

IN THE UNITED STATES DISTRICT 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 RESPONSE IN OPPOSITION TO NON-PARTY TENNESSEE
SUPREME COURT JUSTICES' MOTION TO QUASH
SUBPOENA OR FOR PROTECTIVE ORDER**

Respectfully submitted,

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INTRODUCTION

Plaintiff Dan McCaleb, Executive Editor of The Center Square, responds in opposition to the Motion to Quash Subpoena or Protective Order (ECF No. 60) filed by Tennessee Supreme Court Chief Justice Holly Kirby, Justice Jeffrey Bivins, Justice Roger Page, and Special Justice Sharon Lee (collectively the “Justices”), all of whom are non-parties to this case. The Justices’ remote depositions via Zoom are scheduled to begin this morning at 9:00 am CDT, continuing for the following three days. The Justices do not contest service of the four subpoenas and notices of deposition (collectively the “Subpoena”) served upon them on October 31, 2023.

However, in their Motion filed on Thanksgiving Eve — 22 days after being served with the Subpoena and 1 business day before the first scheduled deposition — the Justices contend the Subpoena should be quashed pursuant to Rule 45 or, in the alternative, the Court should enter a protective order under Rule 26. In the Justices’ view the Subpoena compelling their deposition testimony seeks “privileged and protected matters,” and is unduly burdensome given their “lack of factual knowledge regarding the underlying litigation.” ECF No. 60, PageID #1217.

But the Justices possess relevant “firsthand” knowledge of the advisory commission, which forms the underlying basis of this lawsuit. McCaleb claims a First Amendment right of access to advisory commission meetings. And the Supreme Court, including the Justices, appoint members to this commission, who then meet and make recommendations to the Justices on court rules of practice and procedure. Their Motion is unavailing, and this Court should deny it in its entirety.

BACKGROUND

A. Plaintiff McCaleb's First Amendment Right of Access Claim to Advisory Commission Meetings and Defendant Long's Defenses

On June 30, 2022, Plaintiff McCaleb filed his First Amended Complaint (“Compl.”) against Defendant Michelle Long, in her official capacity as Director of the Administrative Office of the Courts (“AOC”). Compl., ECF No. 19. McCaleb sought declaratory and injunctive relief, which included a Section 1983 and First Amendment right of access claim to state court rulemaking meetings of the Tennessee Advisory Commission on the Rules of Practice & Procedure (“Advisory Commission”), created by Tenn. Code Ann. § 16-3-601. *Id.*¹

Tennessee’s Supreme Court appoints members to the Advisory Commission, “whose duty shall be to advise the [Justices and Supreme Court] from time to time respecting the rules of practice and procedure.” *See* Tenn. Code Ann. § 16-3-601(a). Under Defendant Long’s direction, the AOC provides logistical and administrative support to the Advisory Commission. *See* Tenn. Code Ann. § 16-3-601(d). AOC employee Michelle Consiglio-Young is the liaison to the Advisory Commission, and she provides administrative support to assist the Commission’s members in discharging their duties. Memorandum Opinion, ECF No. 39, PageID #1089.

McCaleb sought public access to these Advisory Commission meetings under the “experience and logic test” first articulated by the United States Supreme Court in

¹ McCaleb amended his complaint and requested access to rulemaking meetings of the (1) Advisory Commission, as well as the (2) Tennessee Judicial Conference (TJC) committees, created by Tenn. Code Ann. § 17-3-101, et seq. Compl., ECF No. 19.

Richmond Newspapers and later adopted in its subsequent precedents. Compl., ECF No. 19. Specifically, McCaleb argued pursuant to the “experience and logic test” that, because the federal analogue to the Advisory Commission had opened its rulemaking meetings to the public over 34 years ago, history, tradition, and the favorable judgment of experience counsel that the First Amendment attaches to Tennessee Advisory Commission meetings, and the meetings should also be open to the public as well, absent a compelling governmental reason that is narrowly tailored. *See id.* And McCaleb requested “a preliminary injunction, later to be made a permanent injunction, ordering Director Long to provide him with both virtual and in-person access so he can assign reporters to report on future meetings” of the Advisory Commission. *Id.*, at PageID #149, B.

In her Answer in response to McCaleb’s allegations that Advisory Commission meetings were “closed to the public and press,” Director Long “Denied” that these meetings were closed. Answer, ECF No. 48, PageID #1126, ¶30; Compl., ECF No. 19, PageID #137, ¶30. As part of her theories and defenses to McCaleb’s First Amendment right of access claim to meetings, Director Long contends that under *Richmond Newspapers’* two-part test, “there is no historically recognized right of access to the Tennessee Advisory Commission on the Rules of Practice & Procedure.” Initial Case Mgt. Order, ECF No. 50, PageID #1147.

Although in her Answer she “Denied” that Advisory Commission meetings were closed to the public and press, in her recent deposition last month Director Long testified that meetings were open to the public in the past, but at some point, before

her tenure they became closed. Director Long further testified she does not know why meetings became closed. Excerpts from Director Long's relevant deposition testimony ("Long Depo.") are attached as **Exhibit 1** and set forth below:

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.

Exhibit 1, Long Depo., p. 106, Lines 8-25.

B. The Court's Preliminary Injunction Issued on March 22, 2023

On March 22, 2023, effective at 3:00 pm, along with its Memorandum Opinion (ECF No. 39), the Court issued an Order And Preliminary Injunction (ECF No. 40), finding that McCaleb had shown a likelihood of success on the merits of his First Amendment right of public access claim to Advisory Commission meetings. In its Order And Preliminary Injunction, the Court said:

It is, therefore, **ORDERED** that, pursuant to Federal Rule of Civil Procedure 65, Defendant and her officers, agents, employees, servants, attorneys, and all persons in active concert or participation with them are hereby **ENJOINED** and **RESTRAINED** from:

Holding future meetings of the Tennessee bench-bar advisory commission established to recommend rules without providing the public with access either via livestreaming or in-person attendance; provided, however, that such access may be denied with respect to a particular meeting, such that the meeting is closed in whole or in part on a case-specific basis; based on a particular stated reason that purportedly justifies such closure; provided further, however, that any such disclosure shall be separately subject to challenge in its own right by any party with standing to do so.

Defendant is **FURTHER ORDERED** to provide notice of this Order to her officers, directors, agents, servants, representatives, attorneys, employees, and affiliates, and those persons in active concert or participation with them. Defendant shall take whatever means are necessary or appropriate to ensure proper compliance with this Order. ECF No. 40, PageID ##1103-04.

C. The Depositions Thus Far Including Advisory Commission Chair Gino Bulso, and AOC Liaison Michelle Consiglio-Young

The parties have taken seven (7) total depositions thus far, as follows:

- October 3, 2023 (remote) – Prof. Benjamin Barton, Plaintiff’s Expert
- October 9, 2023 (in-person) – Gino Bulso, Chair Advisory Commission
- October 13, 2023 (remote) – Plaintiff Dan McCaleb
- October 24, 2023 (in-person) – AOC Deputy Director Rachel Harmon
- October 25, 2023 (in-person) – Defendant AOC Director Michelle Long

- November 16, 2023 (in-person) – AOC liaison Michelle Consiglio-Young
- November 21, 2023 (remote) – Lang Wiseman, Defendant’s Expert

Relevant excerpts from the depositions given by Gino Bulso, Chair of the Advisory Commission (“Bulso Depo.”), attached as **Exhibit 2**, and Michelle Consiglio-Young, (“Consiglio-Young Depo.”), attached as **Exhibit 3**, with respect to whether meetings have historically been open to the public or closed, as well as the Tennessee Supreme Court’s and Justices’ involvement with the Commission, are as follows:

Gino Bulso, Chair Advisory Commission

Q. Can you describe the commission?

A. A commission is a group of attorneys and judges appointed by the Tennessee Supreme Court pursuant to 16-3-601 to assist it in modifying Rules of Civil and Criminal Procedure.

Exhibit 2, Bulso Depo., p. 18, Lines 2-6.

Q. From 2016 through 2022, during your time serving on the commission, were any of those meetings ever open to the public?

A. I'm not sure.

Id., p. 28, Lines 17-20.

Q. Okay. I think you said -- I want to make sure I understood this. Did you say in your earlier testimony that you serve at the pleasure of the Tennessee Supreme Court?

A. I did say that.

Q. Is that language, is that in the statute?

A. Yes.

Q. It is?

A. It is implicitly in 16-3-601.

Q. I think, as I recall, the AOC director uses that language, "Serves at the pleasure of the chief justice of the Supreme Court"; would that be correct?

A. I don't know.

Q. But you're saying implicitly, you, as the chair -- who do you serve at the pleasure of, the Supreme Court or the Chief Justice?

A. The Supreme Court.

Id., p. 68, Lines 6-22.

Q. How do you communicate with your Supreme Court liaison? Do you do it while you're at the meeting or at a later time?

A. By telephone, typically.

Q. Who was the Supreme Court liaison in 2022 from the Supreme Court?

A. Justice Lee.

Q. How often did you communicate by telephone with Justice Lee during the 2022 calendar year?

A. Likely once or twice.

Q. Once or twice?

A. (Witness nods head up and down.)

Q. Do you recall what the nature of those calls were about?

A. Yes. Questions about reappointment as chair. Reappointment to the commission.

Q. Why would you communicate with Justice Lee about that, those issues?

A. Because it's -- the Supreme Court appoints the members of the commission. It's the Supreme Court who appoints the chair, the vice chair, the reporter, and the other offices of the commission.

Id., p. 69, Line 17 through p. 70, Line 13.

Michelle Consiglio-Young, AOC Liaison to the Advisory Commission

Q. Let's kind of backtrack a little bit. So I think you said 2015 to 2016 you sat in on some meetings?

A. Uh-huh.

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

A. Yes.

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

A. I believe it was 2018.

Q. I'm sorry?

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, 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.

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.

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

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

Q. Where are the minutes kept?

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

Exhibit 3, Consiglio-Young Depo., p. 40, Line 8 through p. 46, Line 12.

D. Administrative Order No. 102 Issued on October 17, 2023, Closing Court for the Thanksgiving Holiday on November 23 and 24

On October 17, 2023, the United States District Court for the Middle District of Tennessee in the matter of *IN RE: 2023 Holiday Schedule*, Administrative Order No. 102 (M.D. Tenn. Oct. 17, 2023), issued the Court's holiday schedule, and it was signed by Chief Judge Waverly D. Crenshaw, Jr. and District Court Judges Aleta A. Trauger, William L. Campbell, Jr., and Eli Richardson. Administrative Order No. 102 is attached as **Exhibit 4**, and it said in relevant part:

It is hereby ORDERED that the United States District Court for the Middle District of Tennessee, including the Clerk's Office and the United States Probation Office, will be closed on the following dates:

Thursday, November 23, 2023, and Friday, November 24, 2023

Pleadings or other documents required to be filed on the dates listed above will be treated as timely filed if filed on the next business day after the required date.

It is so ORDERED.

E. The Subpoena Served on October 31, 2023, for the Justices' Remote Depositions Noticed for November 27, 28, 29, and 30

On October 31, 2023, McCaleb's counsel served four subpoenas and notices of remote Zoom depositions of the Justices for November 27-30, 2023. These documents

and the Subpoena were initially served upon Defendant Long's counsel, who represented to Plaintiff's counsel that they would accept service on behalf of the Justices. Attached as **Exhibit 5** is the Declaration of James McQuaid ("McQuaid Decl."), pro hac vice attorney of record on behalf of Plaintiff McCaleb in this case, along with these supporting documents. Moreover, attached as **Exhibit 6** is the Declaration of Buck Dougherty, lead counsel and attorney of record on behalf of Plaintiff McCaleb in this case, along with records documenting \$40 checks were tendered to the Justices' counsel for attendance at their noticed depositions.

F. The Justices' Motion to Quash Subpoena Filed on Thanksgiving Eve

On Thanksgiving Eve, November 22, 2023, at approximately 11:43 am CDT, the Justices filed their Motion to Quash their depositions. ECF No. 60. Accompanying their Motion was a supporting Memorandum of Law (ECF No. 61), Plaintiff's Rule 26 Initial Disclosures served on May 19, 2023 (ECF No. 61-1), four Affidavits signed and dated by the Justices (ECF No. 61-2), Plaintiff's First Supplemental Response to Interrogatories (ECF No. 61-3), excerpts from Plaintiff McCaleb's deposition (ECF No. 61-4), and excerpts from Rachel Harmon's deposition (ECF No. 61-5).

In the Memorandum in support of their Motion to Quash, they said, "Even in the pursuit of factual information (as opposed to judicial motivations), the subpoenaed depositions pose an undue burden weighed against the Justices' lack of factual knowledge relevant to the underlying litigation." ECF No. 61, PageID # 1221-22.

LEGAL STANDARD

A. Rule 45

Under the Federal Rules of Civil Procedure, Rule 45 provides the legal vehicle for quashing a subpoena: On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

Fed. R. Civ. P. 45(d)(3)(A); *see* Fed. R. Civ. P. 30(a)(1) (providing that a party may depose any person, and their “attendance [at a deposition] may be compelled by subpoena under Rule 45”). The decision to quash a subpoena lies within the sound discretion of the trial court. *Thomas v. City of Cleveland*, 57 F. App'x 652, 654 (6th Cir. 2003) (citing *Ghandi v. Police Dep't*, 747 F.2d 338, 354 (6th Cir. 1984)).

“A nonparty seeking to quash a subpoena bears the burden of demonstrating that the discovery should not be permitted.” *Sinclair v. Lauderdale Cnty.*, 2015 U.S. Dist. LEXIS 37081, *7 (W.D. Tenn. Mar. 24, 2015) (quoting *In re Smirman*, 267 F.R.D. 221, 223 (E.D. Mich. May 12, 2010)). Even though courts “consider one’s status as a nonparty to be a significant factor in the undue-burden analysis,” the nonparty still bears the burden of demonstrating that the discovery sought should not be permitted. *Sinclair*, 2015 U.S. Dist. LEXIS at *9 (cleaned up). “The quashing of a subpoena and the complete prohibition of a deposition are certainly

extraordinary measures which should be resorted to only in rare occasions.”

Bickford v. Lifecare Ctr. of Am., 2008 U.S. Dist. LEXIS 127183, *4 (E.D. Tenn. Aug. 7, 2008) (quoting *Alexander v. F.B.I.*, 186 F.R.D. 60, 64 (D.D.C. Jun. 15, 1998)). “It is very unusual for a court to prohibit the taking of a deposition altogether and absent extraordinary circumstances, such an order would likely be in error.” *Salter v. Upjohn Co.*, 593 F.2d 649, 651 (5th Cir. 1979).

B. Rule 26

Rule 26 provides for broad and ample discovery relevant to the parties’ claims and defenses and states:

Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

Fed. R. Civ. P. 26(b)(1). Courts may issue a protective order from annoyance, embarrassment, oppression, or undue burden or expense, upon good cause and a “clearly defined and serious injury.” Fed. R. Civ. P. 26(c)(1); *Nix v. Sword*, 11 Fed. Appx. 498, 501 (6th Cir. 2001). “The party requesting a protective order must make a specific demonstration of facts in support of the request as opposed to conclusory or speculative statements about the need for a protective order and the harm which will be suffered without one.” *Alexander*, 186 F.R.D. at 64.

ARGUMENT

I. The Court should deny the Justices’ Motion to Quash Subpoena under Rule 45 and for a Protective Order under Rule 26 because they failed to show why their depositions should not be permitted.

The Court should deny the Justices’ Motion to Quash Subpoena under Rule 45 and for a Protective Order under Rule 26 because they failed to show why their depositions should not be permitted. Their Motion (1) is untimely and unreasonable because it was filed 1 business day before the depositions were scheduled to begin, and no reason was provided why they waited; (2) they lack standing as a non-party to quash the Subpoena on relevancy grounds; (3) their Affidavits are facially invalid; and (4) the Subpoena does not subject the Justices to an undue burden because they have “firsthand” and unique knowledge of Advisory Commission meetings according to Michelle Consiglio-Young’s testimony.²

A. The Justices’ Motion is untimely and unreasonable because it was filed 1 business day before the depositions were to begin, and they provided no reason why they waited.

The Justices’ Motion filed on Thanksgiving Eve, November 22, 2023 — 22 days after being served with the Subpoena and 1 business day before the first scheduled deposition — is untimely and unreasonable.

Although Rule 45 does not define when a motion to quash is “timely,” this Court has denied a motion to quash depositions and for a protective order when the motion was filed one business day before the depositions were to begin. *Save on*

² In their Motion, the Justices do not argue that they did not have reasonable time to comply with the Subpoena, nor that it requires them to go beyond the geographical limits specified in Rule 45(c). *See* Fed. R. Civ. P. 45(d)(3)(A)(i) and (ii).

Energy Sys. v. Energy Automation Sys., 2009 U.S. Dist. LEXIS 82505, *4-5 (M.D. Tenn. Sep. 10, 2009). That case provides a good fit here because the motion to quash there was filed just prior to the Labor Day holiday, “effectively one business day before the depositions were scheduled to begin.” *Id.* at *2-3. In denying the motion to quash, this Court was troubled by the failure of the movant to offer “absolutely no explanation why they waited” to move to quash when they had plenty advance notice of the scheduled depositions. *Id.* at *4.

