposed rules -- and my understanding, and you
12 can tell us, at some point there's a -- there's
13 a public comment period and then at some point
14 there's -- but you've referred to the rules
15 package?

16 A. Uh-huh.

17 Q. And at some point the legislature votes
18 on it. So can you just kind of roughly explain
19 that process?

20 A. Sure. It typically goes for a calendar
21 year, so there is -- the June meeting would be
22 the last meeting that rules -- proposed rules
23 would be sent to the Supreme Court for
24 consideration. So from the September meetings
25 to the June meetings would be your -- your year

1 of what would be considered in a rules package
2 for -- that would be sent to the Supreme Court.

3 Q. And that's because the Tennessee
4 government cycle is July through June; is that
5 the reason?

6 A. It probably was based on that at some
7 point, but it does also coincide with being
8 able to have public comment and then having a
9 rules package for January enough time to be --
10 for the consideration in there. So that is --
11 for the rules I think may be more the reason
12 why it goes -- the September meeting would be
13 the start of the new package and June would be
14 the end.

15 Q. So and that's because the general
16 assembly comes in January, right?

17 A. Correct.

18 Q. Okay. Go ahead, I didn't mean to
19 interrupt.

20 A. No, no problem.

21 So once the rule -- Advisory Commission
22 has settled on proposals, they -- that is
23 compiled, is sent to the attorneys for the
24 Supreme Court, who are also liaisons on the --
25 on the Commission, they will make sure that

1 everything is cohesive and together. They send
2 that to the Supreme Court for consideration as
3 far as the recommendations.

4 The Supreme Court will take the
5 recommendations and they may add or subtract or
6 whatnot, but they will then put out those
7 recommendations for public comment. And
8 there's always a public comment period that --
9 it varies, but it's -- typically it's not less
10 than 60 days. There's always a comment period
11 for the public.

12 And then the Supreme Court gets those
13 comments back. They take all that into
14 consideration, and they file an order of
15 proposed rules for that -- we call it the rules
16 package. I mean, that may not -- it's not more
17 of an internal term, it's not an official term.
18 But they issue the order of the proposed rules
19 that -- based on the recommendations and public
20 comment.

21 And then I take certified copies of those
22 orders plus the proposed amendments to the
23 rules, I file them with the -- on behalf of the
24 Supreme Court, but I file them with the clerks
25 at the House and the Senate that -- which is

1 required by statute to do so. And you have to
2 do it from when they gavel in -- between when
3 they gavel in and January 31st. So typically
4 is a couple weeks that you can file them. And
5 then those certified copies of the orders and
6 the amendments are considered via rule
7 resolution, which is -- which I make sure is
8 written up and filed by the legislature.

9 Q. And you -- you've answered exactly like I
10 asked you to, which was general. I just now
11 want to kind of go back and unpack that just a
12 little bit.

13 A. Uh-huh.

14 Q. So the June meeting, as I understand it,
15 you've said that's kind of the last of the term
16 of the Advisory Commission meetings; is that
17 right?

18 A. Yes.

19 Q. And that's when the final proposed rule
20 recommendations to the extent there are any --

21 A. Right.

22 Q. -- that's when they're made?

23 A. Yes.

24 Q. How are they made in June? Does the
25 Advisory Commission have like a list? Do you

1 write it? Does a reporter write it? How does
2 that work?

3 A. It -- it's really ongoing. So there may
4 be rules that they approved to recommend to the
5 Court in the September prior. So it -- and
6 those will not come up again in June, it's just
7 they're -- they are -- the reporter kind of
8 keeps a record -- well, keeps a record of what
9 officially is recommended by the Commission.
10 That's all compiled by the reporter in
11 conjunction with the Supreme Court liaisons.
12 And it's really between them of how the form --
13 the format of how that gets to the Court.

14 Q. So and then do you all send that -- when
15 I saw "you all," does the Advisory Commission,
16 either the reporter or you or the chair, does
17 that get transmitted to the justices in June?

18 A. It's -- the reporter puts it together as
19 far as I know or, like I said, works with the
20 Supreme Court liaison, the Supreme Court
21 attorneys or the liaisons, and they determine
22 how it gets relayed to the Court.

