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FILE NO. A23-1890

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against SUSAN S. SMITH,
a Minnesota Attorney,
Registration No. 0340467.

VOLUME II

The above-entitled matter came on for hearing
before the Honorable Referee Christopher J. Dietzen,
before Susan M. Strom, a Notary Public in and for
the County of Dakota, State of Minnesota, taken on
the 16th day of April, 2024, commencing at
approximately 8:30 a.m., at 25 Rev. Dr. Martin Luther
King Jr. Blvd., Room 210, St. Paul, Minnesota.

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A P P E A R A N C E S

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APPEARING ON BEHALF OF THE OFFICE OF THE DIRECTOR
OF LAWYERS PROFESSIONAL RESPONSIBILITY:

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APPEARING PRO SE, RESPONDENT:

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ALSO PRESENT:

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P R O C E E D I N G S

THE COURT: Good morning,
everyone. Please, be seated. Before we start
formally on the record, I want to go off the record
and discuss a couple of scheduling things and also
the status of some exhibits.

(At this time a discussion
was held off the record.)

THE COURT: Good morning,
everyone. We have discussed the status of a couple
of exhibits, 304, which has been offered and
received, and Exhibit 305, which was the police
report which has not been offered.

And then we are going to have two
witnesses today. Ms. Smith, and I assume, counsel
Ms. Humiston, you are ready to proceed. Ms. Smith,
let's call your next witness.

MS. SMITH: I would like to call
Jose Jimenez.

JOSE JIMENEZ,
the Witness in the above-entitled
matter after having been first duly
sworn, testifies and says as follows:

THE COURT: Please, be seated.

1 State for the record your full name, spell your
2 last, and your business address.

3 THE WITNESS: My full name is Jose
4 W. Jimenez, J-i-m-e-n-e-z. Business address is
5 6800 France Avenue South. That's in Edina.
6 55 -- I think it's 435.

7 THE COURT: Counsel, you may
8 proceed.

9 DIRECT EXAMINATION

10 BY MS. SMITH:

11 Q. Jose, can you tell us about your --

12 THE COURT: Just as a matter of
13 form, let's refer to witnesses by their last name.

14 MS. SMITH: Sorry. Thank you.

15 BY MS. SMITH:

16 Q. Mr. Jimenez, can you describe your
17 educational background.

18 A. Yes, Ms. Smith. Thank you. We moved
19 to the Twin Cities probably about a little over
20 20 years ago. When I came here, I had already
21 received a bachelor's in electrical engineering
22 from Northwestern University. A John Marshall Law
23 School degree as well. I had practiced in Illinois
24 for a number of years before we came to Minnesota.
25 And before we came, I had also gotten an MBA from

1 Northwestern University in Evanston, Illinois.

2 When I very first came to the Twin
3 Cities, I started working for a small firm. Later,
4 I became a partner in two firms in town as well as
5 starting my own firm. Before starting my own firm,
6 I was inhouse patent counsel at American Medical
7 Systems and practiced there for about -- I was
8 inhouse counsel for maybe about six years.

9 I started my own firm, Jimenez Law
10 Firm, in March of 2019. Right around that time --
11 actually, really getting into the late March time
12 frame --

13 MS. HUMISTON: At this point, Your
14 Honor, if I could object to the narrative. There
15 was just a question that was answered relating to
16 background.

17 THE COURT: Very well. Let's just
18 answer the question and then we'll --

19 THE WITNESS: Okay. That's fine.

20 BY MS. SMITH:

21 Q. And so that was the question about your
22 education. Now can you describe your practice of
23 law.

24 A. Sure. Primarily a patent attorney, by
25 training. Writing patent applications and

1 prosecute before the Patent and Trademark Office.
2 In a number of firms here in the Twin Cities, I was
3 a partner as a patent attorney in the various law
4 firms and practicing in that area.

5 Q. And are you still a licensed attorney?

6 A. I am. I am still a licensed patent
7 attorney and a licensed attorney here in Minnesota.

8 Q. Are you licensed in the federal courts
9 as well? Can you practice in the federal courts?

10 A. I don't practice in the federal courts.
11 At one time I think I was admitted to the 7th
12 District of Illinois and I think here in Minnesota
13 as well. But I don't litigate.

14 Q. Currently, where do you live?

15 A. Although I still practice and have a
16 number of clients here in Minnesota, I currently
17 live in Florida, and I do come up to Minnesota on
18 business on a regular basis.