Here, in their Memorandum the Justices concede the Subpoena was “served on October 31, 2023, commanding each Justice to appear for deposition in this lawsuit between November 27-30, 2023.” ECF No. 61, PageID #1220. In the matter of *IN RE: 2023 Holiday Schedule*, this Court provided public notice on October 17, 2023, that Court would be closed on Thursday, November 23, 2023, and Friday, November 24, 2023, meaning the “next business day” would be Monday, November 27, 2023, the first day depositions were scheduled to begin. See **Exhibit 4**. Justice Page signed his Affidavit on November 20, 2023.³ ECF No. 61-2, PageID ##1250-51. Chief Justice Kirby, Justice Bivins, and Special Justice Lee signed their Affidavits on November 21, 2023. *Id.* at PageID ##1252-57. But they do not say why they waited until Thanksgiving Eve to file. It was untimely and unreasonable for the Justices to wait until November 22, 2023, to move to quash “effectively one business day before

³ On the same day Justice Page executed his Affidavit, the AOC announced his retirement on its webpage. See <https://www.tncourts.gov/press/2023/11/20/justice-page-announces-august-2024-retirement> (last visited November 26, 2023).

the depositions were scheduled to begin” and offer “absolutely no explanation why they waited.” See *Energy Automation Sys.*, 2009 U.S. Dist. LEXIS at *2-4.

B. As non-parties to this case, the Justices do not have standing to quash the Subpoena on relevancy grounds.

As non-parties to this case, the Justices’ Motion is improper and must fail because they do not have standing to quash the Subpoena on relevancy grounds.

This Court previously expressed that it “has serious questions about whether a non-party can, under normal circumstances, raise lack of relevancy in a motion to quash.” *MCS Music Am. v. Yahoo!, Inc.*, 2010 U.S. Dist. LEXIS 155580, *4 (M.D. Tenn. Aug. 17, 2010). This reasoning is guided by common sense because a non-party “generally has no interest in the outcome” of a case. *Ghandi v. Police Dep’t of City of Detroit*, 74 F.R.D. 115, 123 (E.D. Mich. Mar. 14, 1977) (citing *Cooney v. Sun Shipbuilding & Dry-dock Co.*, 288 F. Supp. 708, 717 (E.D. Pa. Jul. 26, 1968)). In other words, because a non-party has no interest in the outcome, it would be illogical to allow them to quash on relevancy grounds and thus dictate to *actual parties before the Court* whether the discovery sought is relevant. That is left to the parties, and “relevancy” is not the concern of non-parties attempting to quash, who have no interest in the outcome of a case. See Fed. R. Civ. P. 45(d)(3)(A)(i)-(iv).

But as non-parties the Justices attempt to do what this Court said it had “serious questions about” by raising “lack of relevancy” in moving to quash. The Justices argue in their Memorandum that the Subpoena should be quashed because “the subpoenaed depositions pose an undue burden weighed against the Justices’ lack of factual knowledge *relevant* to the underlying litigation.” ECF No. 61, PageID # 1221-22

(emphasis added). Their Motion fails because they do not have standing to quash the Subpoena on relevancy grounds. *See Yahoo!, Inc.*, 2010 U.S. Dist. LEXIS at *4.

C. The supporting “Affidavits”— the instruments themselves — appear to be a hybrid of a sworn Affidavit and unsworn Declaration, do not contain a notary public’s signature in ink and affixed official seal, and are facially invalid under Tennessee law.

Their Affidavits — the instruments themselves — are facially invalid under Tennessee law. Thus, the statements contained within these defective instruments in support of the Motion to Quash Subpoena may not be considered by the Court.⁴

Under well-settled precedents of the Tennessee Supreme Court, the word “affidavit,” *ex vi termini*, means an oath reduced to writing. *See Grove & Jenkins v. Campbell*, 17 Tenn. 7, 10 (Tenn. 1836). Tennessee law provides that a notary public is authorized to act in any county in the state and has the power to acknowledge signatures upon personal knowledge or satisfactory proof, to administer oaths, to take depositions, qualify parties to bills in chancery, and to take affidavits. Tenn. Code Ann. § 8-16-112. A notary public must sign all documents in ink by his or her own hand, and affix the notary’s official seal. Tenn. Code Ann. *Id.* The official signature of the notary should reflect the notary’s title as a notary public for the State of Tennessee. Tenn. Code Ann. § 8-16-113.

⁴ To be clear, McCaleb’s argument here is with the defective instruments themselves, and not directed at the statements made by the Justices contained within the instruments. McCaleb takes no position on the actual statements made by the Justices that are embodied within the instruments, other than to argue that the instruments themselves are procedurally defective under Tennessee law.

When a “sworn declaration, verification, certificate, statement, oath, or affidavit,” is required to support the truth of a matter at issue, federal law provides that an “unsworn declaration, certificate, verification, or statement, in writing by such person which is subscribed by him, as true under penalty of perjury, and dated,” may be used in lieu of the sworn instrument. 28 U.S.C. § 1746; *see also* Tenn. R. Civ. P. 72 (Advisory Commission Comments [2011] “Rule 72 is intended to make the practice pursuant to the Tennessee Rules of Civil Procedure consistent with the practice in the federal courts in accordance with 28 U.S.C. § 1746.”).⁵

Here, the Justices’ supporting instruments all use the express word, “Affidavit,” in bold in the caption. The body of the instruments contains the state and county and includes the same introductory language that the Justices are “affiant[s],” and acknowledge that “after being duly sworn,” they make their “statements under oath.” ECF No. 61-2, PageID ##1249-57. All of the Justices used “DAVIDSON COUNTY, TENNESSEE,” as the designated county in these instruments (ECF No. 61-2, PageID ##1250, 1252, 1256), with the exception of Special Justice Lee, who used “KNOX COUNTY, TENNESSEE.” ECF No. 61-2, PageID #1254. The Justices conclude each of their statements by stating, “FURTHER THE AFFIANT SAYETH NOT.” ECF No. 61-2, PageID ## 1251, 1253, 1255, 1257. Then following their statements each Justice said, “Pursuant to 28 U.S.C. §1746, I declare under penalty

⁵ The “Advisory Commission” referenced in this citation to Tenn. R. Civ. P. 72 is the same Advisory Commission appointed by the Tennessee Supreme Court to make court rule recommendations to them, that is at issue in this case in which Plaintiff is seeking access to the Commission’s meetings under the First Amendment so he can assign reporters to report on meetings.

of perjury that the foregoing is true and correct.” And they each dated and signed their respective instruments with “wet signatures.” ECF No. 61-2, PageID ## 1251, 1253, 1255, 1257. There was no name or title of a Tennessee notary public who administered the oaths to the Justices, no signature by a notary public in ink by his or her own hand, and there was no notary’s official seal affixed to the instruments.

The Fifth Circuit Court of Appeals addressed a similar issue that is applicable here in this instance in *Stokes & Spiehler Onshore, Inc. v. Ogle (In re Wave Energy)*, 467 Fed. Appx. 248 (5th Cir. 2012). In that case, the court held that the notary public’s statement in an affidavit was insufficient under Texas law, thus invalidating the affidavit.⁶

Under Tennessee law, the Justices’ Affidavits are defective and invalid because they do not contain the required notary public’s signature in ink by his or her own hand who administered the oath, nor do they contain an affixed notary public’s official seal. *See* Tenn. Code Ann. § 8-16-112. And including in their “hybrid” Affidavits statutory language from 28 U.S.C. §1746 regarding unsworn statements does not transform the Justices’ “sworn” Affidavits into “unsworn” Affidavits. While there are valid instruments such as an “unsworn declaration, certificate, verification, or statement,” there is no such “unsworn affidavit” that is recognized as a valid instrument. *See* 28 U.S.C. §1746; *see also* *Grove & Jenkins*, 17 Tenn. at 10. And the express substance, character, and nature of the Justices’ supporting

⁶ Texas law required that an affidavit contain a certification by a notary public who had administered the oath, which is known as the “jurat.” *Id.* at 250.

instruments were clearly intended to be “sworn Affidavits,” not unsworn affidavits, declarations, certificates, verifications, or statements. *See* 28 U.S.C. §1746; ECF No. 61-2, PageID ##1249-57.

D. The Subpoena does not subject the Justices to an undue burden because they are fact witnesses with relevant “firsthand” and unique knowledge of Advisory Commission meetings according to Michelle Consiglio-Young’s testimony.

The Subpoena does not subject the Justices to an undue burden because they are fact witnesses with relevant “firsthand” and unique knowledge of Advisory Commission meetings according to Michelle Consiglio-Young’s testimony.

The Sixth Circuit has rejected the “apex doctrine” and simply applied the Federal Rules of Civil Procedure to protect a person from a deposition, so long as the person shows “a particular and specific demonstration of fact, as distinguished from stereotyped and conclusory statements.” *Serrano v. Cintas Corp.*, 699 F.3d 884, 901 (6th 2012) (citing *Nemir v. Mitsubishi Motors Corp.*, 381 F.3d 540, 550 (6th Cir. 2004) (quoting *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 102 n.16 (1981))). The Sixth Circuit has never applied such a doctrine to government officials and defers to Rules 26 or 45 as applicable. *See Serrano v. Cintas Corp.*, 699 F.3d at 901.

Here, the Justices argue that they do not possess relevant factual information. For support, the Justices point to the deposition of Rachel Harmon — Deputy Director of the AOC. Their theory supporting why they should not be deposed is that Harmon testified that “Michelle Consiglio-Young is the AOC employee who has the most knowledge of what takes place at Advisory Commission meetings.” ECF No. 61, PageID #1231. But Consiglio-Young’s deposition testimony *does not support*

their argument. Rather, her testimony *undercuts* the Justices' argument that they should be shielded from giving their depositions. See **Exhibit 3**, Consiglio-Young Depo., p. 40, Line 8 through p. 46, Line 12.

First, Consiglio-Young testified that, after the 2018 public Advisory Commission meeting when the gentleman became verbally combative and disruptive, the Tennessee Supreme Court took the matter up for discussion and then the meetings were closed after that incident. According to their bios on the AOC webpage, Chief Justice Kirby, Justices Bivins and Page, and Special Justice Lee all served on the Tennessee Supreme Court in 2018 during the time of this incident.⁷

Second, Consiglio-Young testified that current Chief Justice Kirby was the Supreme Court liaison in 2018 and was at that specific public Advisory Commission meeting involving the verbally combative man and had “firsthand” knowledge of this incident. Chief Justice Kirby confirmed that she was in fact Supreme Court liaison to the Advisory Commission in 2018. ECF No. 61-2, PageID #1256.

Third, Consiglio-Young testified that Justice Bivins was the Chief Justice during the time of this incident in 2018 when the Supreme Court “took the matter up for discussion and then the meetings were closed after that incident.”

Fourth, as one of her theories and defenses, Director Long has squarely injected into this case whether there is a “historically recognized right of access to the

⁷ (Chief Justice Kirby) <https://tncourts.gov/courts/supreme-court/judges/holly-kirby>
(Justice Bivins) <https://tncourts.gov/courts/supreme-court/judges/jeffrey-s-bivins>
(Justice Page) <https://tncourts.gov/courts/supreme-court/judges/roger-page>
(Special Justice Lee) <https://www.tncourts.gov/press/2022/11/15/justice-lee-announces-august-2023-retirement>

Tennessee Advisory Commission on the Rules of Practice & Procedure.” Initial Case Mgt. Order, ECF No. 50, PageID #1147. But she also does not know about the historical nature of meetings and whether they were open or closed to the public because that predates her tenure as AOC Director according to her testimony. Moreover, under *Richmond Newspapers* and its progeny, once the First Amendment attaches to meetings, the government must come forward with a compelling governmental reason that is narrowly tailored why meetings should be closed. And from his excerpted testimony, Chairman Bulso likewise does not know if Advisory Commission meetings historically have been open or closed, and Chairman Wade did not make the decision in 2018 to close meetings according to Consiglio-Young.

Finally, Consiglio-Young provided compelling testimony involving the 2018 incident, narrowing the issues in dispute over the historical nature of open and closed meetings. But she also pointed directly back at the Justices since they “took the matter up for discussion and then the meetings were closed after that incident.”

II. Plaintiff McCaleb and Defendant Long have agreed to a Case Management Order entered by this Court, which would be severely impacted by quashing or delaying the depositions.

Plaintiff and Defendant have agreed to the Initial Case Mgt. Order, ECF No. 50, and Modified Case Mgt. Order, ECF No. 58, which would be severely impacted by quashing or delaying the depositions. The discovery cutoff deadline is November 30, 2023; the dispositive motion deadline is December 15, 2023; and trial is May 7, 2024.

CONCLUSION

For these reasons, the Justices’ Motion to Quash Subpoena should be denied.

November 27, 2023

Respectfully submitted,

/s/ M. E. Buck Dougherty III

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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 27th day of November 2023:

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Exhibit

1

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
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I N D E X

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E X H I B I T S

(None marked.)

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

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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 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 serving 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 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 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 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 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 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 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 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 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 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 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 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 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 reality 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 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 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 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 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. 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 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 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 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 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

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.)

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REPORTER'S CERTIFICATE

STATE OF TENNESSEE

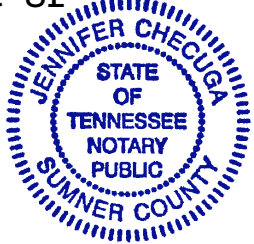
COUNTY OF SUMNER

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

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

I further certify that in order for this document to be considered a true and correct copy, it must bear my original signature and that any unauthorized reproduction in whole or in part and/or transfer of this document is not authorized, will not be considered authentic, and will be in violation of Tennessee Code Annotated 39-14-104, Theft of Services.

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LCR #690 - Expires: 6/30/2024

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Exhibit

2

MCCALEB

vs.

LONG

GINO BULSO

October 09, 2023



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

The deposition of GINO BULSO was taken by counsel for the Plaintiff, by Notice, at the John Sevier State Office Building, 500 Dr. Martin Luther King, Jr. Boulevard, Nashville, Tennessee, on October 9, 2023, 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 question, are reserved for 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 SABA MC KINLEY, LCR, RPR, CRI, may swear the witness, and that the reading and signing of the completed deposition by the witness are waived.

1 * * *

2 GINO BULSO,

3 was called as a witness, and after having been first
4 duly sworn, testified as follows:

5
6 EXAMINATION

7 QUESTIONS BY MR. DOUGHERTY:

8 Q Good morning, Mr. Bulso.

9 A Good morning.

10 Q Have you ever had your deposition taken before
11 today?

12 A Yes.

13 Q When was that?

14 A Several times.

15 Q Can you recall those times and in what -- what
16 the reason was?

17 A Sure. I believe I gave several depositions in
18 litigation with a adverse party named Ken Nelson, who
19 was a defendant in a fraudulent transfer case that I
20 filed. He filed some type of an action against me, and
21 I think there were one or two depositions in that case.

22 Q And that litigation that was filed by
23 Mr. Nelson, that was against you in your capacity as an
24 attorney?

25 A Yes and no. I was an attorney. He sued me as

1 a party, claiming some type of malicious prosecution.

2 Q Okay.

3 A And it was a deposition that was given, I
4 think, here in Nashville. At some point, the case was
5 dismissed and refiled in Wisconsin. Before that case
6 was dismissed, I may have testified again. And then
7 there was another action brought by parties from
8 San Francisco in which I was deposed.

9 MR. DOUGHERTY: I tell you what. Let's go off
10 the record for a second.

11

12 (Discussion off the record)

13

14 BY MR. DOUGHERTY:

15 Q Mr. Bulso, I appreciate that. I should have
16 probably clarified.

17 You're an attorney; is that correct?

18 A Yes.

19 Q When I asked that question, I was referring to
20 you specifically being part of a deposition, giving your
21 deposition.

22 Did you understand that correctly?

23 A Yes.

24 Q Okay. I'll try to clarify that next time.

25 Do you understand, Mr. Bulso, that you are

1 under oath here today?

2 A Yes.

3 Q Are you prepared to answer the questions that I
4 ask of you today?

5 A To the best of my ability.

6 Q Okay. Have you taken any medications before
7 your deposition today that could affect your ability to
8 give honest and truthful answers?

9 A No.

10 Q Will you inform me if you do not understand a
11 question had that I ask of you today?

12 A Yes.

13 Q I will try to clarify that to the best of my
14 ability.

15 And then, I know you're an experienced
16 attorney, it's my understanding. So any time you need
17 to take a break, feel free and we can.

18 A All right.

19 Q Then just a couple other points.

20 Obviously, in giving depositions, it's very
21 important to give audible, verbal responses.

22 Do you understand that?

23 A Yes.

24 Q I know quite frequently, as a matter of habit,
25 we all kind of nod our heads. It's important, for the

1 court reporter, for you to give audible and verbal
2 answers.

3 Okay?

4 A Understood.

5 Q You understand the procedures we've outlined
6 here today for conducting your deposition?

7 A Could you ask that again?

8 Q Sure. Do you understand the procedures we've
9 gone over for conducting your deposition today?

10 A I presume they're in accordance with the
11 Federal Rules of Civil Procedure.

12 Q That's correct. I meant kind of general
13 guidelines; if you need a break, those simple kind of
14 common sense things.

