

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

DAN McCALEB, Executive Editor of)
THE CENTER SQUARE,)

Plaintiff,)

v.)

MICHELLE LONG, in her official)
capacity as DIRECTOR of the)
TENNESSEE ADMINISTRATIVE)
OFFICE OF THE COURTS,)

Defendant.)

Case No. 3:22-cv-00439

Judge Richardson

Magistrate Judge Frensley

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff Dan McCaleb, Executive Editor of The Center Square, files this Motion for Summary Judgment pursuant to Fed. R. Civ. P. 56 and LR 56.01. Plaintiff McCaleb moves for summary judgment against Defendant Michelle Long, in her official capacity as Director of the Administrative Office of the Courts ("AOC").

Accompanied with this Motion for Summary Judgment is a supporting Memorandum of Law as well as a Rule 56.01 Statement, which provides the Court with a concise statement of the material facts as to which Plaintiff McCaleb contends there is no genuine issue for trial.

Moreover, McCaleb attaches the following exhibits to this Motion for Summary Judgment as follows:

- **Exhibit 1**, Dan McCaleb Deposition
- **Exhibit 2**, Michelle Long Deposition
- **Exhibit 3**, Michelle Consiglio-Young Deposition
- **Exhibit 4**, May 20, 2016, Public Meeting Notice
- **Exhibit 5**, [Proposed] Permanent Injunction

In further support of his Motion for Summary Judgment, McCaleb submits:

1. His First Amended Complaint (ECF No. 19) against Defendant Long sought prospective injunctive relief pursuant to 42 U.S.C. §1983 and the First Amendment.
2. This included a request for a permanent injunction to access meetings of the Tennessee Advisory Commission on the Rules of Practice & Procedure (“Advisory Commission”), created by Tenn. Code Ann. §16-3-601.
3. As more fully set forth in his Memorandum of Law, Defendant Long oversees the AOC, which provides administrative support to the Advisory Commission. This support includes posting public notice of meetings on the AOC’s website.
4. Moreover, in the past the AOC posted public notice on its website of upcoming Advisory Commission meetings. But a member of the public verbally disrupted a 2018 meeting. And after this incident, the AOC instituted a practice of no longer posting public notice of Advisory Commission meetings, and Defendant Long has continued this practice during her tenure as Director of the AOC.
5. But the AOC’s practice of not posting public notice to Advisory Commission meetings limits the stock of information on the state court rulemaking process from

which members of the public may draw. And the First Amendment attaches to meetings under the *Richmond Newspapers*' "experience and logic" test.

RELIEF REQUESTED

For these reasons, Plaintiff Dan McCaleb requests that the Court grant his Motion for Summary Judgment and enter a permanent injunction, ordering Defendant Long and the AOC to provide public access to meetings of the Advisory Commission. McCaleb is submitting a proposed permanent injunction for the Court's consideration.

Additionally, McCaleb reserves the right to move for reasonable attorneys' fees and costs pursuant to 42 U.S.C. §1988 at the applicable time in accordance with the Federal and Local Rules.

December 15, 2023

Respectfully submitted,

/s/ M. E. Buck Dougherty III

M. E. Buck Dougherty III, TN BPR #022474

James McQuaid, *Pro Hac Vice*

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*Attorneys for Plaintiff, Dan McCaleb,
Executive Editor of The Center Square*

CERTIFICATE OF SERVICE

I, counsel for Plaintiff, hereby certify that a true and correct copy of the foregoing document has been served on the following counsel of record, via the Court's ECF system by email on this 15th day of December 2023:

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/s/ M.E. Buck Dougherty III

Exhibit

1

McCALEB

vs.

LONG

DAN MCCALEB

October 13, 2023



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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

DAN McCALEB, Executive Editor
of THE CENTER SQUARE,
Plaintiff,

Case No. 3:22-cv-00439

vs.

Judge Richardson

MICHELLE LONG, in her
official capacity as
DIRECTOR of the TENNESSEE
ADMINISTRATIVE OFFICE OF
THE COURTS,
Defendant.

Magistrate Judge
Frensley

Videconference Deposition of:
DAN McCALEB
Taken on behalf of the Defendants
October 13, 2023

Commencing at 11:57 a.m.

Deborah H. Honeycutt, LCR, Associate Reporter
Lexitas Legal TENNESSEE
1015 Avery Park Circle
Smyrna, TN 37167
(615)595-0073

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

The videoconference deposition of
DAN McCALEB was taken by counsel for the
Defendants, by Notice, with all participants
appearing at their respective locations, on
October 13, 2023, for all purposes under the
Tennessee Rules of Civil Procedure.

All objections, except as to the form of
the question, are reserved to the hearing, and 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 Deborah H. Honeycutt,
Notary Public and Licensed Court Reporter for the
State of Tennessee, may swear the witness remotely,
and that the reading and signing of the completed
deposition by the witness is waived.

A P P E A R A N C E S

For the Plaintiff:

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Also present:

MS. BRIDGET CONLAN, Liberty Justice Center

* * *

THE REPORTER: Good morning. My name is
Deborah Honeycutt. I am a stenographic reporter
with Lexitas Legal TENNESSEE. My license number is
472.

Today's date is October 13, 2023, and
the time is approximately 11:57 a.m. Central time.

This is the deposition of Dan McCaleb in
the matter of Dan McCaleb, Executive Editor of The
Center Square vs. Michelle Long, in her official
capacity as Director of the Tennessee Administrative
Office of the Courts, filed in the District Court
for the Middle District of Tennessee, Nashville
Division. The Case Number is 3:22-cv-00439.

This deposition is being taken by
videoconference, and the oath will be administered
remotely by me. Any digital exhibits marked during
this deposition will be deemed as "original" for
purposes of said deposition.

At this time, I will ask counsel to
identify yourselves and state whom you represent.
If you have any objections with the procedures I've
outlined, please state so when you introduce
yourself. We will start with the noticing attorney.

1 MR. STAHL: Michael Stahl, representing
2 Michelle Long, the defendant.
3 MR. DOUGHERTY: Buck Dougherty
4 representing the plaintiff, Dan McCaleb. And just
5 one objection for the record. I don't recall this
6 being noticed as a video-recorded deposition which I
7 believe is required under the Rules. We're going to
8 reserve the right to raise that if it's to be
9 recorded, but I just want to get that for the
10 record.

11 THE REPORTER: I am recording that for
12 my purposes only, Mr. Dougherty.

13 MR. DOUGHERTY: Thank you.

14 MR. McQUAID: And James McQuaid also for
15 Plaintiff, Dan McCaleb.

16

17 * * *

18 DAN McCALEB
19 was called as a witness, and after having been duly
20 sworn, testified as follows:

21

22 EXAMINATION

23 QUESTIONS BY MR. STAHL:

24 Q. Okay. Mr. McCaleb, we'll begin. Can you
25 state your name for the record.

1 **A. Dan McCaleb.**

2 Q. And you understand that you're under oath
3 today, sir, right?

4 **A. I do, yes.**

5 Q. And are you represented by counsel?

6 **A. I am.**

7 Q. And who is that?

8 **A. Liberty Justice Center, Buck Dougherty,
9 Mr. Buck Dougherty, lead counsel.**

10 Q. Okay. Thank you. Have you ever given a
11 deposition or provided testimony in a court case
12 before?

13 **A. I gave one deposition many, many years ago,
14 18 or 19 years ago.**

15 Q. What was that case? Do you remember?

16 **A. The case name or number I don't remember. I
17 remember some very few details but no.**

18 Q. Well, let me just go over some procedures so
19 that we are on the same page since it's been a
20 while. The first is that if you can't hear me or
21 you don't understand a question please let me know.
22 It's really important that you understand the
23 questions that I'm asking before you give your
24 answer. So if that comes up, if there's technology
25 issues because we're remote or whatever, just feel

1 free to let me know, please. If you don't
2 understand something or need clarification, I can
3 definitely help you with that. It's best if you let
4 me finish my question before you start to give your
5 answer for a couple of reasons. One, so that you
6 know the question that I'm asking and then, two, so
7 that the court reporter can be sure to get down what
8 everyone is saying because if people start talking
9 over each other, the transcript just gets a little
10 bit messy.

11 In that vein, it's also important that you
12 give verbal responses. So sometimes during
13 depositions people will shake their heads or give
14 uh-huh or huh-uh answers. And, again, that's hard
15 for the transcript to reflect. So please do your
16 best to give verbal responses.

17 If you need a break, that's perfectly fine.
18 Just let me know. We can take a break. I don't
19 think this will take all that long, but if at any
20 time you feel like you need a break, that's
21 perfectly fine. You can let me know or let your
22 attorney know. The only thing that I ask is that if
23 I have asked you a question already, that you answer
24 that question before we go on break. Does that
25 sound good?

1 **A. Yes.**

2 Q. Great. As far as your mental condition
3 today, is there reason why you believe you can't
4 give full and complete answers?

5 **A. No.**

6 Q. Are you under any medication or substances
7 that would impair your ability to give honest
8 testimony?

9 **A. No.**

10 Q. Have you talked with anyone in preparation
11 for today's deposition?

12 **A. My attorney.**

13 Q. Anyone else?

14 **A. No.**

15 Q. Have you reviewed anything in preparation for
16 today's deposition?

17 **A. I have reviewed some of our filings, our
18 amended lawsuit, and my declarations.**

19 Q. And Buck mentioned before we went on the
20 record that you didn't have anything with you today
21 but I'll just ask again for the transcript. Did you
22 bring anything with you today?

23 **A. I brought printouts of what I just mentioned
24 but I don't have them on me here, no.**

25 Q. Okay. Let's just go through some

1 biographical information. What's your address?
 2 **A. My personal address is 726 Windsor Drive,**
 3 **Crystal Lake, Illinois.**
 4 Q. So you're a resident of Illinois then?
 5 **A. Yes.**
 6 Q. Do you have any other addresses in any other
 7 states?
 8 **A. No.**
 9 Q. Are you a resident of any other state?
 10 **A. No.**
 11 Q. What is your occupation?
 12 **A. Journalist.**
 13 Q. How long have you been doing that?
 14 **A. More than 30 years.**
 15 Q. Are you an independent journalist, or do you
 16 work for someone?
 17 **A. I work for The Center Square.**
 18 Q. Okay. And how long have you worked for them?
 19 **A. Since 2017, although we weren't known as The**
 20 **Center Square in 2017.**
 21 Q. What were you known as in 2017?
 22 **A. Illinois News Network.**
 23 Q. And when you say that you're now known as The
 24 Center Square, was that because you changed your
 25 business license or just the name or what

1 precipitated the change from the Illinois News
 2 Network to Center Square?
 3 **A. Well, in 2017 when I joined, we were covering**
 4 **just Illinois only. And then we expanded our**
 5 **coverage to across the country and Illinois News**
 6 **Network didn't work for Tennessee or Pennsylvania,**
 7 **for example.**
 8 Q. Okay. Before you worked for Illinois News
 9 Network, where did you work?
 10 **A. I worked for Shaw Media.**
 11 Q. Was that also in Tennessee -- or in Illinois?
 12 **A. Yes, Illinois. I was in Illinois. Illinois**
 13 **and Iowa, yes.**
 14 Q. All right. Do you know why we are here
 15 today?
 16 **A. Yes.**
 17 Q. What is your understanding of why we're here
 18 today?
 19 **A. I am giving a deposition in a lawsuit against**
 20 **Defendant Michelle Long.**
 21 Q. And what is the purpose of that lawsuit?
 22 **A. To open up the Bench Bar Advisory Commission**
 23 **in Tennessee to public scrutiny, essentially.**
 24 Q. When you say public scrutiny, are you
 25 limiting that to press or is it your understanding

1 that this lawsuit would apply to the entirety of the
 2 public?
 3 **A. The press and the public.**
 4 Q. Okay. The caption in the lawsuit says that
 5 you are the plaintiff as executive editor of The
 6 Center Square. So is it your understanding that you
 7 are filing this suit as a private citizen or as a
 8 member of the press?
 9 **A. As a member of the press.**
 10 Q. Have you reviewed all the pleadings in this
 11 case?
 12 **A. Yes.**
 13 Q. Do you agree with everything that's been
 14 filed on your behalf?
 15 **A. Yes.**
 16 Q. Why did you initiate this lawsuit?
 17 **A. As a 30-plus-year journalist I believe in**
 18 **open government. When I learned that this was**
 19 **closed, I asked the question, what are they hiding,**
 20 **as I would in any situation. So I looked into it**
 21 **further and thought it was appropriate to get the**
 22 **meetings open.**
 23 Q. When you say you learned that they were
 24 closed, how did you learn that they were closed?
 25 **A. I think my first information about it had to**

1 **do with Ms. Long's statement or a policy position**
 2 **that she put out that had to do with concerns about**
 3 **safety and security and closing -- was it the**
 4 **Tennessee Judicial Conference? I started looking**
 5 **into it after that.**
 6 Q. So you believe that you saw a policy from
 7 Michelle Long that indicated that the Tennessee
 8 Rules Advisory Commission on Practice and Procedure
 9 were closed to the public?
 10 MR. DOUGHERTY: Object to the form of
 11 the question.
 12 BY MR. STAHL:
 13 Q. You can answer.
 14 **A. Okay. No. No. Initially it was the**
 15 **Tennessee Judicial Conference, I think is what the**
 16 **name of it is. I think it came from Michelle Long,**
 17 **yes.**
 18 Q. But that was a policy that you saw that
 19 indicated that the Judicial Conference was closed to
 20 members of the public?
 21 **A. I don't know if you'd call it a policy or a**
 22 **rule or whatever but the Judicial Conference was**
 23 **closed.**
 24 Q. Well, what would you call it?
 25 **A. I guess if they're acting on the policy, I'd**

1 **call it a rule that was put in place.**
 2 Q. And where did you see this rule?
 3 **A. On the Tennessee judicial website,**
 4 **tncourts.gov, I believe it is.**
 5 Q. When was the last time you saw this policy?
 6 Or the rule?
 7 **A. When I reviewed my filings, I believe.**
 8 Q. When did you review those filings?
 9 **A. Over the course of this week.**
 10 Q. So within the past week you saw a policy or a
 11 rule on the Tennessee Judicial website from Michelle
 12 Long that said the Tennessee Judicial Conference was
 13 closed to members of the public?
 14 MR. DOUGHERTY: Object to the form of
 15 the question.
 16 **THE WITNESS: I have reviewed a lot of**
 17 **documents in the past week, so I guess I can't state**
 18 **specifically. I definitely read something related**
 19 **to concerns over security and safety for members of**
 20 **the Tennessee Judicial Conference.**
 21 BY MR. STAHL:
 22 Q. Was this lawsuit filed in the last week?
 23 **A. No.**
 24 Q. Do you remember when you filed this lawsuit?
 25 **A. June of 2022.**

1 Q. Okay. So what caused you to believe prior to
 2 June of 2022 that the Tennessee Commission on the
 3 Rules of Practice and Procedure were closed to the
 4 public?
 5 MR. DOUGHERTY: Object to the form of
 6 the question.
 7 **THE WITNESS: I want to say it started**
 8 **with that, with -- with -- I'm sorry -- with the --**
 9 **the policy or the rule from Ms. Long.**
 10 BY MR. STAHL:
 11 Q. So, just to be clear, prior to June of 2022,
 12 you saw a policy or a rule on the Tennessee Judicial
 13 website from Ms. Long saying that the Tennessee
 14 Judicial Commission was closed to the public and you
 15 assumed that the Tennessee Rules of Practice and
 16 Procedure Commission was also closed to the public?
 17 **A. No, I did not assume that.**
 18 Q. So what made you file this lawsuit to open
 19 the meetings of the Tennessee Advisory Commission on
 20 the Rules of Practice and Procedure?
 21 **A. I started looking into it further and one of**
 22 **the things I recall saying is that this, semantics,**
 23 **you call it the Advisory Commission, Bench Bar**
 24 **Committee, that they were supposed to meet**
 25 **periodically. But I did not -- I couldn't find**

1 **anywhere on this judicial website any advisories of**
 2 **any meetings and so that drew more suspicion from**
 3 **me.**
 4 Q. Okay. So you said you looked into it further
 5 and you said that you didn't see any notices
 6 indicating that the Commission meetings were open to
 7 the public; is that right?
 8 **A. Correct. Or -- yes, correct. But if memory**
 9 **serves, I didn't even see any -- not just open to**
 10 **the public, but any schedules of meetings.**
 11 Q. Okay. And why does the lack of scheduled
 12 meetings indicate that meetings aren't open to the
 13 public?
 14 **A. Well, experience in 30 years of journalism.**
 15 **I have gone to a lot of government websites. I have**
 16 **attended a lot of government meetings. And if**
 17 **meetings are open to the public, there's generally**
 18 **supposed to be public notice.**
 19 Q. So you say generally. Does that mean there
 20 are instances when that's not the case?
 21 **A. The public meetings I think there needs to be**
 22 **public notice.**
 23 Q. So when there wasn't public notice that you
 24 could find about the Tennessee Commission on the
 25 Rules of Practice and Procedure, did you do anything

1 else to confirm that those meetings weren't open to
 2 the public?
 3 **A. Did I do anything else? I kept looking, kept**
 4 **digging, I think, kept investigating. In terms of**
 5 **specifics, I don't recall exactly what I did.**
 6 Q. Well, that's difficult for me to understand
 7 that you think you did stuff but you can't tell me
 8 what you did. So I've got to keep asking some
 9 questions about that. So you said you kept digging.
 10 What did that mean?
 11 MR. DOUGHERTY: Object to the form of
 12 the question.
 13 **THE WITNESS: I kept searching this**
 14 **particular website, and I think I went to the State**
 15 **of Tennessee's website, and I just kept looking,**
 16 **what's going on. I had the question what's going on**
 17 **here? Why are these meetings not -- why is there**
 18 **not public notices for these meetings? That's,**
 19 **essentially, it.**
 20 Q. Okay. So when you didn't see the public
 21 notice for the meetings, you continued to look for
 22 the public notice meetings on that website you
 23 visited and other state websites; is that fair?
 24 **A. Yes. Actually, I looked at the federal**
 25 **judiciary website and I noticed something very**

1 similar to the Tennessee Bench Bar Committee and
 2 noticed that they were open as well. Or that they
 3 were open, excuse me, not as well.
 4 Q. Okay. So after not finding a public notice
 5 for the Tennessee Advisory Rule Commission meetings,
 6 did you do anything else to confirm whether those
 7 meetings were open to the public?
 8 **A. I think I have answered the question. I kept**
 9 **looking. But yes, that was the end of it.**
 10 Q. Okay. Well, thinking you answer my question
 11 and answering my questions sometimes is different
 12 for different people. So I'm trying to get some
 13 good clarity on this.
 14 You looked online for public notices of the
 15 Tennessee Advisory Commission meetings in multiple
 16 places; you couldn't find the meeting notices; and
 17 so you filed suit; is that right?
 18 **A. Yes, eventually.**
 19 Q. Did you ever call anyone and ask them, either
 20 in the state government or the Tennessee judiciary,
 21 about the public notice or lack thereof?
 22 MR. DOUGHERTY: Object to the form of
 23 the question.
 24 **THE WITNESS: Can you repeat it?**
 25 //

1 BY MR. STAHL:
 2 Q. Did you ever call anyone in the Tennessee
 3 state government or the Tennessee judiciary to ask
 4 or confirm why you couldn't find a public notice for
 5 the Tennessee Commission meetings on Rules of
 6 Practice and Procedure?
 7 **A. Not that I recall, no.**
 8 Q. Did you email anyone asking that same
 9 question?
 10 **A. Within Tennessee state government, not that I**
 11 **recall, no.**
 12 Q. Have you ever been a named plaintiff before?
 13 **A. No.**
 14 Q. Have you ever been a named defendant before?
 15 **A. No.**
 16 Q. Your pleadings in this case indicate that you
 17 are the executive editor at The Center Square
 18 organization; is that right?
 19 **A. Yes.**
 20 Q. I think The Center Square website has you
 21 listed as vice president of news and content,
 22 though. Can you explain that discrepancy?
 23 **A. I am vice president of news and content for**
 24 **the Franklin News Foundation, which is the 501(c)(3)**
 25 **non-profit that publishes The Center Square, and**

1 other things.
 2 Q. So are you still an executive editor at
 3 Center Square?
 4 **A. Yes.**
 5 Q. And what does it mean to be an executive
 6 editor at The Center Square?
 7 **A. I am the top editor. I make final decisions**
 8 **on editorial judgment issues.**
 9 Q. Do you have a particular area that you work
 10 within for The Center Square in doing your editorial
 11 comments, meaning sports, politics, anything like
 12 that, or is it just general editorial purview?
 13 **A. We're focused on government news.**
 14 Q. Okay. How many employees are there at The
 15 Center Square?
 16 **A. I think we are at about 27 or 28 right now.**
 17 Q. Okay. And is that organization online only,
 18 or do they have a print or video arm?
 19 **A. We -- we do do some video. We are print**
 20 **only -- or, excuse me -- online only. We do not**
 21 **have a print arm.**
 22 Q. And you said that The Center Square was born
 23 out of the Illinois News Network in 2017; is that
 24 right?
 25 **A. I joined Illinois News Network in 2017. We**

1 **launched The Center Square in 2019.**
 2 Q. And was The Center Square a completely
 3 separate organization when you launched it or was it
 4 the same as the Illinois News Network under just a
 5 new name?
 6 **A. We folded Illinois News Network into The**
 7 **Center Square.**
 8 Q. Who hired you to The Center Square?
 9 **A. It's the same person who hired me to Illinois**
 10 **News Network. Chris Krug.**
 11 Q. And who is he? Is he the founder of The
 12 Center Square?
 13 **A. He is the president of the Franklin News**
 14 **Foundation which publishes The Center Square.**
 15 Q. Is The Center Square registered as a business
 16 in Tennessee?
 17 **A. I honestly don't know the answer to that**
 18 **question. Well, I think we have tax status. I**
 19 **think that's the best I can say.**
 20 Q. And what is the organizational structure
 21 between The Center Square and Franklin News?
 22 **A. The organizational structure, Franklin News**
 23 **is the 501(c)(3) nonprofit that publishes The Center**
 24 **Square. I do report up to the president of the**
 25 **Franklin News Foundation. We also have other**

1 **separate websites that some of which that I'm**
 2 **directly involved in, that also go up to the**
 3 **Franklin News Foundation.**
 4 Q. Is the president of the Franklin News
 5 Foundation Chris Krug?
 6 **A. Correct, yes.**
 7 Q. Okay. To the best of your knowledge, is
 8 Franklin News registered as a business in Tennessee?
 9 **A. I don't know.**
 10 Q. Do you have the ability to hire and fire
 11 people as executive editor of The Center Square?
 12 **A. Yes.**
 13 Q. Do you decide what gets reported on?
 14 **A. Ultimately, if there is question about it,**
 15 **yes. But I don't get involved in every single daily**
 16 **news coverage decision.**
 17 Q. So maybe you can walk me through. How does a
 18 news article get published on The Center Square? Is
 19 it assigned by you to a reporter? Does someone come
 20 to you with an idea? How does that the process
 21 work?
 22 **A. It's a combination.**
 23 Q. A combination of what?
 24 **A. A combination of me or other editors**
 25 **assigning stories to reporters or reporters going up**

1 **to editors saying I think we should cover this**
 2 **today. We have a daily ongoing what we call a news**
 3 **budget. Not a financial budget. A news budget.**
 4 **Here's the stories that we can work on and we have**
 5 **daily meetings to discuss the options.**
 6 Q. And do you give final approval on what gets
 7 approved for a story, meaning, what gets funded to
 8 investigate that story, or do you only give final
 9 approval for what gets printed on the website? How
 10 does that work?
 11 **A. We have 27, 28 staff on The Center Square.**
 12 **We publish, I don't know, anywhere in the**
 13 **neighborhood of 70 stories a day. I don't give**
 14 **final approval on every single story. More**
 15 **controversial stories, I might. If something comes**
 16 **to my attention, I'll say we need to go get that,**
 17 **but I do not give final approval on every single**
 18 **story. No, I couldn't possibly.**
 19 Q. Do you assign stories to reporters?
 20 **A. Yes.**
 21 Q. Did you assign anyone or have you ever
 22 assigned anyone to do a story or an article on the
 23 Tennessee Commission on the Rules of Practice and
 24 Procedure?
 25 **A. Not directly assign. I made staff aware of**

1 **the lawsuit.**
 2 Q. Can you explain to me what you mean when you
 3 say you made them aware of the lawsuit?
 4 **A. I let staff know that we -- not me**
 5 **personally -- as the executive of The Center Square,**
 6 **we're filing a lawsuit.**
 7 Q. Prior to filing the lawsuit, had you ever
 8 edited or wrote an article about the Tennessee
 9 Commission on Rules of Practice and Procedure?
 10 **A. Me personally, no.**
 11 Q. Had you ever prior to the lawsuit assigned
 12 anyone to write an article or cover a story in some
 13 way about the Tennessee Commission on Rules of
 14 Practice and Procedure?
 15 **A. No.**
 16 Q. Have you written about this case online or
 17 anywhere in print?
 18 **A. Me personally?**
 19 Q. Yes.
 20 **A. No.**
 21 Q. Have you commented about this case in any
 22 video or audio platform?
 23 **A. No.**
 24 Q. Have you written any articles regarding
 25 public access under the First Amendment?

1 **A. Public access in general? Not specific to**
 2 **this case, I guess is what I'm asking?**
 3 Q. That's right.
 4 **A. Yes. I'm sure I have, plenty of times.**
 5 Q. Can you think of any of them?
 6 **A. Can I have a second or a moment to consider?**
 7 **Can you repeat the question first so I know what I'm**
 8 **considering?**
 9 Q. I am trying to figure out if you've ever
 10 written about the First Amendment's right to public
 11 access in any online forum or print forum or
 12 anything like that in general?
 13 **A. I'm sure I have. I would have to get back to**
 14 **you on that, though. In the moment nothing is**
 15 **immediately coming to mind.**
 16 Q. Okay. If the Advisory Commission on the
 17 Rules of Practice and Procedure in Tennessee were
 18 open to the public, would you attend those?
 19 **A. Me personally, no.**
 20 Q. Yes.
 21 **A. No. Me personally, I would not attend them**
 22 **in person. I'm in Chicago or the Chicago suburb.**
 23 **I'm in Illinois. I would not come attend them in**
 24 **person. I would certainly at least initially**
 25 **observe them if they were available via Zoom or a**

1 **Zoom-like platform.**

2 Q. So would you be satisfied with an electronic
3 recording of the videos in terms of public access?
4 MR. DOUGHERTY: Object to the form of
5 the question.

6 **THE WITNESS: No.**

7 BY MR. STAHL:

8 Q. So you wouldn't attend them but you would
9 expect them to be electronically recorded?

10 MR. DOUGHERTY: Object to the form of
11 the question.

12 **THE WITNESS: Live webcast, plus open to**
13 **in-person observation.**

14 BY MR. STAHL:

15 Q. So you say recorded.

16 **A. I'm a little confused by when you use the**
17 **term "recorded".**

18 Q. What about the term "recording" is confusing
19 you?

20 **A. Well, you can live webcast a hearing and then**
21 **put up a recording of the live webcast of the**
22 **hearing at some point after the fact, or you can not**
23 **live webcast it and then you can just put up a**
24 **recording of it at some point after the fact. So I**
25 **just want to differentiate between the two. Live**

1 **webcast is a term I'm using for actually seeing it**
2 **as it's going on.**

3 Q. Okay. So you have no intention of ever
4 physically attending a Tennessee Commission meeting
5 on the Rules of Practice and Procedure?

6 **A. Me personally?**

7 Q. Yes.

8 **A. No immediate intention, no. I might happen**
9 **to find myself needing to.**

10 Q. Would you expect to send someone to cover
11 those meetings if they were open to the public?

12 MR. DOUGHERTY: Object to the form of
13 the question.

14 **THE WITNESS: Can you repeat the**
15 **question?**

16 BY MR. STAHL:

17 Q. If the meetings were open to the public,
18 would you as executive editor of The Center Square
19 expect to send a reporter or someone on behalf of
20 The Center Square to observe those meetings in
21 person?

22 **A. That's very possible, yes.**

23 Q. Have you ever tried to do that before?

24 **A. Specific to this case? No.**

25 Q. Okay. Not specific to this case, but in your

1 time as editor of any organization, your 30 years of
2 journalism as you put it, have you ever assigned
3 anyone to attend the Tennessee Commission on Rules
4 of Practice and Procedure in person?

5 **A. Not that I recall.**

6 Q. And, to be clear, you've never written
7 anything about the Tennessee Rules of Practice and
8 Procedure in your time as a journalist?

9 **A. Me personally?**

10 Q. Yes.

11 **A. No.**

12 Q. Do you host or contribute regularly to any
13 podcasts?

14 **A. Yes.**

15 Q. What podcast is that?

16 **A. I'm on four podcasts.**

17 Q. Okay. What are those?

18 **A. America in Focus. Illinois in Focus.**
19 **Wisconsin in Focus. And Education in Focus.**

20 Q. Have you ever discussed the Tennessee
21 Advisory Commission on Rules of Practice and
22 Procedure in any of those podcasts?

23 **A. No.**

24 Q. What is heartlandernews.com?

25 **A. I don't know.**

1 Q. When you decided to file suit in this case,
2 did you need anyone's permission to do that as
3 executive editor of The Center Square?