23 Q. And then the Supreme Court around
24 September through maybe November, that's when
25 the public comment period is?

1 A. It varies every year, but typically, yes,
2 it would be -- they -- they typically take it
3 into consideration from that June meeting
4 through August. And then in the past it's been
5 some where between September and November that
6 they'll put out the rules for comment.

7 Q. So there's a lag period between June and
8 then whenever they start the public comment
9 period?

10 A. It's a review period for the Court.
11 That's the time that they take to review the
12 recommendations.

13 Q. So it is a -- there is a lag period
14 between that time?

15 A. And you can call it that, but I don't
16 know that it's necessarily a lag period. It's
17 just part of the process.

18 Q. Well, the Supreme Court is not -- doesn't
19 send out public comment notices in June, right?

20 A. No.

21 Q. And you said typically that public
22 comment period lasts, you said, 60 days?

23 A. It's 60 days minimum. I've not ever seen
24 it less than that.

25 Q. Is that -- do you know if that's by

1 statute or just custom in practice?

2 A. I can't recall if it's statute or within
3 the rules themselves, but it's definitely
4 practice within the Court.

5 Q. So let's say this September to November,
6 roughly, comment period, when comments come
7 back about the proposed rules, what does the
8 Supreme Court do? Do they send it back to the
9 Advisory Commission or do they act on it? How
10 does that work?

11 A. I mean, I can't speak definitively for
12 the Court. I can just say that sometimes
13 they -- I mean, they take the recommendations
14 or comments by the public into consideration.
15 They have in the past sent rules back to the
16 Commission, and they've also made changes
17 themselves to the recommendations for
18 consideration by the legislature. It just
19 varies.

20 Q. Without consulting the Advisory
21 Commission?

22 A. Correct.

23 Q. And so, after the public comment period,
24 is it Tennessee Supreme Court or is it you that
25 then takes the rules package to the general

1 assembly?

2 A. I facilitate it on behalf of the Supreme
3 Court. So I essentially represent their
4 requirement to do so. I will be the one to
5 physically bring it over and file and make sure
6 it goes through the process. But it is a
7 requirement that the Court -- the Supreme Court
8 does that, but I'm their --

9 Q. And when you say "requirement," you mean
10 a statutory requirement?

11 A. Yes.

12 Q. So when you -- when do you typically
13 submit the rules package to the general
14 assembly? Is that around January when they --

15 A. It's almost always in January.

16 Q. Right, when they begin their term?

17 A. Correct.

18 Q. So once you get the rules package to the
19 general assembly in January, is there anything
20 else that you do?

21 A. I will -- I file the -- the orders and
22 the certified copies with the clerks, and then
23 I draft the res -- rule resolutions for
24 whichever resolution -- whichever rules that
25 are being proposed to be amended. And I will

1 send those rule resolution drafts to the member
2 of the legislature who will sponsor those
3 resolutions. And it varies kind of year to
4 year, but typically it's the chair of the
5 Judiciary Committee that I would go through and
6 then they -- they take those drafts from there
7 and consult with their legislative legal
8 services attorneys for official drafting.

9 Q. So you typically submit the rules package
10 to the chair on the Judicial Committee?

11 A. It's a rule resolution --

12 Q. Okay.

13 A. -- that must be filed. It's -- the way
14 that the legislature approves the rules is via
15 --

16 Q. I see.

17 A. -- resolution. So they have to have that
18 drafted and then filed officially within the
19 rule -- resolution filing process so that it's
20 in the -- in the system to -- to be acted upon.

21 Q. So is it fair to say the rules
22 resolution, that's just more of a summary of
23 the entire rules package?

24 A. It -- there is a separate resolution for
25 every category of court rule that is being

1 amended.

2 Q. And you typically do provide the
3 Judiciary Committee chair with the rules
4 resolution?

5 A. Yes, it's typically the -- either the
6 Senate judiciary chair or the House, civil or
7 criminal, it -- obviously criminal rules will
8 go through the Criminal Justice Committee --

9 Q. Oh, okay.

10 A. -- civil rules will go through the Civil
11 Justice Committee. So I just facilitate to
12 make sure whichever particular rule package
13 amendments we have that they go to the correct
14 judiciary chair in the House.