15 Do you understand that?

16 A I do.

17 Q Can you please state your full name for the
18 record?

19 A Eugene Nicholas Bulso, Jr.

20 Q You go by Gino; is that correct?

21 A Correct.

22 Q Okay. How old are you and what is your date of
23 birth?

24 A 61. December 25, 1961.

25 Q Where do you live, Mr. Bulso?

1 A Brentwood, Tennessee.

2 Q How long have you lived there?

3 A 28 years.

4 Q Okay. Where do you work?

5 A I work at Bulso PLC. 155 Franklin Road, Suite
6 400, Brentwood, Tennessee.

7 Q You're an attorney; is that correct?

8 A Yes.

9 Q Are there any other attorneys in practice with
10 you at your firm?

11 A Yes.

12 Q How many other attorneys are in practice with
13 you?

14 A Three.

15 Q What are their names?

16 A Paul Krog, Nicholas Bulso, and Niko Tsiouvaras.

17 Q The other Nicholas Bulso, that a relative?

18 A Yes.

19 Q Is he your son?

20 A Exactly.

21 Q Okay. Does he go by "Junior" or "the third" or
22 anything like that?

23 A He goes by Nicholas.

24 Q Okay. What other law firms have you been
25 associated with prior to your current firm?

1 A Boulton Cummings Connors & Berry, and Leader
2 Bulso & Nolan PLC.

3 Q Can you give me the approximate years when you
4 were with Boulton Cummings?

5 A 1986 to May 2008.

6 Q And the other firm that you gave, what was that
7 name again?

8 A Leader Bulso & Nolan.

9 Q Approximately what years were you associated
10 with that firm?

11 A 2008 to 2020.

12 Q How long again have you been associated with
13 your current firm, Bulso PLC?

14 A Since its formation in about May of 2020.

15 Q Where did you go to undergraduate school?

16 A Cornell college.

17 Q What year did you graduate from Cornell?

18 A 1983.

19 Q What school -- what law school did you attend
20 and graduate from?

21 A Emory.

22 Q In Atlanta?

23 A Yes.

24 Q What was your graduation year?

25 A 1986.

1 Q How many state bar licenses do you currently
2 carry?

3 A One.

4 Q And what is that?

5 A Tennessee.

6 Q Do you recall the year of your first admission?

7 A Yes.

8 Q What is that?

9 A 1986.

10 Q Are you admitted to any other courts besides
11 the state of Tennessee courts?

12 A Yes.

13 Q What are those?

14 A In the federal system, the U.S. Supreme Court,
15 the U.S. Court of Appeals for the 6th Circuit, U.S.
16 Court of Appeals for the 5th Circuit, U.S. Court of
17 Appeals for the 4th circuit.

18 The Middle District of Tennessee. The Eastern
19 District of Tennessee, the Western District of
20 Tennessee, the Eastern District of Arkansas, the
21 Southern District of Texas, the Eastern District of
22 Wisconsin.

23 And those are the ones that I can recall right
24 now.

25 Q You did a better job than I did. I typically

1 have to look at my plaques on the wall to figure that
2 out.

3 Have you ever been formally disciplined by a
4 state bar licensing authority?

5 A No.

6 Q Have you ever been disciplined by a court that
7 you're admitted in?

8 A I have not.

9 Q Have you ever been convicted of a crime?

10 A I have not.

11 Q Other than the Ken Nelson matter that you
12 described, have you ever been sued before?

13 A In the San Francisco matter that I mentioned
14 earlier.

15 Q Is that the Ken Nelson matter?

16 A That's a different case.

17 Q Okay. Let's try -- I just want to get this for
18 the record.

19 A Sure.

20 Q Can you tell me the name of the litigation and
21 what court in what you refer to as Ken Nelson
22 litigation?

23 A That was Nelson vs. Bulso, originally filed in
24 the Davidson County Chancery Court and later filed in
25 the Eastern District of Wisconsin.

1 Q Do you happen to recall the case number or
2 anything like that?

3 A I do not.

4 Q Do you recall the year when that was filed?

5 A I do not.

6 Q How did that litigation conclude?

7 A It was dismissed.

8 Q You were a defendant in that case?

9 A Correct.

10 Q That was a civil matter?

11 A Yes.

12 Q You refer to something -- the San Francisco
13 litigation; is that correct?

14 A Right. There was an action, San Francisco
15 Residence club versus Leader Bulso & Nolan PLC. I
16 believe I was individually named in that case as well.

17 Q When was that lawsuit filed?

18 A Sometime around 2014 or '15.

19 Q Did that conclude, that case conclude?

20 A It was dismissed on summary judgment.

21 Q What court was that in?

22 A Ultimately, it was in the Northern District of
23 Alabama.

24 Q You say "ultimately." Was it in another court
25 before it got transferred?

1 A Yes.

2 Q What court was that?

3 A As I recall, it was originally filed in state
4 court in Marin County, California. It was removed to
5 the Northern District of California, Federal District
6 Court, and then transferred to Alabama.

7 Q Okay. Are you represented by counsel today?

8 A Yes.

9 Q Who represents you?

10 A Ashley Carter.

11 Q Ms. Carter's here today, correct?

12 A Yes.

13 Q How did you learn of your deposition today,
14 that it was going to be taken today?

15 A I was advised by counsel.

16 Q Okay. As a nonparty to this lawsuit, you're
17 entitled, under federal statute, to receive a daily fee
18 for your attendance plus mileage reimbursement. I
19 believe I may have sent an email either -- last week to
20 the other -- Mr. Stahl's group, who represents Director
21 Long.

22 Where should I send your check for your
23 appearance today and your mileage fee, number one? Who
24 should I send that to?

25 A You can send that to me at the firm.

1 MR. DOUGHERTY: Is that okay, Ms. Carter?

2 MS. CARTER: Yes.

3 BY MR. DOUGHERTY:

4 Q You've already given -- can you go ahead and
5 give me that address once again?

6 A Sure. It's Bulso PLC. 155 Franklin Road,
7 Suite 400, Brentwood, Tennessee 37027.

8 Q And then, should I calculate your mileage
9 reimbursement from your office to this office and then
10 back to be able to send you a check?

11 A That would be fine.

12 Q Okay.

13 A It should be -- it will be nine miles either
14 way.

15 Q Okay. Great.

16 All right. Mr. Bulso, are you familiar with
17 the Advisory Commission on the Rules of Practice and
18 Procedure that was created by Tennessee Code annotated
19 16-3-601?

20 A Yes.

21 Q What is that?

22 A It's a commission that the General Assembly
23 created to advise the Supreme Court on rules of practice
24 and procedure.

25 Q When you say "the Supreme Court," you're

1 referring to Tennessee Supreme Court; is that right?

2 A Yes.

3 Q Are the members of that commission typically
4 listed on the Tennessee Administrative Office of the
5 Courts' website?

6 MS. CARTER: Can I just make a clarification
7 for the record --

8 MR. DOUGHERTY: Yes.

9 MS. CARTER: -- as we're going into this?

10 So I just want to clarify that you've noticed
11 him in his individual capacity. That's -- to the extent
12 he knows, he's welcome to testify to it, but I just want
13 to make sure that it's clear on the record that he's not
14 testifying for the commission in the deposition today.

15 MR. DOUGHERTY: I think that's correct. I
16 think the reason for Mr. Bulso's testimony is in his,
17 which we'll get into, his capacity as chair of the
18 Advisory Commission.

19 MS. CARTER: Right. But he's not here to
20 testify on behalf of the commission as its chair. He's
21 here to testify as an individual.

22 So I just want to make certain that as we go
23 through, he's providing whatever knowledge he has to you
24 just for clarification purposes.

25 MR. DOUGHERTY: Okay.

1 BY MR. DOUGHERTY:

2 Q Can you describe the commission?

3 A A commission is a group of attorneys and judges
4 appointed by the Tennessee Supreme Court pursuant to
5 16-3-601 to assist it in modifying Rules of Civil and
6 Criminal Procedure.

7 Q We'll get to those different committees in a
8 moment.

9 So I think you said this already, but there are
10 members of the judiciary that serve on the commission?

11 A In an ex officio capacity, yes.

12 Q What does that mean?

13 A It means they're nonvoting members.

14 Q But they're on the actual Advisory Commission,
15 the judicial members?

16 A I'm not sure exactly how to answer that. I
17 know that the statute gives the Supreme Court the
18 authority to appoint members to the commission. I know
19 that we've got attorneys who vote on proposals that come
20 before the commission, and that we have judges who are
21 involved in the meetings but who do not actually vote.

22 When you say that they're members of the
23 commission, I'm not exactly sure I can answer that
24 specifically.

25 Q Have you ever gone to the AOC website and seen

1 the names that were listed for the Advisory Commission
2 on that website?

3 A Yes.

4 Q Does it list names of judicial members?

5 A I don't know.

6 Q I've actually viewed it this morning. I will
7 give you some names, and you can tell me if they are
8 members of the judiciary.

9 Okay?

10 A Sure.

11 Q So it list you as the chair, Gino Bulso, and
12 that's correct?

13 A It is.

14 Q How long have you been the chair for the
15 Advisory Commission?

16 A The last two years.

17 Q Do you recall the year or the day that you were
18 appointed to the commission as chair?

19 A Not the specific date, no.

20 Q Would it have been 2020 or after that?

21 A It was either in 2020 or 2021.

22 Q In your current appointment as chair of the
23 Advisory Commission, how long is the term?

24 A My understanding is it's one year.

25 Q Did you serve as chair in 2022?

1 A Yes.

2 Q Was that for the full year?

3 A Yes.

4 Q Did you serve as chair in 2021?

5 A At least for part of the year, I believe so.

6 Q You were appointed, you think, halfway or part
7 of the way through 2021; is that your testimony?

8 A No. My testimony is that I was appointed, I
9 believe, either in 2020 or 2021. I don't recall
10 specifically which year it was.

11 Q Okay. Are you -- is it your understanding
12 you're to chair the full year in 2023?

13 A My understanding is that I'm to be chair so
14 long as the Supreme Court wants me to be. And at some
15 point, if they decide to fill that role with some other
16 person, then obviously they'll issue an order doing
17 that.

18 But I serve at the pleasure of the Supreme
19 Court as chair.

20 Q So earlier you testified that your term was one
21 year. By that you mean, as I understand it from what
22 you just said, it's a rolling one year until you're
23 notified that you're no longer chair?

24 A I'm not sure I'd say it quite that way.

25 Q I'm just trying to understand. I just wanted

1 to clarify that point.

2 A Sure. I was appointed by the Supreme Court to
3 be chair of the Advisory Commission, and then at least
4 once or possibly twice since I was initially appointed,
5 the Supreme Court liaison has asked me to continue in
6 that role. And I've agreed to do so.

7 Q How does the Supreme Court communicate with you
8 about that?

9 A Principally through the liaison.

10 Q Do they -- do any of the members of the Supreme
11 Court communicate with you by email regarding your role
12 as chair?

13 A I do not believe I've ever exchanged an email
14 with anyone on the Supreme Court about that, no.

15 Q And you never exchanged email with Director
16 Michelle Long of the Tennessee AOC about your --
17 regarding your role as chair?

18 A Not that I recall.

19 Q We'll get to the other members. It's my
20 understanding that there are some AOC staff members that
21 serve on the commission; is that correct?

22 A I do not believe that it is.

23 Q Okay. Then let's unpack that.

24 Can you explain that?

25 A I don't believe there's anyone at the AOC who

1 is actually on the commission.

2 Q Okay. So my understanding, from looking at the
3 website this morning, it lists AOC staff contact
4 Michelle Consiglio-Young.

5 Do you know her?

6 A Yes.

7 Q Does she attend Advisory Commission meetings?

8 A Yes.

9 Q What is her role on the Advisory Commission, or
10 what is her role when she does attend the meetings?

11 A Her role is that of a facilitator.

12 Q Okay. Can you explain what that means?

13 A Sure. Our meetings are conducted remotely, and
14 so there is a Zoom link that is hosted for the meeting,
15 and Michelle typically is in charge of hosting the
16 remote connection. So she'll circulate a link to the
17 reporter for the commission, who will then circulate it
18 to the other commission members.

19 And then Michelle will be virtually online
20 throughout the meeting to manage the connection.

21 Q Does Ms. Young -- is it fair to say she
22 provides administrative support to the Advisory
23 Commission?

24 A Yes.

25 Q Now, when you said that -- we'll get in, a

1 little bit later, to meetings being open to the public.
2 But when you said that your meetings are remote, what
3 did you mean by that?

4 A What I meant was that currently, when we
5 conduct meetings of the Advisory Commission, that the
6 members of the commission are not in the same place.
7 Rather, they're meeting through a Internet connection.

8 Q When did the remote meetings of the Advisory
9 Commission, when did that begin?

10 A Well, as long as I've been on the commission,
11 at least some portion of the meeting has been remote.

12 Q Would that have been in 2020?

13 A Can you clarify?

14 Q Did the remote Advisory Commission meetings
15 begin in 2020?

16 A No.

17 Q Did they begin in 2021?

18 A No.

19 Q Did they begin in 2022?

20 A No.

21 Q Did they begin in 2023?

22 A No.

23 Q Okay. I'm just trying to understand. When did
24 the remote meetings start, when you all were in
25 different places having your meeting?

1 A Well, as I stated a moment ago, for as long as
2 I've been on the commission, at least some portion of
3 the meeting has been remote.

4 Q Okay. Were you on the commission in any other
5 capacity prior to your serving as chair?

6 A Yes.

7 Q Tell us what -- when that was and what was your
8 role.

9 A I was initially appointed as a member of the
10 commission, I believe, in 2016.

11 Q So, in 2016, you were not the chair; is that
12 correct?

13 A That is correct.

14 Q How many years do you recall serving prior to
15 being appointed chair?

16 A I would estimate four to five years.

17 Q When you started in 2016 with your initial
18 appointment to the Advisory Commission, is it your
19 testimony that you all held meetings remotely?

20 A In part, yes.

21 Q Okay. Were there some times where you met
22 physically, in person?

23 A What I mean by "in part" is that the way the
24 meetings were conducted were through videoconference.
25 So we have a room of commission members in Nashville who

1 would be joined by videoconference with other members
2 who were meeting together in the same room in Memphis,
3 and a third group of members meeting in Knoxville. And
4 also there sometimes were members who participated by
5 telephone.

6 So that was a hybrid of having some members in
7 person; yet, meeting, in part, being conducted remotely
8 through videoconference.

9 Q In 2016, when you met -- did your group meet
10 here in the Nashville area?

11 A Yes.

12 Q What office did you meet at?

13 A At the AOC.

14 Q The Tennessee AOC office?

15 A Yes.

16 Q That was in 2016?

17 A Yes.

18 Q Do you recall who the chair was of the Advisory
19 Commission when you were first appointed?

20 A I do.

21 Q Who was that?

22 A Jim Doran.

23 (Stenographer interrupts for
24 clarification.)

25 THE WITNESS: D-O-R-A-N.

1 BY MR. DOUGHERTY:

2 Q Is Mr. Doran still on the commission?

3 A No.

4 Q When he was chair, was he -- what did he do --
5 strike that question.

6 When he was chair, was he a private attorney or
7 was he a judge?

8 A He was an attorney.

9 Q Was he in private practice in the Nashville
10 area?

11 A Yes.

12 Q Do you know if he is still practicing law in
13 Tennessee?

14 A I believe so, yes.

15 Q Do you know what firm he's with?

16 A I believe I do.

17 Q Can you name it, please?

18 A I believe he's with what is now Holland &
19 Knight.

20 Q Who was the executive director of the Tennessee
21 AOC in 2016, when you were first appointed?

22 A I do not remember.

23 Q Was it Michelle Long?

24 A I do not believe it was, no.

25 Q Do you know the current deputy director, Rachel

1 Harmon, of the Tennessee AOC?

2 A I know of her.

3 Q Does she ever participate in you all's meetings
4 currently?

5 A I do not recall Rachel ever being in one of our
6 meetings.

7 Q Do you recall if she was working with the AOC
8 in 2016, when you were first appointed?

9 A I do not.

10 Q You do not recall, or you do not know?

11 A I do not recall.

12 Q When you were first appointed in 2016, were any
13 of those meetings ever open to the public?

14 A I'm not sure.

15 Q Do you ever -- you don't ever recall the
16 Advisory Commission discussing whether the meeting
17 should or should not be open to the public?

18 A Correct.

19 Q Do you ever recall seeing a public meeting
20 notice for any of those meetings beginning in 2016?

21 A I do not recall seeing such a notice.

22 Q Was there someone on the Tennessee AOC staff
23 that provided administrative support during these
24 meetings for you?

25 A Yes.

1 Q Who was that?

2 A Michelle Consiglio.

3 Q So she's currently providing administrative
4 support. I think that's your testimony, correct?

5 A I believe she's currently on maternity leave.
6 But when she's not on maternity leave, yes, she is.

7 Q I think you're right. She'll be back in
8 November, is my understanding.

9 It's also your testimony when you joined the
10 Advisory Commission in 2016, Ms. Young was there
11 participating in your meetings?

12 A I believe so. I believe she was participating
13 then in the same respect that she participates now.

14 Q And that would be providing administrative
15 support?

16 A Yes.

17 Q From 2016 through 2022, during your time
18 serving on the commission, were any of those meetings
19 ever open to the public?

20 A I'm not sure.

21 Q How would you know if they were open to the
22 public?

23 A I mean, if someone had told me, I presume that
24 I would know.

25 Q If there were a public meeting notice still

1 posted on the Tennessee AOC website that says there's a
2 meeting that's open to the public, would you think that
3 that meeting probably was open to the public?

4 A I'm not sure.

5 Q Let me rephrase it.

6 Were there any members of the public that
7 physically came in to any of the offices that you
8 observed during these meetings?

9 A I do not recall that happening.

10 Q Do you ever recall seeing some type of video
11 setup that allowed the meetings to be broadcast to the
12 public from 2016 to 2022?

13 A I do not recall that.

14 Q We'll go through some more names later. I want
15 to go kind of back -- more names of the current
16 commission members.

17 Okay?

18 A Sure.

19 Q Are there different subcommittees of the
20 Tennessee Advisory Commission?

21 A No.

22 Q Can you give me a summary of what the
23 commission does in terms of the various court rules that
24 it reviews potential rules?

25 A Sure. In summary, there will be proposals made

1 by members of the commission or by other attorneys or
2 judges across Tennessee, or by others, to modify an
3 existing rule of evidence, appellate procedure, civil
4 procedure, criminal procedure, or juvenile procedure.