4 MR. DOUGHERTY: Object to the form of
5 the question.

6 **THE WITNESS: No. I alerted my**
7 **publisher that we were going to do it, just for**
8 **communication sake.**

9 BY MR. STAHL:

10 Q. When you say --

11 **A. Not permission.**

12 Q. -- your publisher, do you mean Chris Krug?

13 **A. Yes.**

14 Q. So you never spoke to him about the case
15 prior to deciding to file?

16 **A. I don't recall.**

17 Q. Have you ever been to Tennessee, Mr. McCaleb?
18 **A. Yes.**

19 Q. And what did you come to Tennessee for?

20 **A. The last time I was in Tennessee was actually**
21 **for a First Amendment conference.**

22 Q. When was that?

23 **A. 2017 or 2018.**

24 Q. Have you ever attempted to attend any other
25 Tennessee State Commission meetings other than the

1 Tennessee Commission on Rules of Practice and
 2 Procedure?
 3 **A. Me personally?**
 4 Q. Yes.
 5 **A. No.**
 6 Q. Have you ever sent any reporters on your
 7 behalf as an editor, either at The Center Square or
 8 as an editor at another journalistic platform, to
 9 Tennessee State Commission meetings other than the
 10 Tennessee meeting on Rules of Practice and
 11 Procedure?
 12 **A. So I got the first part. Tennessee**
 13 **Commission meetings or like any kind of Tennessee**
 14 **meetings, like legislative meetings, or be specific.**
 15 **Are you talking about the judiciary?**
 16 Q. I'm talking about Tennessee State Commission
 17 meetings, so any commission representing the State
 18 of Tennessee in any capacity.
 19 **A. I guess I'm a little confused by what you**
 20 **mean by commission. Would that include**
 21 **legislative-type of meetings or like committees of**
 22 **legislature, et cetera? I'm just trying to get a**
 23 **better understanding of what you're asking.**
 24 Q. Sure. No. I can appreciate that. Well, let
 25 me ask you this.

1 Are you aware of how many commissions there
 2 are in Tennessee under the Tennessee Supreme Court?
 3 **A. I know I have seen a number. I want to say**
 4 **it was between 15 and 20.**
 5 Q. Okay. So limiting my question to those 15 to
 6 20 committees, have you sent anyone on your behalf
 7 or as an editor either at The Center Square or any
 8 other organization that you've ever worked for as a
 9 journalist to any of those other commission meetings
 10 except the Tennessee Commission on Rules of Practice
 11 and Procedure?
 12 **A. No. It wasn't until I realized that these**
 13 **meetings were closed that it piqued my curiosity.**
 14 Q. What piqued your curiosity?
 15 **A. When government to tries to close meetings,**
 16 **from my 30-plus years of experience, it piques my**
 17 **curiosity. What are they trying to hide, I ask**
 18 **myself.**
 19 Q. So any time that your learn of a government
 20 meeting that's not open to the public you file suit?
 21 MR. DOUGHERTY: Object to the form of
 22 the question.
 23 **THE WITNESS: No. I think this was my**
 24 **first lawsuit --**
 25 **//**

1 BY MR. STAHL:
 2 Q. Okay.
 3 **A. -- on behalf of The Center Square.**
 4 Q. Well, now you just qualified it. Your first
 5 lawsuit on behalf of The Center Square. Does that
 6 mean --
 7 **A. No. My first lawsuit, yes.**
 8 Q. Okay.
 9 **A. I'm saying it's not me personally. But yeah.**
 10 **I have not filed any other lawsuits, here or in**
 11 **previous experiences.**
 12 Q. There was a June 9th, 2023 meeting of the
 13 Commission for the Tennessee Rules of Practice and
 14 Procedure that was recorded and placed on YouTube.
 15 Did you watch that?
 16 **A. I did.**
 17 Q. Have you ever served as member on any state
 18 board or commission in Tennessee?
 19 **A. No.**
 20 Q. What about Chicago or, rather, Illinois?
 21 **A. Like -- repeat the question specifically to**
 22 **Chicago or Illinois.**
 23 Q. Have you ever served as a member on any state
 24 board or commission in Illinois?
 25 **A. No.**

1 Q. Do you believe that there is an access to
 2 justice crisis in Tennessee?
 3 **A. Problem, yes. Crisis, maybe so. That's, you**
 4 **know -- that's subjective, I guess.**
 5 Q. It is subjective. And I'm just asking for
 6 your opinion. What leads you to believe that there
 7 is an access to justice problem and/or crisis in
 8 your opinion?
 9 **A. If you were -- I guess, in terms of the data,**
 10 **there's plenty of people who don't have the means to**
 11 **hire an attorney to represent them. That would be**
 12 **true in Tennessee and many states across the**
 13 **country. I can't unequivocally say every state but**
 14 **certainly that is an issue.**
 15 Q. Do you have any data that's Tennessee
 16 specific to support that statement?
 17 **A. No specific data, no.**
 18 Q. Have you talked with anyone who is a
 19 Tennessee resident who has expressed to you that
 20 they have trouble hiring a lawyer in Tennessee?
 21 MR. DOUGHERTY: Object to the form of
 22 the question.
 23 **THE WITNESS: Who they personally had --**
 24 **repeat the question. I'm sorry.**
 25 **//**

1 BY MR. STAHL:
 2 Q. Have you ever talked with anyone who is a
 3 Tennessee resident who has expressed their
 4 difficulty in hiring a lawyer in Tennessee?
 5 **A. No.**
 6 Q. Do you know what a pro se litigant is,
 7 Mr. McCaleb?
 8 **A. Yes.**
 9 Q. Are you a pro se litigant?
 10 **A. No.**
 11 Q. In your opinion, does this suit involve the
 12 rights of pro se litigants?
 13 MR. DOUGHERTY: Object to the form of
 14 the question.
 15 **THE WITNESS: Go ahead and answer.**
 16 BY MR. STAHL:
 17 Q. Yes, you can answer.
 18 **A. Yes.**
 19 Q. In what way?
 20 **A. Pro se litigants, more than maybe other**
 21 **litigants who have representation, have a more**
 22 **difficult time understanding, accessing, et cetera,**
 23 **with the court system. And by opening these**
 24 **meetings up to the public and a journalist to cover**
 25 **these meetings, they have a better opportunity to**

1 **understand the court system.**
 2 Q. Have you ever spoken with any Tennessee
 3 resident who has acted as a pro se litigant in a
 4 lawsuit?
 5 **A. No.**
 6 Q. Have you ever talked to a Tennessee resident
 7 who has expressed to you their desire to attend the
 8 Tennessee Commission on Rules of Practice and
 9 Procedure?
 10 **A. No.**
 11 Q. As a journalist and as someone who you
 12 mentioned attended a conference on the First
 13 Amendment, have you read the first amendment to the
 14 Constitution?
 15 **A. Yes.**
 16 Q. Why do you think that particular amendment
 17 requires the State of Tennessee to open its Advisory
 18 Commission meetings to the public?
 19 **A. Well, I'm not a lawyer. I'm not a**
 20 **constitutional lawyer. But as a 30-year journalist,**
 21 **you've learned some things here and there. And when**
 22 **policy decisions are being made that can affect a**
 23 **certain body or can affect the taxpayers and voters**
 24 **and general public, that general public should have**
 25 **access to those meetings in my experience.**

1 Q. Where is that found in the First Amendment?
 2 **A. Again, I'm not a lawyer. I'm not a**
 3 **constitutional lawyer.**
 4 Q. I understand. And I don't really want to go
 5 back and forth on this, but I'm going to keep
 6 asking. You've read the First Amendment?
 7 **A. Yes.**
 8 Q. Right?
 9 **A. Yes.**
 10 Q. What part of the First Amendment supports
 11 your claim that the State of Tennessee is required
 12 to open its Advisory Commission meeting to the
 13 public?
 14 **A. They have a right to petition the government**
 15 **to access of the government. Again, that's the best**
 16 **I can do on that one.**
 17 Q. Are you familiar with the Tennessee
 18 Administrative Office of the Courts, otherwise
 19 referred to in these pleadings as the AOC?
 20 MR. DOUGHERTY: Object to the form of
 21 the question.
 22 **THE WITNESS: Yes. Yes. I know it as**
 23 **the TAOC but same thing I guess, yes.**
 24 BY MR. STAHL:
 25 Q. Yes. That's what I'm talking about. So I'm

1 just going to ask you have you ever talked to any
 2 member of the TAOC?
 3 **A. No.**
 4 Q. We mentioned earlier that the TAOC website
 5 lists and I think you numbered 15 to 20 different
 6 commissions. Do you remember talking about that?
 7 **A. Yes. And that was an educated guess but yes.**
 8 Q. Sure. And it doesn't have to be perfect.
 9 **A. Yes.**
 10 Q. Do you have an opinion as to whether or not
 11 the Advisory Commission meetings are meaningfully
 12 different from the work being done in any of those
 13 other commissions?
 14 MR. DOUGHERTY: I object to the form of
 15 the question.
 16 **THE WITNESS: Well, I've watched one of**
 17 **these Advisory Commission meetings. I have not**
 18 **watched any of the other ones, so I can't speak for**
 19 **the other ones.**
 20 BY MR. STAHL:
 21 Q. If you learned that those other commission
 22 meetings were not open to the public, would you
 23 expect to file suit under the First Amendment to
 24 have those meetings open as well?
 25 **A. I guess it would depend on what the**

1 **committees are supposed to do. If they are setting**
2 **policy or recommending policy for the courts to**
3 **follow or for potential legislation then yes.**

4 Q. How would you know if a committee was
5 creating or recommending policy?

6 **A. Well, I guess by digging into it, by asking**
7 **questions. If memory serves, these committees in**
8 **Tennessee mirror or very closely mirror the same**
9 **committees in the federal judiciary. And looking**
10 **into the -- I haven't done this so I can't speak to**
11 **it, but the mirrored committee meeting at the**
12 **federal level and its similar name at the state**
13 **level, I guess you could assume, we don't like to**
14 **assume, that it's doing something similar that the**
15 **Federal Judiciary Committee has done.**

16 Q. Okay. So I think we walked through this a
17 little bit earlier. But I asked you what you had
18 done to investigate the Tennessee Rules of Practice
19 and Procedure Commission prior to filing suit to
20 have those meetings open to the public.

21 And if I'm right, you hadn't attended any of
22 those; you hadn't watched any of those; so how did
23 you know that that committee was creating policy or
24 recommending policy that would require that
25 committee to be open to the public?

1 MR. DOUGHERTY: Object to the form of
2 the question.

3 **THE WITNESS: The Advisory Commission,**
4 **the Bench Bar Commission, is what you're referring**
5 **to?**

6 BY MR. STAHL:

7 Q. Yes.

8 **A. I know what commission you're talking about.**
9 **Please ask me the question again.**

10 Q. Well, I'm trying to understand your earlier
11 statement that you wouldn't necessarily file suit if
12 you learn that a commission was not open to the
13 public unless that commission was creating policy or
14 recommending policy. And I'm trying to understand
15 how you learned or what led you to believe that the
16 Tennessee Commission on Rules of Practice and
17 Procedure satisfied those terms, that it created
18 policy or advised on policy.

19 **A. I think just by this committee's name itself.**

20 Q. So if a committee has a name that you think
21 indicates it creates policy or recommends policy,
22 you automatically believe that that meeting should
23 be open to the public under the First Amendment?

24 **A. Yes.**

25 Q. Do you know if the federal analog to the

1 Tennessee Rules of Practice and Procedure, the
2 Federal Rules Advisory Commission, live stream their
3 meetings?

4 **A. If you look under the federal version of the**
5 **Tennessee Commission.**

6 Q. Yes.

7 **A. I guess I honestly, I'm not positive, but I**
8 **think they do. But that's -- I have not watched**
9 **one, a live committee meeting of the Federal Policy**
10 **Committee.**

11 Q. Have you ever attempted to watch one, done a
12 search for it on the YouTube or on the federal
13 websites?

14 **A. I did do searches on the federal websites.**
15 **And I seem to recall -- I can't say specifically**
16 **that they were live webcasts but I do recall seeing**
17 **some either YouTube video or some video of the**
18 **conference meetings.**

19 Q. If you were to learn that the Federal
20 Advisory Commission doesn't live stream their
21 meetings but records them and puts them on a
22 platform such as YouTube after the fact, would that
23 change your opinion as to whether the Tennessee
24 Commission on Rules of Practice and Procedure could
25 do the same?

1 MR. DOUGHERTY: Object to the form of
2 the question.

3 **THE WITNESS: No.**

4 BY MR. STAHL:

5 Q. So if the Federal Advisory Commission were
6 electronically recording their meetings and putting
7 them on a platform after the fact, not live
8 streaming them, would you file suit under the First
9 Amendment to have them open their meeting to the
10 public?

11 MR. DOUGHERTY: Object to the form of
12 the question.

13 **THE WITNESS: I'd think long and hard**
14 **about it, yes.**

15 BY MR. STAHL:

16 Q. Did you review your expert's opinion in this
17 case, Mr. Barton?

18 **A. I was on the live stream of his deposition.**
19 **I did get distracted at times, so I can't say I**
20 **heard every single word from start to finish, but I**
21 **heard large chunks of it.**

22 Q. There was a portion, a statement made in that
23 opinion, that said the Tennessee Rules of Procedure
24 have a direct effect on every citizen in the state
25 of Tennessee. Do you agree with that statement?

1 **A. I'm sorry, I'm going to have to ask you to**
 2 **repeat it one more time.**
 3 Q. Mr. Barton's opinion made a statement that
 4 the Tennessee Rules of Procedure have a direct
 5 effect on every citizen in the state of Tennessee
 6 and I was just wondering if you agree with that
 7 statement?
 8 **A. I can't say one way or the other. I think it**
 9 **has a direct effect on many people in the state of**
 10 **Tennessee. I would need to probably hear arguments**
 11 **for and against to say whether or not I agreed with**
 12 **that 100 percent.**
 13 Q. Do you believe that the Tennessee Rules of
 14 Procedure affect you as a citizen of Illinois?
 15 **A. Only inasmuch as governments close meetings,**
 16 **if no one challenge that, more governments will**
 17 **close meetings. And so it could yes, indirectly,**
 18 **yes.**
 19 Q. Well, I don't mean the meetings. I mean the
 20 actual Tennessee Rules of Procedure for filing a
 21 suit, if you're a citizen of Tennessee and you're
 22 involved in the court system, the Tennessee Rules of
 23 Procedure would apply to you.
 24 But would they apply to you, Mr. McCaleb, as
 25 a citizen of Illinois?

1 **A. Not that I'm aware of.**
 2 Q. Who is John Styf? And I may not be saying
 3 that last name right, S-t-y-f.
 4 **A. Styf.**
 5 Q. Styf. Who is Mr. John Styf?
 6 **A. He is a reporter for The Center Square.**
 7 Q. How do you know him?
 8 **A. He is an employee of mine.**
 9 Q. Does he report to you?
 10 **A. Up through the chain. I'm not his direct**
 11 **supervisor.**
 12 Q. Have you ever had conversations with him?
 13 **A. Yes. I'm in meetings every day with him and**
 14 **the whole staff, yes.**
 15 Q. Have you ever discussed this case with him?
 16 **A. I made him aware of the case, and I made him**
 17 **aware of the court's ruling back in March.**
 18 Q. So to your best recollection, has he written
 19 anything about this case?
 20 **A. Yes.**
 21 Q. Did you provide any editorial comment about
 22 that?
 23 MR. DOUGHERTY: Object to the form of
 24 the question.
 25 **THE WITNESS: I provided a statement**

1 **through -- I think it was through Liberty Justice**
 2 **Center.**
 3 BY MR. STAHL:
 4 Q. So prior to his publishing anything about
 5 this case, you wouldn't have edited anything that he
 6 would have written?
 7 **A. About this case?**
 8 Q. Yes.
 9 **A. No. I stepped aside. I need -- because I am**
 10 **part of the case, I needed to recuse myself from the**
 11 **editing process.**
 12 Q. Okay. Do you know if Mr. Styf lives in
 13 Tennessee?
 14 **A. He does not.**
 15 Q. Who is J.D. Davidson?
 16 **A. J.D. Davidson is John Styf's direct**
 17 **supervisor.**
 18 Q. Does he live in Tennessee?
 19 **A. No.**
 20 Q. Are you aware of anything that Mr. Davidson
 21 might have written about this case?
 22 **A. Not aware. I don't think he has, but I can't**
 23 **say that for sure.**
 24 Q. Who is Steve Wilson?
 25 **A. Steve Wilson was John Styf's previous**

1 **supervisor.**
 2 Q. So am I to assume that Mr. Wilson doesn't
 3 work at The Center Square anymore?
 4 **A. No. He does. We went through a restructure.**
 5 **We went through a restructure.**
 6 Q. Okay. Have you ever talked to Steve Wilson
 7 about this case?
 8 **A. Only to confirm that he was, in fact, John**
 9 **Styf's supervisor when the lawsuit was filed.**
 10 Q. Okay. Is he a Tennessee citizen?
 11 **A. No.**
 12 Q. Has Mr. Wilson written about the case that
 13 you're aware of?
 14 **A. Not that I'm aware of. I don't think so.**
 15 Q. Does Mr. Styf at your direction -- has he
 16 ever traveled to Tennessee to write or research a
 17 story?
 18 MR. DOUGHERTY: Object to the form of
 19 the question.
 20 **THE WITNESS: I don't know the answer to**
 21 **that question.**
 22 BY MR. STAHL:
 23 Q. So is it possible that you would have
 24 directed him --
 25 **A. I'm sorry. I didn't -- no. No, I have not.**

1 **I did not direct him.**
 2 Q. Okay. Just one more question I think,
 3 Mr. McCaleb.
 4 Have you ever been convicted of a felony?
 5 **A. No.**
 6 MR. STAHL: Okay. Buck, why don't you
 7 go ahead and if I've got anything else I'll do it at
 8 the end, but I think I'm done for now.
 9 MR. DOUGHERTY: Okay. Thank you, Mike.
 10
 11 EXAMINATION
 12 QUESTIONS BY MR. DOUGHERTY:
 13 Q. Mr. McCaleb, there was a line of questioning
 14 that Mr. Stahl asked you about Advisory Commission
 15 being recorded versus live stream. Do you recall
 16 that line of questioning?
 17 **A. Yes.**
 18 Q. Would you assign any of your reporters to
 19 cover Advisory Commission meetings if they were open
 20 to the public?
 21 **A. Yes, particularly in this case.**
 22 Q. Is it important as part of your lawsuit that
 23 meetings be open contemporaneously to the public
 24 when they are actually occurring?
 25 **A. Yes.**

1 Q. And then just to follow up, you talked about
 2 at the end there on some of the questioning when
 3 Mr. Styf wrote about this case. Do you recall that?
 4 **A. Yes, this case, this lawsuit. Yes.**
 5 Q. Mr. Stahl asked you some questions. And so
 6 the comments that you did give to Mr. Styf about
 7 this case, were they in your capacity as the
 8 plaintiff?
 9 **A. Yes.**
 10 Q. And when you say you felt you needed to
 11 recuse yourself, by that did you mean you didn't
 12 then give a comment and then have editorial control
 13 over the story itself; is that correct?
 14 **A. I did not. It was the reporters and the**
 15 **reporters' editors' decision whether to include the**
 16 **statement, the full statement, partial statement,**
 17 **not include it at all.**
 18 Q. Is that kind of part of the normal
 19 journalistic code of ethics --
 20 **A. Yes.**
 21 Q. -- since you're pretty involved in the story
 22 that your news agency is reporting on, you kind of
 23 stay out of the editorial process?
 24 **A. Yes.**
 25 MR. DOUGHERTY: I don't have anything

1 further, Mike.
 2
 3 EXAMINATION
 4 QUESTIONS BY MR. STAHL:
 5 Q. Just one more question, Mr. McCaleb.
 6 Have you ever been hired to give an expert
 7 opinion for any reason in any lawsuit?
 8 **A. No.**
 9 MR. STAHL: Well, that's all I have.
 10 MR. DOUGHERTY: All right. I guess we
 11 can go off the record. We'll take a copy of the
 12 transcript whenever you can get it. And really
 13 appreciate you-all's help for covering these.
 14 * * *
 15 THE REPORTER: Mr. Stahl, you are
 16 ordering this transcript?
 17 MR. STAHL: Yes, please.
 18 THE REPORTER: Reading and signing?
 19 MR. DOUGHERTY: We'll waive the signing.
 20 You have an opportunity to look through your
 21 transcript and then sign if everything is fine, but
 22 I think it's fine to waive.
 23 **THE WITNESS: I'm okay with waiving.**
 24 **FURTHER DEPONENT SAITH NOT**
 25 **(Proceedings concluded at 1:01 p.m.)**

1 REPORTER'S CERTIFICATE
 2
 3 STATE OF TENNESSEE
 4
 5 COUNTY OF DAVIDSON
 6
 7 I, Deborah H. Honeycutt, Licensed Court
 8 Reporter, with offices in Hermitage, Tennessee,
 9 hereby certify that I reported the foregoing
 10 videoconference deposition of DAN McCALEB by
 11 machine shorthand to the best of my skills and
 12 abilities, and thereafter the same was reduced to
 13 typewritten form by me. I am not related to any of
 14 the parties named herein, nor their counsel, and
 15 have no interest, financial or otherwise, in the
 16 outcome of the proceedings.
 17 I further certify that in order for this
 18 document to be considered a true and correct copy,
 19 it must bear my original signature, and that any
 20 unauthorized reproduction in whole or in part
 21 and/or transfer of this document is not authorized,
 22 will not be considered authentic, and will be in
 23 violation of Tennessee Code Annotated 39-14-104
 24 Theft of Services.
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Exhibit

2

McCALEB

vs.

LONG

MICHELLE LONG

October 25, 2023



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IN THE UNITED STATES DISTRICT FOR
THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

DAN MCCALED, Executive Editor of
THE CENTER SQUARE,
Plaintiff,
vs. Case No. 3:22-cv-00439
MICHELLE LONG, in her official
capacity as DIRECTOR of the
TENNESSEE ADMINISTRATIVE OFFICE
OF THE COURTS,
Defendant.

Deposition of:

MICHELLE LONG

Taken on behalf of the Plaintiff
October 25, 2023
Commencing at 9:04 a.m. CST

Lexitas Legal
Jenny Checuga, LCR, RPR
555 Marriott Drive
Nashville, Tennessee 37214
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E X H I B I T S

(None marked.)

A P P E A R A N C E S

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

The deposition of MICHELLE LONG was taken
by counsel for the Plaintiff, at the offices of
500 Charlotte Avenue, Nashville, Tennessee, on
October 25, 2023, by Notice for all purposes
under the Federal 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 JENNIFER CHECUGA, 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 not waived.

1 * * *
2 MICHELLE LONG,
3 was called as a witness, and having first been
4 duly sworn, testified as follows:

5
6 EXAMINATION

7 QUESTIONS BY MR. DOUGHERTY:

8 Q. Good morning.
9 **A. Good morning.**
10 Q. My name is Buck Dougherty, I'm an
11 attorney with Liberty Justice Center and I
12 represent the Plaintiff in this lawsuit, Dan
13 McCaleb. He's the executive editor of the
14 Center Square. And we'll go ahead and get
15 started with some introduction and kind of
16 ground rules and we'll talk a little bit about
17 that.
18 Have you ever had your deposition taken
19 before today?
20 **A. Only once.**
21 Q. And when was that?
22 **A. Over ten years ago.**
23 Q. Was that -- do you recall, was it a
24 particular lawsuit that you were involved in
25 or --

1 **A. It was not -- I believe I was deposed as**
2 **a fact witness in a lawsuit involving hospitals**
3 **when I was working at the Tennessee Hospital**
4 **Association.**
5 Q. And was that lawsuit filed in a Tennessee
6 state court?
7 **A. I think it was federal.**
8 Q. Tennessee federal court?
9 **A. Yes.**
10 Q. Would that have been Middle District of
11 Tennessee?
12 **A. Yes.**
13 Q. Okay. So you perhaps may recall, you
14 know, I'll ask a question, it's important -- I
15 know when people communicate we nod our heads
16 and give cues, it's important that you give
17 audible verbal statements so our court reporter
18 can pick that up on the transcript, and I'll
19 try to be as clear as possible with my
20 questions.
21 If you don't understand any question at
22 any time, feel free to ask me to restate it,
23 okay?
24 **A. Yes.**
25 Q. And also, we can take a break at any

1 point. If you want to go for an hour and take
2 a break or two hours, that's up to you, the
3 only stipulation is if I've got a question that
4 I've asked and it's on the table, I would ask
5 that you answer that question then before we
6 take a break.
7 **A. Yes, of course.**
8 Q. Okay. So do you understand that you're
9 under oath today?
10 **A. I do.**
11 Q. And are you prepared to answer the
12 questions that I ask of you truthfully?
13 **A. Yes.**
14 Q. Are you represented by counsel?
15 **A. Yes.**
16 Q. And what is his name?
17 **A. Michael Stahl.**
18 Q. Michael Stahl.
19 MR. DOUGHERTY: And there's another
20 person here, want go ahead and introduce
21 yourself?
22 MR. COKE: John Coke, general counsel
23 at the Tennessee Administrative Office.
24 MR. DOUGHERTY: I don't know if I
25 asked you this, Mr. Coke, are you going to be

1 entering a notice of appearance in this
2 lawsuit?
3 MR. COKE: No, I will not.
4 MR. DOUGHERTY: Okay.
5 BY MR. DOUGHERTY:
6 Q. Did you take any kind of medication or
7 are you on any kind of treatment that would
8 hinder your ability to give truthful and honest
9 answers today?
10 **A. No.**
11 Q. Okay. So you kind of understand kind of
12 our ground rules today?
13 **A. Yes, sir.**
14 Q. Okay. Please state your full name for
15 the record.
16 **A. Michelle Evette Jones long.**
17 Q. And where have you lived during the last
18 five years?
19 **A. Nashville, Tennessee.**
20 Q. Where do you work?
21 **A. The Tennessee Administrative Office of**
22 **the Courts.**
23 Q. And what is your position?
24 **A. I am the director.**
25 Q. Do you go by director or is it

1 administrative director or executive director;
 2 which title is it?
 3 **A. In the statute it is director or I'm also**
 4 **referred to as the chief administrative officer**
 5 **in the statute.**
 6 Q. But you refer to yourself as director?
 7 **A. Correct.**
 8 Q. Okay. When did you start that position?
 9 **A. As director, February of 2022.**
 10 Q. Do you remember the specific day; would
 11 that have been February 1, 2022?
 12 **A. I believe that is correct.**
 13 Q. And explain that director position; did
 14 someone appoint you to that position?
 15 **A. I was appointed by the Tennessee Supreme**
 16 **Court, correct.**
 17 Q. And you worked there since February 1st
 18 of 2022?
 19 **A. Correct.**
 20 Q. What did you do prior to your appointment
 21 as director?
 22 **A. I was deputy director.**
 23 Q. And what was the time period in which you
 24 were deputy director?
 25 **A. I began in October of 2019 as deputy**

1 **director.**
 2 Q. Prior to that, where did you work?
 3 **A. Prior to that I worked for the Tennessee**
 4 **Department of Health.**
 5 Q. Do you recall the time period in which
 6 you were with the Tennessee Department of
 7 Health?
 8 **A. Seven to eight years. I think it's**
 9 **closer to seven years.**
 10 Q. Okay. And what was your position with
 11 the Tennessee Department of Health?
 12 **A. I was assistant commissioner for**
 13 **licensure and regulation.**
 14 Q. Is that for hospital licensure?
 15 **A. All hospitals, all healthcare facilities,**
 16 **healthcare practitioners, yes.**
 17 Q. Was the assistant commissioner, is that
 18 an elected or an appointed position?
 19 **A. Appointed.**
 20 Q. Who appointed you to that position?
 21 **A. The commissioner of the Department of**
 22 **Health.**
 23 Q. Do you recall that person's name?
 24 **A. John Dreyzehner.**
 25 Q. How do you spell the last name?