15 Q. Is there a committee for every -- all
16 five different proposed rules; criminal, civil,
17 appellate, evidence and juvenile?

18 A. There are -- the way the legislature is
19 currently set up, there are just two -- there's
20 a Criminal and a Civil Judiciary Committee.
21 And the clerk of the House and the clerk of the
22 Senate determine which committee the rules
23 get -- rule resolutions get sent to.

24 However, we know just from past
25 experience, obviously, civil ones will go to

1 civil and criminal would go to the Criminal
2 Committee. So we just be sure to talk to those
3 chairs prior so that they're aware of the rule
4 resolutions.

5 Q. How long does that process take from
6 January through -- does that take through March
7 or April? What does that look like for you?

8 A. It just depends on when the legislature
9 schedules the rule resolutions to be heard.
10 They are scheduled to be heard in the
11 committees, and so it's really just dependent
12 on the chair of the committee and when they
13 want to schedule it. So we could hear them in
14 January or we could hear them closer to the end
15 of session. It just depends on preference of
16 the chair.

17 THE REPORTER: And could we take a
18 quick restroom break?

19 MR. DOUGHERTY: Sure.

20 (Short break.)

21 BY MR. DOUGHERTY:

22 Q. We're back on the record.

23 Are you aware of Federal Advisory
24 Committee meetings that are similar to the
25 Tennessee Advisory Commission?

1 A. I can't say that I'm very familiar with
2 them.

3 Q. Have you become familiar with the Federal
4 Advisory Committees from this lawsuit?

5 A. Only what's referenced in the lawsuit. I
6 have not looked it up separately.

7 Q. And that's never something the Federal
8 Advisory Committee that's ever come up in
9 Advisory Commission meetings?

10 A. Not that I recall.

11 Q. Do you go to conferences in your position
12 with the AOC to other either state AOC
13 conferences or federal AOC conferences?

14 A. I go to the AOC's judicial conferences,
15 yes.

16 Q. Is that -- is that a state -- on the
17 state or what is that?

18 A. On the state level. There are various
19 conferences for the different levels of judges,
20 and I attend those.

21 Q. How often do those usually take place?

22 A. It varies per judicial conference, but
23 it's either two or three times a year.

24 Q. You talking about the Tennessee judicial
25 conference?

1 A. Yes.

2 Q. And so, are you saying that other state
3 AOC offices and employees come together at
4 these conferences?

5 A. What do you mean other state?

6 Q. Well, I guess what I'm trying to ask is:
7 Do you have an opportunity as the Tennessee AOC
8 departmental government liaison, are there
9 other states that have equivalent jobs that
10 you're able to communicate with to see what
11 they do?

12 A. I do not know. And no, typically we do
13 not confirm with other state AOCs.

14 Q. Do you have any interaction with the
15 federal AOC?

16 A. No.

17 Q. Does the Advisory Commission members, do
18 they have opportunities to do conferences with
19 other either state judicial conferences or
20 federal advisory?

21 A. Not that I'm aware of.

22 Q. Okay. Do you personally take a role in
23 making rule recommendations or is your role
24 just to provide administrative support to the
25 Advisory Commission?

1 A. I do not make rule recommendations, it's
2 purely administrative.

3 Q. And you may have said, but how does that
4 happen? Let's say a rule comes and someone
5 wants to change Rule 12 of Civil Procedure, do
6 the members debate it, talk about it, does
7 someone write a paper about it? What does that
8 look like?

9 A. It varies on how it comes up. It can
10 come up via a member or a request from a
11 legislator or another member of the public. It
12 really varies. But the Commission will
13 typically add it to the agenda for the -- for
14 the next meeting, whatever meeting would be in
15 closest proximity to that request. And the
16 Commission members discuss it and decide if it
17 warrants further discussion or reference to a
18 subcommittee within the Commission or -- or
19 they just don't want -- don't deem it necessary
20 to discuss further.

21 Q. How would a member of the public make a
22 suggestion to get on the agenda of the Advisory
23 Commission?

24 A. They could do that in various ways by
25 either e-mailing the AOC. They could e-mail

1 the contact, you know, me or another person via
2 the names on the website or they could reach
3 out directly to the reporter or the chair. It
4 just depends on -- and it's varied in the past.
5 We have had requests from members of the public
6 before for discussion of items.