5 And then we will, at a Advisory Commission
6 meeting, typically assign the proposal to one of our
7 standing committees. And then the committee will
8 discuss the proposal amongst itself and then report at
9 the next Advisory Commission meeting as to what their
10 recommendation would be with regard to the proposal.

11 We will then, at some point, vote on whether to
12 adopt a rule change, and if so, that is prepared by the
13 AOC and presented to the Supreme Court.

14 Q Is there a committee to make recommendations
15 for the Criminal Rules of Tennessee Procedure?

16 A We have a committee on the Rules of Criminal
17 Procedure. I'm not sure that I would characterize that
18 what that committee does is recommendations. They will
19 investigate a proposed rule change and then report at a
20 Advisory Commission meeting. And then one or more
21 members of that committee may make a motion to adopt a
22 rule change, at which point it's debated by the entire
23 commission.

24 Q Does the Tennessee Advisory Commission make
25 rule recommendations on the Criminal Rules of Procedure?

1 MS. CARTER: I'm sorry. Can you just repeat
2 that last question?

3 MR. DOUGHERTY: Sure.

4 BY MR. DOUGHERTY:

5 Q Does the Tennessee Advisory Commission on the
6 Rules of Practice and Procedure make recommendations to
7 the Tennessee Supreme Court regarding the Criminal Rules
8 of Procedure?

9 A Yes.

10 Q Does the Tennessee Advisory Commission make
11 rule recommendation to the Supreme Court regarding the
12 Civil Rules of Procedure?

13 A We do.

14 Q Does the Tennessee Advisory Commission make
15 rule recommendations to the Supreme Court regarding the
16 Appellate Rules of Procedure?

17 A Yes.

18 Q Does the Tennessee Advisory Commission make
19 rule recommendations to the Supreme Court regarding the
20 Rules of Evidence?

21 A Yes.

22 Q Does the Tennessee Advisory Commission make
23 rule recommendations to the Supreme Court regarding the
24 Juvenile Rules of Procedure?

25 A We do.

1 Q How do you communicate -- how does the Advisory
2 Commission communicate these rule recommendations to the
3 Tennessee Supreme Court?

4 A Through the AOC.

5 Q So once a rule recommendation is made, the
6 Advisory Commission will communicate those
7 recommendations directly to the AOC?

8 A I wouldn't characterize it that way.

9 Q Well, you just said that. I just want to
10 understand it.

11 Can you explain how that process works?

12 A Well, if there is a firm vote by a majority of
13 the members of the Advisory Commission on a proposed
14 rule change, somehow, administratively, that is prepared
15 by the AOC. And then from that point, it's communicated
16 to the full Supreme Court.

17 Q Does Michelle Consiglio-Young, once a vote has
18 been taken on a rule change, does she then go back to
19 the AOC, or do you, as chair, communicate with the AOC
20 as far as the rule change?

21 A To the Supreme Court?

22 Q To the AOC.

23 A Well, Michelle's present at the meetings, so
24 she knows what happened.

25 Q Yeah. I'm just trying to understand the

1 process.

2 Let's say the commission makes a vote --

3 A Yeah.

4 Q -- for a rule recommendation. Do you then, as
5 chair, get on your email and send an email to someone at
6 the AOC office?

7 A No.

8 Q Does -- is it your understanding that
9 Ms. Michelle Consiglio-Young, since she's present, does
10 she then go back to the AOC and communicate that to the
11 director, for example?

12 A I don't know.

13 Q But it's your understanding that the AOC is the
14 next point of contact who receives the rule
15 recommendations from the Advisory Commission?

16 A I think that's fair. I would also add that we
17 do have a reporter that's appointed by the Supreme Court
18 for the Advisory Commission, and so there likely is some
19 involvement between Michelle at the AOC and our reporter
20 on actually packaging the rule and communicating it to
21 the full Supreme Court.

22 Q Who is the current reporter for the Tennessee
23 Advisory Commission?

24 A Lynn Zehrt.

25 Q How do you spell her last name?

1 A I believe it's Z-E-R-T.

2 Q Would her name be listed, Ms. Zehrt's name,
3 would it be listed on the website that sets out the
4 names for the Advisory Commission members?

5 A I don't know.

6 Q I see it. Lynn Zehrt, would it be Z-E-H-R-T?

7 A Yes. I left out the H.

8 Q And the same Lynn Zehrt that is a professor at
9 Belmont University College of Law?

10 A She is.

11 Q Was she, Ms. Zehrt, the reporter when you first
12 joined in 2016?

13 A No.

14 Q Do you recall who the reporter was then?

15 A I do not.

16 Q So by "reporter," does that mean an individual
17 who is taking notes? Is that what Ms. Zehrt does?

18 A I don't know whether she takes notes. The
19 function of the reporter is to prepare agenda for the
20 meetings, to take minutes of the meetings, to take the
21 role at meetings.

22 Q Is it your understanding that Ms. Zehrt would
23 take the minutes, the meeting minutes?

24 A Yes. She does currently.

25 Q She also is the one who handles putting the

1 agenda together?

2 A Correct.

3 Q Who determines the agenda for each meeting?

4 A Working together, the reporter and the chair.

5 Q So you work with Ms. Zehrt to come up with an
6 agenda for the next meeting?

7 A Exactly.

8 Q In 2016, when you first joined, how frequently
9 were meetings held of the Advisory Commission?

10 A Quarterly.

11 Q Has that always been the case, quarterly
12 meetings?

13 A It's been the case ever since I've been on the
14 commission.

15 Q Who determines when those quarterly meetings
16 are going to be held?

17 A The chair.

18 Q Since you became the chair of the Advisory
19 Commission, you would make that determination, the date
20 and time when meetings are to be held; is that correct?

21 A Yes.

22 Q What is your role as chair?

23 A To conduct meetings of the Advisory Commission.

24 Q Do you, as chair, have any other communication
25 in between quarterly meetings with the other members on

1 the commission?

2 MS. CARTER: Object to form.

3 THE WITNESS: From time to time, I would say

4 so.

5 BY MR. DOUGHERTY:

6 Q During these communications in between
7 quarterly meetings, do you discuss business, Advisory
8 Commission business with other members?

9 A If I understood your question correctly, yes.

10 Q Do you have these discussions with other
11 members in between quarterly meetings by email?

12 A On some occasions.

13 Q Do you still keep -- do you have those emails?

14 A I'm not sure.

15 Q When did you first become aware of this lawsuit
16 that you're currently giving a deposition in?

17 A Probably at some point within the last six
18 months or so.

19 Q You only became aware of this lawsuit within
20 the last six months?

21 A I believe that's what I said, yes.

22 Q Has anyone from the AOC office reached out to
23 you with a litigation hold letter?

24 A I have not receive a litigation hold letter
25 from anyone.

1 Q When you became aware of this litigation six
2 months ago, did you discuss with the other members on
3 the Advisory Commission if they should hold on to
4 emails?

5 A I did not.

6 Q How did you prepare for this deposition?

7 A Met with counsel.

8 Q That would be Ms. Carter?

9 A Correct.

10 Q Have you ever served on any other boards or
11 commissions in Tennessee, other than the Advisory
12 Commission?

13 A Yes.

14 Q What are those other boards and commissions?

15 A I was on the board of the directors for Pope
16 John Paul II High School, on the board of the St. Thomas
17 More Society of Middle Tennessee.

18 There are probably others that I've been on as
19 well.

20 Q Have you ever served on any other boards or
21 commissions where the AOC office provides administrative
22 support, other than the Advisory Commission?

23 A Not that I recall.

24 Q Are you aware of similar meetings held by the
25 federal courts and the federal advisory committees?

1 A No.

2 Q You're not aware of any of those meetings and
3 what they do with regard to making federal rules?

4 A Correct.

5 Q You've never seen any or observed any of those
6 federal advisory committee rule-making meetings?

7 A Correct.

8 Q When was the first time you ever became aware
9 of those federal advisory committee meetings?

10 A Likely sometime during law school.

11 Q Is it your testimony you've never had that
12 discussion with your current Tennessee Advisory
13 Commission meetings regarding what the federal advisory
14 committee meetings do?

15 A I believe that's true.

16 Q In 2022, you were the chair of the Tennessee
17 Advisory Commission; is that right?

18 A Yes.

19 Q Were there quarterly meetings held during that
20 year, 2022?

21 A Yes.

22 Q Was there a quarterly meeting in March of 2022
23 that was held?

24 A Well, we have to check the record, but I
25 believe so.

1 Q Was that meeting open to the public?

2 A I don't know.

3 Q You wouldn't know if the public was able to
4 watch it?

5 A Well, first, I've told you that I'm not able to
6 testify for certain that there was a meeting in March of
7 2022. Even if there were such a meeting, I do not know
8 whether the AOC or anyone else made any provision for
9 public participation in that meeting.

10 Q Was that March 2022 meeting held remotely among
11 the members of the Advisory Commission?

12 A If there was such a meeting, it was held
13 remotely, yes.

14 Q Where were you when you participated in that
15 meeting?

16 A Well, I do not recall that there was a meeting
17 in March of 2022, even if there were, I could not,
18 sitting here, tell you where I was.

19 Q Of the four quarterly meetings in March of
20 2022, were any of those open to the public?

21 A I don't know.

22 Q Did you see any of the public participating in
23 those meetings?

24 A No.

25 Q Was the June 2023 Advisory Commission meeting

1 open to the public?

2 A Depends on what you mean by "open to the
3 public."

4 Q Was the June 9, 2023, Advisory Commission
5 meeting livestreamed to the public?

6 A My understanding is that it was.

7 Q Why is that, your understanding? How do you
8 know?

9 A Based on discussions with Michelle.

10 Q Is that Michelle Consiglio-Young?

11 A Yes.

12 Q What did she tell you about that June 9, 2023,
13 meeting?

14 A Well, at some point, Michelle advised me,
15 perhaps the other members of the commission, that Judge
16 Richardson had issued some type of an injunction that
17 provided for livestreaming of our Advisory Commission
18 meetings. And she wanted to make sure that the members
19 of the commission were aware that the meetings were
20 going to be livestreamed.

21 Q Did Michelle Consiglio-Young tell you during
22 any of the quarterly meetings of 2022 that those were
23 going to be livestreamed?

24 A I don't recall.

25 Q Did you have a discussion with the members on

1 the Advisory Commission about the June 9, 2023, meeting
2 being livestreamed to the public?

3 A No.

4 Q When is the -- did the Advisory Commission have
5 a meeting in September of 2023?

6 A We did not.

7 Q Do you know why?

8 A I believe so.

9 Q And why is that?

10 A My understanding is that the AOC had intended
11 to issue some type of a public notice regarding the
12 meeting. But I think, in part, because Michelle was on
13 maternity leave, the notice was not sent out when
14 perhaps it otherwise would have been sent out.

15 And we made the decision, in light of the
16 absence of that public notice, just to move the agenda
17 items from the September 2023 meeting to the
18 December 2023 meeting.

19 Q Was that meeting supposed to be held on
20 September 8th, 2023?

21 A I believe that is correct.

22 Q At the end of the June 9th, 2023, livestream
23 meeting, you said to the public that it was going to be
24 held on September 8th, 2023, correct?

25 A I don't know.

1 Q Have you ever watched that livestreamed video?

2 A I have not.

3 Q Are you aware that the Tennessee courts have
4 YouTube pages that you can watch the videos?

5 A I'm aware that one can watch oral arguments
6 from the Supreme Court and the Court of Appeals on a
7 YouTube channel.

8 Q Were you aware that people can also watch the
9 June 9, 2023, meeting that was livestreamed to the
10 public?

11 A I'm aware of that, yes.

12 Q Have you ever watched that video?

13 A I have not.

14 Q By having that June 9, 2023, meeting
15 livestreamed to the public, did it cause you, as
16 chair -- or did it burden you in terms of how you
17 conducted the meeting?

18 A You've got two questions in there, counsel.

19 Q I apologize. I will strike that.

20 Having the June 9, 2023, meeting livestreamed,
21 did that burden the meeting, from your perspective as
22 chair?

23 A I can't say that I know exactly what you mean
24 by "burden the meeting."

25 Q Did it cause you more stress, more problems in

1 terms of the way the meeting was conducted?

2 A Having the meeting livestreamed in June 2023
3 did not cause me any stress. It did not cause me any
4 problems.

5 Q So is it your testimony that the meeting that
6 was livestreamed in June 2023 was very similar to other
7 meetings that you've overseen?

8 A I have not testified to that, no.

9 Q Well, is there any difference between the
10 June 9, 2023, meeting that was livestreamed to any other
11 meetings that you've chaired?

12 A I'm sure there are, yes.

13 Q Well, can you tell me what those differences
14 are?

15 A Sure. I mean, at some meetings, we simply
16 discuss proposed rule changes. At other meetings, we
17 actually vote on adopting amendments or recommending the
18 adoption of amendments to the Supreme Court.

19 Q Did the June 9, 2023, meeting, the fact that it
20 was livestreamed, did that interfere with the meeting
21 itself?

22 A It did not.

23 Q Have you ever discussed with other members
24 whether meetings should be open or closed to the public?

25 A Could you repeat that?

1 Q Yeah. Have you ever discussed with other
2 members on the Advisory Commission whether meetings
3 should be open or closed to the public?

4 A No.

5 Q You've never had that discussion?

6 A Correct.

7 Q Have the members themselves ever had that
8 discussion amongst themselves?

9 MS. CARTER: Object to the form.

10 THE WITNESS: I don't know.

11 BY MR. DOUGHERTY:

12 Q Have you ever observed anybody talking about
13 whether meetings should be open or closed to the public?

14 A Are you excluding discussions with counsel?

15 Q I'm certainly -- not your discussions with
16 counsel.

17 I'm saying: Have you ever observed, at any
18 point during your chairmanship, other individuals on the
19 commission discussing whether that meeting should be
20 opened or closed?

21 A I have not, no.

22 Q You mentioned a preliminary injunction that
23 Judge Richardson issued. When was the first time you
24 became aware of the preliminary injunction?

25 A I'm not sure.

1 Q Do you recall when Ms. Consiglio-Young told you
2 about the preliminary injunction prior to the June 9,
3 2023, meeting?

4 A I think, as I testified earlier, it's been at
5 least six months that I've known about it. It could be
6 longer.

7 Q Okay. So when Ms. Michelle Consiglio-Young
8 first told you about the preliminary injunction, was
9 that the first time you heard about the lawsuit?

10 A I believe so.

11 Q As part of your legal practice, do you do any
12 first amendment work?

13 A I do not believe I've ever handled a first
14 amendment case.

15 Q I probably should have clarified. Free speech,
16 first amendment work?

17 You've never handled free speech, first
18 amendment work?

19 A I do not believe I've ever had a case involving
20 the first amendment or the right to free speech.

21 Q What is the nature of your law practice,
22 Mr. Bulso?

23 A Commercial litigation.

24 Q I know that's kind of a broad area. Can you
25 expand on that a little bit? What are the types of

1 cases you typically get involved in?

2 A We get involved in business disputes. I've
3 handled cases involving commercial/residential real
4 estate, federal estate securities, franchise litigation,
5 transportation litigation, warranty fraud, Consumer
6 Protection Act, breach of contract, other types of
7 commercial disputes.

8 Q Now, on the website that I viewed this morning
9 that list the members of the Advisory Commission, it
10 list a vice chair. Her name is Catherine Clayton.

11 Do you know Ms. Clayton?

12 A Yes.

13 Q How long has she been the vice chair?

14 A I believe Cathy has been vice chair for as long
15 as I have been chair.

16 Q Was she also on the committee when you first
17 joined in 2016?

18 A If by "committee" you mean commission, no.

19 Q Correct. So Ms. Clayton came on the Advisory
20 Commission after you had been appointed in 2016?

21 A I believe so, yes.

22 Q Did you make Ms. Clayton vice chair, or does
23 the Supreme Court make that appointment?

24 A The Supreme Court makes that appointment.

25 Q So not only -- it's my understanding -- I just

1 want to understand this.

2 The Supreme Court appoints the members to the
3 Advisory Commission, correct?

4 A It does.

5 Q And the Supreme Court appoints the specific
6 roles, like chair and vice chair; is that correct?

7 A Precisely.

8 Q Okay. Does the Tennessee Supreme Court also
9 make the appointment on the judicial liaisons?

10 A It does.

11 Q Does the Tennessee Supreme Court make an
12 appointment on the Supreme Court liaison?

13 A I believe it does.

14 Q Do you know why there's a distinction between
15 judicial liaisons and Supreme Court liaison?

16 A Well, it may be that "judicial liaison" refers
17 to judges who are not on the Supreme Court. And the
18 Supreme Court liaison refers to a liaison who is.

19 Q Makes sense. I just was curious. When you
20 look at the website, it makes a clear distinction. Have
21 you ever looked at the website that lists your Advisory
22 Commission before, on the AOC website?

23 A I have a vague recollection of having seen it
24 several years ago.

25 Q Currently, it lists, under the judicial

1 liaison, the first person is Chancellor William Cole.

2 A Sure.

3 Q And was Chancellor Cole on the Advisory
4 Commission in 2016?

5 A I don't recall.

6 Q You don't know if he was there when you first
7 joined or if he came later?

8 A I do not.

9 Q The -- and it lists him as a chancellor. He's
10 a chancellor in chancery court, as you understand it?

11 A He is.

12 Q James Hivner. Who is Mr. Hivner?

13 A He's the clerk.

14 Q Would that be the clerk of the Tennessee
15 appellate courts?

16 A Exactly.

17 Q Is Mr. Hivner a judge?

18 A I do not believe so.

19 Q Is Mr. Hivner an attorney?

20 A I'm sure he is.

21 Q Okay. The next person under judicial liaison
22 category on the website is Judge Carma Dennis McGee. Do
23 you know Judge McGee?