1 **A. D-R-E-Y-Z-E-H-N-E-R. I'll have to look**
 2 **at it.**
 3 Q. Is he still working in state government?
 4 **A. No, he's not.**
 5 Q. Okay. So that's a good window. Anything
 6 before -- I'm sure you had work before then,
 7 but what did you do prior to the Tennessee
 8 Department of Health?
 9 **A. Prior to the Tennessee Department of**
 10 **Health, I worked as senior vice president and**
 11 **legal counsel for the Tennessee Hospital**
 12 **Association.**
 13 Q. Is that a private or a state position?
 14 **A. Private.**
 15 Q. Is that a nonprofit?
 16 **A. Yes.**
 17 Q. Is that nonprofit still in existence?
 18 **A. Yes.**
 19 Q. And where are they located?
 20 **A. They are now located in Maryland Farms in**
 21 **Brentwood, Tennessee.**
 22 Q. Where were they located when you worked
 23 there?
 24 **A. Over -- near the fairgrounds. I can't**
 25 **recall the name of the street.**

1 Q. Is that here in Nashville?
 2 **A. Here in Nashville.**
 3 Q. Okay. All right, let's -- so you're a
 4 practicing attorney; is that correct?
 5 **A. That's correct.**
 6 Q. And where was your undergraduate degree,
 7 the school and the year?
 8 **A. Northwestern University in Evanston,**
 9 **Illinois, and I graduated in 1990.**
 10 Q. Chicago, our office is based in Chicago.
 11 And your law school?
 12 **A. University of Tennessee, Knoxville.**
 13 Q. And what year was your JD?
 14 **A. 1994.**
 15 Q. Do you have any other postsecondary
 16 graduate degrees or anything?
 17 **A. No, sir.**
 18 Q. Okay. What was the date of your first
 19 bar admission? The year, excuse me.
 20 **A. 1994.**
 21 Q. And was that Tennessee?
 22 **A. Yes.**
 23 Q. Are you admitted or barred in any other
 24 states?
 25 **A. Yes.**

1 Q. Where are those states?
 2 **A. Alabama and DC.**
 3 Q. And then do you have, I assume, federal
 4 court admissions?
 5 **A. I did. I don't maintain them, but yes.**
 6 Q. At one point?
 7 **A. Yes.**
 8 Q. Would that have been the United States
 9 Supreme Court; do you recall?
 10 **A. I believe it was when I was working in**
 11 **Alabama, so it would have been not the United**
 12 **States Supreme Court, but the 9th Circuit.**
 13 **Seems there was a case --**
 14 Q. The 9th Circuit Court of Appeals?
 15 **A. Yes. Yes.**
 16 Q. Okay.
 17 **A. Alabama's 9th Circuit.**
 18 Q. So you're not talking about the 9th
 19 Circuit Court of Appeals in federal court.
 20 **A. I am. I think I am.**
 21 Q. Okay. The 9th Circuit that sits in San
 22 Francisco, the federal court?
 23 **A. Then no, I'm not, I've got the circuit**
 24 **wrong, I apologize.**
 25 Q. Would it be the 11th Circuit Court of

1 Appeals?
 2 **A. The 11th.**
 3 Q. Would that be in Atlanta?
 4 **A. Yes.**
 5 Q. That's all right, we're not in federal
 6 law.
 7 So it looks like you had a very lengthy
 8 experience with your legal career, you've held
 9 a lot of state positions. Is it fair to say
 10 you were not in litigation?
 11 **A. I started off in litigation, but I did**
 12 **not stay in litigation. So most of my career**
 13 **is not litigation.**
 14 Q. At least the last ten years or so it's
 15 been primarily in state --
 16 **A. That's correct.**
 17 Q. -- organizations?
 18 **A. That's correct.**
 19 Q. I appreciate your responsiveness. Just
 20 to help her out, just let me finish the
 21 question and I'll try to do the same before you
 22 answer. I know -- even though you're
 23 anticipating your answer, we'll make sure we
 24 help our court reporter out.
 25 **A. Okay.**

1 Q. Have you ever been formally disciplined
 2 by any state bar, licensing authority?
 3 **A. No.**
 4 Q. Have you ever been convicted of a crime?
 5 **A. No.**
 6 Q. Other than this lawsuit, McCaleb versus
 7 Long, have you ever been a party to a lawsuit
 8 before?
 9 **A. No.**
 10 Q. So the deposition you gave, the Tennessee
 11 Hospital -- the one you mentioned about ten
 12 years ago, you weren't actually a party to that
 13 lawsuit?
 14 **A. That's correct.**
 15 Q. Do you recall who the parties were?
 16 **A. I do not.**
 17 Q. Okay. Do you recall how that lawsuit
 18 concluded?
 19 **A. I do not.**
 20 Q. All right. As director -- for purposes
 21 of this deposition, I'm going to refer to your
 22 office either as the AOC or the TAOC; is that
 23 okay? Do you understand what -- we can do that
 24 today?
 25 **A. Yes, sir.**

1 Q. And I know that you all refer to it as
 2 the AOC?
 3 **A. We do.**
 4 Q. And you're aware that there is a federal
 5 AOC as well, right?
 6 **A. Yes.**
 7 Q. So that's -- just for simplicity
 8 purposes, I'll refer to it today as either the
 9 AOC or the Tennessee AOC?
 10 **A. Okay.**
 11 Q. If I'm going to refer to the Federal AOC,
 12 I'll make a specific reference to it.
 13 **A. Okay.**
 14 Q. Okay. Who is your supervisor as director
 15 of the AOC?
 16 **A. Chief Justice Holly Kirby.**
 17 Q. And how long has Chief Justice Kirby been
 18 your supervisor?
 19 **A. Since September 1st.**
 20 Q. Of this year?
 21 **A. Of this year.**
 22 Q. And who was your supervisor prior to
 23 Chief Justice Kirby?
 24 **A. Chief Justice Roger Page.**
 25 Q. And is it your understanding that the

1 chief justice of the Tennessee Supreme Court is
 2 always the director's supervisor?
 3 **A. That is my understanding.**
 4 Q. And do you have periodic evaluations on
 5 your performance with the chief justice?
 6 **A. I would say I have weekly evaluations**
 7 **with the chief justice, but nothing formal.**
 8 Q. What -- explain those; tell me about
 9 those weekly evaluations.
 10 **A. So we have a standing meeting -- I have a**
 11 **standing meeting with the chief justice every**
 12 **Friday.**
 13 Q. And what do those standing meetings every
 14 Friday, what at the do they consist of?
 15 **A. Updates on activities at the AOC and then**
 16 **mostly awareness, I call it situational**
 17 **awareness.**
 18 Q. What kind of updates? Are you talking
 19 about court updates?
 20 **A. No, administrative.**
 21 Q. What are some of those administrative
 22 updates that come up in your discussions?
 23 **A. So -- okay, so particularly right now**
 24 **we're in the process of budget discussions and**
 25 **so we would talk about the budget priorities**

1 **for the -- for the Court, for the AOC, those**
 2 **become our priorities.**
 3 Q. And does that -- do you also in these
 4 weekly meetings and updates discuss any boards
 5 or commissions, any administrative issues that
 6 are coming up in any of those?
 7 **A. I cannot recall anything recently**
 8 **relative to a board -- I take that back.**
 9 **So we recently did salary increases at**
 10 **the AOC across the Judicial Department, and so**
 11 **yes, we talked about boards and commissions**
 12 **salary increases.**
 13 Q. Are boards and commissions, do they
 14 receive a state salary?
 15 **A. Some do.**
 16 Q. Which ones do you recall that receive a
 17 state salary?
 18 **A. So the CLE, the Continuing Legal**
 19 **Education Commission. The Board of**
 20 **Professional Responsibility has state**
 21 **employees. TLAP, Tennessee Lawyers Assistance**
 22 **Program has state employees. And I am -- did I**
 23 **say the Board of Professional Responsibility,**
 24 **Commission on Legal Education, I think those**
 25 **are the three --**

1 Q. And TLAP.
 2 **A. -- that have state employees.**
 3 Q. What does TLAP stand for?
 4 **A. Tennessee Lawyers Assistance Program.**
 5 Q. Okay. And the CLE, that's the group or
 6 the division that monitors attorneys' CLEs
 7 every year?
 8 **A. Continuing legal education, correct.**
 9 **Board of Law Examiners, that's the one I'm**
 10 **forgetting.**
 11 Q. So do you make recommendations in terms
 12 of salary increases for AOC employees or how
 13 does that process work?
 14 **A. For AOC employees, yes.**
 15 Q. But the CLE, does that come under the AOC
 16 Department?
 17 **A. No, it has its own director. Each of**
 18 **those boards have their own director.**
 19 Q. Well, help me, I'm just trying to
 20 understand.
 21 Why would you be involved in salary
 22 discussions in budget; does that come under
 23 your budget, the CLE?
 24 **A. It actually does not, but in order to**
 25 **implement salary increases, we have to**

1 **implement them at the AOC.**
 2 Q. Explain that.
 3 **A. So our fiscal director manages their**
 4 **budget as well.**
 5 Q. I see. Well, depending on what CLE or
 6 the Board of Professional Responsibility gets
 7 in terms of funding, does that affect your
 8 office, the AOC?
 9 **A. I'm sorry, I don't understand that**
 10 **question.**
 11 Q. Sure. I'm just trying to understand the
 12 interconnectedness.
 13 How does the salary increases or
 14 decreases, adjustments, let's say, in another
 15 -- either CLE -- the boards that you listed,
 16 CLE, the Board of Professional Responsibility,
 17 TLAP or the Law Examiners, how does budgetary
 18 issues with respect to those four entities
 19 affect the Administrative Office of the Courts
 20 and AOC employees?
 21 **A. So I would say that it doesn't impact AOC**
 22 **employees, except that our fiscal director and**
 23 **our HR director are the ones responsible for**
 24 **literally keying the salary adjustments.**
 25 Q. So your participation in those

1 discussions is more just kind of ancillary; is
 2 it fair to say?
 3 **A. I think that's fair.**
 4 Q. Does the -- is it the fiscal director?
 5 **A. Correct.**
 6 Q. What is that person's name?
 7 **A. Dalton Hensley.**
 8 Q. And does Dalton Hensley come under your
 9 supervision?
 10 **A. Yes.**
 11 Q. Does the AOC office, do you get involved
 12 in the salary adjustments with the judges,
 13 state court judges, appellate judges?
 14 **A. So their salary adjustments are pursuant**
 15 **to statute, so they get a COLA every year. In**
 16 **order for that to show up in their paychecks,**
 17 **we literally key the information into a system**
 18 **that pays them.**
 19 Q. So your office -- the AOC is just like
 20 the name says, your office provides
 21 administrative support?
 22 **A. That's correct.**
 23 Q. What is COLA; what does that stand for?
 24 **A. Cost of living adjustment.**
 25 Q. That's COLA?

1 **A. Yes.**
 2 Q. Is that a state of Tennessee term or is
 3 that a federal term or just a widely used term?
 4 **A. I think it's a widely used term.**
 5 Q. Okay. What is your understanding of the
 6 purpose, function and role of your position as
 7 director of AOC?
 8 **A. To provide support to the Tennessee**
 9 **Supreme Court for the administration of**
 10 **effective, efficient court processes for the**
 11 **administration of justice in Tennessee.**
 12 Q. So is it just support to the Tennessee
 13 Supreme Court?
 14 **A. Yes.**
 15 Q. You don't provide support to any other of
 16 the courts?
 17 **A. I would say we -- the AOC operates at the**
 18 **direction of the Tennessee Supreme Court and**
 19 **the Tennessee Supreme Court has authority for**
 20 **the entire court system. So all of those other**
 21 **courts are included.**
 22 Q. Any responsibility for efficient
 23 administration of courts regarding litigants
 24 who come into courts?
 25 **A. We do have programs that ensure access to**

1 **justice for litigants, you know, where English**
 2 **is not the first language. So we do court**
 3 **interpreter programs. We certify court**
 4 **interpreters so that courts have that -- a**
 5 **certification for legal interpretation**
 6 **available in the courts.**
 7 Q. And we'll talk about access to justice in
 8 a moment.
 9 Do you also -- as part of your duties,
 10 are you required to submit a budget each year?
 11 **A. Yes.**
 12 Q. And I think you just said something about
 13 the process. Is that -- when do you usually
 14 typically do that, submit a budget?
 15 **A. We have submitted our budget request. I**
 16 **don't recall the due date, but it has been**
 17 **submitted. We'll have our first hearing in**
 18 **November.**
 19 Q. Is that a public hearing or is that
 20 before the General Assembly? When you say
 21 hearing, what do you mean?
 22 **A. It's with the Department of Finance and**
 23 **Administration. So the statute requires us to**
 24 **present our budget to F&A first.**
 25 Q. What statute are you referring to?

1 **A. Couldn't tell you the you citation off**
 2 **the top of my head.**
 3 Q. Is it part of the statute that outlines
 4 the director's duties?
 5 **A. Yes.**
 6 Q. When do you typically start getting
 7 involved with that budgetary process that
 8 you're required by statute to submit?
 9 **A. It almost begins at the conclusion of a**
 10 **legislative session, but I would say formally**
 11 **some time in the fall. But we're gathering**
 12 **information the entire time.**
 13 Q. Were you responsible for submitting the
 14 budget to the governor in 2022?
 15 **A. No, my predecessor submitted the budget**
 16 **in 2022.**
 17 Q. And do you know when that would have been
 18 submitted -- and I'm referring to the AOC
 19 portion -- to the governor? And then as I
 20 understand it, the governor then submits it to
 21 the General Assembly; is that how it works?
 22 **A. So departments and agencies submit their**
 23 **budget to the Department of Finance and**
 24 **Administration and then the Department of**
 25 **Finance and Administration makes**

1 **recommendations to the governor for his budget.**
 2 Q. And who was your predecessor?
 3 **A. Deborah Tate.**
 4 Q. And do you know why she submitted the
 5 budget in 2022?
 6 **A. It would have been in the normal course**
 7 **of business. It would have been submitted in**
 8 **the fall of 2021 and then processed through the**
 9 **next steps in the legislature in 2022.**
 10 Q. And that was before you took your role as
 11 director in February of 2022; is that correct?
 12 **A. That's correct.**
 13 Q. So you were Ms. Tate's deputy director;
 14 is that right?
 15 **A. That's correct.**
 16 Q. Is the AOC office responsible for
 17 reimbursement payments to any individuals
 18 serving on boards and commissions?
 19 **A. Yes.**
 20 Q. And tell me about that.
 21 **A. So expense claims are submitted to our**
 22 **Division for Fiscal Services. They then review**
 23 **them for appropriateness and then they get**
 24 **submitted to F&A for processing or payment.**
 25 Q. And what is F&A?

1 **A. Finance and Administration, I apologize.**
 2 Q. What do you mean by -- I think I know
 3 what you mean, but I want you to explain it --
 4 by appropriateness when reimbursement expenses
 5 are submitted?
 6 **A. So we just check to make sure that it is**
 7 **an eligible expense.**
 8 Q. Is there some type of formal guideline
 9 that you have that you follow?
 10 **A. So we do have guidelines for travel**
 11 **reimbursement. For example, the day of travel**
 12 **for per diems would not be full day for the per**
 13 **diem, you get a percentage of the day. So we**
 14 **look for things like that to audit the**
 15 **expenses.**
 16 Q. Are those guidelines internal AOC
 17 policies or is that by statute?
 18 **A. We do have an internal policy, but it**
 19 **mimics the state policy.**
 20 Q. It's a state policy or a state statute?
 21 **A. I believe it is a policy.**
 22 Q. Okay. Who implements state policies?
 23 **A. For that purpose, it would be the**
 24 **Department of Finance and Administration.**
 25 Q. F&A?

1 **A. Correct.**
 2 Q. But that's not the AOC's F&A, correct?
 3 **A. Well, it's not our Division of Fiscal**
 4 **Services, correct.**
 5 Q. I just want to understand, the AOC's
 6 fiscal director is Dalton Hensley?
 7 **A. That's correct.**
 8 Q. When you say "F&A," you're referring to a
 9 centralized different Department of Finance and
 10 Administration?
 11 **A. Yes.**
 12 Q. Within the whole state?
 13 **A. Yes.**
 14 Q. Okay. Are you responsible or your
 15 office, the AOC, for overseeing reimbursement
 16 requests from members of the Advisory
 17 Commission on the rules of practice and
 18 procedure?
 19 **A. Could you repeat that? I am sorry.**
 20 Q. Yeah. Is the AOC responsible for
 21 overseeing reimbursement requests from the
 22 members of the Advisory Commission on the rules
 23 of practice and procedure?
 24 **A. To the extent that they are eligible for**
 25 **reimbursement for expenses, then yes.**

1 Q. It comes to your office, right?
 2 **A. That is correct.**
 3 Q. Do you keep records of those
 4 reimbursement requests?
 5 **A. I do not.**
 6 Q. Does your office keep records?
 7 **A. Yes.**
 8 Q. And how far back does that -- do those
 9 records go?
 10 **A. I do not know.**
 11 Q. But someone in your office would know?
 12 **A. Yes.**
 13 Q. As director of the AOC, do you survey and
 14 study the operation of the state court system?
 15 **A. Yes.**
 16 Q. Explain how you do that. What does that
 17 look like?
 18 **A. So I can give you a specific example**
 19 **relative to -- since I've been director.**
 20 **Technology and the processes relative to**
 21 **E-filing for state courts. So we have been in**
 22 **the process of surveying what each and every**
 23 **court offers in term of E-filing.**
 24 Q. How do you survey?
 25 **A. Well, we went out and met with court**

1 **clerks and judges across the state in all three**
 2 **grand divisions, we kind of created teams that**
 3 **went east and west and we all kind of looked at**
 4 **middle to see what the state of E-filing was in**
 5 **as many courts as we could cover.**
 6 Q. Does the AOC office keep records of these
 7 surveys?
 8 **A. I have my notes.**
 9 Q. Okay. What does that mean, your notes?
 10 **A. So in the process of meeting with court**
 11 **clerks to understand what their systems looked**
 12 **like, I took notes to make sure we could**
 13 **compare from county to county what was**
 14 **happening.**
 15 Q. Who do you share those notes within the
 16 AOC or the court system?
 17 **A. I have not shared my notes.**
 18 Q. You have not shared your notes?
 19 **A. No.**
 20 Q. You still have your notes?
 21 **A. Yes.**
 22 Q. Are those at your office?
 23 **A. Yes.**
 24 Q. Okay. Do they get inputted into the
 25 electronic system or computer system or

1 anything like that?
 2 **A. No.**
 3 Q. Do you share your notes with the justices
 4 on the Supreme Court?
 5 **A. Are you asking me if I shared the**
 6 **physical paper that my --**
 7 Q. Either. When I say "share your notes,"
 8 either discussed your notes with someone in the
 9 AOC or the court system or physically shared
 10 your notes with someone?
 11 **A. I have discussed.**
 12 Q. Okay. Let's do that then. Who have you
 13 discussed -- within the AOC, let's start with
 14 the AOC first. What individuals have you
 15 discussed based on your survey and based on
 16 your notes?
 17 **A. I have discussed what I learned with our**
 18 **director for information technology services.**
 19 **I have --**
 20 Q. What's the person's name?
 21 **A. Brandon Bowers.**
 22 Q. Okay.
 23 **A. Members of his team, Amanda Hughes. I**
 24 **have discussed the takeaways from that physical**
 25 **survey of courts with our appellate court**

1 **clerk, Jim Hivner. I discussed the takeaways**
 2 **with Chief Justice Roger Page. Maybe that's --**
 3 **maybe that's all.**
 4 Q. And what was -- if you can summarize,
 5 what was the takeaway?
 6 **A. The takeaway was that there was no**
 7 **uniformity across our courts. There were some**
 8 **impediments to E-filing that we needed to**
 9 **overcome. Those were the major takeaways.**
 10 Q. And has there been a process of next
 11 steps to -- strike that question.
 12 From the takeaways, did you make a
 13 recommendation to anyone based on your survey?
 14 **A. Yes.**
 15 Q. Who did you make recommendations to?
 16 **A. Chief Justice Roger Page.**
 17 Q. Were those discussed verbally with him or
 18 did you make your recommendations in writing?
 19 **A. Verbally.**
 20 Q. Do you recall when that was?
 21 **A. Probably the end of the calendar year in**
 22 **2022.**
 23 Q. The end of 2022?
 24 **A. Correct.**
 25 Q. December of 2022, approximately?

1 **A. Yes.**
 2 Q. So what were your verbal recommendations?
 3 **A. Recommendations were that our case -- the**
 4 **state's case management system was inhibiting**
 5 **courts from being able to as rapidly deploy**
 6 **E-filing as we may have desired and that we**
 7 **needed to work with our vendor to make sure**
 8 **they were actively improving their system such**
 9 **that it was not limiting courts from being able**
 10 **to E-file.**
 11 Q. When you say "vendor," are you talking
 12 about some outside technology vendor?
 13 **A. That's correct.**
 14 Q. What's the name of the vendor?
 15 **A. Local Government.**
 16 Q. That's the name of the vendor?
 17 **A. That is the name of the vendor, Local**
 18 **Government Corporation located in Columbia,**
 19 **Tennessee.**
 20 Q. Okay. Is that a vendor that the AOC
 21 office has contracted with previously?
 22 **A. Yes.**
 23 Q. Did Chief Justice Paige implement your
 24 verbal recommendations?
 25 MR. COKE: Object --

1 MR. STAHL: Object to the form.
 2 **THE WITNESS: Did he implement --**
 3 **I'm sorry, say it again.**
 4 BY MR. DOUGHERTY:
 5 Q. Yeah, I want to make sure I understand.
 6 You said you gave verbal recommendation
 7 to see Chief Justice Paige in the end of 2022
 8 in December; is that right?
 9 **A. That's right.**
 10 Q. And it was regarding the vendor, the
 11 Local Government Corporation, regarding the
 12 technology in your survey; is that accurate?
 13 **A. That's right, that is accurate.**
 14 Q. So what were your verbal recommendations
 15 to Chief Justice Page?
 16 **A. So first and foremost was to address our**
 17 **case management system, which is that vendor.**
 18 Q. Right.
 19 **A. And so yes, that was accepted.**
 20 Q. What do you mean by "accepted"?
 21 **A. We are in the process currently of**
 22 **expanding -- okay, so from that recommendation,**
 23 **what we learned -- the court has engaged in a**
 24 **technology oversight review for the court. Out**
 25 **of that, we expect to do competitive bids for**

1 **an overall system to provide uniform case**
 2 **management, E-filing across the state. So it's**
 3 **broadened our view of what is needed to move**
 4 **the state forward.**
 5 Q. Previously I used the word "implement,"
 6 you said "accepted," so does that mean that
 7 Chief Justice Page with respect to this first
 8 verbal recommendation, the vendor, that he
 9 accepted your recommendations?
 10 MR. STAHL: Object to the form.
 11 **THE WITNESS: So yes, he accepted the**
 12 **recommendations and takeaway from our survey,**
 13 **yes.**
 14 BY MR. DOUGHERTY:
 15 Q. How does he display that he's accepting
 16 one of your recommendations?
 17 **A. By first creating a Technology Oversight**
 18 **Committee and designating one of the chief**
 19 **justices to head up that work.**
 20 Q. And when was that --
 21 **A. One of the justices.**
 22 Q. When was that technology committee
 23 created, if you can recall?
 24 **A. I would say the spring of this year, of**
 25 **2023.**

1 Q. Okay.
 2 **A. I think that's right.**
 3 Q. So were there any other verbal
 4 recommendations, other than the vendor, that
 5 you made to Chief Justice Page?
 6 **A. No, because most everything hinges on the**
 7 **case management system.**
 8 Q. Now, is the case management system that
 9 you're talking about, is that different from
 10 like the YouTube channels and livestreaming?
 11 **A. Yes.**
 12 Q. Okay. Let's talk a little bit about the
 13 YouTube channels and livestreaming, okay?
 14 **A. (Nodding head.)**
 15 Q. Did that issue come up in your survey
 16 that you've talked about where you went to each
 17 grand division?
 18 **A. No.**
 19 Q. What is your understanding of the two
 20 YouTube channels and the livestreaming that the
 21 AOC does?
 22 **A. What is my understanding?**
 23 Q. Explain what your office -- or let me
 24 start real quick.
 25 Does your office involve providing

1 livestream services to court proceedings?
 2 **A. Yes.**
 3 Q. Does your office provide livestreaming to
 4 various meetings of boards and commissions to
 5 the public?
 6 **A. I don't know about boards and**
 7 **commissions.**
 8 Q. Well, do you -- is it your
 9 responsibility -- or whose responsibility is it
 10 on the AOC website to kind of oversee that
 11 website?
 12 **A. Our communications director, Barbara**
 13 **Peck.**
 14 Q. Are you aware that of a preliminary
 15 injunction that was entered in this case?
 16 **A. Am I aware of it?**
 17 Q. Yes.
 18 **A. Yes.**
 19 Q. And what is your understanding of that
 20 preliminary injunction with respect to what the
 21 AOC office was required to do?
 22 **A. We were required to offer in person or**
 23 **virtual access to the rules -- Advisory**
 24 **Commission on rules.**
 25 Q. And so when was the first time you saw

1 that preliminary injunction?
 2 **A. Sometime in March of this year.**
 3 Q. And who provided that preliminary
 4 injunction to you?
 5 **A. Probably our legal counsel, John Coke.**
 6 Q. Who did you speak with within the AOC or
 7 the court system about the preliminary
 8 injunction?
 9 **A. I would have only had conversation with**
 10 **John Coke to make me aware of the order and I**
 11 **don't recall having any other conversations**
 12 **about it.**
 13 Q. Did -- as part of the preliminary
 14 injunction -- so you just said the virtual.
 15 When you say "virtual," does that mean
 16 livestreaming?
 17 **A. Yes.**
 18 Q. Is that something that you made sure took
 19 place after the preliminary injunction in terms
 20 of livestreaming or virtual so the public could
 21 view the meeting virtually?
 22 **A. So I have to say March was a difficult**
 23 **month for me, I had a significant loss of a**
 24 **family member that month. So I do know that**
 25 **the intention was certainly to comply with the**

1 **order, but I took no steps myself. I relied on**
 2 **my team to make sure we were in compliance with**
 3 **the court order.**
 4 Q. Sorry to hear about that, but -- I just
 5 want to make sure, we're talking about March of
 6 2023, this year, right?
 7 **A. Yes.**
 8 Q. Okay. Were you out of the office on
 9 leave a period of that time?
 10 **A. Yes.**
 11 Q. How long were you out?
 12 **A. So I know -- probably two weeks. I think**
 13 **two weeks.**
 14 Q. Do you recall when that might have been
 15 in March?
 16 **A. So March 9th -- a week following**
 17 **March 9th, I returned to work the next week,**
 18 **and then I think maybe a week after March 26th.**
 19 Q. And if we need to take a break, we've
 20 been going --
 21 **A. No, I'm fine.**
 22 Q. Okay, that's fine if we need to, we've
 23 been going about 45 minutes.
 24 So you were out for a couple weeks there
 25 in March and so you said you relied on your

1 team to assist with compliance with the
 2 preliminary injunction; is that right?
 3 **A. That's right.**
 4 Q. Who was part of your team then?
 5 **A. So Deputy Director Rachel Harmon was**
 6 **servicing in my absence, and then basically every**
 7 **division director at the AOC was making sure**
 8 **that things continued seamlessly during my**
 9 **absence.**
 10 Q. Just how many different divisions are
 11 there within the AOC?
 12 **A. Six.**
 13 Q. And can you name those six divisions?
 14 **A. Yes. So there's our Fiscal Services**
 15 **Division; Communications and Judicial Resources**
 16 **Division; Access, Innovation and Collaboration;**
 17 **Information Technology Services Division; Legal**
 18 **Services and Judicial Development. And I'm**
 19 **forgetting one. Executive. I'm forgetting**
 20 **somebody.**
 21 Q. And it's not a quiz, I'm just -- is
 22 that -- let me ask you this: Are those
 23 divisions required by statute?
 24 **A. No.**
 25 Q. So who makes the determination on

1 creating or disbanding divisions; is that the
 2 AOC director?
 3 **A. Yes.**
 4 Q. Have you ever created or implemented one
 5 of these divisions or were they already in
 6 place when you got there?
 7 **A. They were in place when I got there.**
 8 Q. Okay. Do you appoint the directors of
 9 the various divisions?
 10 **A. Yes.**
 11 Q. So you did -- when you took over in
 12 February of 2022 you appointed new division
 13 directors?
 14 **A. Yes.**
 15 Q. How did you do that? Do you -- do you
 16 hire from within the AOC or do you put out bids
 17 or how does that process work?
 18 **A. Well, so the only director I have hired**
 19 **was director for legal services and we did**
 20 **publish notice and did about three rounds of**
 21 **interviews for that. We had an internal**
 22 **candidate who was John Coke for that position,**
 23 **and he was the successful candidate.**
 24 Q. So you hired Mr. Coke?
 25 **A. Yes, I did.**

1 Q. Okay.

2 **A. He was already employed at the AOC, but**

3 **yes, elevated him.**

4 Q. I see. And you mentioned Deputy Director

5 Harmon, we'll talk a little bit about her.

6 You're aware that she gave a deposition in this

7 case?

8 **A. Yes.**

9 Q. Kind of skipped over -- when we were

10 talking about technology, I kind of want to

11 circle back do that, the livestreaming and the

12 virtual what you were talking about.

13 When I say what is your understanding of

14 the livestreaming and the virtual YouTube

15 channels, number one, is that something that

16 your office oversees?

17 **A. Yes.**

18 Q. And so when the preliminary injunction,

19 and I appreciate you sharing that information,

20 you were out, your team is helping you, who

21 made the decision -- because as you said, I

22 think the preliminary injunction said you

23 either have to have in-person public observing

24 or observing by livestreaming.

25 Who made the decision to go livestreaming

1 to comply with the injunction?

2 **A. I don't know.**

3 Q. Well, was that you or did you delegate

4 that to someone?

5 **A. I would have only directed compliance**

6 **with the order, the how would have been someone**

7 **else on the team. I did not.**

8 Q. How did you delegate or direct

9 compliance? Did you do that through an e-mail

10 or verbal communication?

11 **A. It would have been verbal and understood**

12 **that we had a court order. And so when that**

13 **was communicated to me, of course we're going**

14 **to comply with that court order.**

15 Q. Do you know if you sent an e-mail?

16 **A. I did not send an e-mail.**

17 Q. Do you know if anyone sent an e-mail

18 internally?

19 **A. I do not know.**

20 Q. Did you communicate with the justices

21 about this preliminary injunction?

22 **A. I think it came up in communication,**

23 **again, situational awareness that we had**

24 **received the order, but that would have been**

25 **the extent of it, just to update them.**

1 Q. When did you first become aware of this

2 lawsuit?

3 **A. Soon after I became director.**

4 Q. Would that have been around the time it

5 was filed in June of 2022?

6 **A. Well, I thought June of 2022 was -- let**

7 **me...**

8 **I thought June of 2022 was the amended**

9 **complaint in this matter.**

10 Q. They were filed in the same month, I

11 believe.

12 **A. Okay.**

13 Q. And that's -- I'm not so much worried

14 about dates, I assume you became aware of it

15 when it was filed?

16 **A. Yes.**

17 Q. Okay. Or shortly thereafter.

18 When you got it, did you issue any type

19 of litigation hold notice to your AOC

20 Department and your team?

21 **A. That was done by our legal counsel at the**

22 **time.**

23 Q. So there was a litigation hold sent out,

24 as far as you're aware?

25 **A. Yes.**

1 Q. Did you see that litigation hold?

2 **A. I don't recall.**

3 Q. Who would have been the counsel that

4 would have --

5 **A. Rachel Harmon.**

6 Q. Was she serving in a dual role?

7 **A. Yes.**

8 Q. She was your director and then she was

9 transitioning out of her role as general

10 counsel; is that right?

11 **A. Yes, we were in the process of hiring at**

12 **that time.**

13 Q. Was that litigation hold letter shared

14 with the justices?

15 **A. I don't know.**

16 Q. Did you discuss with the justices holding

17 any kind of information that they may have that

18 might be relevant to this lawsuit?

19 **A. I did not.**

20 Q. Do you know if Deputy Director Harmon

21 did?

22 **A. I do not know.**

23 Q. As part of your role as director at the

24 AOC, do you provide legal advice to any of the

25 justices on the Supreme Court?

1 **A. I do not.**
 2 Q. Have you ever delegated to any of your
 3 employees that they provide legal advice to the
 4 justices?
 5 **A. No, I would not be in that position of**
 6 **delegating that. I'm not hired for legal**
 7 **advice.**
 8 Q. Right. Explain that. What do you mean
 9 by that?
 10 **A. Well, my role is not one of legal advice**
 11 **and counsel to the courts.**
 12 Q. Is Deputy Director Harmon's role legal
 13 advice to the courts?
 14 **A. I think she does provide legal advice and**
 15 **support to the courts, yes.**
 16 Q. And in what --
 17 **A. Or did as general counsel.**
 18 Q. I'm sorry, I didn't mean to interrupt.
 19 Does she provide legal advice to the
 20 courts in her role as deputy director?
 21 MR. STAHL: Object to the form.
 22 **THE WITNESS: No, I don't believe so.**
 23 BY MR. DOUGHERTY:
 24 Q. Did she provide legal advice to any of
 25 the justices in her role as deputy director?