7 Q. Do members of the public know they have
8 that option? I mean, is that something that
9 the AOC regularly broadcasts to the public?

10 A. Other than the public access to the page
11 on the website, I don't know that there's
12 anything specific.

13 Q. Has there ever been anything on the AOC
14 website that announces to the public that if
15 they want to make a suggestion proposed rule
16 change, they could do so?

17 A. I don't know if that's ever been
18 something that's been on our website. I can't
19 say that it was or wasn't.

20 Q. So it's not something that affirmatively
21 the AOC reaches out to the public, it just kind
22 of comes up occasionally?

23 A. The page is open to the public. And so
24 if a member of the public had a question,
25 they're always free to reach out to contacts

1 provided on that page.

2 Q. And is your contact provided on the page?

3 A. Yes.

4 Q. Okay. That's pre injunction?

5 A. Correct.

6 Q. What about reimbursements of Advisory
7 Commission members, is that something that you
8 provide administrative support for for
9 expenses?

10 A. I have in the past; however, recently I
11 don't recall anyone requesting a reimbursement
12 for mileage or anything like that because our
13 meetings happen virtual.

14 Q. And that's been going on pre preliminary
15 injunction?

16 A. Correct.

17 Q. Do you recall getting the litigation hold
18 letter when this lawsuit was filed by either
19 Director Long or someone within the AOC?

20 A. I don't remember exactly if I received a
21 litigation hold letter or if it was just our
22 director and I was just informed of the pending
23 litigation.

24 Q. And so, was it your understanding that
25 all records and e-mails and everything was

1 supposed to be preserved now that there was
2 litigation?

3 A. Yes.

4 Q. To the best of your recollection and
5 knowledge that has it actually taken place,
6 everything's been preserved?

7 A. As far as I know, yes.

8 Q. Did you participate personally in -- with
9 Director Long or in her answer that was filed
10 in this lawsuit?

11 A. No.

12 Q. Have you ever seen her answer that was
13 filed in this lawsuit?

14 A. I do believe I saw it after it was filed,
15 but I don't recall exactly.

16 Q. Do you recall seeing Director Harmon's
17 two declarations that were filed early when the
18 lawsuit was filed?

19 A. I do believe I saw them, but I don't
20 recall the details.

21 Q. Did you assist in preparing those
22 declarations --

23 A. No.

24 Q. -- for Ms. Harmon?

25 And you said no?

1 A. Correct, no.

2 Q. Do you provide -- in your role with the
3 AOC, do you provide legal advice to the
4 justices of the Supreme Court?

5 A. In various capacities I have in the past
6 on various topics.

7 Q. But what are those topics and capacities?

8 A. It -- majority is with legislative
9 topics.

10 Q. Related to the Advisory Commission rules
11 package?

12 A. No. Just other legislative duties that I
13 provide.

14 Q. Could you give me an example? Is there
15 something you could give me an example?

16 A. Sure. Just the legislation that is
17 either filed, proposed statutory amendment that
18 may affect court process and I will talk to the
19 Court about that. And there are lots of times
20 it's legal in nature but not related to the
21 Advisory Commission, just other proposals that
22 get filed by members of legislature.

23 Q. So that's more in your capacity as
24 intergovernmental affairs director?

25 A. That's correct.

1 Q. Do you know if deputy Harmon provides
2 legal advice to the justices of the Supreme
3 Court?

4 A. I believe she does, yes.

5 Q. Do you know in what capacity?

6 MR. STAHL: Object to the form.

7 THE WITNESS: No.

8 BY MR. DOUGHERTY:

9 Q. Do you know if Director Long provides
10 legal advice to the justices?

11 A. I can't -- I can't answer that
12 definitively.

13 Q. So you don't know; is that right?

14 A. I don't know.

15 MR. DOUGHERTY: I think I'll pass the
16 witness, Mike.

17 MR. STAHL: Okay.

18

19 EXAMINATION

20 QUESTIONS BY MR. STAHL:

21 Q. Ms. Young, just a few questions.

22 Prior to the closing of the meetings and
23 the virtual meetings that occurred when COVID
24 started in 2020, I think you mentioned that
25 most of the meetings occurred in person and

1 they occurred in a conference room at the AOC
2 offices; is that right?