24 A I do.

25 Q What court is Judge McGee -- what court does

1 she oversee?

2 A Court of Criminal Appeals.

3 Q Do you know what county?

4 A I'm not sure the Court of Criminal Appeals is
5 restricted to a county.

6 Q Okay. So she's on the Court of Criminal
7 Appeals?

8 A Yes.

9 Q Do you know if she's in the west, east, or
10 middle grand division?

11 A That, I'm not sure of.

12 Q Are appointments made by the Tennessee Supreme
13 Court Advisory Commission made based on the grand
14 divisions, east, west and middle?

15 A I believe that is certainly a factor that the
16 Supreme Court takes into account.

17 Q Do you know if that's a required factor in the
18 statute?

19 A Yes.

20 Q It's your understanding that is a required
21 factor in the statute?

22 A No, it's not.

23 Q It's not?

24 A No.

25 Q So you think the Supreme Court just makes that

1 their own decision to do that, have the representatives
2 from each grand division?

3 A I might express that a bit differently. I
4 would say that the statute that you referred to earlier,
5 16-3-601, vests the Supreme Court with the authority to
6 appoint members to the Advisory Commission, and the
7 Supreme Court has the discretion about whom to appoint.

8 So it could, according to the statute, appoint
9 all the members from one grand division. But in
10 practice, I believe it has appointed members from all
11 three grand divisions.

12 Q Currently, the current members that serve on
13 the Advisory Commission of which you chair, is there a
14 equal breakdown of members between east, west and middle
15 grand divisions?

16 A I have not looked at it statistically, but my
17 sense would be that each grand division is well
18 represented on the commission.

19 Q The next individual under judicial liaisons is
20 Judge Camille McMullen of Memphis, Tennessee. Do you
21 know Judge McMullen?

22 A Yeah.

23 Q In what court does Judge McMullen serve?

24 A Also the Court of Criminal Appeals.

25 Q Where?

1 A Court of Criminal Appeals.

2 Q Also the Court of Criminal Appeals?

3 A (No audible response from witness.)

4 Q But Chancellor Cole would be in the lower trial
5 chancery court; is that right?

6 A Correct. He's out in Hardeman County, McNairy
7 County, that area.

8 Q The last judicial liaison listed is Judge
9 Jennifer Smith of Nashville. Do you know Judge Smith?

10 A Yes.

11 Q What court does she oversee?

12 A She's in a trial-level court.

13 Q Do you know if that's circuit court or general
14 sessions or chancery court?

15 A I am not certain.

16 Q But you think it's a trial-level court?

17 A I do.

18 Q And then there's one Supreme Court liaison,
19 justice, Dwight Tarwater; is that right?

20 A That's correct.

21 Q I believe he started his tenure as Supreme
22 Court justice on September 1, 2023; is that right?

23 A Yes.

24 Q So has he participated yet in any Advisory
25 Commission meetings?

1 A No.

2 Q That would be because the September meeting,
3 you all did not have it, right?

4 A That is correct.

5 Q When is the December meeting? When is it
6 scheduled for?

7 A It is scheduled for the second Friday of
8 December.

9 Q Do you have a date on that?

10 A As I'm sitting here, I do not recall the date,
11 no.

12 Q Its looks like that might be December the 8th,
13 on my calendar. But you said the second Friday; is that
14 your testimony?

15 A Yes.

16 Q Are Advisory Commission meetings typically held
17 on the second Friday of each month?

18 A For the last -- well, no.

19 For the last few years, we have held the
20 meetings at 9:00 a.m. on the second Friday of March,
21 June, September, and December.

22 Q Since when have you done that?

23 A At least for the last several years.

24 Q Since you've been there, since 2016?

25 A No. I wouldn't say that.

1 Q Well, can you recall when you started this
2 March, June, September, December? Can you recall what
3 year that was when that began?

4 A That's been the case ever since I've been on
5 the commission.

6 Q You've been on the commission since 2016.

7 A Correct.

8 Q So has this March, June, September, December
9 staggering of quarterly meetings happened since 2016?

10 A Yes.

11 Q Since you're not having a meeting in September
12 in 2023, is the Advisory Commission communicating as to
13 what you might otherwise be doing in your meeting? Are
14 you communicating online with each other, emailing with
15 each other?

16 MS. CARTER: Object the form.

17 THE WITNESS: Yeah. I'll have to ask you to
18 rephrase the question, please.

19 BY MR. DOUGHERTY:

20 Q Since you're not going to have quarterly
21 meetings in 2023 because there's no September meeting,
22 is Advisory Commission business being conducted in
23 another form or fashion?

24 A Well, I disagree with the predicate of your
25 question, but the answer is no.

1 Q You disagree that there was no meeting in
2 September of 2023?

3 A I do not disagree with that.

4 Q Well, what do you disagree with, the predicate
5 of the question?

6 A The predicate of your question was, "Since
7 quarterly meetings are not being held in 2023." It's
8 inaccurate and I disagree with it.

9 Q Okay. How many meetings are going to be held
10 in 2023?

11 A Three.

12 Q Does three meetings in 2023 satisfy the
13 quarterly meeting standard?

14 A Yes.

15 Q It does?

16 A (No audible response from witness.)

17 Q And how is that?

18 A Because of the nature of what a quarterly
19 meeting is. A quarterly is a meeting that's held every
20 three months, and our meetings in 2003 (sic) have been
21 held every three months.

22 Therefore, they are quarterly meetings.

23 Q You said "2003." We're referring to 2023.

24 A Exactly.

25 Q Okay. When did you -- when were the meetings

1 in 2023?

2 A We had one in March. We had one in June. We'll
3 have one in December.

4 Q From June meeting until the December meeting,
5 how many months is that?

6 A Six.

7 Q So then, you would agree that there haven't
8 been meetings in 2023 every three months?

9 A I will agree that there was no September
10 quarterly meeting.

11 Q But it's your testimony there will only be
12 three meetings in September -- excuse me -- three
13 meetings in 2023?

14 A That is correct.

15 Q The next would be in the second Friday in
16 December?

17 A Yes.

18 Q At 9:00 a.m.?

19 A Exactly.

20 Q That will be livestreamed to the public, right?

21 A I don't know.

22 Q You're waiting for Ms. Michelle Consiglio-Young
23 to tell you?

24 A I am not waiting on anything, counsel.

25 Q Did you receive a copy of the preliminary

1 injunction?

2 A Well, let me answer it this way.

3 At some point, I went on PACER and got the
4 preliminary injunction.

5 Q Did anyone from the Tennessee Administrative
6 Office of Courts provide you with a copy of the
7 preliminary injunction?

8 A I do not recall.

9 Q You don't recall if Ms. Consiglio-Young
10 provided you with a copy of the preliminary injunction?

11 A Correct. I do not believe that anyone at the
12 AOC provided me a copy of the preliminary injunction.
13 It's possible, but I just do not recall it.

14 MS. CARTER: Counsel, when you have a minute,
15 if we can take five minutes for a comfort break, that
16 would be great.

17 MR. DOUGHERTY: Yeah. We can go ahead and do
18 that. There's no question on the table. That's fine.

19 It's 10:05. When do you want to come back?

20 MS. CARTER: I'm just going to run down to the
21 ladies' room.

22 MR. DOUGHERTY: We can do 10 minutes or 15. It
23 doesn't matter to me.

24 MS. CARTER: That's fine.

25 MR. DOUGHERTY: We will be back at 10:15.

1 We'll take a break now, Mr. Bulso.

2 (Whereupon, a recess was taken
3 from 10:06 a.m. to 10:12 a.m.)

4 MR. DOUGHERTY: We're back on the record, Mr.
5 Bulso.

6 BY MR. DOUGHERTY:

7 Q What is the process, from your understanding,
8 once the Advisory Commission transmits the rule
9 recommendations to the AOC office?

10 What happens after that?

11 A Well, I would not characterize it as what
12 happens as a transmission from the Advisory Commission
13 to the AOC. That is a bit of a seamless process because
14 the AOC is in the meetings when the rule recommendations
15 are adopted.

16 And once we vote on and approve a proposed
17 change to the rules, I do not know by what process the
18 AOC notifies the Supreme Court of that.

19 Q Understood.

20 Is it your understanding -- and I'm trying to
21 get to if the General Assembly is involved at any point
22 after the Advisory Commission's rule recommendations.

23 A Sure.

24 Q So is the General Assembly involved at any
25 point after the Advisory Commission makes -- votes and

1 makes its rule recommendations?

2 A Yes.

3 Q Can you tell me what your understanding of that
4 process is, that the General Assembly then gets involved
5 at some point?

6 A Sure. At some point, the Supreme Court will
7 propose changes to the rules of civil or criminal
8 procedure, and those proposals are sent to the General
9 Assembly by way of resolutions. And in order for any
10 rule change to go into affect, the rule change has to be
11 approved by resolution in the House and in the Senate.

12 Q And then is that when the rule becomes final,
13 at some point?

14 A I think the rule becomes effective once those
15 resolutions have been adopted.

16 Q By the General Assembly?

17 A Yes.

18 Q Is that typically in July, maybe July 1st of
19 each year?

20 A I believe the effective date on those
21 resolutions typically is July 1 of each year.

22 Q Is the public ever notified at any point? Is
23 there some type of public and notice comment period
24 after the commission makes its recommendations?

25 A Yes.

1 Q What is your understanding of that process?

2 A That at some point, when the Supreme Court
3 decides that it is contemplating a rule change, that it
4 will put the proposed change out for public comment.

5 Q Are you, as chair, or is the Advisory
6 Commission involved in that process with the Supreme
7 Court?

8 A No.

9 Q Does that happen immediately and
10 contemporaneously, when the Advisory Commission votes on
11 its recommendations?

12 A No.

13 Q That happens after?

14 A Yes.

15 Q Do you know how long after?

16 A I do not.

17 Q Does the public notice and comment period, is
18 that predate when the Supreme Court sends the proposed
19 rule to the general assembly?

20 A Yes.

21 Q Are you, as chair, or any members of the
22 Advisory Commission involved in that process with the
23 General Assembly or the public notice and comment
24 period?

25 A Yes.

1 Q How?

2 A In my role as chairman of the Advisory
3 Commission, I have, in the past, appeared at meetings of
4 the Civil Justice Subcommittee to the extent testimony
5 would be necessary before the House on the proposed rule
6 changes.

7 Q How many times have you appeared at hearings to
8 provide testimony on proposed rule changes?

9 A At least twice.

10 Q Do you recall when that was?

11 A Sometime between 2020 or -- strike that.
12 Sometime likely between 2018 and today.

13 Q How were you notified that your testimony at
14 these hearings were necessary?

15 A Well, let me amend that question slightly,
16 'cause there have been times when I've gone and I
17 haven't actually testified.

18 What occurs is that Michelle tells me that, on
19 a particular day, a rules package will be presented to
20 the subcommittee or the full committee of the Civil
21 Justice Committee and the House, and then I will be
22 present in the event that testimony is necessary.

23 But in every instance previously, before this
24 year, I've been notified by Michelle that the package is
25 going to be submitted, and myself, either as vice chair

1 or chair, would be there in case testimony were
2 necessary.

3 Q When you say "Michelle," you're referring to
4 Michelle Consiglio-Young of the AOC?

5 A Correct.

6 Q You said you were -- how long did you serve as
7 vice chair?

8 A For at least a year, possibly two years.

9 Q Does the Advisory Commission, are they required
10 to do any kind extra training above and beyond your
11 normal CLE-required hours?

12 A No.

13 Q Are there ever any kind of meetings about what
14 the federal equivalent advisory committees is doing or
15 not doing?

16 A I have never been a party to any such meeting.

17 Q The rule recommendations that the Tennessee
18 Advisory Commission evaluates, is there ever any
19 consideration with what the federal rules -- what
20 they're doing in the federal rules?

21 A Sure.

22 Q Can you elaborate on that, please?

23 A (No audible response from witness.)

24 Q And let just ask a couple questions as a
25 lead-in.

1 It's my understanding that the Tennessee rules
2 can make its own rules for court procedure; is that
3 correct?

4 A (No audible response from witness.)

5 Q Assuming the process is -- goes through the
6 process.

7 A Let me answer it this way.

8 Q Sure.

9 A I mean, in Title 16, the General Assembly has
10 vested the Tennessee Supreme Court with the authority to
11 promulgate rules for all the civil and criminal courts.
12 That's what happens in Tennessee.

13 Q I understand that Tennessee does not have to
14 follow what the federal rules, what they do. You would
15 agree with that?

16 A A hundred percent.

17 Q Is it fair to say that, historically, the
18 Tennessee rules somewhat mirror the federal rules?

19 A In some respects.

20 Q So would that typically be who -- your
21 commission would look to see what the federal rules are
22 doing? That would be kind of your guide post, so to
23 speak; would you agree with that?

24 A Not as you've stated it. I would say that we
25 look at federal rules of civil procedure. We look at

1 other states' rules of civil procedure, and try to look
2 at what would be the best practice for the state of
3 Tennessee.

4 Q What would you say the percentage of Tennessee
5 rules are that follow the federal rules? Would it be,
6 like, 90 percent of the Tennessee rules are about the
7 same as the federal equivalent rules? Would that be a
8 fair number?

9 A I doubt it. I think it would be lower than
10 that.

11 Q You think it would be lower than that? What do
12 you think it would be?

13 A Well, we have to go rule by rule. If you look
14 at Rule 4 on service of process, they are similar, but
15 they're not identical. If you look at Rule 6 on timing,
16 they are similar, but they're not identical. If you
17 look at Rule 8 on pleadings, they are similar, but
18 they're not identical. If you look at the process under
19 Rule 12, they're similar, but they're not identical.

20 If you get to Rule 26 and you're dealing with
21 discovery of fact witnesses and expert witnesses,
22 they're similar, but not identical. If you look at Rule
23 38 on the practice of jury selection, once again,
24 they're similar, but they're not identical.

25 So I would have a very difficult time believing

1 that 90 percent of our state rules are the same as what
2 we've got in the federal rules.

3 Q When the Advisory Commission is coming up with
4 its rule recommendations, does it look to the federal
5 rules to say, "What are the feds doing? Do we want to
6 do that or not want to do that?"

7 Is that part of your process?

8 A We certainly have had members that propose
9 changes based on what's going on in federal courts.

10 Q Do you know why that is?

11 A Sure. Because sometimes the federal rules have
12 a process or procedure that would benefit litigation in
13 Tennessee.

14 Q Now, as part of the rules that are published,
15 once they're adopted by the General Assembly, there's
16 usually -- as I understand it, in the rules, there's,
17 like, a comment section that says, "Advisory
18 Commission."

19 Do you know what I'm referring to?

20 A I do.

21 Q Is that the Advisory Commission on the Rules of
22 Practice and Procedure that you chair?

23 A It is.

24 Q Who publishes that? Is that something that you
25 get involved in? Does the AOC get involved in it? How

1 does that get transmitted to some type of published rule
2 when you have the Advisory Commission comments?

3 A It's something that we vote on in the Advisory
4 Commission. If we adopt a new rule or amend an existing
5 rule, often there is a comment that explains why that
6 change was made.

7 And so what we send through the AOC to the
8 Supreme Court will be not just a proposed rule change,
9 but a proposed Advisory Commission comment. And
10 ultimately, that will follow all the way through the
11 process and be part of the resolution, as presented to
12 the General Assembly.

13 If it's adopted, it becomes part of the
14 official rule package.

15 Q So any time --

16 Are all proposed rule changes, do they -- do
17 they come with an Advisory Commission comment?

18 A Many times, yes.

19 Q But not all the time; is that your testimony?

20 A I think that's correct, yes.

21 Q Do you ever look at when the AOC sends out for
22 the public notice and comment period -- well, let me
23 back up.

24 Who sends that out, the public notice and
25 comment period, to the public?

1 A I'm not sure.

2 Q Is it on the AOC website, typically?

3 A I don't know.

4 Q You've never looked?

5 A Correct.

6 Q Do you know if the Tennessee Supreme Court and
7 the AOC, if they share the same website?

8 A I'm not sure how to answer that, but what I can
9 tell you is that the Tennessee Administrative Office of
10 the Courts maintains the website. And part of the
11 website reflects arguments in front of the Supreme
12 Court, opinions issued by the Supreme Court, arguments
13 before the Court of Appeals, opinions from the court of
14 Appeals.

15 So when you say, "Do they share the same
16 website," I'm not really sure.

17 Q If I wanted to pull up the Advisory Commission
18 on the Rules of Practice and Procedure on the AOC
19 website, would I go to the AOC website?

20 A If you wanted to do what?

21 Q To look at the Advisory Commission names and
22 members, would I go to the AOC website?

23 A As far as I'm aware, the names of the
24 commission members are posted on the AOC website.

25 Q If I wanted to look up oral arguments or

1 opinions from the Tennessee Supreme Court, would I go to
2 the same AOC website or would I go to a different
3 website?

4 A The same website.

5 Q Okay. Do you ever get with Michelle
6 Consiglio-Young at the beginning of a calendar year to
7 map out agendas or meetings notices? Do you do anything
8 like that at the beginning of each calendar year?

9 A Well, I've never done what you've asked, but I
10 have met with Michelle about other things.

11 Q Related to the Advisory Commission?

12 A Probably.

13 Q How often do you meet with Michelle
14 Consiglio-Young regarding the Advisory Commission?

15 A I'd say, over the seven years that I've been on
16 the commission, maybe two or three times.

17 Q Two or three times total?

18 A Yes.

19 Q Is that when she tells you about a package that
20 the General Assembly may be considering, a rules
21 package?

22 A No.

23 Q Okay. What were those two or three times?
24 What were they related to?

25 A Well, just likely how to make the commission

1 operate as efficiently as possible, whether we should
2 use the committee structure, whether we should have
3 subcommittees, who we should perhaps assign to
4 committees to make sure that they're evenly and
5 appropriately staffed.