1 MR. STAHL: Object to the form.
 2 **THE WITNESS: Can you repeat that?**
 3 BY MR. DOUGHERTY:
 4 Q. Yeah. Does Deputy Director Harmon
 5 provide legal advice to any of the Tennessee
 6 Supreme Court justices in her role as deputy
 7 director?
 8 **A. I don't believe so.**
 9 Q. Okay. As -- you kind of referenced the
 10 statute a moment ago that you would agree that
 11 there -- a lot of your duties and
 12 responsibilities are created by statute; you
 13 would agree with that?
 14 **A. I agree.**
 15 Q. And it's a very long list?
 16 **A. It is.**
 17 Q. How do you go about when you took over
 18 the position, fulfilling your obligation as
 19 director to make sure all those things that are
 20 listed in the statute that you take care of;
 21 how do you do that?
 22 **A. Well, through the organizational**
 23 **structure that we have, and the division**
 24 **directors are responsible for various parts of**
 25 **what's listed there in the statute, and then**

1 **those other duties are as assigned by the**
 2 **Court.**
 3 Q. And you were serving as deputy, so you
 4 had some experience and you kind of knew what
 5 you were getting into, I guess, right?
 6 **A. Yes.**
 7 Q. I was just wondering if there's any --
 8 for lack of a better word, is there any kind of
 9 handbook or any kind of training that you went
 10 to or continuously go through as director to be
 11 able to fulfill your obligation?
 12 **A. The training is on the job and it is**
 13 **every day. So no, there's no handbook.**
 14 Q. There's no handbook, okay. I was just
 15 wondering. So there's no way to take what's in
 16 that statute and put it into practice when
 17 you're starting your position?
 18 **A. So I will say as deputy director, I was**
 19 **tasked to review all of the statutes pertaining**
 20 **to the Court and the AOC for the duties and**
 21 **responsibilities. So yes, we did engage in an**
 22 **effort to inventory everything that the statute**
 23 **required us to do to make sure that it was**
 24 **being handled somewhere in the AOC.**
 25 Q. And is that in your electronic system

1 somewhere or your hand -- I mean is it
 2 somewhere that would be available?
 3 **A. I do have that, yes.**
 4 Q. Okay. And what do you call that?
 5 **A. Just called it AOC duties and**
 6 **responsibilities.**
 7 Q. Okay. Do you still -- are you active
 8 with your legal status in Tennessee?
 9 **A. I maintain active status, yes.**
 10 Q. So you have to take 15 hours of CLE
 11 credits every year; is that right?
 12 **A. Yes.**
 13 Q. And do you take any additional type of
 14 training or education for your role as director
 15 of the AOC?
 16 **A. It doesn't qualify for continuing legal**
 17 **education, but I participate with my**
 18 **counterparts in other states in what is the**
 19 **State Court Administrator Conference.**
 20 Q. Yeah, that's kind of what I'm talking
 21 about. So what do you call that other
 22 organization?
 23 **A. I think it's COSCA, and I think it stands**
 24 **for Center -- Council on State Court**
 25 **Administrators, I think. COSCA, yeah, COSCA.**

1 Q. COSCA, okay.
 2 Where is that organization; does it have
 3 a headquarters?
 4 **A. No, the head -- it's an arm of the**
 5 **National Center of State Courts.**
 6 Q. How frequently do you go to conferences
 7 or training or however you refer to it; is that
 8 an annual or is it monthly?
 9 **A. As I can. So I try to attend the annual**
 10 **meeting and the mid-year meeting. So far, I've**
 11 **only been in the job a year and a half, almost,**
 12 **I have attended two conferences.**
 13 Q. And where were they held; do you recall?
 14 **A. One was in Chicago and one was in**
 15 **Alabama.**
 16 Q. Where in Alabama?
 17 **A. Point Clear.**
 18 Q. Good place.
 19 **A. Beautiful place.**
 20 Q. That hotel right there on the water?
 21 **A. Yes.**
 22 Q. All right. What types of topics do you
 23 all discuss at the COSCA meetings that you've
 24 been to so far?
 25 **A. Whatever the challenges are facing state**

1 **courts. And so we've had topics on judicial**
 2 **security, definitely topics on E-filing and**
 3 **modernizing court systems. I guess I entered**
 4 **kind of post pandemic, so there was lots of**
 5 **education and learning around things that had**
 6 **been developed during the pandemic to ensure**
 7 **access to courts, and so there was a lot of**
 8 **discussion in some of those first meetings**
 9 **around what we learned could be done to ensure**
 10 **open courts.**
 11 Q. And did -- to ensure open courts, is that
 12 also -- did other topics come into play about
 13 open meetings that the AOC offices oversee?
 14 **A. So, no, it was more about the quick**
 15 **deployment of resources, like Zoom and the soft**
 16 **video conferencing ability for judges to**
 17 **conduct business remotely from the court house.**
 18 Q. So would you say in your estimation that
 19 since the pandemic, there's -- most AOC offices
 20 around the country are doing a lot more with
 21 technology and Zoom and livestreaming?
 22 **A. Yes.**
 23 Q. And do you feel that the Tennessee AOC
 24 office is keeping up with the technological
 25 advances with respect to livestreaming and Zoom

1 and all the technology that's out there?
 2 **A. Yes.**
 3 Q. Have you -- in your role as director of
 4 AOC, have you ever studied any of the federal
 5 AOC practices with respect to having open
 6 meetings?
 7 **A. I have not.**
 8 Q. Were you aware that there is a Federal
 9 Advisory Committee that's very similar to the
 10 Tennessee Advisory Commission on rules and
 11 practice?
 12 **A. Only from reviewing the pleadings in this**
 13 **matter.**
 14 Q. Were you aware of that federal analog
 15 before this lawsuit?
 16 **A. No.**
 17 Q. Since this lawsuit was failed, have you
 18 ever viewed any of the federal analog meetings
 19 on YouTube or wherever they have them that's
 20 open to the public?
 21 **A. No.**
 22 Q. Okay. Have you ever talked with anyone
 23 in the Federal AOC office about how they do
 24 that in terms of having their meetings open to
 25 the public?

1 **A. No.**
 2 Q. Have you ever spoken to any of the
 3 justices on the Supreme Court about the federal
 4 meetings that are open to the public?
 5 **A. No.**
 6 Q. Have you ever spoken to anyone in the AOC
 7 office about the federal meetings like the
 8 Advisory Commission that are open to the
 9 public?
 10 **A. No.**
 11 Q. Do you know of any other -- in your COSCA
 12 group meetings, has that discussion ever come
 13 up where they've got like an equivalent
 14 Advisory Commission like Tennessee, any
 15 discussion about having their meetings open to
 16 the public?
 17 **A. No.**
 18 Q. Are there certain states -- well, strike
 19 that.
 20 This COSCA group, do you have -- are you
 21 like on an e-mail list or how do you get
 22 informed? Is it an annual registration? What
 23 does that look like?
 24 **A. So there is an annual registration to**
 25 **participate. There's a Listserv and an e-mail**

1 **group among us.**

2 Q. Have you ever had any -- are there any of
3 the other states that you reach out to that are
4 part of that COSCA group that you've
5 established a relationship with?

6 **A. Do you mind repeating?**

7 Q. Yeah. So as I understand it, this COSCA
8 group, they have other similar Michelle Longs
9 in like Arkansas or Florida, Michigan,
10 wherever. Do you have a special relationship
11 with any of your counterparts in any of these
12 other states?

13 **A. I have formed relationships with other
14 AOC directors, yes.**

15 Q. Do you recall who those are? And I don't
16 mean everybody, I just mean people that -- if
17 you had to pick up the phone and call someone
18 who is -- let's see what they're doing, is
19 there anybody that sticks out to you that you
20 would reach out to?

21 **A. So David Slayton is one person I have
22 reached out to. He's no longer there. But
23 E-filing and vendors that other states have
24 used for E-filing, I have had conversation with
25 other state court administrators on that topic,**

1 **yes.**

2 Q. Mr. Slate [sic], what state was he in or
3 with the AOC?

4 **A. Well, he was at the National Center for
5 State Courts, but I think he's now in
6 California.**

7 Q. Okay.

8 **A. And then I cannot remember her name, it's
9 escaping me right now, but I did have the
10 opportunity to speak with another state that
11 was engaging in an RFP for court system case
12 management and E-filing, and her name escapes
13 me right now.**

14 Q. So the National Center for State Courts
15 and COSCA, have they ever reached out to the
16 Feds about the PACER system? Why can Tennessee
17 courts not use the PACER system?

18 **A. Why can we not use the PACER system?**

19 Q. Maybe I'm assuming something.
20 Can the Tennessee courts use the PACER
21 system?

22 **A. Well, first of all, the PACER system is
23 being revamped right now, so they're in no
24 better shape than we are, but PACER was not
25 designed for the reporting and the data**

1 **collection that we ultimately want, it was
2 purely an E-filing system.**

3 Q. Let's talk about that. What is it that
4 you as Tennessee AOC director want? You don't
5 just want a place where attorneys can file
6 lawsuits online, what do you mean by collecting
7 and reporting; what do you mean?

8 **A. So it's a continuum in my view. It
9 starts with E-filing, that's where cases enter
10 the door.**

11 Q. Right.

12 **A. We want to capture that information in a
13 robust uniform way in our case management
14 system and then have all of that information
15 report to a data repository or warehouse where
16 we can then produce reliable reports.**

17 Q. And so is it -- what do you call that?
18 It's not just E-filing, what do you call that
19 what you're explaining?

20 **A. We have been calling it an enterprise
21 court information system.**

22 Q. And if you had this court information
23 system as you explained it, would that better
24 assist you in fulfilling your statutory duties
25 as AOC director?

1 **A. Yes.**

2 Q. Who have you shared this information with
3 on this enterprise system within the AOC or the
4 justices?

5 **A. So definitely with the Technology
6 Oversight Committee, which is headed by Justice
7 Sarah Campbell; our appellate court clerk, Jim
8 Hivner; my IT director, Brandon Bowers.**

9 Q. Now, Mr. Hivner is on the Advisory
10 Commission for the rules of practice and
11 procedure; is that right?

12 **A. Yes.**

13 Q. Has he ever expressed any or shared
14 information with you about how technology could
15 help the Advisory Commission?

16 **A. No.**

17 Q. Have you ever discussed with him how
18 technology could better assist the Advisory
19 Commission?

20 **A. No.**

21 Q. Do you know if anyone in your office
22 spoke with Mr. Hivner on technology and after
23 the preliminary injunction was entered?

24 **A. I don't know.**

25 Q. Did your team, when the preliminary

1 injunction was entered, also communicate with
 2 anyone on the Advisory Commission about the
 3 injunction?
 4 **A. I don't know.**
 5 Q. Does the Advisory Commission on the rules
 6 of practice and procedure provide meeting dates
 7 to the AOC office?
 8 **A. I don't -- I don't know.**
 9 Q. Do any boards and commissions, other than
 10 the Advisory Commission, provide meeting dates
 11 to the AOC office?
 12 **A. So I -- I know the Access to Justice**
 13 **Commission does. I don't know other than that.**
 14 Q. I'm about to get into the Access to
 15 Justice. It's like ten after, I've got a
 16 fairly long line of questioning on it. It's
 17 whatever you all want to do.
 18 MR. STAHL: Do you want to stretch
 19 your legs before we go for another hour?
 20 **THE WITNESS: Sure.**
 21 MR. STAHL: Why don't we come back at
 22 10:20.
 23 (Short break.)
 24 BY MR. DOUGHERTY:
 25 Q. So we're back on the record, Ms. Long.

1 We talked a little bit about the Advisory
 2 Commission on the rules of practice and
 3 procedure this morning, haven't we?
 4 **A. Yes.**
 5 Q. Okay. And that body was created by
 6 TCA 16-3-601. So I want to talk some more
 7 about it and I'll just refer to it as the
 8 Advisory Commission if that's okay?
 9 **A. Yes.**
 10 Q. I know in the pleadings in the briefing
 11 there are -- lots of different names were used,
 12 but we'll refer to it as the Advisory
 13 Commission.
 14 When did you first become aware of the
 15 Advisory Commission either in your role as
 16 deputy director or director or were you aware
 17 of it before then?
 18 **A. I first became aware of it with a Supreme**
 19 **Court order assigning court liaisons to the**
 20 **various boards and commissions.**
 21 Q. Was that when you were deputy director or
 22 as director?
 23 **A. I think it's deputy director.**
 24 Q. And do you recall that particular order,
 25 when that might have been?

1 **A. I do not.**
 2 Q. And who was the signed, of the order that
 3 you're referencing, who was that individual
 4 that was in the order -- named in the order?
 5 **A. Justice Sharon Lee for the Advisory**
 6 **Commission.**
 7 Q. Did you work with Justice Lee at some
 8 point?
 9 **A. Yes, she was a member of the Supreme**
 10 **Court.**
 11 Q. Right. Okay, I just -- she was chief
 12 justice at one point, too, was she not?
 13 **A. She was.**
 14 Q. Was she chief justice when you were
 15 deputy director?
 16 **A. No.**
 17 Q. Okay. Who was the chief justice when you
 18 were deputy director?
 19 **A. Justice Bivins, Jeff Bivins.**
 20 Q. And then when you were director first,
 21 the chief justice was Roger Page; is that
 22 right?
 23 **A. Yes.**
 24 Q. And in September Chief Justice Kirby took
 25 that position?

1 **A. Yes.**
 2 Q. Okay. Justice Lee retired I think end of
 3 August; is that right?
 4 **A. Yes.**
 5 Q. But she was also -- Justice Lee was on
 6 the Advisory Commission, correct?
 7 **A. Yes.**
 8 Q. Was she on the Advisory Commission when
 9 you were deputy director?
 10 **A. Yes.**
 11 Q. Was she on the Advisory Commission when
 12 you were director?
 13 **A. Yes.**
 14 Q. Tell me about your conversations with
 15 Justice Lee regarding the Advisory Commission.
 16 **A. I never had any.**
 17 Q. Okay. So you just saw that order and it
 18 referenced her that she was the liaison for the
 19 Advisory Commission?
 20 **A. Yes.**
 21 Q. All right. What is your understanding of
 22 the function of the Advisory Commission?
 23 **A. To recommend rule changes for practice**
 24 **and procedure for the various courts, criminal,**
 25 **civil, juvenile, appellate court, and rules of**

1 **evidence.**

2 Q. And the AOC provides administrative
3 support to the Advisory Commission; is that
4 right?

5 **A. Yes.**

6 Q. Does the AOC have one of its employees
7 that serves as a liaison to the Advisory
8 Commission?

9 **A. Yes.**

10 Q. And who is that?

11 **A. Michelle Consiglio-Young.**

12 Q. Was Michelle Consiglio-Young the liaison
13 to the Advisory Commission when you were deputy
14 director?

15 **A. Yes.**

16 Q. Is Michelle Consiglio-Young still the
17 liaison since you've been the director of the
18 AOC?

19 **A. Yes.**

20 Q. Do you communicate with Michelle
21 Consiglio-Young with respect to her role as
22 liaison to the Advisory Commission?

23 **A. No, I've not had any -- no.**

24 Q. When would you have a need to communicate
25 with her about her role on the Advisory

1 **kept.**

2 Q. Well, how do you know that double-booking
3 presents itself; how do you become aware of
4 that?

5 **A. So it would be the liaison saying we need
6 to -- or the commission, the board, whatever
7 wants -- needs to meet at a particular time and
8 the conference room is booked. So we have an
9 electronic system that schedules the conference
10 rooms, and so if there was a need to move
11 someone or rearrange such that we could utilize
12 another area, that might come to me.**

13 Q. What's the electronic system that
14 schedules the conference room; what is that
15 called? Does it have a name?

16 **A. I think it's in our GroupWise calendaring
17 system.**

18 Q. When you say "GroupWise," are you talking
19 about the group, the AOC itself in general?

20 **A. No, that would be the name of our e-mail
21 system.**

22 Q. Okay. What's the Group Wide calendar
23 system?

24 **A. GroupWise. GroupWise.**

25 Q. GroupWise, I'm sorry.

1 Commission?

2 **A. If there was a conflict for scheduling a
3 meeting in a particular location. Like
4 sometimes we'll get double-booked at the AOC,
5 so she might come to me to resolve a conflict
6 for meeting location. Beyond that, I can't
7 really think of a need.**

8 Q. What do you mean by getting double-booked
9 at the AOC for meeting locations?

10 **A. So we only have a few conference rooms.
11 So if there was a need to use the conference
12 room for a meeting and there was something else
13 scheduled at the same time --**

14 Q. So you mean --

15 **A. -- she might engage me to resolve a
16 conflict.**

17 Q. So you mean if the Advisory Commission
18 had a meeting scheduled at the AOC and it
19 conflicted with another meeting, you would
20 communicate with Ms. Michelle Consiglio-Young?

21 **A. Yes.**

22 Q. Okay. Where is records -- where are
23 records kept of these meetings where this
24 double booking might come to your attention?

25 **A. Oh, I don't know that there are records**

1 **A. It's a product.**

2 Q. How many individuals within the AOC have
3 the GroupWise calendar system?

4 **A. We all do.**

5 Q. How many employees do you have, just
6 under your supervision?

7 **A. 87 at the AOC.**

8 Q. 87?

9 **A. Yes.**

10 Q. So the only way you would know about
11 potential double-booking of conference rooms
12 would be if one of the liaisons came to you and
13 said we've got a problem?

14 **A. Yes.**

15 Q. And so does that mean that the liaison is
16 kind of keeping track of the dates when
17 meetings are going to be held for whatever
18 commission they serve?

19 **A. Yes.**

20 Q. Do you have periodic meetings with the
21 liaisons that are assigned to specific boards
22 and commissions?

23 **A. No.**

24 Q. So you don't have any kind of
25 communication with your liaisons?

1 **A. So I do meet with -- the liaisons are the**
2 **same people, so it's the same as our directors**
3 **in the division or other -- so I meet with the**
4 **directors regularly, I meet with them every**
5 **Monday.**

6 Q. Right, I understand. When I say
7 "liaison," I am not saying -- I think -- and
8 you correct me if I'm wrong, my understanding
9 is a liaison is not someone -- that's not like
10 an official position, they're going to have
11 another role and then they are -- they are
12 going to also serve as a liaison; is that how
13 that works?

14 **A. Yes.**

15 Q. Okay. So when I say "do you meet with
16 your liaisons," let me rephrase it.

17 When you're meeting with your team, do
18 you ever discuss with them their role as
19 liaisons on their boards and commissions that
20 they serve?

21 **A. I've never had occasion to discuss their**
22 **role.**

23 Q. What about situational things that come
24 up?

25 **A. So it would necessarily come up if there**

1 **was a meeting coming up, yes, that would be**
2 **discussed at one of our Monday meetings.**

3 Q. So a meeting would be brought to your
4 attention about one of the boards and
5 commissions; is that right?

6 **A. Yes.**

7 Q. What other types of topics would come up?
8 I'm talking about liaisons on commissions.

9 **A. Oh. Just situational awareness, if a**
10 **meeting is scheduled. I cannot think of an**
11 **example of anything else that's come up.**

12 Q. Did you ever -- Justice Lee, was she ever
13 involved in these Monday meetings regarding her
14 role as the liaison to the Advisory Commission?

15 **A. No.**

16 Q. Is there a reason for that?

17 **A. Those Monday meetings are just for me and**
18 **my division directors.**

19 Q. Is Michelle Consiglio-Young a division
20 director?

21 **A. Yes.**

22 Q. What does she direct, what division?

23 **A. I think that's the division I neglected**
24 **to list, it's intergovernmental affairs, she's**
25 **the director for that division.**

1 Q. Is that one of the six?

2 **A. Yes.**

3 Q. Did she have a different title at some
4 point prior to becoming the director of
5 intergovernmental affairs, another role at the
6 AOC, I should say?

7 **A. I don't know.**

8 Q. Okay. Was she there at the AOC as an
9 employee when you started working as the deputy
10 director?

11 **A. Yes.**

12 Q. Was she the director of intergovernmental
13 affairs when you started as deputy director?

14 **A. Yes.**

15 Q. Okay. Do you recall any specific
16 communication with Michelle Consiglio-Young
17 about double-booking of Advisory Commission
18 meetings?

19 **A. No.**

20 Q. Let me ask you another question about
21 this GroupWise calendar system.

22 You're aware that there is a calendar
23 facing the public on the AOC website?

24 **A. Yes.**

25 Q. Is that a different -- is that calendar

1 that the public can view, is that different
2 than the GroupWise calendar system?

3 **A. I don't know what feeds the public facing**
4 **calendar, so I don't know if I know the answer**
5 **to your question.**

6 Q. You know what I'm talking about, though,
7 right?

8 **A. I do know what you're talking about.**

9 Q. Who would know about the public facing
10 calendar system within the AOC?

11 **A. I think it's our communications director,**
12 **Barbara Peck.**

13 Q. Who would know about the GroupWise
14 calendar system? Would Ms. Peck also have that
15 information or would that be someone else?

16 **A. I think Barbara Peck is a good place to**
17 **gather information with regard to what's on the**
18 **group calendar, because I do think she's**
19 **responsible for posting information to that**
20 **group calendar in GroupWise.**

21 Q. Who comes up with the dates, the meeting
22 dates for the Advisory Commission?

23 **A. I do not know.**

24 Q. Did you know that they meet quarterly
25 typically?

1 **A. I didn't -- I'm not aware of the cadence**
 2 **of their meetings. I know the statute just**
 3 **says from time to time, but I don't know what**
 4 **that cadence has been.**
 5 Q. At all, even after the pleadings have
 6 been filed in this case?
 7 **A. I know what the pleadings say and it says**
 8 **quarterly.**
 9 Q. Do you know if Deputy Director Harmon
 10 testified under oath in a declaration that they
 11 meet quarterly?
 12 **A. I don't recall.**
 13 Q. Did you review her declarations before
 14 they were filed?
 15 **A. Before they were filed, yes.**
 16 Q. You reviewed both of those declarations
 17 that she filed in this case?
 18 **A. Yes. Yes.**
 19 Q. How did you review those? Did you review
 20 those with her in the same room with General
 21 Kleinfelter?
 22 **A. No.**
 23 Q. Did Deputy Director Harmon send you a
 24 draft? I'm just curious as to how you reviewed
 25 those before they were filed?

1 **A. I believe I saw drafts.**
 2 Q. So assuming that the cadence is quarterly
 3 for the Advisory Commission, were you aware
 4 that they've typically been meeting on the
 5 second Friday of March, June, September and
 6 December?
 7 **A. I was not aware.**
 8 Q. Okay. Now, you talked about
 9 double-booking, and that's double-booking with
 10 respect to in-person meetings that use a
 11 conference room at the AOC; is that right?
 12 **A. That's right.**
 13 Q. Is there ever any double-booking when any
 14 various commissions are livestreamed to the
 15 public?
 16 **A. So we have limited resources for the**
 17 **livestreaming functions of the Court.**
 18 **That's -- if there have been conflicts, they**
 19 **would be resolved by Barbara Peck, she's**
 20 **responsible for the livestreaming.**
 21 Q. Is there a budgetary item within your
 22 budget for livestreaming?
 23 **A. Not as a line item, no.**
 24 Q. Is there a budgetary item for
 25 administrative support to the Advisory

1 Commission on the rules of practice and
 2 procedure?
 3 **A. No.**
 4 Q. Is there a budgetary item for
 5 administrative support for any board or
 6 commission?
 7 **A. No, it's just part of our job and so it's**
 8 **part of the AOC budget.**
 9 Q. Okay. So there's no designation in any
 10 of the budget from -- I'm speaking of the AOC,
 11 the court portion, with respect to boards and
 12 commissions?
 13 **A. Not the advisory board for rules or any**
 14 **other advisory boards. There are those four**
 15 **that are revenue generating and have their own**
 16 **budget, so BLE, CLE, TLAP and BPR.**
 17 Q. So those four are considered boards or
 18 commissions?
 19 **A. They are.**
 20 Q. Is there a heading on your website at the
 21 AOC where it has boards and commissions?
 22 **A. Yes.**
 23 Q. Would it be fair to say that there's
 24 probably approximately 15 that are listed there
 25 on your AOC website?

1 **A. I know there's several.**
 2 Q. When's the last time that you've reviewed
 3 the AOC website from a public facing
 4 standpoint?
 5 **A. Yesterday.**
 6 Q. And what did you review when you went on
 7 the website?
 8 **A. I was looking at our calendar and then**
 9 **the current -- well, we're in the process of**
 10 **changing our website, and so I was comparing**
 11 **what's there now to what we plan to have on our**
 12 **new website. So I was in the process of**
 13 **communicating with Barbara Peck about some**
 14 **changes.**
 15 Q. Was that -- you reviewed the website
 16 yesterday in your role as director or was any
 17 of that review also because you were about to
 18 give a deposition today?
 19 **A. It was in my role as director, but I**
 20 **certainly was cognizant of what I saw there**
 21 **related to the Advisory Commission rules.**
 22 Q. How else did you prepare for this
 23 deposition?
 24 **A. I reviewed the pleadings and the most**
 25 **recent package of rules from June.**

1 Q. Now, when -- we'll talk about that in a
 2 second.
 3 The package of rules, is that the
 4 complete package that's submitted to the
 5 General Assembly?
 6 **A. So what I saw was what was posted by the**
 7 **appellate court clerk for comment.**
 8 Q. Would that be like on Lexis or Westlaw?
 9 **A. Yes.**
 10 Q. That's also on the AOC website, is it
 11 not?
 12 **A. I haven't seen it on the website.**
 13 Q. If the Supreme Court says -- issues an
 14 order that something should be posted publicly,
 15 would the -- would that be posted on the AOC
 16 website?
 17 **A. Yes.**
 18 Q. Is that one of the functions that your
 19 office does is to post orders on the AOC
 20 website?
 21 **A. Yes.**
 22 Q. Is the Tennessee Supreme Court website
 23 part of the AOC website?
 24 **A. The Tennessee Supreme Court website?**
 25 Q. Let me rephrase it. If I wanted to go

1 look at the Tennessee Supreme Court, would that
 2 be on the AOC website?
 3 **A. Yes.**
 4 Q. Does the Tennessee Supreme Court have a
 5 separate website apart from the AOC website?
 6 **A. Not that I'm aware of.**
 7 Q. Okay. So when you looked at the calendar
 8 yesterday -- was there a reason that you -- the
 9 AOC is changing its website?
 10 **A. It's just time to update.**
 11 Q. And why is that?
 12 **A. It's not as user friendly as we would**
 13 **like.**
 14 Q. Is it user friendly with respect to
 15 public meeting notices?
 16 **A. There's a calendar and you can see what's**
 17 **posted on the calendar, so yes.**
 18 Q. What part of the website is not user
 19 friendly?
 20 **A. So it's not user friendly from our**
 21 **standpoint in terms of how it captures content.**
 22 **When you search for things -- for example, when**
 23 **you look at the public calendar, you cannot**
 24 **search -- you have to go month by month by**
 25 **month, you can't skip to a different year, so**

1 **it's just not easy to navigate.**
 2 Q. Is it user friendly to the public?
 3 **A. If the public knows no different, then**
 4 **yes, it's user friendly, they can access the**
 5 **information. I just believe we can improve and**
 6 **make it easier to access and navigate our**
 7 **website.**
 8 Q. Easier for whom, the public or for AOC
 9 employees?
 10 **A. Both.**
 11 Q. So then improvement to the AOC website
 12 would also assist the public?
 13 **A. Yes.**
 14 Q. Did you review on that public facing part
 15 of the website any public meeting notices?
 16 **A. I saw some listed, I did not review them.**
 17 Q. Did you see any public meeting notices
 18 for the Advisory Commission?
 19 **A. I did not.**
 20 Q. Have you ever seen any public meeting
 21 notices on the AOC website for the Advisory
 22 Commission?
 23 **A. I saw the June notice on the calendar.**
 24 Q. Was that the June 2023?
 25 **A. Yes.**

1 Q. Do you know when that June 2023 public
 2 meeting notice was placed on the AOC website
 3 calendar?
 4 **A. I do not.**
 5 Q. Does the AOC have an -- either a formal
 6 or an informal way as to when it puts up public
 7 meeting notices so many days in advance of an
 8 actual meeting?
 9 **A. I don't know.**
 10 Q. So let's say at the beginning of -- what
 11 is the fiscal year for the AOC?
 12 **A. July 1st to June 30th.**
 13 Q. So let's say July 1st, is there ever a
 14 situation where the AOC has the indication that
 15 for the next meetings over the next 12 months
 16 will take place on a certain month by any of
 17 the boards or commissions, does that process
 18 ever happen?
 19 **A. I haven't seen that. I have not seen**
 20 **that.**
 21 Q. You have not seen that, but you don't
 22 know if that happens or not?
 23 **A. Right, I don't know if it happens or not.**
 24 Q. Well, let's say a board or a commission
 25 like the Advisory Commission was going to have

1 a public meeting, how many days of advance
 2 notice would the AOC put out to the public to
 3 let them know?
 4 **A. I think I answered that, I don't know if**
 5 **we have a policy.**
 6 Q. What do you think is a fair amount of
 7 notice to the public?
 8 **A. I would say 30 days is pretty standard**
 9 **notice.**
 10 Q. Are you aware that the -- do you know who
 11 the ADR Commission is?
 12 **A. Yes.**
 13 Q. What's your involvement with the ADR
 14 Commission?
 15 **A. I'm not involved.**
 16 Q. Do you know if they have their meetings
 17 that are livestreamed to the public; do you
 18 know if they have any meetings like that?
 19 **A. I don't know.**
 20 Q. Have you ever seen any public meeting
 21 notices on the AOC website involving the ADR
 22 Commission, public meetings?
 23 **A. I believe I did when I was looking**
 24 **yesterday.**
 25 Q. How many of those notices did you see?