3 A. That's correct.

4 Q. How big is that conference room?

5 A. I'm not good with measurement. I would
6 say there's a -- it's fairly large. There's a
7 large conference table that seats roughly 20 or
8 so. It can probably -- I do believe it can
9 accommodate about 50 people com -- maybe not so
10 comfortably, but that could be in there.

11 Q. And how many members of the Committee and
12 other people like yourself from the AOC are
13 typically present at or were typically present
14 when the meetings were held in person?

15 A. We would have roughly ten members of the
16 Commission. Probably more than that before --
17 before COVID we had good attendance. I would
18 say majority of the members would be in
19 attendance.

20 And then as far as members of the AOC, it
21 would -- myself, possibly a member of our tech
22 division to just handle any technology needs in
23 there. But that would be it, typically. There
24 weren't a lot of members of the AO -- other
25 employees of the AOC that would attend.

1 Q. Okay. In your experience prior to 2020
2 when the meetings went virtual and they were
3 still in person and you mentioned that there
4 was the one incident with the member of the
5 public who had come in, how did that member of
6 the public come into the AOC offices? Is there
7 a security area that they need to request
8 permission to come through in order to go to
9 the offices or are members of the public just
10 able to walk in?

11 A. No, the -- that member of the public did
12 have to check in in our -- the security kiosk
13 that's in the lobby of our building. We --
14 sometimes we would know if a member of the
15 public was going to attend because they would
16 reach out prior and request to attend so we
17 could give the information to the security
18 desk, but sometimes they'd just show up. And
19 so they would say, we're here for commission
20 meeting, we would basically verify that, allow
21 them to come up and then they would go through
22 our second -- our own security -- our own doors
23 to our -- to the AOC and they would be allowed
24 into the meeting.

25 Q. Okay. When the meetings were in person

1 and when you attended, were they always held in
2 the same conference room or were they held in
3 different rooms?

4 A. Always the same conference room.

5 Q. Is that the biggest conference room
6 that's available?

7 A. Yes.

8 Q. You mentioned a member of the IT
9 department for the AOC sometimes being at these
10 meetings to facilitate IT needs. I'm wondering
11 in your -- in the AOC's role as administrative
12 support for the Advisory Commission meeting, if
13 a member was to show up in person prior to
14 2020, were they given a computer? Were they
15 expected to provide their own? Would they be
16 provided with writing supplies if they wanted
17 to take notes? What did that look like?

18 A. Just the member of the public that --

19 Q. No, a member of the Committee.

20 A. Oh, anybody. They would typically bring
21 their own if they kept information on a
22 computer or whatnot, but the AOC would
23 typically provide copies of the agenda and any
24 documents that would be considered in that
25 meeting as requested. I would typically have

1 copies available, but members, in my
2 experience, usually brought either on a
3 computer they would just keep electronic
4 documents of how they kept up with it or they
5 would bring their own that they already printed
6 out and reviewed prior to the meeting.

7 Q. Okay. Now that the meetings are virtual,
8 does the AOC provide any computers or hardware,
9 tech support to facilitate those meetings?

10 A. To facilitate the meetings we'll provide
11 the links and whatnot. But as far as any
12 hardware to anybody, no, we don't provide that.

13 Q. Okay. You mentioned that the -- that
14 there's a portion of the Rules Committee
15 process where there is a public comment period.
16 I think you mentioned that you've never seen it
17 to where that comment period was less than
18 60 days but it could be more; is that right?

19 A. Yes, in my experience it has been
20 60 days. It could be more. I won't say it's
21 never been less than 60 days, but in my
22 experience it's been 60 days. That's been the
23 minimum.

24 Q. Are you aware of any public comment that
25 has found its way to the Supreme Court during

1 that public comment period on any Rules
2 Committee recommendations?

3 MR. DOUGHERTY: Object to the form.

4 THE WITNESS: Yes, there have been
5 public comments.

6 BY MR. STAHL:

7 Q. How were those comments provided to the
8 Supreme Court during that period as far as, you
9 know?

10 A. They are -- there is a form that you can
11 fill out on the AOC -- the Court website as far
12 as the -- when that public comment notice goes
13 out, there is an ability to file a -- a
14 comment. And that is also within that
15 Appellate Court clerk's office, but there is a
16 form on the website that you can enter your
17 comments or, I believe, you can upload a
18 document as well if you already have comments
19 pre -- you know, written on a Word document or
20 whatnot. But then the Appellate Court clerk's
21 office compiles those.