6 Q Okay. I think you said -- I want to make sure
7 I understood this.

8 Did you say in your earlier testimony that you
9 serve at the pleasure of the Tennessee Supreme Court?

10 A I did say that.

11 Q Is that language, is that in the statute?

12 A Yes.

13 Q It is?

14 A It is implicitly in 16-3-601.

15 Q I think, as I recall, the AOC director uses
16 that language, "Serves at the pleasure of the chief
17 justice of the Supreme Court"; would that be correct?

18 A I don't know.

19 Q But you're saying implicitly, you, as the
20 chair -- who do you serve at the pleasure of, the
21 Supreme Court or the Chief Justice?

22 A The Supreme Court.

23 Q Tell me how that is implicit. What does that
24 mean? What do you do vis-à-vis your relationship with
25 the Supreme Court members?

1 A Well, the statute states explicitly that it's
2 the Supreme Court who appoints the members. So at any
3 day, the Supreme Court could decide to appoint someone
4 else.

5 Q Okay. So do you -- let's say through a year,
6 and you're about to have four quarterly meetings.

7 A All right.

8 Q Would you ever communicate with any members of
9 the Supreme Court during the course of that year about
10 potential Advisory Commission roles?

11 MS. CARTER: Object to form.

12 THE WITNESS: I've never done that about a
13 rule. But, I mean, certainly I've had communications
14 with our Supreme Court liaison over times about other
15 things.

16 BY MR. DOUGHERTY:

17 Q How do you communicate with your Supreme Court
18 liaison? Do you do it while you're at the meeting or at
19 a later time?

20 A By telephone, typically.

21 Q Who was the Supreme Court liaison in 2022 from
22 the Supreme Court?

23 A Justice Lee.

24 Q How often did you communicate by telephone with
25 Justice Lee during the 2022 calendar year?

1 A Likely once or twice.

2 Q Once or twice?

3 A (Witness nods head up and down.)

4 Q Do you recall what the nature of those calls
5 were about?

6 A Yes. Questions about reappointment as chair.
7 Reappointment to the commission.

8 Q Why would you communicate with Justice Lee
9 about that, those issues?

10 A Because it's -- the Supreme Court appoints the
11 members of the commission. It's the Supreme Court who
12 appoints the chair, the vice chair, the reporter, and
13 the other offices of the commission.

14 Q Well, do you ever -- have you, in the past,
15 ever communicated with any members of the Supreme Court
16 about the Advisory Commission, other than the Supreme
17 Court liaison?

18 A No.

19 Q So your point of communication in the past has
20 always been with the individual who's named as the
21 Supreme Court liaison?

22 A Correct.

23 Q I'm not talking about communications you might
24 have at a bar function. I'm only referring, when I talk
25 about these communications, related to the Advisory

1 Commission and your duties.

2 A That's the way I understood your question.

3 Q Okay. Did Justice Lee have any information or
4 comments back to you during your one or two meetings
5 with her in 2022?

6 A I don't believe I had any meetings with you.

7 Q Well, I think -- my understanding, I said, "How
8 many meeting in 2022 by telephone," and I think you
9 said, "One or two."

10 Was that your testimony?

11 A My testimony was intended to be that I spoke
12 with her by phone once or twice. They were not
13 meetings --

14 Q Okay.

15 A -- in person.

16 Q The one or two times in 2022 when you spoke by
17 phone with Justice Lee, do you recall what information
18 Justice Lee said to you or gave to you?

19 A In general, yes.

20 Q Okay. What was that?

21 A Had to do with reappointment as chairman of the
22 commission, possibly reappointment to the commission
23 itself.

24 Q Were you calling Justice Lee, at that point, to
25 see if you were going to be reappointed, or you were

1 requesting reappointment?

2 Explain that a little bit, please.

3 A I don't believe I called her. Most likely, she
4 called me.

5 Q Okay. When she called you during those one or
6 two times, what did she say?

7 A In words or in substance, "The Supreme Court
8 would like you to continue to serve on the commission.
9 The Supreme Court would like you to continue to serve as
10 chair."

11 Something to that effect.

12 Q Do you recall in 2022 when that happened, those
13 one or two times?

14 A I do not.

15 Q I'm going to jump back to the -- what I viewed
16 on the AOC website this morning, okay, regarding the
17 Advisory Commission and the members that are listed.

18 There's another heading. It says -- and we
19 talked about Justice Tarwater, who was just appointed to
20 the Supreme Court. I think Justice Lee retired.

21 Is that accurate?

22 A She did.

23 Q There's a heading here that says, "Assigned
24 staff attorney (criminal)," and the individual is
25 Elizabeth Ryan, Supreme Court staff attorney.

1 What is Ms. Ryan's role on the Advisory
2 Commission?

3 A Let me answer it this way.

4 I don't know that she's actually on the
5 commission. I know that Elizabeth is in our meetings,
6 along with Jeff Zager, as counsel, and they participate
7 in the meetings there. They do not vote on proposed
8 rule changes, but they provide expertise and guidance on
9 various issues.

10 Q Well, if someone's not on the commission, how
11 do they get to go to the meetings? I don't understand
12 that.

13 Can you explain that?

14 MS. CARTER: I'm going to object to the form.

15 Go ahead.

16 THE WITNESS: My explanation is that the
17 Tennessee Supreme Court has authority to decide who the
18 members of the commission are and how the meetings
19 proceed, and that, at some level, the Supreme Court has
20 determined that having those in the position of
21 Elizabeth Ryan and Jeff Zager would be helpful to the
22 commission's business.

23 And so they have, since I can remember, been in
24 attendance at the meetings.

25 BY MR. DOUGHERTY:

1 Q How long has Ms. Ryan been in attendance at the
2 meetings?

3 A For as long as I can remember.

4 Q What does she do? What is your understanding
5 of Ms. Ryan's role at these meetings?

6 A To lend expertise to the subject matter of the
7 discussions.

8 Q Is Ms. Ryan a judge, or she a practicing
9 attorney? Do you know?

10 A I do know, and she's an attorney. She's not a
11 judge.

12 Q Okay. The other person, it says, "Assigned
13 staff attorney (civil), Jeff Zager." I think you
14 mentioned his name. You are saying Mr. Zager
15 participates in all the meetings?

16 A He's participated in all of the meetings that I
17 can remember, yes.

18 Q Okay. Mr. Zager would have participated in
19 quarterly meetings in 2022?

20 A Yes.

21 Q Did Ms. Ryan participate in the quarterly
22 meetings in 2022?

23 A I believe so.

24 Q Did Mr. Zager participate in the meetings thus
25 far in 2023?

1 A I'm not entirely sure, but I believe so.

2 Q Did Ms. Ryan participate in the meetings thus
3 far in 2023?

4 A I believe so.

5 Q Just to confirm, the reporter, Ms. Zehrt, did
6 she participate in the meetings in 2022?

7 A I'm not sure.

8 Q Do you know when she was appointed to the
9 Advisory Commission?

10 A It was, I believe, either in 2022 or 2023.

11 Q I believe, as I understand your testimony, you
12 said that the Supreme Court makes appointments of
13 members to the Advisory Commission; is that accurate?

14 A That's what I testified to, yes.

15 Q Do they enter any type of judicial order when
16 they make these appointments? Are you aware?

17 A Yes, I am aware. Yes, they do.

18 Q Do they make judicial orders when they appoint
19 judicial liaisons to the Advisory Commission?

20 A I believe so.

21 Q Do they make judicial orders when they appoint
22 and assign staff attorneys? For example, Ms. Ryan or
23 Mr. Zager?

24 A I'm not sure.

25 Q Okay. Do they make judicial orders when they

1 appoint a reporter, like Ms. Zehrt, for example?

2 A I believe so.

3 Q Okay. Do they make judicial orders when they
4 appoint someone like an AOC contact, like Ms. Michelle
5 Consiglio-Young?

6 A I'm not sure.

7 Q As far as you recall, Ms. Michelle
8 Consiglio-Young has served at least until you have been
9 on the commission, since 2016?

10 A That's my memory.

11 Q Okay. Are all of the other people that are
12 listed on the AOC website for the Advisory Commission,
13 other than judicial liaisons, are all those individuals
14 in private practice? Are they private attorneys?

15 MS. CARTER: Object to the form.

16 THE WITNESS: For the most part.

17 BY MR. DOUGHERTY:

18 Q The only one I don't see, from what I'm seeing,
19 it says "ESQ" after pretty much everything. What is
20 your understanding of ESQ?

21 A It's an abbreviation for the word "esquire."

22 Q What does that mean? Does that mean an
23 attorney?

24 A It's a suffix that oftentimes you'll see
25 appended to the name of an attorney.

1 Q There's a Representative William Lamberth of
2 Nashville, Tennessee that does not have the "ESQ" next
3 to his name. Who is Representative Lamberth?

4 A He's a member of the Advisory Commission, and
5 also a member of the Tennessee House of Representatives.

6 Q Is Representative Lamberth an attorney? Do you
7 know?

8 A I do know. Yes, he is an attorney.

9 Q He is an attorney?

10 A (Witness nods head up and down.)

11 Q Is he -- do you know what -- is he with a
12 particular firm that you're aware of?

13 A He has his own firm in Sumner County.

14 Q Andree Blumstein is listed here. As I recall,
15 Ms. Blumstein is the current solicitor general; is that
16 right?

17 A That is correct.

18 MR. DOUGHERTY: I think someone else,
19 Mr. Stahl, may have some questions.

20 I'll pass the witness, Mike.

21 EXAMINATION

22 BY MR. STAHL:

23 Q Representative Bulso, have you ever personally
24 denied a member of the public the option of attending an
25 Advisory Commission meeting?

1 A I have not.

2 Q Do commission members ever disagree about
3 proposed rule changes?

4 A Yes.

5 Q Does the commission ever assign subcommittees
6 to examine proposed rule changes?

7 A We have committees. We have no subcommittees.

8 Q You mentioned earlier that you'll testify
9 before the House or the General Assembly about proposed
10 rule changes that may have gone up through the AOC to
11 the Tennessee Supreme Court; is that right?

12 A Yes.

13 Q When you are at those proceedings, whether you
14 testify or not, do you know if those proceedings are
15 open to the public?

16 A I do.

17 Q Are they?

18 A They are.

19 Q Have you ever been involved in a commission
20 meeting where you noticed that members of the public
21 were present?

22 A I do not recall such a meeting.

23 Q As chair of the Advisory Commission, do you
24 believe that honest and frank discussions among the
25 members is in the committee's best interest?

1 A Yes.

2 Q Have you ever had a rule change that you
3 submitted through the AOC to the Tennessee Supreme Court
4 that the General Assembly denied?

5 A By the Supreme Court?

6 Q Uh-huh.

7 A Yes.

8 Q Have you ever noticed that a submitted proposed
9 rule change and the advisory comments that you said you
10 most often submit with those have been amended or
11 changed in any way before being accepted?

12 A That has happened as well.

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

14 EXAMINATION

15 BY MR. DOUGHERTY:

16 Q When did these changes -- what years did that
17 occur, where the Supreme Court either denied -- well,
18 when did the Supreme Court deny a proposed rule change
19 that the Advisory Commission made?

20 A My recollection is that that occurred with
21 regard to a proposed change regarding mandatory
22 disclosure under Rule 26.

23 Q Do you recall what year that might have been?

24 A No. I could not recall the year that occurred.

25 Q Would there be a record somewhere on the AOC

1 website or the Supreme Court orders? Do you know?

2 A I know that there would be a written record
3 that a rule was proposed to the Supreme Court, and that
4 the Supreme Court did not adopt it.

5 Q Where would that be? Would that be in your
6 typically Lexis/Westlaw search, or where would that be?

7 A Well, it would be in a number of places. It
8 would be a written record of what the commission
9 approved. There'd be some writing of the communication
10 of that action to the Supreme Court, and then there
11 would be, perhaps, no further action by the Supreme
12 Court on putting that proposed rule out for public
13 comment or change.

14 Q Do you recall what year it was when there was
15 a -- the Supreme Court rewrote the recommended rule or
16 changed it somehow? Do you recall when that would have
17 been?

18 A I can't recall the precise year.

19 Q But you're saying it would -- it's your
20 understanding that there would be some type of record of
21 what the Advisory Commission recommended versus what was
22 actually enacted?

23 A Absolutely.

24 Q Were -- those times when the Supreme Court
25 either made a change or denied, were you ever required

1 to testify before the General Assembly?

2 A I don't recall.

3 MR. DOUGHERTY: I don't think I have anything
4 else.

5 MR. STAHL: I just have one more question.

6 EXAMINATION

7 BY MR. STAHL:

8 Q Does every meeting result in a vote?

9 A No.

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

11 MR. DOUGHERTY: We're on the same schedule, an
12 hour and 45 minutes for both of our first depositions.

13 MS. CARTER: You have the right to read and
14 sign, so do you want to read and sign your deposition?

15 THE WITNESS: No, I'll waive it.

16 THE STENOGRAPHER: Do you want a copy of the
17 transcript?

18 MR. DOUGHERTY: Yes, I do.

19 We're off the record.

20

21 (At 10:47 a.m. Central Time,
22 proceedings concluded.)

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REPORTER'S CERTIFICATE

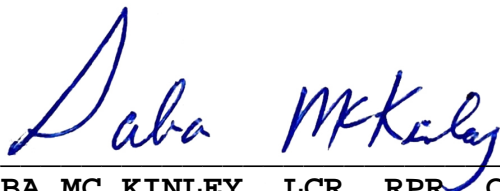
STATE OF TENNESSEE

COUNTY OF DAVIDSON

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Exhibit

3

McCALEB

vs.

LONG

MICHELLE CONSIGLIO-YOUNG

November 16, 2023



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

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

6 Plaintiff,

7 vs.

 Case No. 3:22-cv-00439

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

12 Defendant.

13 Deposition of:

14 MICHELLE CONSIGLIO-YOUNG

15 Taken on behalf of the Plaintiff
16 November 16, 2023

17 Commencing at 9:24 a.m. CST

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

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A P P E A R A N C E S

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E X H I B I T S

(None offered.)

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

2
3
4 The deposition of MICHELLE CONSIGLIO-YOUNG
5 was taken by counsel for the Plaintiff, at the
6 offices of 500 Charlotte Avenue, Nashville,
7 Tennessee, on November 16, 2023, for all purposes
8 under the Tennessee Rules of Civil Procedure.

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

15 It is agreed that MICHELLE CESSNA, LCR, RPR,
16 and Court Reporter for the State of Tennessee, may
17 swear the witness, and that the reading and signing
18 of the completed deposition by the witness are
19 waived.
20
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25

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 Approval Program
16 is also within my division, which deals with
17 juvenile matters.

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

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

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

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

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

1 a different position after that?

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

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

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

10 Q. So that's your current position?

11 A. Correct.

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

14 A. Yes.

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

18 A. Yes.

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

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

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

3 A. Correct.

4 Q. Who do you report directly to?

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

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

9 A. Yes.

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

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

17 Q. What are the three supervisors' names?

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

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

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

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

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

3 Q. In what capacity?

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

6 Q. How long were you in that role?

7 A. I was in that role two years.

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

10 A. Correct.

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

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

16 Q. Okay.

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

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

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

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

25 Q. And then how about your JD?

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

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

5 A. November 2011.

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

7 A. Correct.

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

9 A. No.

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

12 A. No. Just Tennessee.

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

16 A. No.

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

19 A. No.

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

22 A. No.

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

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

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

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

18 A. No.

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

24 A. That's correct.

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

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

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

12 Q. Do they ever request testimony from you?

13 A. Yes.

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

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

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

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

1 legislative session.

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

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

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

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

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

16 A. No.

17 Q. What was that related to?

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

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

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

25 Q. What type of legislation does the AOC

1 sponsor?

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

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

15 A. That's correct.

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

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

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

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

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

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

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

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

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

19 A. John Coke.

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

22 A. Yes.

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

1 A. Yes.

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

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

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

9 A. No. General Counsel John Coke did.

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

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

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

19 A. Correct.

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

22 A. Yes.

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

25 A. Yes.

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

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

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

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

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

14 A. Yes.

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

18 MR. STAHL: Object to the form.

19 THE WITNESS: Could you restate that?

20 BY MR. DOUGHERTY:

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

1 A. Yes.

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

4 MR. STAHL: Object to the form.

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

10 BY MR. DOUGHERTY:

11 Q. Did the preliminary --

12 A. -- in our office.

13 Q. I'm sorry, go ahead.

14 A. Just within our office.

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

17 MR. STAHL: Object to the form.

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

21 BY MR. DOUGHERTY:

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

24 MR. STAHL: Object to the form.

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

1 BY MR. DOUGHERTY:

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

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

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

8 Q. Just in general, just attorneys?

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

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

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

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

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

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

19 A. Yes, uh-huh.

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

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

1 A. Yes, sir.

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

4 A. Yes.

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

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

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

19 A. No.

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

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

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

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

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

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

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

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

25 A. Yes.

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

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

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

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

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

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

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

16 A. Uh-huh.

17 Q. Do you recall --

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

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

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

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

1 the time.

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

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

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

12 A. Yes.

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

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

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

1 A. Yes.

2 Q. What years were -- were those?

3 A. 2015, 2016.

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

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

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

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

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

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

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

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

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

1 public meeting notice at that point?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 A. Yes.

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

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

11 Q. You did that as a liaison?

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

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

17 A. It was Deborah Taylor Tate.

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

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

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

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

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

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

13 Q. On the commission page of members?

14 A. Yes.

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

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

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

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

1 the Tennessee Supreme Court.