1 **A. I recall one.**
 2 Q. And when was the meeting supposed to take
 3 place, or had it already taken place?
 4 **A. I believe it had already taken place.**
 5 Q. Do you know if the AOC has ever hosted
 6 meetings for the Advisory Commission in its
 7 Nashville office?
 8 **A. I do not know.**
 9 Q. Have you ever seen any public meeting
 10 notices on the AOC website showing that there
 11 had been a public meeting?
 12 **A. So I saw the June notice, but that's the**
 13 **only one I've seen.**
 14 Q. Okay, let's talk about the June notice.
 15 What do you recall -- what do you
 16 remember about the June notice that you saw?
 17 Was it in person or was it livestreamed?
 18 **A. Oh, I didn't -- I didn't review it for**
 19 **the details.**
 20 Q. Who put that notice out?
 21 **A. I don't know.**
 22 Q. Who do you think would be the AOC
 23 employee that would be responsible? Would that
 24 be the liaison, Michelle Consiglio-Young?
 25 **A. In terms of putting it on the calendar on**

1 **our website, it's probably our communications**
 2 **director.**
 3 Q. Who would be the point person to give
 4 that information to the communications
 5 director, would that be the liaison like
 6 Michelle Consiglio-Young?
 7 **A. Quite possibly.**
 8 Q. Could there be anybody else but the
 9 liaison that would have that information?
 10 **A. I suppose the chairman could provide that**
 11 **information or the court liaison could provide**
 12 **that information.**
 13 Q. Yeah, and could the justices themselves
 14 provide that information?
 15 MR. STAHL: Object to the form.
 16 **THE WITNESS: Well, there would just**
 17 **be one justice who's the court liaison.**
 18 BY MR. DOUGHERTY:
 19 Q. But is it your understanding that the
 20 Advisory Commission serves the Tennessee
 21 Supreme Court?
 22 **A. Serves the...**
 23 **So it serves a function to support the**
 24 **Tennessee Supreme Court for recommendations for**
 25 **rules, rule changes relative to procedure and**

1 **practice.**
 2 Q. I would agree with that, court rules --
 3 they make rule recommendations to the Tennessee
 4 Supreme Court; you agree with that?
 5 **A. Yes.**
 6 Q. They don't make rule recommendations to
 7 the Tennessee General Sessions Court, right?
 8 **A. Right.**
 9 Q. They don't make rule recommendations to
 10 the Tennessee Chancery Court; is that correct?
 11 **A. That's correct.**
 12 Q. They don't make rule recommendations to
 13 the Tennessee Circuit Courts, right?
 14 **A. That's correct.**
 15 Q. And they don't make rule recommendations
 16 to the Tennessee Court of Criminal Appeals,
 17 right?
 18 **A. That's correct.**
 19 Q. They don't make rule recommendations to
 20 the Tennessee Court of Appeals, correct?
 21 **A. That's correct.**
 22 Q. They make rule recommendations to the
 23 Tennessee Supreme Court, right?
 24 **A. That's correct.**
 25 Q. So would the justices on the Tennessee

1 Supreme Court who are receiving these
 2 recommendations, would they have any
 3 information about when meetings happen?
 4 MR. STAHL: Object to the form.
 5 **THE WITNESS: I don't know.**
 6 BY MR. DOUGHERTY:
 7 Q. Do you know if they've ever issued orders
 8 when meetings have taken place, I'm talking
 9 about the Tennessee Supreme Court?
 10 **A. Not that I've seen.**
 11 Q. Have you ever seen an order where the
 12 Tennessee Supreme Court set a meeting that the
 13 Advisory Commission took place, similar to the
 14 one you referenced about Justice Lee being the
 15 liaison, have you ever seen any kind of order
 16 from the Tennessee Supreme Court about past
 17 meetings, when they took place?
 18 **A. I have not.**
 19 Q. Are you aware that those are on the AOC
 20 website?
 21 **A. I was not.**
 22 Q. Who -- or what individuals would be in
 23 the best position to know when past meetings
 24 took place?
 25 **A. Michelle Consiglio-Young.**

1 Q. And who would have given the information
 2 to the Tennessee Supreme Court justices,
 3 assuming they did put out an order as to when
 4 past meetings took place? Who would be that
 5 person?
 6 MR. STAHL: Object to the form.
 7 BY MR. DOUGHERTY:
 8 Q. Would it be the Tennessee Supreme Court
 9 justice liaison?
 10 **A. I don't know. I don't know the answer to**
 11 **that.**
 12 Q. Is it your understanding that Michelle
 13 Consiglio-Young attends as a liaison Advisory
 14 Commission meetings?
 15 **A. She should.**
 16 Q. And -- okay, and why should she?
 17 **A. Just as I serve on, you know, boards and**
 18 **commissions as a staff liaison, it's to support**
 19 **the needs of that board or commission.**
 20 Q. Because that's your duty and
 21 responsibility, right?
 22 **A. That's right.**
 23 Q. Do you ever get -- when you're evaluating
 24 Michelle Consiglio-Young -- do you evaluate
 25 Michelle Consiglio-Young for job performance?

1 **A. Yes.**
 2 Q. How often do you do that?
 3 **A. Three times a year.**
 4 Q. And when do those evaluations take place?
 5 **A. So there are two interims, interim**
 6 **reviews, I want to say every three months, and**
 7 **then a final evaluation.**
 8 Q. Do you evaluate Michelle Consiglio-Young
 9 on her role as liaison to the Advisory
 10 Commission?
 11 **A. No.**
 12 Q. And why is that?
 13 **A. Because those things -- we set our goals**
 14 **and objectives based on stretch goals, it's not**
 15 **those things that are part of your duties and**
 16 **responsibilities in the job. So those are**
 17 **expected to occur. The evaluation's based on**
 18 **the additional things that you do that move the**
 19 **needle for the AOC and the courts.**
 20 Q. What does that mean, move the needle for
 21 the AOC and the courts; what moves the needle?
 22 **A. So any new innovation, new ideas that are**
 23 **consistent with the goals that we have listed**
 24 **in our strategic plan, those are the things**
 25 **that move the needle. For example, E-filing,**

1 **that would move the needle for the courts.**
 2 Q. So fulfilling one's duties and
 3 obligations doesn't move the needle?
 4 **A. That's the expectation of the job.**
 5 Q. How do you evaluate for that?
 6 **A. If you were not performing the duties and**
 7 **responsibilities of the job, you would not**
 8 **likely continue in the job.**
 9 Q. And that's what I'm asking, how do you
 10 make those determinations if someone, Michelle
 11 Consiglio-Young, for example, I'm not
 12 suggesting she's not, how would you evaluate
 13 Michelle Consiglio-Young if she's not
 14 fulfilling her duties and obligations?
 15 **A. So on the duties and responsibilities of**
 16 **any position in the AOC, if you fail to do**
 17 **those things, then we're going to get**
 18 **complaints, we're going to learn about it**
 19 **through complaints.**
 20 Q. Who would give those complaints about
 21 Michelle Consiglio-Young, for example, on her
 22 role on the Advisory Commission?
 23 **A. It could be --**
 24 MR. STAHL: Object to the form.
 25 **THE WITNESS: -- any member of the**

1 **Commission.**
 2 BY MR. DOUGHERTY:
 3 Q. It could be any member of the Commission?
 4 **A. Uh-huh.**
 5 Q. Do you ever consult with the chair of the
 6 Advisory Commission when you're preparing a
 7 budget?
 8 **A. No.**
 9 Q. Do you ever consult with the chair of the
 10 Commission with any administrative support they
 11 might need?
 12 **A. No.**
 13 Q. Do you leave that responsibility up to
 14 Michelle Consiglio-Young?
 15 **A. The Advisory Commission does not have a**
 16 **budget.**
 17 Q. Right, let me -- just in a broad sense.
 18 I understand that, and you've made that clear,
 19 I apologize.
 20 Does Michelle Consiglio-Young, is she the
 21 one that's responsible with communicating with
 22 the Advisory Commission chair on administrative
 23 support, just general administrative support?
 24 **A. I suppose so.**
 25 Q. Would she be the only person that would

1 be communicating with the Advisory Commission
 2 on administrative support from the AOC?
 3 **A. Yes.**
 4 Q. You wouldn't have direct communications
 5 with the chair?
 6 **A. No.**
 7 Q. Do you know the chair of the Advisory
 8 Commission, who that is?
 9 **A. I do.**
 10 Q. And who is that?
 11 **A. Gino Bulso.**
 12 Q. And have you talked to Chairman Bulso in
 13 preparation for this deposition?
 14 **A. No.**
 15 Q. Are you aware that he gave a deposition
 16 in this case?
 17 **A. Yes.**
 18 Q. Did you talk to Chairman Bulso either
 19 prior to the preliminary injunction or after
 20 the preliminary injunction?
 21 **A. No.**
 22 Q. Do you know if Deputy Director Harmon
 23 spoke with Chairman Bulso either previous to
 24 the injunction or after the injunction?
 25 **A. I don't know.**

1 Q. Do you know if the justices have talked
 2 to Chairman Bulso either pre or post
 3 preliminary injunction about this case?
 4 **A. I don't know.**
 5 Q. So for June 2023, you observed or you saw
 6 a public meeting notice; is that correct?
 7 **A. Yes.**
 8 Q. Do you know why that was there? Was that
 9 there because of the preliminary injunction?
 10 **A. I don't know.**
 11 Q. You weren't aware that that June meeting
 12 happened after the preliminary injunction?
 13 **A. I am aware.**
 14 Q. Let me rephrase it a different way.
 15 Is it your understanding that the reason
 16 that the June 2023 meeting was open to the
 17 public was because of the March 2023
 18 preliminary injunction?
 19 MR. STAHL: Object to the form.
 20 **THE WITNESS: Yes. So that would be**
 21 **consistent with our intention to comply with**
 22 **the order.**
 23 BY MR. DOUGHERTY:
 24 Q. And that would have been something,
 25 livestreaming the Advisory Commission meeting,

1 the AOC office would typically do; is that
 2 right?
 3 **A. I'm struggling with the question, I'm**
 4 **sorry.**
 5 Q. Sure. Assuming -- let's assume before
 6 the preliminary injunction got entered --
 7 because you would agree when the preliminary
 8 injunction was entered, Advisory Commission
 9 meetings had to be open; would you agree with
 10 that?
 11 **A. After the preliminary injunction, yes.**
 12 Q. Okay. Let's say meetings at some point
 13 before the preliminary injunction, let's say
 14 there was a meeting that was open to the public
 15 and it was going to be livestreamed to the
 16 public, is that something that the AOC office
 17 would assist the Advisory Commission in making
 18 that happen?
 19 **A. Yes.**
 20 Q. Okay. And would the AOC office put out a
 21 public meeting notice that it was going to be
 22 livestreamed, assuming the meeting was going to
 23 be open prior to the preliminary injunction?
 24 MR. STAHL: Object to the form.
 25 **THE WITNESS: If you're -- so if**

1 **you're going to livestream the meeting, it's**
 2 **for the public's ability to observe.**
 3 BY MR. DOUGHERTY:
 4 Q. Right, the AOC --
 5 **A. So I would assume that yes, we would post**
 6 **that.**
 7 Q. That's going to be the AOC?
 8 **A. That's going to be the AOC.**
 9 Q. That's what you do? That's what your
 10 office does, I should say?
 11 **A. We post what's on the public notice**
 12 **calendar, yes.**
 13 Q. Okay. Have you ever observed an Advisory
 14 Commission meeting either in person or by
 15 livestreaming?
 16 **A. I have not.**
 17 Q. Did you observe -- or were you aware that
 18 the June 2023 meeting is on the Tennessee
 19 YouTube channel?
 20 **A. I was not aware.**
 21 Q. So you didn't observe that June 2023
 22 meeting that was livestreamed when it was
 23 taking place; is that right?
 24 **A. I did not.**
 25 Q. And you haven't watched it on the

1 Tennessee YouTube channel?
 2 **A. I have not.**
 3 Q. Okay. Do you know if anyone, like Deputy
 4 Harmon, if anyone from your office, if they
 5 ever commented that they saw the Advisory
 6 Commission meeting on the YouTube channel?
 7 **A. No one has commented to me.**
 8 Q. Have you spoken to the justices about the
 9 Advisory Commission in June that was -- that's
 10 on the YouTube channel?
 11 **A. No.**
 12 Q. Okay. So what is your understanding
 13 about the Advisory Commission and the rule
 14 recommendations and how those rule
 15 recommendations get transmitted to the Supreme
 16 Court, which then get transmitted to the
 17 General Assembly and then at some point
 18 they're -- they become law or they become
 19 rules; what is your understanding of that
 20 process?
 21 **A. So my understanding is basically what you**
 22 **just said, that the rules package gets put out**
 23 **for public comment. At some point it then is**
 24 **transmitted to the General Assembly and has to**
 25 **be passed by both houses before becoming**

1 **official and then they get published.**
 2 Q. Now, the public comment period, is that
 3 something that happens at some point after the
 4 meetings and the recommendations get
 5 formulated?
 6 **A. Yes.**
 7 Q. Okay. Have you ever attended one of
 8 those General Assembly hearings where the rules
 9 package is being discussed?
 10 **A. I have not.**
 11 Q. Do you know if Michelle Consiglio-Young
 12 has ever attended one of those General Assembly
 13 hearings on the rules package at any point?
 14 **A. I am sure she has. I cannot think of a**
 15 **specific example, but I know that's part of her**
 16 **role. She and her team, that's part of their**
 17 **role.**
 18 Q. Okay. Do you communicate with the
 19 justices about the rules package?
 20 **A. No.**
 21 Q. Do you ever communicate with the justices
 22 about the administrative support that the
 23 Advisory Commission might need?
 24 **A. No.**
 25 Q. Did you communicate with Barbara Peck,

1 your communications director, after the
 2 preliminary injunction was entered?
 3 **A. I did not.**
 4 Q. Do you know if someone else on your team
 5 communicated with Barbara Peck after the
 6 preliminary injunction was entered?
 7 **A. I don't know.**
 8 Q. Did you know that the June meeting was
 9 livestreamed to the public?
 10 **A. Yes.**
 11 Q. When did you first become aware of that?
 12 **A. Likely in the pleadings, something I**
 13 **reviewed for today.**
 14 Q. You don't remember any conversation you
 15 had with Ms. Peck or anyone in your AOC team
 16 about the livestreaming of the Advisory
 17 Commission?
 18 **A. I do not recall, no.**
 19 Q. Do you know how meetings are
 20 livestreamed?
 21 **A. So I know she has explained it to me, but**
 22 **I could not say that I know how they're**
 23 **livestreamed, no.**
 24 Q. Well, for example, is Ms. Peck or
 25 somebody that works with her on her team, do

1 they physically go in to a room with a camera
 2 or is it something on a computer where
 3 they're --
 4 **A. I don't know.**
 5 Q. You don't know how that works?
 6 **A. No.**
 7 Q. She would be the one that knows how that
 8 works?
 9 **A. Yes.**
 10 Q. Is the AOC and the Tennessee courts, are
 11 they livestreaming court sessions more
 12 frequently post pandemic?
 13 **A. Yes.**
 14 Q. Is the AOC and Tennessee courts
 15 livestreaming meetings publicly post pandemic
 16 more so than they were pre pandemic?
 17 **A. I am unaware.**
 18 Q. You don't have those discussions with
 19 budgetary issues that might come up?
 20 **A. Only for the court sessions.**
 21 Q. Does it cost more money for the courts to
 22 be livestreamed?
 23 **A. We've had some investment in equipment to**
 24 **enable the courtrooms to livestream, so yes.**
 25 Q. How does that process work on

1 livestreaming something in the courts?
 2 **A. I don't know.**
 3 Q. Is there an additional investment of
 4 employees with this increased capacity to
 5 livestream court sessions?
 6 **A. We have not added any employees to be**
 7 **able to do that.**
 8 Q. So would you say it's more of a financial
 9 burden on the AOC to livestream court sessions?
 10 **A. I would not call it a burden, I would say**
 11 **yes, we have invested in equipment to make sure**
 12 **that we can, but I would not call it a burden.**
 13 Q. Okay. Other than the public meeting
 14 notice that you saw the other day on the
 15 June 2023 Advisory Commission meeting, have you
 16 ever seen any other public meeting notices of
 17 the Advisory Commission on your website, either
 18 in your role as deputy or director?
 19 **A. I have not, but I cannot say I've ever**
 20 **looked for them.**
 21 Q. Have you ever seen any public meeting
 22 notices in your role as deputy or director of
 23 any public meeting notice for any board or
 24 commission?
 25 **A. Yes.**

1 Q. And who might that be, which one?
 2 **A. The Trial Vacancy Commission.**
 3 Q. The trial what?
 4 **A. Trial vacancy.**
 5 Q. And what is that commission?
 6 **A. So it is the body that vets candidates**
 7 **for judicial vacancies at the trial court level**
 8 **for the governor, they send names, three names**
 9 **to the governor of recommendation to fill**
 10 **vacancies.**
 11 Q. And do you recall when you observed that
 12 and what that might have been?
 13 **A. We've had several here recently, so -- I**
 14 **can't recall.**
 15 Q. Did you ever serve as chief of staff for
 16 the Tennessee governor before?
 17 **A. Chief of staff? No.**
 18 Q. Did you ever serve in any capacity for a
 19 former governor of Tennessee?
 20 **A. Yes.**
 21 Q. Who was that and what was your role?
 22 **A. I served as Governor Don Sundquist's**
 23 **deputy legal counsel and legal counsel.**
 24 Q. And what was your -- what were your
 25 functions with governor Sundquist in those

1 roles?
 2 **A. So at the time we were combining --**
 3 **creating the Department of Labor and Workforce**
 4 **Development, so I drafted the legislation for**
 5 **that. We were also engaged in bringing school**
 6 **reform to the state of Tennessee, so I drafted**
 7 **the charter school legislation for the**
 8 **governor. I also was engaged in extraditions,**
 9 **probation parole, clemency actions, the very**
 10 **first execution in decades, and then generally**
 11 **kind of supported our legislative liaisons.**
 12 Q. So what years were you in that role with
 13 Governor Sundquist? Doesn't have to be the
 14 exact date, I'm just curious of the years. I
 15 don't recall, I can look it up when he was in
 16 office. I mean, was it his entire term or
 17 terms?
 18 **A. No, it was the second term.**
 19 Q. We're about the same age, so I don't
 20 remember. Was that mid '90s?
 21 **A. It would be late '90s and then early**
 22 **2000s.**
 23 Q. I think the charter school statute was
 24 2002, is that -- you said you drafted that or
 25 assisted with it?

1 **A. I drafted the first one. It was**
 2 **unsuccessful, I think it took us two years to**
 3 **get something.**
 4 Q. That would have been in early 2000, okay.
 5 About 20, 25 years ago you would say roughly
 6 you were with Governor Sundquist?
 7 **A. Yeah.**
 8 Q. I know we're in 2023.
 9 **A. Yeah.**
 10 Q. So in 2022, do you know if the Advisory
 11 Commission held any meetings?
 12 **A. In 2023?**
 13 Q. 2022 first.
 14 **A. 2022, I don't know.**
 15 Q. You started in February 2022, right?
 16 **A. Yes.**
 17 Q. Do you know if there were any meetings in
 18 2022 of the Advisory Commission?
 19 **A. I don't know.**
 20 Q. You never communicated with Michelle
 21 Consiglio-Young about that?
 22 **A. No.**
 23 Q. If there were reimbursements from 2022,
 24 would those be somewhere in your AOC files?
 25 **A. They would be, yes, with our fiscal**

1 **director.**
 2 Q. Tell me -- you may have given me that
 3 person's name.
 4 **A. Dalton Hensley.**
 5 Q. Yeah, okay, I got it.
 6 Dalton is a male?
 7 **A. Yes.**
 8 Q. What about 2023, do you know if the
 9 Advisory Commission met in 2023?
 10 **A. I only know of the June meeting.**
 11 Q. Now, are you aware that the Advisory
 12 Commission meeting -- and the June meeting you
 13 would agree was the post preliminary
 14 injunction?
 15 **A. Yes.**
 16 Q. Were you aware that there was supposed to
 17 be an Advisory Commission meeting in September
 18 of 2023?
 19 **A. Yes.**
 20 Q. And what is your understanding -- first
 21 of all, did that meeting take place in
 22 September of 2023?
 23 **A. No.**
 24 Q. And tell me your understanding as to why
 25 it did not.

1 **A. It did not get properly noticed or we**
 2 **became aware that it was not properly noticed**
 3 **and so it was rescheduled.**
 4 Q. And when did you become aware, your
 5 office, that it was not properly noticed?
 6 **A. I am 99 percent sure that that would have**
 7 **come from legal counsel at the AOC --**
 8 Q. Is that --
 9 **A. -- making me aware that there was a**
 10 **problem.**
 11 Q. -- Mr. Coke?
 12 **A. Yes.**
 13 Q. Was the meeting supposed to be on
 14 September 8, 2023?
 15 **A. I don't remember the date, I just know it**
 16 **was September.**
 17 Q. And what is your understanding -- you
 18 said it got -- I don't want to put words in
 19 your mouth.
 20 Did it get cancelled, the September, or
 21 did it get postponed?
 22 **A. Postponed is probably the better word.**
 23 Q. And what is your understanding, when did
 24 it get postponed to, what date?
 25 **A. To December. So it is scheduled for**

1 **December.**
 2 Q. Wasn't there already though a December
 3 quarterly meeting they were supposed to have?
 4 **A. I don't know.**
 5 Q. How many meetings -- how many meetings is
 6 the Advisory Commission having in 2023 calendar
 7 year?
 8 **A. I don't know.**
 9 Q. So you don't know if this December is --
 10 if it was already scheduled anyway or if it's
 11 the postponed meeting, you're not sure about
 12 that?
 13 **A. I don't know.**
 14 Q. Who would know about that if it's -- if
 15 it was already on the schedule or if it's the
 16 one that got postponed from September?
 17 **A. Michelle Consiglio-Young.**
 18 Q. Anyone else besides Michelle
 19 Consiglio-Young?
 20 **A. John Coke.**
 21 Q. Anyone else?
 22 **A. Rachel Harmon.**
 23 Q. Okay, anyone else? Would the Supreme
 24 Court liaison?
 25 **A. Probably.**

1 Q. Would Chairman Bulso, would he know?
2 MR. STAHL: Object to the form.

3 **THE WITNESS: If the meeting got --**
4 **if the September meeting was cancelled or**
5 **postponed, sure, yes, he should know.**
6 BY MR. DOUGHERTY:

7 Q. Okay. And so what's your understanding
8 of the reason that it was postponed? Is it
9 because there was going to be a violation of
10 the injunction and therefore they didn't have
11 it; is that a fair assessment?

12 MR. STAHL: Object to the form,
13 misstates testimony.

14 **THE WITNESS: What I believe -- I**
15 **believe what I was made aware of is that it had**
16 **not been properly noticed.**

17 BY MR. DOUGHERTY:

18 Q. What do you mean by not properly noticed?
19 That's what I'm trying to understand.

20 **A. There was nothing on our public facing**
21 **calendar to let the public know that that**
22 **meeting was scheduled.**

23 Q. Did the injunction require the AOC to
24 properly notice the public?

25 MR. STAHL: Object to the form.

1 Q. So have you spoken to her about her
2 functions as liaison to the Advisory
3 Commission?

4 **A. No.**

5 Q. What -- have you spoken to her about AOC
6 business?

7 **A. Yes, strategic planning and the final**
8 **assessments of her team members on their goals.**
9 **So we do pay for performance, so she would be**
10 **responsible for evaluating her team members.**
11 **So we've talked about that. We've talked about**
12 **revisions we've made to the strategic plan for**
13 **this next calendar performance cycle, and other**
14 **than that we've just talked about the baby.**

15 Q. So -- and I'm just referring to AOC
16 business, I'm not asking you anything about
17 your personal conversations with her.

18 What is pay -- you said pay for
19 performance?

20 **A. Correct.**

21 Q. What is that?

22 **A. So we do an incentive program tied to**
23 **those goals that I talked about earlier. Each**
24 **person has an individual performance plan and**
25 **we assess performance based on the goals and**

1 **THE WITNESS: So the injunction would**
2 **require us to either have it in person or**
3 **livestream it and so I'm going to assume**
4 **neither was capable of happening for that**
5 **September meeting.**

6 BY MR. DOUGHERTY:

7 Q. Does the injunction also require the AOC
8 to give proper notice to the public as to when
9 it's going to be?

10 **A. Yes.**

11 Q. What do you consider proper notice to the
12 public in advance of a meeting? I think you
13 said 30 days; is that your testimony?

14 **A. I will stick to that answer, I think**
15 **that's standard.**

16 Q. Do you know if the injunction requires a
17 certain amount of notice or not?

18 **A. I don't recall.**

19 Q. Okay. Have you spoken to Michelle
20 Consiglio-Young while she has been out on
21 maternity leave?

22 **A. Yes.**

23 Q. Have you spoken to her specifically about
24 the Advisory Commission?

25 **A. No.**

1 **objectives in those individual plans. And then**
2 **we rank the outcomes and reward employees for**
3 **their performance.**

4 Q. Whose responsibility was it to properly
5 notice the Advisory Commission meeting in
6 September?

7 MR. STAHL: Object to the form.

8 **THE WITNESS: I don't know.**

9 BY MR. DOUGHERTY:

10 Q. Was it Michelle Consiglio-Young?

11 **A. I don't know.**

12 Q. Who is on her team?

13 **A. So she oversees Charley Baldwin who is**
14 **legislative liaison. She also oversees our**
15 **court improvement program. I think that's**
16 **everyone on her team.**

17 Q. So Charley Baldwin, I only heard one
18 person's name.

19 **A. Well, Stacy Lynch is the director, if you**
20 **will, I may get the titles wrong, for the court**
21 **improvement program. And I believe she has a**
22 **staff of -- oh, I forgot one other person,**
23 **Stephanie Ethridge who is over our safe baby**
24 **courts. And then there are probably three or**
25 **four people that report through them.**

1 Q. Okay. Do you think whether or not
2 Advisory Commission meetings are open or closed
3 to the public is important to improve the
4 administrative -- administration of justice in
5 the Tennessee courts?

6 **A. You're asking my opinion?**

7 Q. Yes.

8 **A. Okay. So the process, as I know it, has
9 the opportunity for the public to comment. So
10 if the goal of whether they're open or closed
11 is to ensure that the public has the
12 opportunity to comment, I think that is already
13 part of the process.**

14 Q. Yeah, and that's not my question. I
15 didn't ask about commenting, I didn't suggest
16 that the purpose was about public commenting.

17 I said, do you think Advisory Commission
18 meetings that are closed to the public, closed
19 meetings, does that improve the administration
20 of justice?

21 **A. I think there are times when in order to
22 have candid discussion of a matter, there is a
23 need to have that discussion be closed. In
24 terms of the public's ability to know and
25 understand what comes out of that discussion, I**

1 **believe that is already part of this process.
2 So I don't have an opinion one way or the
3 other whether they should be open or closed, I
4 just look at the outcomes. And so I believe
5 that there is already process in place for the
6 outcomes for the public that promote the
7 administration of justice.**

8 Q. And so are meetings -- is it your
9 understanding that Advisory Commission meetings
10 are open or closed?

11 **A. For this particular commission, I
12 understand the history has been that at one
13 point they were open and at one point they were
14 closed.**

15 Q. And at what point is it your
16 understanding on the history were they open?

17 **A. It predates me. I want to say maybe
18 2017, 2018, but I am not certain.**

19 Q. What is your understanding of history
20 wise when they became closed?

21 **A. I don't know why they became closed.**

22 Q. I didn't say "why," I said what is your
23 understanding of the process of getting closed
24 and why they became closed?

25 **A. I don't know.**

1 Q. Who would know that? Would the justices
2 know that?

3 MR. STAHL: Object to the form.

4 **THE WITNESS: Any -- whoever was
5 involved at the time.**

6 BY MR. DOUGHERTY:

7 Q. So I guess is it fair to say if they were
8 open, Advisory Commission meetings at some
9 point in the past -- I think you said they were
10 at some point, right?

11 **A. (Nodding head.)**

12 Q. If they were open, do you think they were
13 open to try to improve the administration of
14 justice?

15 MR. STAHL: Object to the form.

16 **THE WITNESS: I don't know if there
17 was the intentionality around that or not, I
18 don't know.**

19 BY MR. DOUGHERTY:

20 Q. Why do you think they would have been
21 open previously?

22 **A. I don't -- I don't know.**

23 Q. Is there someone that you're aware of who
24 decided not to keep the meetings open any
25 longer?

1 **A. I'm sorry, it predates me, I don't know.**

2 Q. Well, you talked about the history, I'm
3 just trying to understand, how did you have the
4 knowledge to be able to know that historically
5 at some point meetings of the Advisory
6 Commission were open?

7 **A. In the context of preparing for this
8 deposition, I learned that at one point they
9 were open.**

10 Q. And who did you learn that from?

11 **A. Likely legal counsel, John Coke.**

12 Q. And did you review any information that
13 would have -- evidence that they were open at
14 some point?

15 **A. No.**

16 Q. Do you know -- have you ever reviewed any
17 information as to a reason they might have been
18 open in the past at some point?

19 **A. No.**

20 Q. So is it possible that open Advisory
21 Commission meetings could improve the
22 administration of justice?

23 MR. STAHL: Object to the form.

24 **THE WITNESS: I've never attended an
25 Advisory Commission meeting for rules, but I**

1 **would say, again, that there may be a need to**
 2 **have candid discussion among the lawyers and**
 3 **judges that are part of that body. And so that**
 4 **may be problematic in an open forum. And so as**
 5 **long as the results of that discussion are made**
 6 **available to the public, in my opinion, that is**
 7 **sufficient.**
 8 BY MR. DOUGHERTY:
 9 Q. As long as -- you're saying the public
 10 comment period comes sometime after the meeting
 11 happens, that that's sufficient is what you're
 12 saying?
 13 MR. STAHL: Object to the form,
 14 misstates testimony.
 15 BY MR. DOUGHERTY:
 16 Q. Well, then you tell me what your
 17 testimony is when you talk about public
 18 comment. I'm just trying to understand it.
 19 Because I understood you to say before that the
 20 public comment period happens after the
 21 meetings; is that right?
 22 **A. I think that is the way it is set up**
 23 **today, yes.**
 24 Q. Okay. And you think that's sufficient to
 25 improve the administration of justice?