22 Q. Okay. Since your -- you've taken up this
23 role as liaison for the rules Advisory
24 Commission, has a member of the public ever
25 contacted you about attending a meeting?

1 A. Yes. I mean, prior to 2020 there have --
2 there were members of the public that
3 required -- that requested to attend. I don't
4 know I can give you a specific example, but it
5 has happened.

6 Q. Since 2020 has any member of the public
7 contacted you about attending a meeting?

8 A. No.

9 Q. Do you make any decisions about rules
10 Advisory Commission, policies or actions of the
11 Committee?

12 A. No.

13 Q. Have you ever witnessed the Committee
14 requesting someone come and speak to them in
15 any capacity?

16 A. Yes. I've witnessed a legislator asking
17 to come and address the Committee, the
18 Commission. That has happened in the past.

19 Q. You also mentioned that there are
20 subcommittees as part of the Rules Commission;
21 is that right?

22 A. Correct.

23 Q. Are they standing committees or are they
24 committees as necessary?

25 A. They have been standing committees;

1 however, it is up to the chair whether or not
2 to dissolve a committee or create one as
3 needed. Create a new one.

4 Q. Do you know what the standing committees
5 are -- subcommittees, I'm sorry?

6 A. I can't recall all of them, but they
7 basically breakdown into categories. So there
8 is civil, criminal, appellate, evidence. I
9 don't believe there's a juvenile one at the
10 moment.

11 Q. Have you witnessed any meetings between
12 the members of those subcommittees?

13 A. No, I have not attended any of those
14 subcommittee meetings.

15 Q. Do members of the subcommittee meet at
16 the AOC offices as far as you know?

17 A. Since subcommittees were created, to my
18 knowledge, they have all been virtual meetings.

19 Q. Since they've been created have any of
20 those subcommittees requested AOC technical
21 support to conduct those virtual meetings?

22 A. I do not know.

23 MR. STAHL: I think that's all I've
24 got.

25 ///

1 EXAMINATION

2 BY MR. DOUGHERTY:

3 Q. Brief follow-up.

4 Does providing livestreaming access of
5 Advisory Commission meetings to the public
6 elevate any crowding problems from in-person
7 attendance?

8 A. It could. It just depends, I suppose.
9 But livestreaming would eliminate the need of
10 someone attending in person.

11 Q. I mean, if there's a small conference
12 room and you can only fit 60 people in, for
13 example, of the public, it would be better if
14 you had unlimited amount of people, which they
15 could do that through livestreaming, right?

16 MR. STAHL: Object to the form.

17 THE WITNESS: The livestreaming does
18 give that option.

19 BY MR. DOUGHERTY:

20 Q. Okay.

21 MR. DOUGHERTY: That's all I've got.

22 MR. STAHL: Great. Okay.

23 THE REPORTER: Do you want to order
24 this?

25 MR. DOUGHERTY: Yeah.

1 THE REPORTER: Do you want it regular
2 delivery or sooner?

3 MR. DOUGHERTY: Can I get it before?

4 (WHEREUPON, an off-the-record
5 discussion was held.)

6 MR. DOUGHERTY: What about Tuesday or
7 Wednesday, the 27th or 28th?

8 THE REPORTER: Yeah.

9 MR. STAHL: Yeah, we'll take a copy.
10 Same order. And she's going to waive
11 signature. Thank you.

12 FURTHER DEPONENT SAITH NOT
13 (Proceeding concluded at 11:16 a.m. CST)

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REPORTER'S CERTIFICATE

STATE OF TENNESSEE

COUNTY OF SUMNER

I, MICHELLE CESSNA, Licensed Court Reporter, with offices in Nashville, Tennessee, hereby certify that I reported the foregoing deposition of MICHELLE CONSIGLIO-YOUNG by machine shorthand to the best of my skills and abilities, and thereafter the same was reduced to typewritten form by me.

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