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

5 A. Yes.

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

8 A. Yes.

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

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

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

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

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

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

25 My role is -- compared to the reporter is

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

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

9 A. Not to my knowledge.

10 Q. Where are they kept?

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

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

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

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

3 A. Yes.

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

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

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

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

14 Q. How is the reporter selected?

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

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

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

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

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

5 Q. What's a voting member?

6 A. They are not voting members.

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

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

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

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

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

23 A. I -- I do not know.

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

1 aware of how that works?

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

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

6 A. Yes.

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

10 A. It's quarterly.

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

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

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

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

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

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

1 depending on the members' availability
2 sometimes.

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

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

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

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

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

17 A. Yes.

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

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

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

4 A. Yes.

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

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

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

14 A. Yes.

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

16 A. Yes, Gina Bulso.

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

19 A. Uh-huh.

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

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

25 Q. Did you attend the March 2023 Advisory

1 Commission meeting?

2 A. Yes.

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

4 A. It was closed.

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

7 A. Yes.

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

9 A. It was open.

10 Q. Why was it open?

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

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

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

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

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

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

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

1 posted on the website.

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

4 A. They were not.

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

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

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

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

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

15 A. I believe it did not occur.

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

17 A. I don't.

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

21 A. No.

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

24 A. No, I have not.

25 Q. How about have you had any discussion

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

3 A. No.

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

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

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

11 A. Yes.

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

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

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

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

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

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

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

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

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

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

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

11 A. Uh-huh.

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

14 A. Yes.

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

18 A. I believe it was 2018.

19 Q. I'm sorry?

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

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

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

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

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

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

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

3 Q. Do you recall his name?

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

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

8 A. Yes.

9 Q. -- or physical?

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

18 Q. Do you recall the topic?

19 A. No.

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

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

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

25 A. Yes.

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

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

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

5 A. I was at that meeting, yes.

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

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

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

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

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

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

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

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

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

5 A. Yes.

6 Q. And who was that?

7 A. It was Justice Holly Kirby.

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

10 A. She was.

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

13 A. Yes, she is.

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

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

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

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

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

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

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

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

25 A. No.

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

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

7 Q. Where are the minutes kept?

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

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

15 A. Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 A. No.

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

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

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

1 that you saw?

2 A. Not that I experienced, no.

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

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

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

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

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

18 A. Uh-huh.

19 Q. -- was that in 2017?

20 A. Yes.

21 Q. 2015?

22 A. As far as I can recall.

23 Q. 2016?

24 A. That was the norm prior to 2020.

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

1 that.

2 A. Uh-huh.

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

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

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

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

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

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

23 Q. That issue never came up?

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

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

1 A. No I'm okay.

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

4 BY MR. DOUGHERTY:

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

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

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

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

18 Q. Right.

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

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

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

7 A. Correct.

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

11 A. Yes.

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

15 A. Yes.

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

18 A. That is the plan.

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

24 A. The livestreaming link --

25 Q. Yes.

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

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

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

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

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

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

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

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

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

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

19 A. Yes.

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

22 A. Yes.

23 Q. What about the rules of evidence?

24 A. Yes.

25 Q. And what about the juvenile rules of

1 procedure?

2 A. Yes, occasionally.

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

6 A. Yes, those are the five.

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

8 A. No.

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

16 A. Uh-huh.

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

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

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

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

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

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

17 A. Correct.

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

20 A. No, no problem.

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

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

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

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

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

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

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

13 A. Uh-huh.

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

18 A. Yes.

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

21 A. Right.

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

23 A. Yes.

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

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

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

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

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

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

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

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

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

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

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

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

20 A. No.

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

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

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

1 statute or just custom in practice?

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

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

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

20 Q. Without consulting the Advisory
21 Commission?

22 A. Correct.

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

1 assembly?

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

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

11 A. Yes.

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

15 A. It's almost always in January.

16 Q. Right, when they begin their term?

17 A. Correct.

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

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

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

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

11 A. It's a rule resolution --

12 Q. Okay.

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

16 Q. I see.

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

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

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

1 amended.

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

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

9 Q. Oh, okay.

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

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

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

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

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

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

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

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

19 MR. DOUGHERTY: Sure.

20 (Short break.)

21 BY MR. DOUGHERTY:

22 Q. We're back on the record.

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

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

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

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

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

10 A. Not that I recall.

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

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

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

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

21 Q. How often do those usually take place?

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

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

1 A. Yes.

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

5 A. What do you mean other state?

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

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

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

16 A. No.

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

21 A. Not that I'm aware of.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 provided on that page.

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

3 A. Yes.

4 Q. Okay. That's pre injunction?

5 A. Correct.

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

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

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

16 A. Correct.

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

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

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

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

3 A. Yes.

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

7 A. As far as I know, yes.

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

11 A. No.

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

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

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

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

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

23 A. No.

24 Q. -- for Ms. Harmon?

25 And you said no?

1 A. Correct, no.

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

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

7 Q. But what are those topics and capacities?

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

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

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

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

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

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

25 A. That's correct.

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

4 A. I believe she does, yes.

5 Q. Do you know in what capacity?

6 MR. STAHL: Object to the form.

7 THE WITNESS: No.

8 BY MR. DOUGHERTY:

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

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

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

14 A. I don't know.

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

17 MR. STAHL: Okay.

18

19 EXAMINATION

20 QUESTIONS BY MR. STAHL:

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

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

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

3 A. That's correct.

4 Q. How big is that conference room?

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

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

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

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

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

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

25 Q. Okay. When the meetings were in person

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

4 A. Always the same conference room.

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

7 A. Yes.

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

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

19 Q. No, a member of the Committee.

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

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

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

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

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

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

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

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

3 MR. DOUGHERTY: Object to the form.

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

6 BY MR. STAHL:

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

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

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

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

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

8 A. No.

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

12 A. No.

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

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

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

22 A. Correct.

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

25 A. They have been standing committees;

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

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

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

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

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

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

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

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

22 A. I do not know.

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

25 ///

1 EXAMINATION

2 BY MR. DOUGHERTY:

3 Q. Brief follow-up.

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

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

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

16 MR. STAHL: Object to the form.

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

19 BY MR. DOUGHERTY:

20 Q. Okay.

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

22 MR. STAHL: Great. Okay.

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

25 MR. DOUGHERTY: Yeah.

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

3 MR. DOUGHERTY: Can I get it before?

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

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

8 THE REPORTER: Yeah.

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

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

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REPORTER'S CERTIFICATE

STATE OF TENNESSEE

COUNTY OF SUMNER

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

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

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MICHELLE CESSNA, LCR, RPR
Lexitas Legal
Licensed Court Reporter (TN)
Notary Public State of Tennessee

LCR #864 - Expires: 6/30/2024

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Exhibit

4

Oct 17, 2023

Vicki Kinkade
Chief Deputy Clerk

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

IN RE:) ADMINISTRATIVE ORDER
2023 HOLIDAY SCHEDULE) NO. 102

ORDER

It is hereby ORDERED that the United States District Court for the Middle District of Tennessee, including the Clerk's Office and the United States Probation Office, will be closed on the following dates:

Thursday, November 23, 2023, and Friday, November 24, 2023

Friday, December 22, 2023

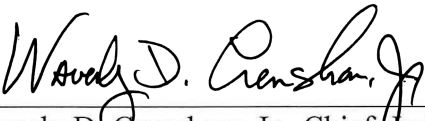
Monday, December 25, 2023

Friday, December 29, 2023

Monday, January 1, 2023

Pleadings or other documents required to be filed on the dates listed above will be treated as timely filed if filed on the next business day after the required date.

It is so ORDERED.




Waverly D. Crenshaw, Jr., Chief Judge



Aleta A. Trauger, U.S. District Judge



William L. Campbell, Jr., U.S. District Judge



Eli Richardson, U.S. District Judge

Exhibit

5

IN THE UNITED STATES DISTRICT 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

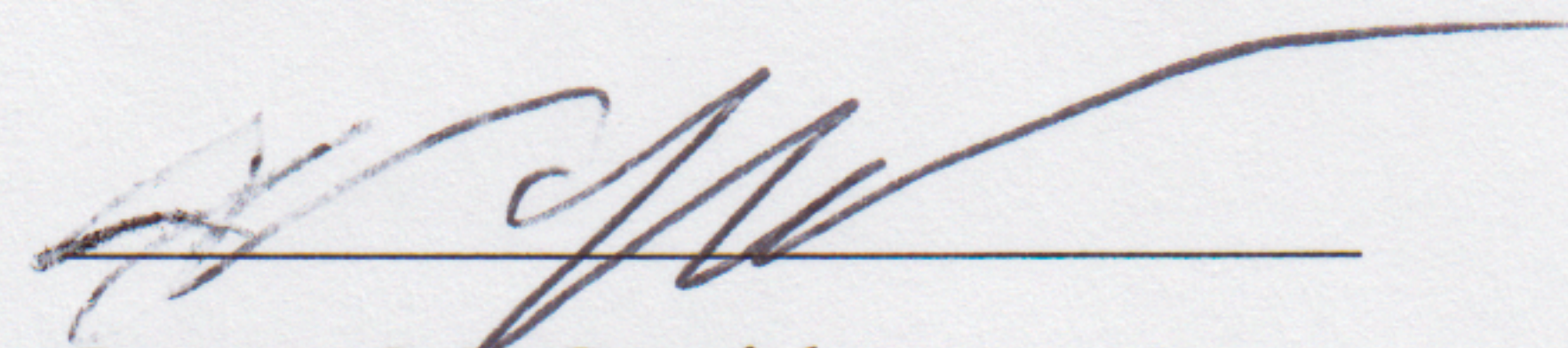
DECLARATION OF JAMES MCQUAID

I, James McQuaid, declare as follows:

1. I am a US citizen over the age of 18 years. If called to testify in this matter, I would do so as follows:
2. I am counsel of record for Plaintiff Dan McCaleb in this case.
3. In a series of emails on September 28, 2023, Robert Wilson and Andrew Coulam, counsel for Defendant, agreed to accept service of the subpoenas for depositions of the Supreme Court Justices Bivens, Page, Kirby, and Lee ("the Subpoenas"). An excerpt of that email chain containing a true and correct copy of the relevant emails is attached to this declaration as **Exhibit A**.
4. On October 31 2023, I electronically served the Subpoenas on attorneys Wilson and Coulam, as well as their colleague Michael Stahl. A true and correct copy of that email is attached as **Exhibit B**.
5. The Subpoenas and their proofs of service are attached to this Declaration as **Exhibit C**.

Under penalty of perjury, I affirm that the foregoing is true and correct.

November 26, 2023


James McQuaid

Exhibit





A



From: Buck Dougherty <bdougherty@libertyjusticecenter.org>
Sent: Thursday, September 28, 2023 7:15 PM
To: Andrew Coulam <Andrew.Coulam@ag.tn.gov>; Robert W. Wilson <Robert.Wilson@ag.tn.gov>; James McQuaid <jmcquaid@libertyjusticecenter.org>
Cc: Michael Stahl <Michael.Stahl@ag.tn.gov>
Subject: RE: McCaleb v. Long - Notices of Deposition

Let me know what time for a call tomorrow.

Prof. Barton confirmed his zoom depo next Tuesday. So, Barton and McCaleb have confirmed their zoom depositions per your notices.

Buck Dougherty Senior Counsel Liberty Justice Center	<ul style="list-style-type: none">  312-637-2280 (Main)  423-326-7548 (Cell)  bdougherty@libertyjusticecenter.org  libertyjusticecenter.org
---	---



From: Andrew Coulam <Andrew.Coulam@ag.tn.gov>
Sent: Thursday, September 28, 2023 7:04 PM
To: Buck Dougherty <bdougherty@libertyjusticecenter.org>; Robert W. Wilson <Robert.Wilson@ag.tn.gov>; James McQuaid <jmcquaid@libertyjusticecenter.org>
Cc: Michael Stahl <Michael.Stahl@ag.tn.gov>
Subject: Re: McCaleb v. Long - Notices of Deposition

Yes, to be clear, our office will accept service of the subpoenas.

It was our understanding that we had agreed on the depositions of Long and Harmon for next week and we were wondering why we had not received a notice and subpoena. That was one of the reasons for my call. So, we can tell Long and Harmon that their depositions for next week are off and will have to be rescheduled? If so, we'll inquire about their availability for the remainder of October.

We can discuss tomorrow about extending another discovery deadline to allow you to depose any expert(s) we disclose. We're obviously not trying to prevent you from deposing any such expert.

Andrew C. Coulam | Deputy Attorney General
 Public Interest Division
 Office of Tennessee Attorney General

Mailing Address:

P.O. Box 20207, Nashville, TN 37202-0207

p. [615.741.1868](tel:615.741.1868)andrew.coulam@ag.tn.gov**From:** Buck Dougherty <bdougherty@libertyjusticecenter.org>**Sent:** Thursday, September 28, 2023 6:15 PM**To:** Robert W. Wilson <Robert.Wilson@ag.tn.gov>; James McQuaid <jmcquaid@libertyjusticecenter.org>**Cc:** Andrew Coulam <Andrew.Coulam@ag.tn.gov>; Michael Stahl <Michael.Stahl@ag.tn.gov>**Subject:** RE: McCaleb v. Long - Notices of Deposition

1. Because Bulso can only do his deposition on **October 9** (and you were uncertain of his availability at the conference), it makes more sense practically and logistically to try and do Bulso, Long, and Harmon together in Nashville that week at your office. McCaleb's is on the 13th, and I will be in Chicago for that. So, if Bulso is on Monday October 9, which is fine with me, let me know if Long and Harmon can do 10, 11, and/or 12 (in any order). I do not want to depose Harmon and Long next week now that Bulso's schedule has been disclosed to us. As you know, I'm in Memphis and would prefer to depose the State folks you've stipulated to at your office the same week so I'm not making multiple trips. So please confirm Long and Harmon's availability as I've suggested.
2. I understand you object to the depositions themselves. I'm just asking about accepting service of process. Thanks for agreeing to accept service.
3. We've both already had 30-day extensions of experts. I think we probably need to discuss on a call tomorrow. While it normally might not be an issue, pushing your expert deadline back another 30 days as you've requested exceeds the discovery cutoff of Oct. 31 per the scheduling order, and we are obviously going to have to depose that individual. So, I think your request is much more than a simple 30-day extension; it's actually a request to push back the discovery deadline itself, which is currently set for Oct. 31. I'm available to jump on a video conference tomorrow to discuss, just let me know.

Thanks, Buck

Buck Dougherty

Senior Counsel

Liberty Justice Center

 [312-637-2280](tel:312-637-2280) (Main)
 [423-326-7548](tel:423-326-7548) (Cell)
 bdougherty@libertyjusticecenter.org
 libertyjusticecenter.org

**LIBERTY JUSTICE CENTER**

From: Robert W. Wilson <Robert.Wilson@ag.tn.gov>
Sent: Thursday, September 28, 2023 6:01 PM
To: Buck Dougherty <bdougherty@libertyjusticecenter.org>; James McQuaid <jmcquaid@libertyjusticecenter.org>
Cc: Andrew Coulam <Andrew.Coulam@ag.tn.gov>; Michael Stahl <Michael.Stahl@ag.tn.gov>
Subject: RE: McCaleb v. Long - Notices of Deposition

Buck,

You agreed to depose Director Long on October 4. That date is still available for you to depose her. If you need to reschedule, then we will need to contact Director Long regarding her available dates.

Our Office will accept service for the subpoenas. We still object to the relevance of any Tennessee Supreme Court Justice being deposed in this matter.

We also need to know if Plaintiff objects to the expert disclosure deadline extension by 30 days, to November 1, 2023.

Thank you,

-Robert

Robert W. Wilson
 Senior Assistant Attorney General
 Memphis Division
 Office of Tennessee Attorney General
 40 South Main Street, Suite 1014
 Memphis, TN 38103-1877
 Phone: (901) 543-9031
 Email: Robert.Wilson@ag.tn.gov



From: Buck Dougherty <bdougherty@libertyjusticecenter.org>
Sent: Thursday, September 28, 2023 5:49 PM
To: Robert W. Wilson <Robert.Wilson@ag.tn.gov>; James McQuaid <jmcquaid@libertyjusticecenter.org>
Cc: Andrew Coulam <Andrew.Coulam@ag.tn.gov>; Michael Stahl <Michael.Stahl@ag.tn.gov>
Subject: RE: McCaleb v. Long - Notices of Deposition

Please confirm via this email before close of business tomorrow on Friday Sep. 29 per our conference that you agree to accept service of process for the subpoenas for depositions for the 4 TN Supreme Court justices we've previously discussed.

Best, Buck

Buck Dougherty

Senior Counsel

☎ [312-637-2280](tel:312-637-2280) (Main)

☎ [423-326-7548](tel:423-326-7548) (Cell)

Case 3:22-cv-00439 Document 62-5 Filed 11/27/23 Page 6 of 37 PageID #: 1703

Exhibit

B

McCaleb v Long

James McQuaid <jmcquaid@libertyjusticecenter.org>

Tue 10/31/2023 4:48 PM

To: andrew.coulam@ag.tn.gov <Andrew.Coulam@ag.tn.gov>; Robert.Wilson@ag.tn.gov <Robert.Wilson@ag.tn.gov>; Stahl <Michael.Stahl@ag.tn.gov>

Cc: Buck Dougherty <bdougherty@libertyjusticecenter.org>

 8 attachments (3 MB)

McCaleb notice of kirby dep.pdf; McCaleb notice of bivens dep.pdf; McCaleb notice of lee dep.pdf; McCaleb notice of page dep.pdf; kirby subpoena.pdf; bivens subpoena.pdf; Lee subpoena.pdf; Page subpoena.pdf;

Please see the attached Notices of Deposition and corresponding Subpoenas.