1 improve the administration of justice?
 2 MR. STAHL: Object to the form.
 3 **THE WITNESS: I don't believe it's**
 4 **not transparent.**
 5 BY MR. DOUGHERTY:
 6 Q. And so you think closed meetings are
 7 transparent?
 8 MR. STAHL: Object to the form.
 9 **THE WITNESS: So I am saying the need**
 10 **for candid conversation improves the**
 11 **administration of justice. The outcomes of**
 12 **that candid conversation are transparent to the**
 13 **public, that also improves the administration**
 14 **of justice. And the ability to take in comment**
 15 **and information from the public improves the**
 16 **administration of justice.**
 17 BY MR. DOUGHERTY:
 18 Q. Would open meetings improve the
 19 rulemaking process?
 20 **A. It is open when it gets to the**
 21 **legislative process.**
 22 Q. No, it's not, it's a meeting?
 23 MR. STAHL: Object to the form,
 24 argumentative.
 25 ///

1 MR. STAHL: Object to the form.
 2 **THE WITNESS: I don't think it**
 3 **hinders the administration of justice.**
 4 BY MR. DOUGHERTY:
 5 Q. Well, you would agree that part of your
 6 responsibility and duties are to improve the
 7 administration of justice as director of AOC,
 8 right?
 9 **A. Yes.**
 10 Q. Statute requires you to survey and try to
 11 come up with ideas of how to do that, right?
 12 **A. Yes.**
 13 Q. So is it possible that open meetings to
 14 the public on court rulemaking is to improve
 15 the administration of justice?
 16 MR. COKE: Object to the form.
 17 MR. STAHL: Object to the form.
 18 **THE WITNESS: Is it possible. I**
 19 **would still lean toward the need to have candid**
 20 **open dialogue about rule changes and that may**
 21 **not happen in a public forum to the level of**
 22 **candor needed to improve the administration of**
 23 **justice.**
 24 BY MR. DOUGHERTY:
 25 Q. Does transparency on rulemaking meetings

1 BY MR. DOUGHERTY:
 2 Q. It's a meeting. Are meetings today open
 3 prior to the preliminary injunction?
 4 MR. STAHL: I'm going to allow this
 5 one last question, then I'm going to ask to
 6 take a break.
 7 **THE WITNESS: Are meetings open**
 8 **prior --**
 9 BY MR. DOUGHERTY:
 10 Q. We're talking about Advisory Commission
 11 meetings. Were they open --
 12 **A. My understanding is they have not been**
 13 **open.**
 14 Q. Okay.
 15 MR. STAHL: We're going to take a
 16 break. That was a question. Thank you. Take
 17 a five-minute break.
 18 MR. DOUGHERTY: Just make it 11:35.
 19 MR. STAHL: Okay.
 20 (Short break.)
 21 BY MR. DOUGHERTY:
 22 Q. Okay, we'll go back on the record.
 23 Ms. Long, what is your understanding of
 24 the preliminary injunction in March; why was it
 25 issued by the court?

1 **A. To ensure that the Advisory Commission on**
2 **rules was open to the public.**

3 Q. When you say the advisory -- you talking
4 about meetings?

5 **A. Meetings.**

6 Q. So was it your understanding that prior
7 to the injunction they were closed --

8 **A. Yes.**

9 Q. -- meetings, right?

10 **A. Yes.**

11 Q. Okay. Do you know if they talk about --
12 let's go back.

13 What -- is the Advisory Commission made
14 up of -- what do they make rule recommendations
15 on? Are there certain courts, certain
16 procedures, are you aware of that?

17 MR. STAHL: Object to the form.

18 **THE WITNESS: So I did -- I think I**
19 **answered earlier that they make recommendations**
20 **on the rules of practice and procedure for**
21 **various courts and for the rules of evidence.**

22 BY MR. DOUGHERTY:

23 Q. Yeah, so it's the rules of evidence is
24 one; is that your understanding?

25 **A. Yes.**

1 **works very closely with the legislature and**
2 **then other departments. And so for court**
3 **improvement programs, she's working with**
4 **Children's Services. For safe baby courts,**
5 **she's working with Human Services and**
6 **Children's Services as well. So it's that**
7 **place that connects with other departments and**
8 **agencies across the state.**

9 Q. So is it fair to say then when you say
10 "intergovernmental" or what she does, some of
11 her work touches on the executive branch and
12 the legislative branch and the judicial branch?

13 **A. Yes.**

14 Q. Is that a relatively new position or has
15 that always kind of been there with the AOC?

16 **A. I think it's always -- well, since I've**
17 **been at the AOC it's been there.**

18 Q. Okay. Do you know how long she served on
19 the Advisory Commission as the AOC liaison?

20 **A. I do not know.**

21 Q. Is the Advisory Commission listed
22 somewhere on the AOC website?

23 **A. It is.**

24 Q. And are there names of the people who are
25 on that commission on that particular website?

1 Q. And is also the rules of civil procedure
2 one of the rule recommendations they make?

3 **A. Yes.**

4 Q. And the rules of criminal procedure?

5 **A. Yes.**

6 Q. Rules of juvenile procedure?

7 **A. Yes.**

8 Q. And is the last one, the fifth one, the
9 rules of appellate procedure?

10 **A. Yes.**

11 Q. When we talk about court rules of
12 practice, that's what they're actually doing?

13 **A. Yes.**

14 Q. Were you aware that the federal analog
15 has very similar rules in certain courts?

16 **A. No.**

17 Q. Have you read the pleadings about the
18 federal analog and what they do?

19 **A. Yes.**

20 Q. What does Michelle Consiglio-Young,
21 Intergovernmental -- what is her title --

22 **A. Affairs.**

23 Q. What does that mean?

24 **A. So she is our liaison to the other**
25 **branches of government and so she does -- she**

1 **A. Yes.**

2 Q. I think all of the -- we talked earlier
3 about the boards and commissions section of the
4 AOC website; do you recall that?

5 **A. Yes.**

6 Q. And I haven't looked last week, but I
7 think it is fair to say that most members who
8 serve on these various commissions and boards
9 are listed there on the AOC website?

10 **A. Yes.**

11 Q. Who puts that information together?

12 **A. So who serves is decided in most places**
13 **by the Court and they will often times put down**
14 **a court order for membership and then that gets**
15 **accumulated at the AOC. I don't know who**
16 **physically puts it on the website.**

17 Q. Well, is the responsibility of liaison
18 for that particular board or commission to make
19 sure those names are on the website or is that
20 your communications group?

21 **A. I don't know.**

22 Q. Okay. Do you all have like a flow chart
23 at the AOC because you have a lot of different
24 divisions? I am just trying to understand how,
25 you know, delegation of duties and obligations

1 are carried out when you've got kind of these
 2 various six divisions, what -- and you don't
 3 have to tell me everything, I am just trying to
 4 understand the hierarchy and how everybody
 5 communicates with one another.
 6 **A. So you won't find flow charts. What you**
 7 **will find is trust in liaisons that work with**
 8 **these various boards and commissions to carry**
 9 **out the functions that they always carried out.**
 10 **We are in the process of trying to document**
 11 **some of those processes and procedures, I call**
 12 **it eliminating single points of failure,**
 13 **because if something happens to Michelle**
 14 **Consiglio-Young, someone else needs to be able**
 15 **to pick up where she left off. So it's not**
 16 **written down now, but we're working toward**
 17 **writing some of those practices and procedures**
 18 **down.**
 19 Q. Are you aware of a commission that was
 20 established several years ago that put together
 21 several reports on aspirations for the
 22 Tennessee judicial system in the year 2030?
 23 **A. I'm not.**
 24 Q. Are you aware that that commission's
 25 final report is on the AOC website?

1 **A. So I believe I saw a report -- I don't**
 2 **think that's what -- I thought it was more**
 3 **around diversity. I don't know if we're**
 4 **talking about the same report or not, though.**
 5 Q. So as I understand it, I believe it might
 6 even be in the pleadings at some point or
 7 motions, I'm not sure, but I just wanted to
 8 know if you were aware that -- I want to say it
 9 was the mid '90s, there was a commission in
 10 Tennessee by various members, private
 11 attorneys, judges, you weren't aware of that?
 12 I know that was several years ago.
 13 **A. If you're talking about -- I'm calling it**
 14 **a diversity report. I have seen that one, but**
 15 **I don't know if we're talking about the same**
 16 **thing.**
 17 Q. What I am referring to, and I don't know
 18 the exact name, but I think it was Vision,
 19 Tennessee Courts 2030. I believe the year was
 20 2030. You don't recall that?
 21 **A. I don't.**
 22 Q. And you haven't seen that 2030 -- I am
 23 just -- it may not be exactly, but you don't
 24 recall seeing that 2030 report on the AOC
 25 website?

1 **A. No.**
 2 Q. I don't recall who the person -- the
 3 person who served in your role, the director of
 4 the AOC was, but do you ever get together or
 5 have communications with previous AOC directors
 6 that predated you? Even going back mid '90s or
 7 the '80s?
 8 **A. So two of them are friends. So I do have**
 9 **conversation with two previous directors.**
 10 Q. Who are those?
 11 **A. Debbie Tate and Bill Young.**
 12 Q. And Ms. Tate was your -- you were deputy
 13 to her, right?
 14 **A. Yes.**
 15 Q. Does she still serve in some capacity
 16 with the AOC?
 17 **A. We have her on a temporary assignment**
 18 **right now, so yes.**
 19 Q. Is that like a limited contract for
 20 certain period of time?
 21 **A. Yes.**
 22 Q. 120-day contract?
 23 **A. I think so, yes.**
 24 Q. Bill Young, who is Bill Young?
 25 **A. Bill Young was I believe Ms. Tate's**

1 **predecessor in the role.**
 2 Q. How long did Ms. Tate serve as AOC
 3 director, if you can recall?
 4 **A. I think it was seven years.**
 5 Q. And then how about Mr. Young, how long
 6 was he -- do you know? If you don't, that's
 7 fine.
 8 **A. I don't know.**
 9 Q. Is he still living?
 10 **A. Yes.**
 11 Q. Does he work for the AOC?
 12 **A. No.**
 13 Q. Is he retired?
 14 **A. Not that I'm aware of.**
 15 Q. Okay. Is he an attorney?
 16 **A. Yes, he is. I think he's working for the**
 17 **Ethics Commission.**
 18 Q. So is that a Tennessee government paid
 19 position?
 20 **A. Yes.**
 21 Q. Bill Young?
 22 **A. Yes.**
 23 Q. He is an attorney?
 24 **A. Yes.**
 25 Q. Is Ms. Tate an attorney?

1 **A. Yes.**
 2 Q. And is there a requirement that the
 3 executive director of the AOC has to be an
 4 attorney?
 5 **A. Not in statute.**
 6 Q. Have most of them, besides Ms. Tate and
 7 Mr. Young and yourself, have most previous AOC
 8 directors been attorneys?
 9 **A. To my knowledge, yes.**
 10 Q. Are you aware of how the Federal AOC is
 11 set up with respect to the relationship with
 12 the chief justices of the US Supreme Court?
 13 **A. No.**
 14 Q. So if I told you that the AOC in the
 15 federal court does not serve at the pleasure of
 16 the chief justice, Chief Justice Roberts, and
 17 is a separate entity, you wouldn't have any
 18 information on that or knowledge?
 19 **A. No.**
 20 Q. Are you aware of anyone or any report
 21 that has ever suggested or recommended that the
 22 AOC director and office should be separate from
 23 the Tennessee Supreme Court?
 24 **A. No.**
 25 Q. You've never seen a report or heard about

1 any recommendations on that?
 2 **A. I think there's some opinion out there**
 3 **that it should be led by more than just the**
 4 **Supreme Court, in other words a group of judges**
 5 **representing all levels of the court system,**
 6 **but I've never seen a report, I've never seen**
 7 **anything in writing in that regard.**
 8 Q. What opinion are you referring to?
 9 **A. I think there's been some discussion over**
 10 **time about the AOC being responsible, if you**
 11 **will, to more than just the Supreme Court.**
 12 Q. So is it your understanding that the AOC
 13 is just responsible for the Tennessee Supreme
 14 Court?
 15 **A. No, it is not my understanding.**
 16 Q. Well, then why does that -- why is that
 17 opinion or idea out there?
 18 **A. I don't know.**
 19 Q. Who -- when you say opinion, is it like
 20 an Tennessee attorney general opinion; what do
 21 you mean?
 22 **A. No, no. I just mean over the course of**
 23 **time, there have been comments that I'm aware**
 24 **of that trial judges don't get -- don't**
 25 **perceive that they are heard when it comes to**

1 **how the AOC operates. The statute clearly says**
 2 **that the AOC director serves at the pleasure of**
 3 **the Tennessee Supreme Court. The realty is the**
 4 **Tennessee Supreme Court is responsible for the**
 5 **entire court system. So the Tennessee Supreme**
 6 **Court, vis-a-vis the AOC director, is**
 7 **responsive to all levels of court. But we**
 8 **don't control perception.**
 9 Q. What is your opinion on that, do you
 10 think they -- that maybe the statute requiring
 11 your position to serve, as you say, the
 12 pleasure of the chief justice and the justices,
 13 is that a good thing or a bad thing?
 14 **A. It's a thing.**
 15 Q. Right.
 16 **A. I think that in terms of --**
 17 Q. I'm not trying to --
 18 **A. -- to get something done, having five**
 19 **bosses is very different from having some**
 20 **larger group of bosses, if you will.**
 21 Q. I'm not trying to get you in trouble with
 22 your bosses, I'm just -- I'm just talking
 23 about -- I mean, because you would agree that
 24 you are responsible for the administration of
 25 justice and some of these kind of broad

1 concepts; would you agree with that?
 2 **A. Absolutely.**
 3 Q. So having five bosses, is that more
 4 difficult to carry out your duties? Or what do
 5 you mean by having five bosses? Explain that.
 6 I am just trying to understand. I don't want
 7 to put words in your mouth, I don't want you to
 8 talk bad about -- I'm just trying to understand
 9 philosophically what your opinion is.
 10 **A. Well, the AOC is the administrative arm**
 11 **of the Tennessee Supreme Court. The Tennessee**
 12 **Supreme Court has five justices.**
 13 Q. Right. Do you think it would be a better
 14 situation if your office, the AOC, was
 15 completely separate from the Tennessee Supreme
 16 Court and that you made all those decisions?
 17 **A. No.**
 18 Q. Okay. And if the Feds do it that way,
 19 and I don't know if they do it exactly that
 20 way, but would that be something you wouldn't
 21 agree or think would be a great thing or you
 22 don't know right now?
 23 **A. I don't know. I don't think it would be**
 24 **because I think our Tennessee Supreme Court is**
 25 **very intentional about hearing and making sure**

1 **they are responsive to all courts.**
 2 **I mean, we have programs across the AOC**
 3 **that address juvenile courts, general sessions**
 4 **courts, trial courts. So there -- the**
 5 **processes are in place to make sure all courts**
 6 **are represented in what the Tennessee Supreme**
 7 **Court then directs.**
 8 Q. Do you think the people on the inside,
 9 attorneys, all of us at this table, justices
 10 and judges think that the Tennessee judicial
 11 system is a good thing or --
 12 MR. STAHL: Object to the form.
 13 BY MR. DOUGHERTY:
 14 Q. -- or doing the best it can?
 15 **A. The Tennessee judicial system?**
 16 Q. Yeah. Well, the courts, what you have to
 17 do, what you have to do. Do you think the
 18 Tennessee courts are perceived by the members
 19 of the bar and the judiciary as being a pretty
 20 good system?
 21 **A. Yes.**
 22 Q. Do you think the public perceives the
 23 Tennessee judicial system as a pretty good
 24 system?
 25 MR. STAHL: Object to the form.

1 of, record wise?
 2 **A. I don't keep track of that, no.**
 3 Q. You're not required to do that under the
 4 statute?
 5 **A. No.**
 6 Q. Are you aware of the compensation system
 7 for attorneys in Tennessee for indigent
 8 representation?
 9 **A. Yes.**
 10 Q. Is it good or is it bad compared to other
 11 states?
 12 MR. STAHL: Object to the form.
 13 **THE WITNESS: So compared to other**
 14 **states, we compensate lawyers for their**
 15 **representation at the lowest level of any other**
 16 **state.**
 17 BY MR. DOUGHERTY:
 18 Q. So Tennessee's the worst state, right?
 19 MR. STAHL: Object to the form.
 20 **THE WITNESS: We compensate at a rate**
 21 **lower than any other state.**
 22 BY MR. DOUGHERTY:
 23 Q. The worst state in terms of compensation,
 24 I should have clarified that.
 25 **A. The lowest.**

1 **THE WITNESS: The public is kind of**
 2 **broad. I think it depends on your interaction**
 3 **with the courts. So you could have a negative**
 4 **interaction and I suppose your perception would**
 5 **not be positive. I think generally, when I**
 6 **talk about what I do, I don't hear negative**
 7 **things about the Tennessee judicial system.**
 8 BY MR. DOUGHERTY:
 9 Q. Do you think there's an access to justice
 10 crisis in the state of Tennessee?
 11 **A. Crisis, no.**
 12 Q. Do you think there's an access to justice
 13 problem in the state of Tennessee?
 14 **A. I think we are intentional with programs**
 15 **to make sure that the reach of the Tennessee**
 16 **courts is as broad as it can be from where we**
 17 **work at the AOC, and then we work very closely**
 18 **with all of those legal aid societies out there**
 19 **that do provide the reach and access. So I**
 20 **believe that's a very positive thing for the**
 21 **state of Tennessee.**
 22 Q. Are there a lot of pro se litigants in
 23 the state of Tennessee?
 24 **A. I don't know.**
 25 Q. That's not something that you keep track

1 Q. Well, is it better to get less money or
 2 more money?
 3 MR. STAHL: Object to the form, asked
 4 and answered.
 5 **THE WITNESS: Better to get -- so I**
 6 **don't view it from the standpoint of the**
 7 **attorney compensation whether or not that is**
 8 **good or bad, I view it from the standpoint of**
 9 **are we providing representation. And so**
 10 **representation continues, despite paying the**
 11 **lowest rate in the country.**
 12 BY MR. DOUGHERTY:
 13 Q. Did Chief Justice Kirby think it was bad
 14 enough to issue some comments recently about
 15 how she wanted to improve the compensation
 16 system?
 17 **A. So we are currently in the process of**
 18 **advocating to improve the compensation for**
 19 **attorneys, yes.**
 20 Q. Did Chief Justice Kirby release some
 21 public comments recently?
 22 **A. Yes, she did.**
 23 Q. Were those on the AOC website?
 24 **A. Yes, they are.**
 25 Q. How is -- is the AOC, part of that

1 advocacy, as you called it, about trying to
 2 increase compensation?
 3 **A. Yes.**
 4 Q. How -- what does that advocacy look like?
 5 What does your office have to do?
 6 **A. So the entire fund for indigent**
 7 **representation is appropriated money by the**
 8 **General Assembly. So if there is to be an**
 9 **increase in attorney compensation rates, it**
 10 **will have to come from additional appropriation**
 11 **of moneys.**
 12 Q. So does that mean, when you say
 13 "advocacy," trying to get more money
 14 appropriated? You don't have to pass a law,
 15 right?
 16 **A. No.**
 17 Q. Who does the advocacy besides the AOC
 18 office?
 19 **A. I'm sure on this topic there will be many**
 20 **groups advocating. I think the TBA will**
 21 **definitely be at the table on behalf of**
 22 **attorneys. You might see the PDs office, some**
 23 **of the legal aid societies. I'm sure there's a**
 24 **wide swath of people that would agree.**
 25 Q. Is low compensation that we're talking

1 about, does that make the access to justice
 2 issue better or worse?
 3 MR. STAHL: Object to the form.
 4 **THE WITNESS: Better or worse. I**
 5 **think we could be -- I don't think it has to**
 6 **date, but I think if we don't address it, we**
 7 **could be in a position where access to justice**
 8 **is in jeopardy.**
 9 BY MR. DOUGHERTY:
 10 Q. So appreciate you sharing the advocacy,
 11 is there any kind of written materials that
 12 your office has on this -- what you have to do
 13 to increase the funding to get -- to
 14 compensate, is there anything out there
 15 physically written?
 16 **A. So it is one of our budget requests. And**
 17 **so we have provided information to the**
 18 **Department of Finance and Administration in**
 19 **writing that we will be making an ask to**
 20 **increase the rates.**
 21 Q. Are the justices themselves advocating on
 22 this issue? I mentioned Justice Kirby, but are
 23 they doing any advocacy along with the AOC?
 24 MR. STAHL: Object to the form.
 25 **THE WITNESS: So before it appears in**

1 **our budget request, the Court would have to**
 2 **agree with that. And so they have. I don't**
 3 **know about individual advocacy on their parts.**
 4 BY MR. DOUGHERTY:
 5 Q. How do you know they agreed with the
 6 increase of compensation?
 7 **A. We present our budget proposals to the**
 8 **Court in advance.**
 9 Q. When you say "we," you're talking about
 10 the AOC?
 11 **A. I'm talking about me.**
 12 Q. You?
 13 **A. Uh-huh.**
 14 Q. So when you're doing a budget -- I know
 15 you said that's kind of a year-long process,
 16 kind of, right?
 17 **A. Uh-huh.**
 18 Q. You're putting numbers together, you go
 19 to the justices first or at some point before
 20 that gets submitted to the governor?
 21 **A. That's right, I need approval.**
 22 Q. Okay. So we're just talking about the
 23 compensation for attorneys right now, what the
 24 article was recently that Justice Kirby spoke
 25 about.

1 What's the increase -- or proposed
 2 increase for attorney compensation on a
 3 percentage basis?
 4 **A. Well, it's \$30 increase in the**
 5 **compensation rate. So from \$50 an hour to 80.**
 6 Q. And so currently it's \$50 an hour, is
 7 that for criminal or explain that -- or is that
 8 just court appointed? What does that mean?
 9 MR. COKE: Object to the form.
 10 **THE WITNESS: That's court appointed**
 11 **counsel.**
 12 BY MR. DOUGHERTY:
 13 Q. In state courts in Tennessee?
 14 **A. Yes.**
 15 Q. So is that by statute or is that just how
 16 it's been, the \$50?
 17 **A. It's by rule, supreme court rule, Rule**
 18 **13.**
 19 Q. That's Rule 13?
 20 **A. Yes.**
 21 Q. When was that rule promulgated?
 22 **A. I don't know.**
 23 Q. And so this compensation of \$50 an hour,
 24 is that civil or criminal?
 25 **A. Both.**

1 Q. Oh, it is, okay.
 2 How does that on a criminal side? Isn't
 3 the public defender's office -- don't they
 4 serve that role or -- I don't understand that
 5 part of it.
 6 MR. COKE: Object to form.
 7 **THE WITNESS: So the public**
 8 **defender's office does take -- undertake the**
 9 **representation. However, the indigent -- my**
 10 **understanding, the indigent representation fund**
 11 **for adult defense applied when the public**
 12 **defender's office had a conflict on a matter,**
 13 **and so private counsel could be engaged.**
 14 BY MR. DOUGHERTY:
 15 Q. I see. So the increase in it, assuming
 16 it goes through, does that require a rule
 17 change of Supreme Court Rule 13?
 18 **A. Yes.**
 19 Q. Who makes that change? Do the Supreme
 20 Court justices make that change?
 21 **A. Yes.**
 22 Q. Supreme Court rules are not part of the
 23 Advisory Commission, are they?
 24 **A. I don't believe so, no.**
 25 Q. Is there any commission or board outside

1 of the justices themselves that make changes to
 2 supreme court rules?
 3 **A. So they will -- no, there's no entity,**
 4 **no.**
 5 Q. Do they do that at like certain period,
 6 cadence of the year, or is that ongoing; how
 7 does that work?
 8 **A. I think it's ongoing and they will be put**
 9 **out for public comment.**
 10 Q. So they also put out public comment, but
 11 as far as you know the Supreme Court rules are
 12 not part of the Advisory Commission meeting
 13 rule recommendations; is that right?
 14 **A. That's right.**
 15 Q. Okay. So assuming that the rate
 16 increases from \$50 an hour to compensate an
 17 attorney representing indigent people to 80,
 18 where does that -- where would that put
 19 Tennessee?
 20 MR. COKE: Object to form.
 21 **THE WITNESS: It puts us kind of**
 22 **square in the middle of other states that do**
 23 **indigent representation in this way.**
 24 BY MR. DOUGHERTY:
 25 Q. How many states do indigent

1 representation like Tennessee?
 2 **A. I don't know.**
 3 Q. Approximately?
 4 **A. I don't know.**
 5 Q. Do you ever discuss indigent
 6 representation in your -- is it the COSCA
 7 group, that organization, does that ever come
 8 up?
 9 **A. We have not.**
 10 Q. What about access to justice issues in
 11 general, does that ever come up in your state
 12 meeting association?
 13 **A. So, yes. Interpreters has come up in the**
 14 **COSCA group. I'm trying to remember. I think**
 15 **just interpreters and language access has been**
 16 **an issue.**
 17 Q. What about litigants having to represent
 18 themselves or being pro se, does that pro se
 19 litigation ever come up?
 20 **A. Not that I recall.**
 21 Q. Is part of the goal of increasing
 22 compensation for indigent representation so
 23 that we will have fewer pro se litigants?
 24 MR. STAHL: Object to the form.
 25 **THE WITNESS: I don't -- I don't know**

1 **that that is a goal.**
 2 BY MR. DOUGHERTY:
 3 Q. Would it be fair to say that if attorneys
 4 are going to be paid more to represent people
 5 who can't afford payment, then you're going to
 6 have less indigent -- excuse me, you're going
 7 to have less pro se litigants in courts?
 8 MR. STAHL: Object to the form.
 9 MR. COKE: Object to the form.
 10 **THE WITNESS: Yeah, I don't know the**
 11 **reasons why people choose to go pro se, so I**
 12 **can't necessarily say that I know the answer to**
 13 **that.**
 14 BY MR. DOUGHERTY:
 15 Q. Is one of the reasons that people choose
 16 to go pro se because they don't have enough
 17 money to pay for a lawyer?
 18 **A. I suppose it could be one reason.**
 19 Q. Isn't that the main reason?
 20 MR. STAHL: Object to the form.
 21 **THE WITNESS: I don't know that to be**
 22 **the main reason.**
 23 BY MR. DOUGHERTY:
 24 Q. You don't know that to be the main
 25 reason?

1 **A. (Shaking head.)**
 2 Q. Have you ever had this discussion
 3 specifically with Justice Kirby?
 4 **A. No.**
 5 Q. Were there any justices that opposed the
 6 rate increase from \$50 an hour to 80?
 7 MR. COKE: Object to the form.
 8 **THE WITNESS: No.**
 9 BY MR. DOUGHERTY:
 10 Q. Are any of the justices opposed to having
 11 Advisory Commission meetings open to the
 12 public?
 13 MR. STAHL: Object to the form.
 14 **THE WITNESS: I -- I don't know.**
 15 BY MR. DOUGHERTY:
 16 Q. Has anyone said anything to you about
 17 that -- their objection to having open
 18 meetings?
 19 **A. No.**
 20 Q. Do you personally object to having
 21 Advisory Commission meetings open to the
 22 public?
 23 **A. Do I object? I don't know that it**
 24 **matters. They are open now pursuant to court**
 25 **order. So no, I don't object.**

1 Q. Has that ever been a discussion within
 2 the AOC office about whether or not Advisory
 3 Commission meetings should be open or closed?
 4 **A. I have not had such a discussion.**
 5 Q. You don't know anyone's opinion? Like,
 6 for example, you don't know if Director Harmon
 7 thinks it's a good idea or bad idea?
 8 **A. I don't know her opinion.**
 9 Q. Do you know Chairman Bulso's opinion
 10 whether he thinks it's a good idea or bad idea?
 11 **A. I do not know.**
 12 Q. Do you think if Chairman Bulso thought it
 13 was a bad idea to have meetings open, would he
 14 tell you as the AOC director?
 15 MR. STAHL: Object to the form.
 16 **THE WITNESS: He's more likely to**
 17 **talk with the staff liaison. I don't interact**
 18 **with the commission or the chairman.**
 19 BY MR. DOUGHERTY:
 20 Q. So that would be -- you think he would
 21 tell Michelle Consiglio-Young?
 22 **A. Possibly.**
 23 Q. Would he tell any of the justices on the
 24 Supreme Court?
 25 MR. STAHL: Object to the form.

1 **THE WITNESS: I don't know.**
 2 BY MR. DOUGHERTY:
 3 Q. You don't think he would tell -- you
 4 don't know.
 5 **A. I don't know.**
 6 Q. Do you ever have any input with the
 7 justices when they appoint members to the
 8 Advisory Commission?
 9 **A. Do I -- say the first, do I?**
 10 Q. Yeah, do -- you would agree that the
 11 Tennessee Supreme Court justices appoint
 12 members to serve on the Advisory Commission,
 13 correct?
 14 **A. Yes.**
 15 Q. Do you as the AOC director have any input
 16 with the justices before they appoint someone?
 17 **A. No.**
 18 Q. Does anyone in your office at the AOC
 19 have any input on that process?
 20 MR. STAHL: Object to the form.
 21 **THE WITNESS: The only input that our**
 22 **office would have would be based on the terms**
 23 **of the currently serving members and whether or**
 24 **not they are eligible for reappointment.**
 25 **///**

1 BY MR. DOUGHERTY:
 2 Q. And that eligibility is by statute,
 3 right?
 4 **A. Yes.**
 5 Q. So you don't -- your office doesn't weigh
 6 in and say I think you all should appoint John
 7 Smith as a member to the Advisory Commission,
 8 is that right?
 9 **A. That is correct. Or I don't.**
 10 Q. And I'm talking about -- when I say
 11 "you," I'm talking about your office, the AOC.
 12 Who would be the person that would get involved
 13 in that?
 14 **A. I don't know if, for instance, Michelle**
 15 **Consiglio-Young would have the opportunity to**
 16 **weigh in on appointments or not. I know on the**
 17 **boards and commissions that I serve as liaison,**
 18 **I do not.**
 19 Q. What boards and commissions do you serve
 20 as liaison?
 21 **A. So I serve on the Building Commission.**
 22 Q. The building?
 23 **A. Yes.**
 24 Q. Okay.
 25 **A. I serve on the Technology Oversight**

1 **Committee. I cannot recall if I am on the**
 2 **Access to Justice Commission or not by name,**
 3 **but I attend sometimes their meetings. I think**
 4 **that's all.**
 5 Q. The Building Commission, do they hold
 6 regular meetings?
 7 **A. They do.**
 8 Q. Do you all meet together in one physical
 9 location or is it through Zoom or Webinar?
 10 **A. It's been Zoom.**
 11 Q. Has that been since the pandemic?
 12 **A. I don't -- I started in October like**
 13 **right before, I don't recall a meeting -- well,**
 14 **I wasn't director before then, so I don't know**
 15 **what it was before the pandemic.**
 16 Q. Are your Building meetings open to the
 17 public?
 18 **A. I don't -- I don't think I've ever seen a**
 19 **public notice. They're really about**
 20 **maintenance of the building, like landscaping,**
 21 **plumbing issues.**
 22 Q. Right. How about the Tech Oversight, how
 23 many times a year typically do they meet?
 24 **A. So it's brand new and so it has met maybe**
 25 **three times.**

1 Q. When you say "three times," you're
 2 talking about in calendar year 2023?
 3 **A. Yes.**
 4 Q. Where do you all meet and how do you all
 5 meet?
 6 **A. It's been via Zoom.**
 7 Q. And are any of those meetings been open
 8 to the public?
 9 **A. Not to my knowledge.**
 10 Q. How would you know if a meeting that you
 11 were serving on would be open to the public?
 12 **A. If public was a part of the meeting. I**
 13 **attend, so if there were members of the public**
 14 **outside of, you know, those who are on the**
 15 **committee was in attendance, then I would know**
 16 **that it was open.**
 17 Q. I understand that if they were physically
 18 in the same room. So my question is how would
 19 you -- if you're sitting in a room and it's
 20 being Zoomed out to the public, would you know?
 21 Would there be a camera in the room? How would
 22 you understand that that meeting was going out
 23 to the public?
 24 **A. We're all joining from our own locations.**
 25 Q. Sure.

1 **A. And there's no livestreaming, if that's**
 2 **your question.**
 3 Q. That's what I'm trying to figure out.
 4 How do you know -- not sitting on the side of
 5 the public, you're in the room or your meetings
 6 are being livestreamed, how do you as a
 7 participant know that the public -- that this
 8 meeting is being livestreamed to the public?
 9 **A. I guess I don't know.**
 10 Q. So assuming a chair didn't say, hey
 11 members, this meeting's going to be
 12 livestreamed -- if they told you, you would
 13 know at that point, right?
 14 **A. Right.**
 15 Q. Would you also know if you saw a public
 16 meeting notice on the AOC website that it was
 17 being livestreamed?
 18 **A. Yes.**
 19 Q. Okay. Any other way that you would know?
 20 **A. No.**
 21 Q. Okay. So one of the other aspirational
 22 goals -- are you required as the director to
 23 come up with ways to expedite litigation?
 24 **A. Yes.**
 25 Q. How does that -- what does that look

1 like? What things have you done in your role
 2 to expedite litigation?
 3 **A. I would say the entire in Korean**
 4 **(phonetic) study of E-filing in the state is**
 5 **one of those.**
 6 Q. The E-filing?
 7 **A. Yes.**
 8 Q. Any other ways of expediting litigation?
 9 **A. No. We collect statistical data that**
 10 **would inform the Court of where there may be**
 11 **overloaded dockets and then the Court has some**
 12 **tools available to it to address that.**
 13 Q. So when you see expedited litigation, you
 14 think that relates more towards particular
 15 court dockets?
 16 **A. Yes.**
 17 Q. Are there some court dockets that are
 18 slower to work through a case than other
 19 dockets or courts?
 20 **A. So I think there are places where**
 21 **population growth has caused the courts to be**
 22 **more heavily burdened than in the past. And so**
 23 **the 19th Judicial District comes to mind,**
 24 **they've just got more filings -- filings than**
 25 **they -- over the course of time.**

1 Q. So what's the 19th Judicial District?
 2 **A. So that's Montgomery County.**
 3 Q. And what's the major city in Montgomery
 4 County?
 5 **A. Clarksville.**
 6 Q. Okay. Is that because there has been an
 7 increase in population?
 8 **A. That's what I would argue.**
 9 Q. Well, when you're setting up your
 10 processes to expedite litigation and collecting
 11 all this information, how do you do that? If
 12 you have a district that has a lot more
 13 filings, how does that work? What do you do?
 14 **A. To address it or get the information?**
 15 Q. Well, I don't know. I'm just trying to
 16 understand, is it just your job to collect the
 17 information and statistics or is it your job --
 18 **A. It is my job to collect the information.**
 19 Q. Once you collect the information, is it
 20 your job to come up with a fix or that's not
 21 your job?
 22 **A. So I'm -- it's not my job. I support the**
 23 **Court with the information that it needs to**
 24 **make decisions.**
 25 Q. Okay. And who would be making a decision

1 let's say on information you collect from
 2 Montgomery -- you said Montgomery County?
 3 **A. Uh-huh.**
 4 Q. Who would make decisions on what to do
 5 with that information that you're collecting,
 6 would that be the justices?
 7 MR. STAHL: Object to the form.
 8 **THE WITNESS: Yes. So one of the**
 9 **things that resulted from the collection of**
 10 **information on filings and the growth over time**
 11 **was the request for new judicial positions. So**
 12 **that is something once the Court decides that**
 13 **that is needed, then we would advocate for new**
 14 **judicial positions through the legislature.**
 15 BY MR. DOUGHERTY:
 16 Q. And has that happened once the
 17 information you collected and shared with the
 18 justices?
 19 **A. Yes.**
 20 Q. Okay. So you would think it's fair to
 21 say that a big part of the director position is
 22 collecting a lot of these statistics and
 23 information and sharing it with justices,
 24 right?
 25 **A. Yes.**

1 Q. Do you remember filing an answer in this
 2 lawsuit?
 3 **A. Yes.**
 4 Q. Who helped prepare that answer for you?
 5 **A. Rachel Harmon and the Offices of the**
 6 **Attorney General.**
 7 Q. Anyone else assist you with that?
 8 **A. No.**
 9 Q. Was Ms. Harmon representing you at any
 10 point during this lawsuit?
 11 **A. She has not represented me, no.**
 12 Q. And you reviewed that answer before it
 13 was filed?
 14 **A. Yes.**
 15 Q. Along with your attorneys?
 16 **A. Yes.**
 17 Q. I will segue a little bit away from the
 18 Advisory Commission and talk about the
 19 Tennessee Judicial Conference Committees, which
 20 is a part of this lawsuit, you'll recall.
 21 **A. Okay.**
 22 Q. For simplicity purposes, I'm going to try
 23 to keep it simple and not say Advocacy
 24 Commission, just say TJC committees, if that's
 25 okay.

1 **A. Okay.**
 2 Q. What is your understanding of the TJC
 3 committees?
 4 **A. They are committees of the Judicial**
 5 **Conference. We support them in the same way we**
 6 **do other committees, just administrative**
 7 **support. So there's a staff member assigned to**
 8 **-- I don't want to -- I'm not certain that it's**
 9 **all, but most.**
 10 Q. Right. And is your -- what is your
 11 office responsible for? I mean, your office is
 12 responsible for providing education for judges;
 13 is that right?
 14 **A. Yes.**
 15 Q. Is your office responsible for providing
 16 any kind of education to the Advisory
 17 Commission?
 18 **A. No.**
 19 Q. Okay. But you would agree that judges do
 20 serve on the Advisory Commission?
 21 **A. Yes.**
 22 Q. And non-judges serve on the Advisory
 23 Commission?
 24 **A. Yes.**
 25 Q. Okay. But with the TJC committees, are

1 there any non-judges that serve on any of those
 2 committees that you're aware of?
 3 **A. There's a Bench Bar Committee, so there**
 4 **would be non-judges on that committee, but I'm**
 5 **not sure about others.**
 6 Q. Yeah, and that's -- what's -- what's your
 7 understanding of what that means, "bench bar,"
 8 what does that typically mean?
 9 **A. It's for joint programming, education**
 10 **programming.**
 11 Q. But --
 12 **A. Between the bar associations and the**
 13 **Court.**
 14 Q. For simplicity purposes, does bench bar
 15 mean you have some judges that are on a group
 16 and then some non-judges, attorneys, who are in
 17 the group?
 18 **A. Yes.**
 19 Q. And the Advisory Commission is a Bench
 20 Bar Committee -- Commission, right?
 21 **A. In the generic sense of the term, sure.**
 22 Q. Yeah. Do you participate or serve on any
 23 of these TJC committees?
 24 **A. I participate in the Executive Committee,**
 25 **which I think I actually serve on that**

1 Q. Okay. Is that position elected or
 2 whatever by the people that are -- by the
 3 members?
 4 **A. By the membership.**
 5 Q. Okay. So since you've been director, how
 6 many of these various TJC meetings have you
 7 been to?
 8 **A. I would say four or five. Because most**
 9 **of them meet during a conference and so I will**
 10 **pop in.**
 11 Q. Okay.
 12 **A. Or I'm asked to join just to provide**
 13 **information.**
 14 Q. Does your office also help gain speakers
 15 for CLE for the judges?
 16 **A. Yes.**
 17 Q. Okay. Is that something that you're
 18 involved in or someone else in your office is
 19 involved in?
 20 **A. Someone else in my office.**
 21 Q. Is that Deputy Director Harmon?
 22 **A. I would say it's John Crawford, but I**
 23 **wouldn't doubt that he consults her. He's not**
 24 **an attorney, so I would not doubt that he would**
 25 **consult Deputy Harmon.**

1 **committee. I participate with the Court**
 2 **Security Committee, the Weighted Caseload**
 3 **Committee, Trust and Confidence Committee. I**
 4 **think those are the only ones I've been**
 5 **involved in.**
 6 Q. Are you required by statute to be on any
 7 of those committees?
 8 **A. No.**
 9 Q. Okay. Who makes the selection as to
 10 whether or not you're going to be on a
 11 committee or a commission, who makes that
 12 determination?
 13 **A. I don't know. I inherited all of that.**
 14 Q. Have you ever asked Ms. Tate?
 15 **A. No.**
 16 Q. Do the justices make that decision?
 17 **A. I don't think so.**
 18 Q. Who would be making the decision?
 19 **A. I think most likely the head of the TJC,**
 20 **the president of the TJC.**
 21 Q. Who is that a chief justice of the
 22 Supreme Court?
 23 **A. No.**
 24 Q. Who is the head of the TJC?
 25 **A. Currently it is Valerie Smith.**

1 Q. Do you know how Mr. Crawford makes the
 2 decisions to choose certain speakers for
 3 education?
 4 **A. I don't think he chooses them, I think he**
 5 **might recommend to the Education Committee.**
 6 **There's an Education Committee for TJC.**
 7 Q. Do any of those committees of the TJC, do
 8 they make rule recommendations, court rule
 9 recommendations like the Advisory Commission?
 10 **A. No.**
 11 Q. Okay. And do you know if any of their
 12 meetings are open or closed to the public?
 13 **A. I don't know.**
 14 Q. When you say you pop in, is that -- when
 15 you say conference, are you talking about like
 16 a TBA conference that happens to be taking
 17 place at the same time as the TJC committee
 18 meetings? What do you mean by that, you pop
 19 in?
 20 **A. So I attend all of the conferences for**
 21 **our judicial trial courts -- State Judges**
 22 **Conference, the General Sessions Conference,**
 23 **the Municipal Judge Conference, I'll be going**
 24 **to that here shortly. So I'm an attendant. So**
 25 **if their committees are meeting, then I'll join**

1 **them.**
 2 Q. Okay. Do you know if any of those
 3 conference meetings that the judges have had,
 4 have they ever been open to the public?
 5 **A. Not that I'm aware of. Those conferences**
 6 **are their Judicial Education Conference, so I**
 7 **don't believe they're open to the public.**
 8 Q. Okay. Is it your intention to provide --
 9 well, are you going to provide any expert
 10 testimony in this case or be designated as an
 11 expert witness?
 12 **A. I don't believe so.**
 13 Q. Okay. Do you know if Deputy Director
 14 Harmon would be doing that?
 15 **A. I don't know.**
 16 Q. Okay. Do you know if any of the
 17 Tennessee Supreme Court justices will be doing
 18 that?
 19 **A. I don't know.**
 20 Q. Okay.
 21 MR. DOUGHERTY: I'll pass the
 22 witness, Mike.
 23 ///
 24 ///
 25 ///

1 notices, you had mentioned 30 days was a time
 2 frame that you thought was reasonable to post a
 3 public notice if a meeting was going to be
 4 public; is that right?
 5 **A. Well, I said I felt like that was pretty**
 6 **standard. I don't know if that's reasonable.**
 7 Q. Why would you feel like that's a standard
 8 time frame?
 9 **A. I can only draw on my experiences with**
 10 **the Department of Health, and I know that our**
 11 **notices for boards that were meeting in the**
 12 **Department of Health was published in advance**
 13 **and it was about a 30-day notice.**
 14 Q. Would the AOC, as far as you know,
 15 publish a public notice without permission of
 16 the committee or chairperson?
 17 **A. No.**
 18 Q. Who -- the information contained within a
 19 public notice, the public notices that you've
 20 seen, what kind of information is included in a
 21 public notice that you've seen?
 22 **A. So date and time for a meeting. I've**
 23 **seen -- I believe I've seen some with proposed**
 24 **agenda or an agenda for the meeting. That's**
 25 **what I recall.**

1 EXAMINATION
 2 QUESTIONS BY MR. STAHL:
 3 Q. Just a few questions, Director Long.
 4 Do you personally as director of the AOC
 5 control any of the conduct related to any
 6 committee meetings that happen at the AOC?
 7 **A. No.**
 8 Q. Would you be able to tell a chairperson
 9 of any committee how or what to do during their
 10 meetings?
 11 **A. No. Our interaction with the chairs is**
 12 **limited to implementing what they desire.**
 13 **That's our interaction with the chairs.**
 14 Q. Has any member of your office, as far as
 15 you know, ever told a committee or a commission
 16 when or where to hold its meeting?
 17 **A. No.**
 18 Q. Are the commissions that are listed on
 19 the AOC website either statutorily or otherwise
 20 required to hold their meetings at the AOC?
 21 **A. At the AOC?**
 22 Q. (Nodding head.)
 23 **A. I don't know the answer to that.**
 24 Q. Okay. You're a -- your statement earlier
 25 regarding counsel's question about public

1 Q. Okay. Would the AOC in any capacity
 2 control the information on public notice
 3 concerning the date and time of the meeting?
 4 **A. No.**
 5 Q. Would the AOC have the ability or in any
 6 way control the proposed agenda of the meeting?
 7 **A. No.**
 8 Q. So the information you've seen on public
 9 notices must come from someone outside the AOC?
 10 **A. Yes.**
 11 Q. And can you describe the AOC's role in
 12 publishing the notice after it gets that
 13 information?
 14 **A. So this is where I'm not sure who handles**
 15 **what, but I know more than likely the staff**
 16 **liaison for whatever body we're talking about**
 17 **would get that information, when is the next**
 18 **meeting, what's the time, date, proposed**
 19 **agenda, and then provide that most likely to**
 20 **our communications team that then posts to our**
 21 **website.**
 22 Q. Do you have any reason to believe that
 23 anybody within that process would change or
 24 alter that information?
 25 **A. Absolutely not.**

1 Q. Do you think anybody within that process
2 has the authority to change or alter that
3 information?

4 A. No.

5 MR. STAHL: That's all I have.

6
7 FURTHER EXAMINATION
8 QUESTIONS BY MR. DOUGHERTY:

9 Q. On that line of questioning, on those
10 public meeting notices that you've seen, is
11 there an AOC contact person listed?

12 A. I didn't make note of that.

13 Q. Would there be an AOC contact person
14 listed with e-mail and phone number if the
15 public has a question?

16 A. I don't know. There could be.

17 Q. Who would the public call if they had a
18 question about a public meeting notice that the
19 AOC put out?

20 A. This is speculative, but I would say
21 Barbara Peck or our web master.

22 Q. They would call someone at the AOC,
23 right?

24 A. Yes.

25 Q. Does the first amendment require the

ERRATA PAGE

1 I, MICHELLE LONG, having read the foregoing
2 deposition, Pages 1 through 158, do hereby certify
3 said testimony is a true and accurate transcript,
with the following changes (if any):

PAGE	LINE	SHOULD HAVE BEEN
6	_____	_____
7	_____	_____
8	_____	_____
9	_____	_____
10	_____	_____
11	_____	_____
12	_____	_____
13	_____	_____
14	_____	_____
15	_____	_____
16	_____	_____
17	_____	_____

21 _____
MICHELLE LONG

22
23 Notary Public

24 My Commission Expires: _____
25

1 Advisory Commission meetings to be open to the
2 public?

3 MR. STAHL: Object to the form, legal
4 conclusion.

5 THE WITNESS: I know that's what's
6 argued in this case. I don't know.

7 BY MR. DOUGHERTY:

8 Q. You don't know?

9 A. I don't know.

10 MR. DOUGHERTY: I have nothing
11 further.

12 MR. STAHL: Great. Do you want to
13 review the transcript or do you want to waive
14 signature?

15 MR. COKE: I'd like to review.

16 THE WITNESS: Okay, we'd like to
17 review.

18 THE REPORTER: Did you want to order
19 this?

20 MR. DOUGHERTY: Yes.

21 MR. STAHL: Yes, we want a copy of
22 it.

23 FURTHER DEPONENT SAITH NOT
24 (At 12:30 p.m. CST.)
25

REPORTER'S CERTIFICATE

1 STATE OF TENNESSEE
2
3 COUNTY OF SUMNER

4 I, JENNY CHECUGA, Licensed Court Reporter,
5 with offices in Nashville, Tennessee, and Registered
6 Professional Reporter, hereby certify that I reported
7 the foregoing deposition of MICHELLE LONG by machine
8 shorthand to the best of my skills and abilities, and
9 thereafter the same was reduced to typewritten form
10 by me.

11 I further certify that I am not related to
12 any of the parties named herein, nor their counsel,
13 and have no interest, financial or otherwise, in the
14 outcome of the proceedings.

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Exhibit

3

McCALEB

vs.

LONG

MICHELLE CONSIGLIO-YOUNG

November 16, 2023



Lexitas Legal TENNESSEE | 1015 Avery Park Dr | Smyrna, TN 37167 | (615) 595-0073 |
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IN THE UNITED STATES DISTRICT FOR
THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

DAN MCCALED, Executive Editor
of THE CENTER SQUARE,
Plaintiff,
vs. Case No. 3:22-cv-00439
MICHELLE LONG, in her official
capacity as DIRECTOR of the
TENNESSEE ADMINISTRATIVE OFFICE
OF THE COURTS,
Defendant.

Deposition of:
MICHELLE CONSIGLIO-YOUNG
Taken on behalf of the Plaintiff
November 16, 2023

Commencing at 9:24 a.m. CST

Lexitas Legal
Michelle Cessna, LCR, RPR
(615)595-0073

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E X H I B I T S

(None offered.)

A P P E A R A N C E S

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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.

* * *

1
2 MICHELLE CONSIGLIO-YOUNG,
3 was called as a witness, and having first been
4 duly sworn, testified as follows:
5

6 EXAMINATION

7 QUESTIONS BY MR. DOUGHERTY:

8 Q. Good morning.
9 **A. Good morning.**
10 Q. Can you please state your name for the
11 record?
12 **A. Sure, my name is Michelle**
13 **Consiglio-Young.**
14 Q. And have you ever had your deposition
15 taken before today?
16 **A. No.**
17 Q. Okay. And do you understand that you're
18 under oath?
19 **A. Yes, sir.**
20 Q. Okay. And you're prepared to answer the
21 questions that I ask of you today?
22 **A. Yes, sir.**
23 Q. Are you represented by counsel?
24 **A. I am represented by the Attorney**
25 **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 Improvement 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)
 14
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1 REPORTER'S CERTIFICATE
 2
 3 STATE OF TENNESSEE
 4 COUNTY OF SUMNER
 5 I, MICHELLE CESSNA, Licensed Court Reporter,
 6 with offices in Nashville, Tennessee, hereby certify
 7 that I reported the foregoing deposition of MICHELLE
 8 CONSIGLIO-YOUNG by machine shorthand to the best of
 9 my skills and abilities, and thereafter the same was
 10 reduced to typewritten form by me.
 11 I further certify that I am not related to
 12 any of the parties named herein, nor their counsel,
 13 and have no interest, financial or otherwise, in the
 14 outcome of the proceedings.
 15 I further certify that in order for this
 16 document to be considered a true and correct copy, it
 17 must bear my original signature and that any
 18 unauthorized reproduction in whole or in part and/or
 19 transfer of this document is not authorized, will not
 20 be considered authentic, and will be in violation of
 21 Tennessee Code Annotated 39-14-104, Theft of
 22 Services.
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Exhibit

4

May 20, 2016
Public Meeting Notice:
Advisory Commission
on the Rules of Practice and Procedure

ADVISORY COMMISSION ON THE RULES OF PRACTICE AND PROCEDURE

Date / Time: May 20, 2016 - 9:00am - 11:00am

Event Type:

Public Meeting Notices

A meeting of the Advisory Commission on the Rules of Practice and Procedure will be held on Friday, May 20, 2016, at 9:00 a.m. (CDT) at the Administrative Office of the Courts, 511 Union Street, Suite 600, Nashville, Tennessee. Members of the public are invited to attend.

For additional information on attending the meeting, or if you require an accommodation and/or have special needs because of a qualified disability, please contact:

Jeana Hendrix
Assistant General Counsel
(615) 741-2687
jeana.hendrix@tncourts.gov.

Administrative Office of the Courts
511 Union Street Suite 600
Nashville, TN 37219
See map: [Google Maps](#)

[Calendar](#)

Exhibit

5

**IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

<p>DAN McCaleb, Executive Editor of THE CENTER SQUARE,</p> <p style="text-align:center">Plaintiff,</p> <p>v.</p> <p>MICHELLE LONG, in her official capacity as DIRECTOR of TENNESSEE ADMINISTRATIVE OFFICE OF THE COURTS,</p> <p style="text-align:center">Defendant.</p>	<p>No. 3:22-cv-00439</p> <p>Judge Richardson Magistrate Judge Frensley</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------

[PROPOSED] PERMANENT INJUNCTION

Plaintiff Dan McCaleb, Executive Editor of The Center Square, having filed a First Amended Complaint for Declaratory and Injunctive Relief (ECF No. 19) against Defendant Michelle Long, in her official capacity as Director of the Tennessee Administrative Office of the Courts (“AOC”), and this Court having granted Plaintiff’s Motion for Summary Judgment, entered Final Judgment, and issued this Permanent Injunction;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. This Court has jurisdiction over the subject matter and all parties to this action.

2. Plaintiff’s First Amended Complaint seeks a constitutional right of access under the First Amendment to State court rulemaking meetings of the Tennessee Advisory Commission on the Rules of Practice and Procedure (“Advisory

Commission”), created by the enabling statute, Tenn. Code Ann. § 16-3-601(a).

3. Specifically, Plaintiff seeks a permanent injunction ordering Defendant Long and the AOC to provide him with access to Advisory Commission meetings so he can assign reporters to report on meetings.

4. In support of his First Amendment right of public access claim to Advisory Commission meetings, Plaintiff relies upon the “experience and logic” test in favor of open access. *Detroit Free Press v. Ashcroft*, 303 F.3d 681, 683 (6th Cir. 2002).

5. The “experience and logic” test was first articulated by the United States Supreme Court in *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980), later adopted in the majority opinion in *Globe Newspaper Co. v. Superior Ct. for Norfolk Cty.*, 457 U.S. 596, 603-06 (1982), and reaffirmed in *Press–Enterprise Co. v. Superior Court*, 464 U.S. 501, 104 (1984) (*Press–Enterprise I*) and *Press–Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986) (*Press–Enterprise II*).

6. To further support his claim for open meetings under the “experience and logic” test, Plaintiff identifies the Tennessee Advisory Commission’s federal analogue, i.e., the Judicial Conference’s Committee on Rules of Practice and Procedure (also called the “Standing Committee”). These Standing Committee meetings on proposed federal court rules and procedures have been open to the public and press for at least 35 years. *See* 28 U.S.C. § 2073(c)(1).

7. Under State law, the Tennessee Supreme Court appoints members to its Advisory Commission, whose duty is to make recommendations on proposed rules of practice and procedure in Tennessee courts. *See* Tenn. Code Ann. § 16-3-601(a).

8. Advisory Commission members appointed by the Tennessee Supreme Court are comprised of members of the Bench — State court judges — and Bar — attorneys employed in private practice, by State government, or law school faculty.

9. The Advisory Commission's meeting cadence is typically quarterly.

10. The Advisory Commission has authority to employ legal and clerical assistance, subject to Defendant Long's approval as AOC Director, to efficiently discharge its rulemaking duties. *See* Tenn. Code Ann. § 16-3-601(d).

11. The AOC provides administrative support to the Advisory Commission.

12. This administrative support by the AOC includes posting public meeting notices on its website of past Advisory Commission meetings that were open to the public and providing public access to such meetings at the AOC in Nashville.

13. AOC employee Michelle Consiglio-Young is currently providing administrative support to the Advisory Commission and attends its meetings as AOC liaison and Staff Contact.

14. On March 22, 2023, this Court concluded that Plaintiff was likely to succeed on the merits of his First Amendment claim and issued a Memorandum Opinion partially granting Plaintiff's request for a preliminary injunction and ordering the AOC under Director Long's direction to open Advisory Commission meetings to the public either by livestreaming or by allowing in-person attendance. *See* ECF No. 39, PageID ##1100-01.

15. The Court enters this Permanent Injunction to supplant the preliminary injunction previously issued by the Court on March 22, 2023.

16. Under the *Richmond Newspapers*' "experience and logic" test, this Court declares that the First Amendment right of access attaches to meetings of the Advisory Commission, created by Tenn. Code Ann. § 16-3-601(a).

17. Therefore, any and all Advisory Commission meetings shall be open to the public and press by livestreaming.

18. The AOC under Director Long's direction, as well as under the direction of any subsequent AOC Directors, shall provide public livestreaming access to any and all Advisory Commission meetings.

19. The AOC under Director Long's direction, as well as under the direction of any subsequent AOC Directors, shall post on its website a public meeting notice at least 30 days in advance of any and all Advisory Commission meetings.

20. The public meeting notice shall provide the date and time of the upcoming Advisory Commission meeting, as well as livestreaming credentials.

21. The public meeting notice shall further provide the name, email address, and telephone number of an assigned AOC employee for the public to contact if there are questions regarding the upcoming Advisory Commission meeting.

22. Under the standard articulated in *Globe Newspaper*, any action by the AOC that curtails the public's First Amendment right of access to meetings shall be supported by a showing "that denial is necessitated by a compelling governmental interest, and is narrowly tailored to serve that interest." *See* 457 U.S. at 606-07.

23. Moreover, "the [AOC's compelling] interest is to be articulated along with findings specific enough that a reviewing court can determine whether the closure

order was properly entered.” See *Press-Enter. II*, 478 U.S. at 10.

24. Any such closure order by the AOC of a meeting in whole or in part is subject to challenge by Plaintiff McCaleb or a member of the public.

25. Within seven (7) days of entry by the Court, Defendant Long shall post a file-stamped copy of this Permanent Injunction on the AOC website, and it shall remain publicly posted in perpetuity.

26. Within seven (7) days of entry by the Court, Defendant Long shall send file-stamped copies of this Permanent Injunction via certified mail as follows:

Advisory Commission on the Rules of Practice and Procedure
Attn.: Gino Bulso, Chair
155 Franklin Road, Suite 400
Brentwood, Tennessee 37027

Tennessee Supreme Court
Attn.: Chief Justice Holly M. Kirby
401 7th Ave N
Nashville, TN 37219

27. Any and all notices directed to Plaintiff McCaleb regarding this Permanent Injunction shall be sent as follows:

M. E. Buck Dougherty III
James McQuaid
LIBERTY JUSTICE CENTER
440 N. Wells Street, Suite 200
Chicago, Illinois 60654
bdougherty@libertyjusticecenter.org
jmcquaid@libertyjusticecenter.org

28. Any and all notices directed to Defendant Long regarding this Permanent Injunction shall be sent as follows:

Andrew C. Coulam
Michael M. Stahl
Robert W. Wilson
OFFICE OF TENNESSEE
ATTORNEY GENERAL
P.O. Box 20207
Nashville, Tennessee 37202
andrew.coulam@ag.tn.gov
michael.stahl@ag.tn.gov
robert.wilson@ag.tn.gov

29. This Court retains jurisdiction over this action and the parties for the purpose of enforcing this Permanent Injunction and for granting such additional relief as may be necessary or appropriate.

It is so **ORDERED**, this ____ day of _____.

United States District Court Judge

ENTRY CONSENTED TO:

/s/ M. E. Buck Dougherty III
M. E. Buck Dougherty III, TN BPR #022474
James McQuaid, Admitted *pro hac vice*
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Attorneys for Plaintiff, Dan McCaleb,
Executive Editor of The Center Square

CERTIFICATE OF SERVICE

I, counsel for Plaintiff Dan McCaleb, hereby certify that a true and correct copy of the foregoing document has been served on the following counsel of record, via the Court's ECF system by email on this 15th day of December 2023:

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/s/ M.E. Buck Dougherty III

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

DAN McCALEB, Executive Editor of)
THE CENTER SQUARE,)

Plaintiff,)

v.)

MICHELLE LONG, in her official)
capacity as DIRECTOR of the)
TENNESSEE ADMINISTRATIVE)
OFFICE OF THE COURTS,)

Defendant.)

Case No. 3:22-cv-00439

Judge Richardson

Magistrate Judge Frensley

**RULE 56.01 STATEMENT IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Plaintiff Dan McCaleb, Executive Editor of The Center Square, files this Rule 56.01 Statement pursuant to LR 56.01(b) in support of his Motion for Summary Judgment. This Rule 56.01 Statement is being submitted to comply with the Local Rules and provides the Court with a concise statement of the material facts as to which Plaintiff McCaleb contends there is no genuine issue for trial.

1. Defendant Michelle Long is the Director of the Administrative Office of the Courts ("AOC"). Deposition of Michelle Long ("Long Depo."), ECF No. 74-2 at p. 8, Lines 20-24.