Exhibit

C

UNITED STATES DISTRICT COURT

for the

Middle District of Tennessee

Dan McCaleb

Plaintiff

v.

Michelle Long

Defendant

Civil Action No. 3:22-cv-00439

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Holly Kirby

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Table with 2 columns: Place (via Zoom) and Date and Time (11/27/2023 9:00 am)

The deposition will be recorded by this method: normal stenographic means

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/31/2023

CLERK OF COURT

OR

/s/ M.E. Buck Dougherty III

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Plaintiff Dan McCaleb M.E. Buck Dougherty III, 440 N. Wells St., Ste. 200, Chicago IL 60654 bdougherty@libertyjusticecenter.org, 312-637-2280

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 3:22-cv-00439

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* Holly Kirby
on *(date)* 10/31/2023.

I served the subpoena by delivering a copy to the named individual as follows: Emailed to counsel for
Defendants, who had previously represented that they were authorized to accept service
on *(date)* 10/31/2023 ; or


I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ 40.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: 11/21/2023



Server's signature

James J McQuaid
Printed name and title
440 N Wells St., Ste. 200
Chicago, IL 60654

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

IN THE UNITED STATES DISTRICT 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

NOTICE OF DEPOSITION OF HOLLY KIRBY

Pursuant to the Federal Rules of Civil Procedure, Plaintiff, Dan McCaleb, Executive Editor of The Center Square, through counsel, gives notice that he will take the deposition of Chief Justice Holly Kirby on November 27, 2023, beginning at 9:00 AM Central Time. Counsel for the parties and the witness may attend the deposition through a video conference platform such as Zoom. All participants will be sent a meeting invitation via email which will allow connection to the deposition and will provide the password/meeting ID for participation. The deposition will be taken by normal stenographic means before a court reporter duly authorized to take sworn testimony. By agreement of the parties, the witness may be sworn remotely and will be bound by that oath as if given in person. The oath to be administered to the witness is attached. The deposition will continue until completed or until otherwise agreed by counsel.

Respectfully submitted,

/s/ M. E. Buck Dougherty III

M. E. Buck Dougherty III, TN BPR #022474
James McQuaid, *Pro Hac Vice*
LIBERTY JUSTICE CENTER
440 N. Wells Street, Suite 200
Chicago, Illinois 60654
312-637-2280-telephone
312-263-7702-facsimile
bdougherty@libertyjusticecenter.org
jmcquaid@libertyjusticecenter.org

*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 email on this 31st day of October, 2023:

JONATHAN SKRMETTI
Office of the Attorney General & Reporter
Andrew C. Coulam, *Deputy Attorney General*
Michael M. Stahl, *Senior Assistant Attorney General*
Robert W. Wison, *Senior Assistant Attorney General*
Public Interest Division
P.O. Box 20207
Nashville, Tennessee 37202-0207
andrew.coulam@ag.tn.gov
michael.stahl@ag.tn.gov
Robert.wilson@ag.tn.gov

/s/ M.E. Buck Dougherty III

Remote Witness Oath

Do you solemnly swear or affirm that the testimony you are about to give in this case is the truth, the whole truth and nothing but the truth so help you God. Do you solemnly swear or affirm that you are not consulting and will not consult any outside sources or information during the deposition such as cell phone, smartphone, computer, the internet, any text or instant messaging service, e-mail, any chat room, blog, or website such as Facebook, Myspace, LinkedIn, YouTube, or Twitter to communicate with anyone or to obtain any information or consultation in conjunction with your testimony.

UNITED STATES DISTRICT COURT

for the

Middle District of Tennessee



Dan McCaleb

Plaintiff

v.

Michelle Long

Defendant

Civil Action No. 3:22-cv-00439

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Jeffrey Bivens

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Table with 2 columns: Place (via Zoom) and Date and Time (11/28/2023 9:00 am)

The deposition will be recorded by this method: normal stenographic means

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/31/2023

CLERK OF COURT

OR

/s/ M.E. Buck Dougherty III

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Plaintiff Dan McCaleb M.E. Buck Dougherty III, 440 N. Wells St., Ste. 200, Chicago IL 60654 bdougherty@libertyjusticecenter.org, 312-637-2280

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 3:22-cv-00439

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* Jeffrey Bivens
on *(date)* 10/31/2023 .

I served the subpoena by delivering a copy to the named individual as follows: Emailed to counsel for
Defendants, who had previously represented that they were authorized to accept service
on *(date)* 10/31/2023 ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ 40 .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: 11/21/2023



Server's signature

James J McQuaid
Printed name and title
440 N Wells St., Ste. 200
Chicago, IL 60654

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
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(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

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- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
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(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

IN THE UNITED STATES DISTRICT 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

NOTICE OF DEPOSITION OF JEFFREY BIVENS

Pursuant to the Federal Rules of Civil Procedure, Plaintiff, Dan McCaleb, Executive Editor of The Center Square, through counsel, gives notice that he will take the deposition of Justice Jeffrey Bivens on November 28, 2023, beginning at 9:00 AM Central Time. Counsel for the parties and the witness may attend the deposition through a video conference platform such as Zoom. All participants will be sent a meeting invitation via email which will allow connection to the deposition and will provide the password/meeting ID for participation. The deposition will be taken by normal stenographic means before a court reporter duly authorized to take sworn testimony. By agreement of the parties, the witness may be sworn remotely and will be bound by that oath as if given in person. The oath to be administered to the witness is attached. The deposition will continue until completed or until otherwise agreed by counsel.

Respectfully submitted,

/s/ M. E. Buck Dougherty III

M. E. Buck Dougherty III, TN BPR #022474
James McQuaid, *Pro Hac Vice*
LIBERTY JUSTICE CENTER
440 N. Wells Street, Suite 200
Chicago, Illinois 60654
312-637-2280-telephone
312-263-7702-facsimile
bdougherty@libertyjusticecenter.org
jmcquaid@libertyjusticecenter.org

*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 email on this 31st day of October, 2023:

JONATHAN SKRMETTI
Office of the Attorney General & Reporter
Andrew C. Coulam, *Deputy Attorney General*
Michael M. Stahl, *Senior Assistant Attorney General*
Robert W. Wison, *Senior Assistant Attorney General*
Public Interest Division
P.O. Box 20207
Nashville, Tennessee 37202-0207
andrew.coulam@ag.tn.gov
michael.stahl@ag.tn.gov
Robert.wilson@ag.tn.gov

/s/ M.E. Buck Dougherty III

Remote Witness Oath

Do you solemnly swear or affirm that the testimony you are about to give in this case is the truth, the whole truth and nothing but the truth so help you God. Do you solemnly swear or affirm that you are not consulting and will not consult any outside sources or information during the deposition such as cell phone, smartphone, computer, the internet, any text or instant messaging service, e-mail, any chat room, blog, or website such as Facebook, Myspace, LinkedIn, YouTube, or Twitter to communicate with anyone or to obtain any information or consultation in conjunction with your testimony.

UNITED STATES DISTRICT COURT

for the

Middle District of Tennessee

Dan McCaleb

Plaintiff

v.

Michelle Long

Defendant

Civil Action No. 3:22-cv-00439

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Sharon Lee

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Table with 2 columns: Place (via Zoom) and Date and Time (11/29/2023 9:00 am)

The deposition will be recorded by this method: normal stenographic means

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/31/2023

CLERK OF COURT

OR

/s/ M.E. Buck Dougherty III

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Plaintiff

Dan McCaleb

M.E. Buck Dougherty III, 440 N. Wells St., Ste. 200, Chicago IL 60654
bdougherty@libertyjusticecenter.org, 312-637-2280

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 3:22-cv-00439

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* Sharon Lee
on *(date)* 10/31/2023.

I served the subpoena by delivering a copy to the named individual as follows: Emailed to counsel for
Defendants, who had previously represented that they were authorized to accept service
on *(date)* 10/31/2023 ; or

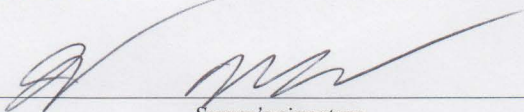
I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ 40.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: 11/21/2023



Server's signature

James J McQuaid
Printed name and title
440 N Wells St., Ste. 200
Chicago, IL 60654

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

IN THE UNITED STATES DISTRICT 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

NOTICE OF DEPOSITION OF SHARON LEE

Pursuant to the Federal Rules of Civil Procedure, Plaintiff, Dan McCaleb, Executive Editor of The Center Square, through counsel, gives notice that he will take the deposition of Retired Justice Sharon Lee on November 29, 2023, beginning at 9:00 AM Central Time. Counsel for the parties and the witness may attend the deposition through a video conference platform such as Zoom. All participants will be sent a meeting invitation via email which will allow connection to the deposition and will provide the password/meeting ID for participation. The deposition will be taken by normal stenographic means before a court reporter duly authorized to take sworn testimony. By agreement of the parties, the witness may be sworn remotely and will be bound by that oath as if given in person. The oath to be administered to the witness is attached. The deposition will continue until completed or until otherwise agreed by counsel.

Respectfully submitted,

/s/ M. E. Buck Dougherty III

M. E. Buck Dougherty III, TN BPR #022474
James McQuaid, *Pro Hac Vice*
LIBERTY JUSTICE CENTER
440 N. Wells Street, Suite 200
Chicago, Illinois 60654
312-637-2280-telephone
312-263-7702-facsimile
bdougherty@libertyjusticecenter.org
jmcquaid@libertyjusticecenter.org

*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 email on this 31st day of October, 2023:

JONATHAN SKRMETTI
Office of the Attorney General & Reporter
Andrew C. Coulam, *Deputy Attorney General*
Michael M. Stahl, *Senior Assistant Attorney General*
Robert W. Wison, *Senior Assistant Attorney General*
Public Interest Division
P.O. Box 20207
Nashville, Tennessee 37202-0207
andrew.coulam@ag.tn.gov
michael.stahl@ag.tn.gov
Robert.wilson@ag.tn.gov


/s/ M.E. Buck Dougherty III

Remote Witness Oath

Do you solemnly swear or affirm that the testimony you are about to give in this case is the truth, the whole truth and nothing but the truth so help you God. Do you solemnly swear or affirm that you are not consulting and will not consult any outside sources or information during the deposition such as cell phone, smartphone, computer, the internet, any text or instant messaging service, e-mail, any chat room, blog, or website such as Facebook, Myspace, LinkedIn, YouTube, or Twitter to communicate with anyone or to obtain any information or consultation in conjunction with your testimony.

UNITED STATES DISTRICT COURT

for the

Middle District of Tennessee 

Dan McCaleb

Plaintiff

v.

Michelle Long

Defendant

)
)
)
)
)
)

Civil Action No. 3:22-cv-00439

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Roger Page

(Name of person to whom this subpoena is directed)

Testimony: **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: via Zoom	Date and Time: 11/30/2023 9:00 am
-----------------	--------------------------------------

The deposition will be recorded by this method: normal stenographic means

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/31/2023

CLERK OF COURT

OR

/s/ M.E. Buck Dougherty III

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Plaintiff

Dan McCaleb

M.E. Buck Dougherty III, 440 N. Wells St., Ste. 200, Chicago IL 60654
bdougherty@libertyjusticecenter.org, 312-637-2280, who issues or requests this subpoena, are:

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 3:22-cv-00439

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* Roger Page
on *(date)* 10/31/2023.

I served the subpoena by delivering a copy to the named individual as follows: Emailed to counsel for
Defendants, who had previously represented that they were authorized to accept service
on *(date)* 10/31/2023 ; or


I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ 40.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: 11/21/2023



Server's signature

James J McQuaid
Printed name and title
440 N Wells St., Ste. 200
Chicago, IL 60654

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

IN THE UNITED STATES DISTRICT 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

NOTICE OF DEPOSITION OF ROGER PAGE

Pursuant to the Federal Rules of Civil Procedure, Plaintiff, Dan McCaleb, Executive Editor of The Center Square, through counsel, gives notice that he will take the deposition of Justice Roger Page on November 30, 2023, beginning at 9:00 AM Central Time. Counsel for the parties and the witness may attend the deposition through a video conference platform such as Zoom. All participants will be sent a meeting invitation via email which will allow connection to the deposition and will provide the password/meeting ID for participation. The deposition will be taken by normal stenographic means before a court reporter duly authorized to take sworn testimony. By agreement of the parties, the witness may be sworn remotely and will be bound by that oath as if given in person. The oath to be administered to the witness is attached. The deposition will continue until completed or until otherwise agreed by counsel.

Respectfully submitted,

/s/ M. E. Buck Dougherty III

M. E. Buck Dougherty III, TN BPR #022474
James McQuaid, *Pro Hac Vice*
LIBERTY JUSTICE CENTER
440 N. Wells Street, Suite 200
Chicago, Illinois 60654
312-637-2280-telephone
312-263-7702-facsimile
bdougherty@libertyjusticecenter.org
jmcquaid@libertyjusticecenter.org

*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 email on this 31st day of October, 2023:

JONATHAN SKRMETTI
Office of the Attorney General & Reporter
Andrew C. Coulam, *Deputy Attorney General*
Michael M. Stahl, *Senior Assistant Attorney General*
Robert W. Wison, *Senior Assistant Attorney General*
Public Interest Division
P.O. Box 20207
Nashville, Tennessee 37202-0207
andrew.coulam@ag.tn.gov
michael.stahl@ag.tn.gov
Robert.wilson@ag.tn.gov

/s/ M.E. Buck Dougherty III

Remote Witness Oath

Do you solemnly swear or affirm that the testimony you are about to give in this case is the truth, the whole truth and nothing but the truth so help you God. Do you solemnly swear or affirm that you are not consulting and will not consult any outside sources or information during the deposition such as cell phone, smartphone, computer, the internet, any text or instant messaging service, e-mail, any chat room, blog, or website such as Facebook, Myspace, LinkedIn, YouTube, or Twitter to communicate with anyone or to obtain any information or consultation in conjunction with your testimony.

Exhibit

6

- October 24, 2023 (in-person) – AOC Deputy Director Rachel Harmon
- October 25, 2023 (in-person) – Defendant AOC Director Michelle Long
- November 16, 2023 (in-person) – AOC liaison Michelle Consiglio-Young
- November 21, 2023 (remote) – Lang Wiseman, Defendant’s Expert

4. Prior to the scheduled depositions of Chief Justice Kirby, Justice Bivins, Justice Page, and Special Justice Lee (collectively “Justices”), I instructed my employer, Liberty Justice Center, to tender \$40 checks to the Justices’ counsel for their attendance at the noticed depositions on November 27, 28, 29, and 30.

Attached as **Exhibit A** are copies of the checks, along with my correspondence.

5. On November 21, 2023, at approximately 1:30 pm CDT, I along with my colleague, James McQuaid, participated in a video conference call with counsel for the Justices regarding their Motion to Quash depositions. Counsel for the Justices participating on the call included Donna Green, Cody Brandon, and Liz Evan. I do not recall counsel for Defendant Michelle Long (Andrew Coulam, Michael Stahl, and Robert Wilson) participating on this video call.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed on November 27, 2023
Lakeland, Tennessee



M. E. Buck Dougherty III
LIBERTY JUSTICE CENTER

Exhibit

A

LIBERTY JUSTICE CENTER

440 N WELLS ST STE 200
CHICAGO, IL 60654-4550

1078

70-480/819 IL
11978

DATE Nov 10, 2023

PAY TO THE
ORDER OF

Chief Justice Holly Kirby

\$ 40.00

Forty and 00/100

DOLLARS



Security
Features
Details on
Back

LIBERTY JUSTICE CENTER

440 N WELLS ST STE 200
CHICAGO, IL 60654-4550

1079

70-480/819 IL
11978

DATE Nov 10, 2023

PAY TO THE
ORDER OF

Justice Roger Page

\$ 40.00

Forty and 00/100

DOLLARS



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Details on
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BANK OF AMERICA

ACH R/T 081904808

McCaleb v. Long

FOR daily witness fee-deposit

LIBERTY JUSTICE CENTER

440 N WELLS ST STE 200
CHICAGO, IL 60654-4550

1080

70-480/819 IL
11978

DATE Nov 10, 2023

PAY TO THE
ORDER OF

Justice Jeffrey Bivens

\$ 40.00

Forty and 00/100

DOLLARS



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Details on
Back

LIBERTY JUSTICE CENTER

440 N WELLS ST STE 200
CHICAGO, IL 60654-4550

1081

70-480/819 IL
11978

DATE Nov 10, 2023

PAY TO THE
ORDER OF

Justice Shannon Lee

\$ 40.00

Forty and 00/100

DOLLARS



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BANK OF AMERICA

ACH R/T 081904808

McCaleb v. Long

FOR daily witness fee-deposit
pursuant to 28 C.S.C. R21

⑈001081⑈ ⑆081904808⑆ 291031728377⑈



10 November 2023

Donna L. Green, Managing Attorney
Law Enforcement and Special
Prosecutions Division
Office of the Tennessee Attorney General
P.O. Box 20207
Nashville, Tennessee 37202-0207

*RE: Daily witness deposition fee pursuant to 28 U.S.C. 1821
McCaleb v. Long No. 3:22 -cv-00439*

Dear Ms. Green,

Enclosed, please find four checks in the amount of \$40.00 each made out to the following pursuant to 28 U.S.C 1821 daily witness deposition fees:

1. Chief Justice Holly Kirby
2. Justice Roger Page
3. Justice Jeffrey Bivens
4. Justice Sharon Lee

Sincerely,

M.E. Buck Dougherty, III
Senior Counsel
Liberty Justice Center