Response

2. Defendant Long oversees the AOC. <https://www.tncourts.gov/administration> (last visited Dec. 13, 2023).

Response

3. The AOC provides administrative support to the Advisory Commission. Long Depo., ECF No. 74-2 at p. 61, Lines 2-5.

Response

4. After the incident in 2018 with the verbally combative man at an Advisory Commission meeting, then General Counsel Rachel Harmon told Michelle Consiglio-Young that there was no need to put public notice out because meetings were going to be closed after that incident. Deposition of Michelle Consiglio-Young, ECF No. 74-3 at p. 45, Lines 4-15.

Response

5. The AOC posted on its website a public meeting notice in advance of an Advisory Commission meeting that was going to be held on May 20, 2016. Public Meeting Notice, ECF No. 74-4.

Response

6. The federal Standing Committee and each of the Advisory Committees typically meet twice per year. <https://www.uscourts.gov/rules-policies/about-rulemaking-process/open-meetings-and-hearings-rules-committee> (last visited Dec. 13, 2023).

Response

7. Committee meetings are open to the public, except when a committee — in open session and with a majority present — determines that it is in the public interest to have all or part of the meeting closed and states the reason. <https://www.uscourts.gov/rules-policies/about-rulemaking-process/open-meetings-and-hearings-rules-committee> (last visited Dec. 13, 2023).

Response

8. A video of the June 9, 2023, Advisory Commission meeting that was livestreamed to the public is on the TN Courts' YouTube channel. <https://www.youtube.com/watch?v=TCCKGHybsxg>.

Response

9. A video of the December 8, 2023, Advisory Commission meeting that was livestreamed to the public is on the TN Court's YouTube channel. <https://www.youtube.com/watch?v=XHY3DFF3V2E>

Response

December 15, 2023

Respectfully submitted,

/s/ M. E. Buck Dougherty III

M. E. Buck Dougherty III, TN BPR #022474

James McQuaid, *Pro Hac Vice*

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*Attorneys for Plaintiff, Dan McCaleb,
Executive Editor of The Center Square*

CERTIFICATE OF SERVICE

I, counsel for Plaintiff, hereby certify that a true and correct copy of the foregoing document has been served on the following counsel of record, via the Court's ECF system by email on this 15th day of December 2023:

JONATHAN SKRMETTI

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Tennessee Supreme Court Justices*

/s/ M.E. Buck Dougherty III

IN THE UNITED STATES DISTRICT COURT FOR
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DAN McCALEB, Executive Editor of)
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Plaintiff,)

v.)

MICHELLE LONG, in her official)
capacity as DIRECTOR of the)
TENNESSEE ADMINISTRATIVE)
OFFICE OF THE COURTS,)

Defendant.)

Case No. 3:22-cv-00439

Judge Richardson

Magistrate Judge Frensley

**MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Respectfully submitted,

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INTRODUCTION

Plaintiff Dan McCaleb, Executive Editor of The Center Square, files this Memorandum of Law in support of his Motion for Summary Judgment against Defendant Michelle Long, in her official capacity as Director of the Tennessee Administrative Office of the Courts (“AOC”). The Court should grant Plaintiff’s Motion and enter a permanent injunction, ordering Defendant Long to provide public access to meetings of the Advisory Commission on the Rules of Practice & Procedure (“Advisory Commission”), created by Tenn. Code Ann. §16-3-601.

Defendant Long oversees the AOC, which provides administrative support to the Advisory Commission. This support includes posting public notice of meetings on the AOC’s website. In the past the AOC posted public notice on its website of upcoming Advisory Commission meetings. But a member of the public verbally disrupted a 2018 meeting. After this incident, the AOC instituted a practice of no longer posting public notice of Advisory Commission meetings, and Defendant Long has continued this practice during her tenure as Director of the AOC.

But the AOC’s practice of not posting public notice to Advisory Commission meetings limits the stock of information on the state court rulemaking process from which members of the public may draw. And the First Amendment attaches to meetings under the *Richmond Newspapers*’ “experience and logic” test.

STATEMENT OF FACTS

A. Plaintiff McCaleb is an experienced journalist who seeks access to Tennessee Advisory Commission state court rulemaking meetings so he can assign reporters to report on meetings.

Plaintiff McCaleb is an experienced journalist and the Executive Editor of The Center Square. *See* Deposition of Dan McCaleb (“McCaleb Depo.”), ECF No. 74-1 at p. 11, Lines 4-22. In addition to his duties as Executive Editor, McCaleb also serves as Vice-President of News and Content for the Franklin News Foundation, a 501 (c)(3) nonprofit that publishes The Center Square. *Id.* at p. 18, Line 20 through p. 19, Line 4. The Center Square is an online news organization that focuses on government news and publishes “in the neighborhood of 70 stories a day.” *Id.* at p. 22, Lines 6-13.

As an experienced journalist, McCaleb believes in open government. *Id.* at p. 11, Lines 16-18. During his 30-plus-year career, he has “attended a lot of government meetings.” *Id.* at p. 15, Lines 11-18. And when he learned that Tennessee Advisory Commission meetings were closed to the public and press, he asked, “[W]hat are they hiding?” *Id.* at p. 11, Lines 16-22. McCaleb would assign reporters to report on Advisory Commission meetings if they were open to the public. *Id.* at p. 45, Lines 18-21.

B. Defendant Long is AOC Director, and the office she oversees provides administrative support to the Advisory Commission.

Defendant Long is the Director of the AOC. *See* Deposition of Michelle Long (“Long Depo.”), ECF No. 74-2 at p. 8, Lines 20-24. Defendant Long “oversees the AOC.”¹ As AOC Director, Defendant Long is “the chief administrative officer of the state court system.” Tenn. Code Ann. §16-3-803(a).

The Advisory Commission was established to recommend rules of practice and procedure in Tennessee state courts. Tenn. Code Ann. §16-3-601(a). The AOC provides administrative support to the Advisory Commission. Long Depo., ECF No. 74-2 at p. 61, Lines 2-5. And according to Defendant Long, the Advisory Commission makes specific recommendations on court rules as follows:

Q. All right. What is your understanding of the function of the Advisory Commission?

A. To recommend rule changes for practice and procedure for the various courts, criminal, civil, juvenile, appellate court, and rules of evidence.

Id. at p. 60, Line 21 through p. 61, Line 1.

C. Michelle Consiglio-Young is the AOC liaison to the Advisory Commission.

Michelle Consiglio-Young joined the AOC in 2015 and has been its liaison to the Advisory Commission since 2018. *See* Deposition of Michelle Consiglio-Young (“Consiglio-Young Depo.”), ECF No. 74-3 at p. 7, Lines 18-20; p. 11, Line 25 through

¹ *See* <https://www.tncourts.gov/administration> (last visited Dec. 13, 2023).

p. 12, Line 7. The Advisory Commission’s meeting cadence is quarterly. *Id.* at p. 34, Lines 4-10. The names of the appointed bench-bar individuals who comprise the current Advisory Commission may be found on the AOC’s public website, and Consiglio-Young is listed as “AOC Staff Contact.”²

D. In the past the AOC posted public notice of Advisory Commission meetings until 2018 when a member of the public breached decorum by verbally disrupting a meeting.

When a past Advisory Commission meeting was open to the public, the AOC posted on its website advance notice inviting the public to attend the meeting.³ *See* May 20, 2016, Public Meeting Notice, ECF No. 74-4. A public meeting notice dating back over a decade to June of 2012, inviting the public to attend an Advisory Commission meeting, remains posted on the AOC’s website.⁴

But in 2018, Consiglio-Young described an incident as follows:

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

A. I believe it was 2018.

Q. I'm sorry?

² *See* <https://tncourts.gov/boards-commissions/boards-commissions/advisory-commission-rules-practice-procedure> (last visited Dec. 12, 2023).

³ *See* <https://www.tncourts.gov/calendar/public-meeting-notices/2016/05/20/advisory-commission-rules-practice-and-procedure> (last visited Dec. 12, 2023).

⁴ *See* <https://www.tncourts.gov/calendar/public-meeting-notices/2012/06/01/advisory-commission-rules-practice-and-procedure-meeting> (last visited Dec. 12, 2023).

A. 2018. It was after I had taken over as liaison. There was -- meetings were open to the public, as far as I can recall. And there was a meeting that we had that there was a member of the public who had attended in person who was there and became unruly and combative with the Commission. And after that, the -- the Tennessee Supreme Court took the matter up for discussion and then the meetings were closed after that incident.

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

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

And that particular meeting there was a member of the public who attended, and he was interested in a topic that was being discussed by the Commission. And during that discussion, he was speaking kind of out of term [sic], you know, without being called on or outside of the public comment period that was allowed and essentially became very assertive with the members and -- and the meeting was stopped and he was asked to leave.

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

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

Q. Do you recall his name?

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

Q. When you say “combative,” do you mean -- what do you mean? Was it verbal combativeness --

A. Yes.

Q. -- or physical?

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

Q. Do you recall the topic?

A. No.

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

A. I believe the chair was Allen Wade then.

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

A. Yes.

Q. Were there four quarterly meetings in 2018?

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

Q. And you were at this meeting in 2018?

A. I was at that meeting, yes.

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

A. It was Justice Jeff Bivins at that time.

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

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

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

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

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

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

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

A. Yes.

Q. And who was that?

A. It was Justice Holly Kirby.

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

A. She was.

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

A. Yes, she is.

Consiglio-Young Depo., ECF No. 74-3, at p. 40, Line 15 through p. 44, Line 13.

E. After this meeting decorum breach, the AOC instituted a practice of no longer posting public notice of Advisory Commission meetings, and Defendant Long has continued this practice as Director.

And Consiglio-Young further testified as follows:

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

A. After the meeting where the person got combative -- and Justice Kirby was in attendance in that meeting, so she had seen it firsthand, the -- as far as I am aware, she took that matter back to the Supreme Court for discussion, and we at the AOC were told that the meetings would no longer be open after that. And that was really my interaction with that. They were -- I was informed that they would be closed.

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

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

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

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

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

A. No.

Id. at p. 44, Line 14 through p. 45, Line 25.

Defendant Long was aware of the AOC's practice instituted in or around 2018 of no longer posting public notice of Advisory Commission meetings, and she has continued this practice during her tenure as AOC Director, testifying as follows:

Q. And so are meetings -- is it your understanding that Advisory Commission meetings are open or closed?

A. For this particular commission, I understand the history has been that at one point they were open and at one point they were closed.

Q. And at what point is it your understanding on the history were they open?

A. It predates me. I want to say maybe 2017, 2018, but I am not certain.

Q. What is your understanding of history wise when they became closed?

A. I don't know why they became closed.

Q. I didn't say "why," I said what is your understanding of the process of getting closed and why they became closed?

A. I don't know.

Long Depo., ECF No. 74-2, p. 106, Lines 8-25.

F. In contrast to the AOC’s practice of restricting access to Tennessee Advisory Commission meetings, similar federal court rulemaking meetings have been open to the public for at least 35 years.

The federal Judicial Conference’s Committee on Rules of Practice and Procedure, (“Standing Committee”) and its five Advisory Committees “carry on a continuous study of the operation and effect” of the federal rules as directed by the Rules Enabling Act.⁵ These Advisory Committees on Criminal, Civil, Bankruptcy, Appellate, and Evidence Rules meet and evaluate proposed recommendations to the federal rules of practice and procedure.⁶

“Each meeting must be preceded by notice of the time and place, published in the Federal Register and on the judiciary’s rulemaking website, sufficiently in advance to permit interested persons to attend.”⁷ The Standing Committee and each of the Advisory Committees typically meet twice per year.⁸ Committee meetings are open to the public, except when a committee — in open session and with a majority present — determines that it is in the public interest to have all or part of the meeting closed and states the reason.⁹ A calendar of upcoming scheduled meetings

⁵ See <https://www.uscourts.gov/rules-policies/about-rulemaking-process/how-rulemaking-process-works> (last visited Dec. 13, 2023).

⁶ *Id.*

⁷ *Id.*

⁸ See <https://www.uscourts.gov/rules-policies/about-rulemaking-process/open-meetings-and-hearings-rules-committee> (last visited Dec. 13, 2023).

⁹ *Id.*

through November of 2024 are posted on a public website.¹⁰ Rules Committee meetings and hearings are open to the public and held in a hybrid format “with remote attendance options whenever possible.”¹¹

The federal court rulemaking meetings have been open to the public for at least 35 years when Congress enacted a reform statute known as the Judicial Improvements and Access to Justice Act of 1988, § 401(a), 28 U.S.C. § 2073 (c)(1).¹² And five years prior to the enactment of the statute, the Standing Committee instituted a number of internal changes in 1983 including making the records of the rules Committees available to the public, documenting all changes made by the Committees at various stages of the process, and conducting public hearings on proposed amendments.¹³ The statute requires that “[e]ach meeting for the transaction of business under this chapter by any committee appointed under this section shall be open to the public.” U.S.C. § 2073 (c)(1).

¹⁰ *Id.*

¹¹ *Id.*

¹² The effective date of the reform statute was December 1, 1988. See Judicial Improvements and Access to Justice Act of 1988, § 407, *available at* <https://www.govinfo.gov/content/pkg/STATUTE-102/pdf/STATUTE-102-Pg4642.pdf>.

¹³ Peter G. McCabe, *Renewal of the Federal Rulemaking Process*, 44 Am. U. L. Rev. 1655, n.43 (1995), *available at* https://www.uscourts.gov/sites/default/files/mccabearicle_1.pdf.

G. To comply with this Court's Preliminary Injunction, the AOC posted public notice in advance of the June and December 2023 meetings and provided virtual livestreaming access to these meetings.

In compliance with this Court's Preliminary Injunction (ECF No. 40), the AOC posted a public meeting notice on its website in advance of the June 2023 meeting and provided virtual livestreaming access to the public.¹⁴ A video of the June 9, 2023, meeting is on the TN Courts' YouTube channel.¹⁵ Approximately six months after this meeting was livestreamed, there were 95 views of the video.¹⁶ And the AOC posted a public meeting notice on its website in advance of the December 2023 meeting and provided virtual livestreaming access to the public.¹⁷ A video of the December 8, 2023, meeting is on the TN Courts' YouTube channel. Approximately five days after livestreaming the meeting, there were 62 views of the video.¹⁸

¹⁴ See <https://www.tncourts.gov/calendar/public-meeting-notices/2023/06/09/advisory-commission-rules-practice-procedure> (last visited Dec. 13, 2023).

¹⁵ See <https://www.youtube.com/watch?v=TCCkGHybsxg> (last visited Dec. 13, 2023).

¹⁶ See *id.*

¹⁷ See <https://www.tncourts.gov/calendar/public-meeting-notices/2023/12/08/advisory-commission-rules-practice-and-procedure> (last visited Dec. 13, 2023).

¹⁸ See <https://www.youtube.com/watch?v=XHY3DFF3V2E> (last visited Dec. 13, 2023).

LEGAL STANDARD

Rule 56 provides that a court “shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).

To properly support a motion, the party must cite to the record, which includes “depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials.” Fed. R. Civ. P. 56(c)(1)(A). In analyzing the motion, a court must draw all reasonable inferences in favor of the nonmoving party. *SunAmerica Hous. Fund 1050 v. Pathway of Pontiac, Inc.*, 33 F.4th 872, 878 (6th Cir. 2022).

“[W]here, as here, there is ‘a videotape capturing the events in question,’ the court must ‘view[] the facts in the light depicted by the videotape.’” *Sandmann v. N.Y. Times Co.*, 78 F.4th 319, 328-29 (6th Cir. 2023) (quoting *Green v. Throckmorton*, 681 F.3d 853, 859 (6th Cir. 2012) (quoting *Scott v. Harris*, 550 U.S. 372, 378, 381 (2007)) (second alteration in *Green*).

ARGUMENT

I. The Court should grant Plaintiff McCaleb’s motion for summary judgment because there is no genuine dispute as to any material fact that the First Amendment attaches to Advisory Commission meetings, requiring the AOC to provide public access to meetings.

The Court should grant Plaintiff McCaleb’s motion for summary judgment because there is no genuine dispute as to any material fact that the First Amendment attaches to Advisory Commission meetings, requiring the AOC to provide public access to meetings. McCaleb is entitled to a permanent injunction ordering Defendant Long to provide access to Advisory Commission meetings.

Defendant Long oversees the AOC. The AOC provides administrative support to the Advisory Commission. This includes responsibility for posting on the AOC’s website public notice of Advisory Commission meetings. Moreover, Consiglio-Young testified that the AOC instituted a practice of *not* posting public notice of Advisory Commission meetings after the 2018 incident. Defendant Long has continued this practice during her tenure as AOC Director. This practice of restricting access to meetings limits the stock of information on the state court rulemaking process from which members of the public may draw. The First Amendment attaches to meetings under *Richmond Newspapers’* “experience and logic” test. *See* 42 U.S.C. §1983.

First, under the “experience” prong, the public’s right of access for at least 35 years to similar federal court rulemaking meetings counsels that the First Amendment attaches to Tennessee Advisory Commission meetings.

Second, under the “logic” prong, as depicted by the June and December 2023 videos, public access plays a significant positive role in the functioning of meetings.

A. The Eleventh Amendment is not a bar under *Ex parte Young*.

The Eleventh Amendment does not bar McCaleb’s First Amendment right of access claim under the *Ex parte Young* doctrine and thus does not strip the Court of subject-matter jurisdiction.

“The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.” U.S. Const. amend. XI. And a suit against an official in her official capacity “is a suit against the State itself.” *Russell v. Lundergan-Grimes*, 784 F.3d 1037, 1046 (6th Cir. 2015). But under the exception in *Ex parte Young*, 209 U.S. 123 (1908), Eleventh Amendment immunity does not bar claims for injunctive relief against an individual state official in her official capacity. “In order to fall within the *Ex parte Young* exception, a claim must seek prospective relief to end a continuing violation of federal law.” *Diaz v. Mich. Dep’t of Corr.*, 703 F.3d 956, 964 (6th Cir. 2013) (internal citations omitted).

It is appropriate under *Young* to enjoin a particular state official “when there is a realistic possibility the official will take legal or administrative actions against the plaintiff’s interests.” *Russell v. Lundergan-Grimes*, 784 F.3d 1037, 1048 (6th Cir. 2015). The *Ex parte Young* doctrine does not require a causal connection between the deprivation and some specific action that a defendant took. Rather, “[a] plaintiff must allege facts showing how a state official is connected to, or has responsibility for, the alleged constitutional violations.” *Top Flight Entm’t, Ltd. v. Schuette*, 729 F.

3d 623, 634 (6th Cir. 2013). This requirement is satisfied where a state official has “some connection” to the unconstitutional legislation or other challenged action.

Allied Artists Picture Corp. v. Rhodes, 679 F. 2d 656, 665 n.5 (6th Cir. 1982).

Here, *Ex parte Young* applies, and the Eleventh Amendment does not bar McCaleb’s First Amendment right of access claim. McCaleb is seeking access to Advisory Commission meetings so he can assign reporters to report on meetings. As discussed above, Defendant Long oversees the AOC as its Director, and the AOC provides administrative support to the Advisory Commission. This support includes responsibility for posting public notice of Advisory Commission meetings.

Indeed, at times in the past, the AOC posted on its website public notice of meetings. The AOC hosted meetings in one of its conference rooms at its headquarters in Nashville, inviting the public to attend. Then the AOC stopped posting public notice of meetings after the 2018 meeting decorum breach that Consiglio-Young described.

There is no dispute that the AOC is the governmental body responsible for posting notice of Advisory Commission meetings and providing the public with virtual livestreaming access as evidenced by the fact that *the AOC did precisely that* to comply with this Court’s Preliminary Injunction.

B. The First Amendment attaches under *Richmond Newspapers*, and the AOC’s practice of restricting access to meetings limits the stock of information on state court rulemaking from which members of the public may draw.

The First Amendment right of access attaches to Tennessee Advisory Commission meetings under *Richmond Newspapers* and its progeny, and the AOC’s

practice of restricting access limits the stock of information on the state court rulemaking process from which members of the public may draw.

The U.S. Supreme Court said, “People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing.” *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 572 (1980). And it emphasized a core purpose of the First Amendment relates “to the functioning of government.” *Id. at* 575. It has further recognized that, “without some protection for seeking out the news, freedom of the press could be eviscerated.” *Branzburg v. Hayes*, 408 U.S. 665, 681 (1972). Moreover, the Supreme Court held that the First Amendment “goes beyond protection of the press and the self-expression of individuals to prohibit government from limiting the stock of information from which members of the public may draw.” *First Nat’l Bank of Bos. v. Bellotti*, 435 U.S. 765, 783 (1978).

To determine whether the First Amendment right of access attaches to a proceeding in question — in this case Advisory Commission meetings — courts apply the two-part “experience and logic” test discussed in the concurrence in *Richmond Newspapers*. See 448 U.S. at 589; see also *Detroit Free Press v. Ashcroft*, 303 F.3d 681, 683 (6th Cir. 2002). The Sixth Circuit explained that the “experience and logic” test has broad and general application and has been extended to various non-adversarial proceedings. For example, the test has been applied “to determine whether there is a right of access to civil trials, administrative hearings,

deportation proceedings, and *municipal planning meetings*.” *In re Search of Fair Fin.*, 692 F.3d 424, 429 (6th Cir. 2012) (emphasis added).

First, a court looks to a similar proceeding to see if it historically has been open to the public because “a tradition of accessibility implies the favorable judgment of experience.” *Richmond Newspapers*, 448 U.S. at 589. Second, a court determines “whether public access plays a significant positive role in the functioning of the particular process in question.” *Press-Enterprise Company v. Superior Court*, 478 U.S. 1, 8-9 (1986) (“*Press-Enter. II*”); *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 605 (1982); *see also Richmond Newspapers* 448 U.S. at 589.

1. Under the “experience” prong, the public’s right of access for at least 35 years to similar federal court rulemaking meetings counsels that the First Amendment attaches to meetings.

Under the “experience” prong, the public’s right of access for at least 35 years to similar federal court rulemaking meetings counsels that the First Amendment attaches to meetings.

The Sixth Circuit is not rigid or formulaic in determining an adequate passage of time to confer tradition under the “experience” prong and has noted that “a brief historical tradition might be sufficient to establish a First Amendment right of access where the beneficial effects of access to that process are overwhelming and uncontradicted.” *Detroit Free Press*, 303 F.3d at 701. In looking at similar proceedings, courts “should look to proceedings that are similar in *form and substance*.” *Id.* at 702. (emphasis added). “Substantively, [courts] look to other proceedings that have the same effect” when deciding if the First Amendment

attaches to the proceeding in question. *Id.* As the Sixth Circuit explained in paraphrasing the Supreme Court, it's the "walk, talk, and squawk" approach when making a comparative analysis. *Id.*

History. In terms of history, as discussed 35 years ago Congress enacted the Judicial Improvements and Access to Justice Act of 1988, § 401(a), 28 U.S.C. § 2073(c)(1). The relevant provision of the statute provided public access to various Advisory Committee meetings, the federal analogue to Tennessee's Advisory Commission. In other words, federal court rulemaking meetings have been open to the public pursuant to statute for at least 35 years. And as further discussed, before Congress formally enacted the Access to Justice statute, in 1983 the Standing Committee instituted several internal changes that had the effect of enhancing public access to federal court rulemaking. Those internal changes adopted in 1983 include making the records of the federal rules Committees available to the public, documenting all changes made by the Committees at various stages of the process, and conducting public hearings on proposed amendments. Thus, Standing Committee hearings on proposed federal court rule changes have been open to the public for 40 years.

Form. In terms of form, the Advisory Committees are comprised of members of both the bench and bar, just like Tennessee's Advisory Commission. The Supreme Court has noted this particular "bench-bar" distinction in one case explaining that its "rulemaking authority is constrained by §§ 2073 and 2074, which require, among other things, that meetings of bench-bar committees established to recommend

rules ordinarily be open to the public, § 2073(c)(1), and that any proposed rule be submitted to Congress before the rule takes effect, § 2074(a).” *Swint v. Chambers County Comm’n*, 514 U.S. 35, 48 (1995).

Substance. In terms of substance, the federal Advisory Committees are also virtually identical to Tennessee’s Advisory Commission in the areas of court rules considered. For example, both the Advisory Committees and Tennessee’s Advisory Commission meet to make recommendations on proposed changes to the practice and procedure of Criminal, Civil, Appellate, and Evidence Rules. The only difference is the federal Advisory Committees also consider proposed changes to the Bankruptcy Rules because that practice area is governed by federal law, and the Tennessee Advisory Commission makes recommendations regarding Juvenile Rules because that practice area is governed by state law.

2. Under the “logic” prong, as depicted by the June and December 2023 videos, public access plays a significant positive role in the functioning of meetings.

Under the “logic” prong, as depicted by the June and December 2023 videos, public access plays a significant positive role in the functioning of meetings.

The Sixth Circuit recently granted summary judgment in favor of news organizations in a high-profile defamation case that had First Amendment implications by viewing the facts in the light depicted by video. *See generally Sandmann*, 78 F.4th 319. And this Court should do so here as well under the “logic” prong of *Richmond Newspapers* by analyzing video on the TN Courts’ YouTube channel of the June and December 2023 Advisory Commission meetings.

*June 9, 2023, Advisory Commission Meeting.*¹⁹ All of the members participated via Zoom and the meeting was approximately 52 minutes in length. Chairman Bulso began the meeting by welcoming and recognizing new members recently appointed by the Tennessee Supreme Court to the Advisory Commission.²⁰ This included a new member from the bench, Judge Jennifer Smith of Davidson County, and at least one new member from the bar, Donald Capparella of Nashville.²¹ Chairman Bulso then turned to Supreme Court Justice Sharon Lee, who gave some remarks.²² Roll was called, and Chairman Bulso determined there was a quorum.²³

The first order of business was for the members to approve the minutes of the previous two meetings. A vote was taken, and the minutes were approved.²⁴ The first action item was regarding discussion on proposed amendments to Rule 43.01 of the Tennessee Rules of Civil Procedure.²⁵

The members engaged in thoughtful, open, and candid discussion on the work the various subcommittees had been involved in, and the meeting overall was conducted in a professional manner and proper decorum was displayed at all times.

¹⁹ See <https://www.youtube.com/watch?v=TCCkGHybsxg>.

²⁰ See *id.* beginning at :23.

²¹ *Id.*

²² See *id.* beginning at 1:05.

²³ See *id.* beginning at 2:10.

²⁴ See *id.* beginning at 3:01.

²⁵ See *id.* beginning at 3:51.

*December 8, 2023, Advisory Commission Meeting.*²⁶ All of the members participated via Zoom, and the meeting was approximately 1 hour and 17 minutes in length. Chairman Bulso conducted the meeting in similar professional fashion as the June meeting. The first action item was a proposal to amend Rule 22 of the Tennessee Appellate Rules of Procedure, and a spirited discussion ensued, with various members weighing in with frank, candid, and thoughtful comments.²⁷

Here, as depicted by the June and December 2023 videos, public access plays a significant positive role in the functioning of Tennessee's Advisory Commission meetings.

First, public access acts as a check on the actions of the state judiciary by assuring citizens that state court proceedings will be conducted fairly and properly. *See Richmond Newspapers*, 448 U.S. at 569 (noting that public access assures that proceedings are conducted fairly and discourages decisions based on secret bias or partiality). In an area such as making recommendations on state court rules, the public and press serve as perhaps the only check on abusive government practices regarding proposed court rules of practice and procedure. For example, the criminal rules of procedure are of significant consequence in the administration of justice. And this check encourages the promulgation of better and more enlightened court rules.

²⁶ *See* <https://www.youtube.com/watch?v=XHY3DFF3V2E>.

²⁷ *See id.* beginning at 6:44.

Second, public access helps ensure that “the individual citizen can effectively participate in and contribute to our republican system of self-government.” *Globe Newspaper*, 457 U.S. at 604. “[A] major purpose of [the First Amendment] was to protect the free discussion of governmental affairs.” *Id.* Public access to Advisory Commission meetings helps inform the public of the affairs of state government including its judiciary and the state court rulemaking process.

Third, openness enhances transparency and the public’s perception of integrity and fairness. Confidence in the state court system increases with open access to meetings because the perception is “that established procedures are being followed and that deviations will become known.” *See Press-Enterprise Co. v. Superior Court of Ca.*, 464 U.S. 501, 508 (1984).

Fourth, unlike a situation involving sensitive information like in *In re Search of Fair Finance*, 692 F.3d at 433, there are no potential harms from opening Advisory Commission meetings because state court rules of practice and procedure are contained within the public domain.

Finally, videos of the two Advisory Commission meetings that were livestreamed to the public in June and December reflect members engaging in candid and open dialogue in their attempt to fashion better state court rules. Just like members in open federal court rulemaking meetings have been doing for nearly 40 years.

II. The AOC's practice of restricting public access to Advisory Commission meetings in the interest of maintaining meeting decorum is not a compelling governmental interest that is narrowly tailored to overcome strict scrutiny.

The AOC's practice of restricting public access to Advisory Commission meetings in the interest of maintaining meeting decorum is not a compelling governmental interest that is narrowly tailored to overcome strict scrutiny.

Under *Globe Newspaper*, strict scrutiny applies to a government action that curtails a First Amendment right of access, and it must be supported by a showing "that denial is necessitated by a compelling governmental interest, and is narrowly tailored to serve that interest." 457 U.S. at 606-07.

To be sure, proper etiquette and decorum are important when it comes to the public observing a government function such as an Advisory Commission meeting. But maintaining proper meeting decorum is not a compelling governmental interest here, particularly since Consiglio-Young testified that the 2018 incident did not involve any physical acts toward members. Instead, that meeting decorum breach by a member of the public was entirely "verbal."

Moreover, while removing the individual from the AOC's conference room in 2018 may have been appropriate, completely closing meetings to the public was not a narrowly tailored response. And now with the AOC's utilization of Zoom and livestreaming, which allows the public to observe *virtually*, a potential meeting decorum breach is not even an issue.

CONCLUSION

For these reasons, Plaintiff McCaleb requests that the Court grant his Motion for Summary Judgment and enter a permanent injunction, ordering Defendant Long and the AOC to provide public access to meetings of the Advisory Commission.

December 15, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, counsel for Plaintiff Dan McCaleb, hereby certify that a true and correct copy of the foregoing document has been served on the following counsel of record, via the Court's ECF system by email on this 15th day of December 2023:

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