19 Q. So how did you get involved in the
20 elections?

21 A. Back in 2020, I signed up to run for
22 state senate. And along with my wife Sandra
23 Jimenez, she also ran for state representative.
24 Which is kind of nuts in the same household, two
25 people running for office. But we felt very

1 strongly about doing what we can and be part of a
2 -- being a public servant in Minnesota and trying
3 to help move the ball forward here in Minnesota.
4 So we were involved in that process.

5 Right around the election -- we had
6 won our elections at midnight with 100 percent
7 precincts reporting. And, lo and behold, at 2:00
8 in the morning 19,000 votes appeared all of a
9 sudden and we lost.

10 A few days later we decided that this
11 wasn't appropriate, and we decided to reach out to
12 the GOP to do something about what was going on,
13 what we had seen. And we had no response.

14 So at that point, November 7, we
15 basically formed an ad hoc group called Minnesota
16 Election Integrity Team. That was comprised of
17 myself, my wife Sandra Jimenez, my daughter Alicia
18 Hopper Jimenez. And then later on we brought in
19 some other candidates that had also been
20 questioning the election. And eventually we asked
21 Susan, my colleague Susan Smith here, to join our
22 team as well.

23 Q. So can you describe what the group
24 originally began doing?

25 A. So after November 7, when I reached out,

1 I made contact with Senator Mary Kiffmeyer, and she
2 guided us and suggested that we get involved right
3 away in the postelection review. And I think -- I
4 forget the number what that is in the Minnesota
5 statutes. But basically giving us as citizens an
6 opportunity to watch the five precincts that are
7 selected in each county, that they are going to
8 check the votes and see how they came in and
9 whatnot.

10 So the law had only been in existence
11 at that time for about 10 years, and no one had
12 ever done a statewide postelection review. So in a
13 matter of literally just a few days we covered
14 60 counties out of the 87 counties in Minnesota.
15 And it was rather unfortunate -- in some cases, the
16 people in those locations were pretty open and
17 letting us watch. In other counties, they did not.
18 They were shutting us down. And that was
19 inappropriate under the statute. But we still were
20 able to get some pretty concerning pictures and
21 data and information about some of the things that
22 were going on in the different counties.

23 So once we gathered all that evidence,
24 you, Counselor Smith, were helping us and guiding
25 us in terms what we can do with that information.

1 Q. So I want to talk a little bit more
2 about the postelection reviews. So how did you get
3 connected to the people who were volunteering as a
4 part of this group?

5 A. So when we first got started we really
6 reached out to our immediate network. Sandra
7 Jimenez and I had developed a number of people that
8 were campaign workers, supporters, doorknockers,
9 and we reached out to that group and a number of
10 other candidates, like Tomas Settel and Megan Olson
11 that also felt that the elections had not gone
12 well. So they joined the team and said we need to
13 do something. Let's get together and do something.

14 So we started with our own inner circle
15 of supporters, doorknockers to get the word out
16 that we wanted to get people out to the PERs and be
17 able to gather that evidence. And then at that
18 point we decided also that we needed to file a
19 petition with the Supreme Court.

20 Q. I want to kind of hold you back, so we
21 don't move too quick ahead.

22 A. That's fine.

23 Q. So you reached out to these candidates.
24 So once people got involved, then how did you
25 communicate with these people to help them know

1 what to do, where to go, those sorts of things?

2 A. As one of the witnesses said yesterday,
3 and it's really true, it was a really challenging
4 time. If we can bring everybody back to where we
5 all were in 2020 and 2021, we were wearing masks,
6 we were asked to do remote. It was hard -- I'm a
7 people person and I like to see people in person
8 and meet clients in person. And it was just not
9 possible back then. And the only way we were able
10 to communicate with people was by email, by phone
11 calls, by Zoom calls. But it was just a super
12 difficult time to communicate with others, and it
13 would require a lot of our own time to make sure we
14 found ways of getting information to everybody. So
15 we were facing that in this process.

16 And, mind you, we started this on
17 November 7. We had filed our brief with the
18 Supreme Court -- let me just finish this one -- and
19 had filed five cases in Ramsey County in less than
20 three weeks. Three weeks we filed. Just digest
21 that for a moment. COVID, 70 affidavits, 80
22 affidavits and trying to communicate in that
23 environment. It's important for all of us to put
24 that in context.

25 We are all feeling much better today.

1 We can all talk openly. But back then, that's what
2 we were facing. And even with all that and with
3 sort of our own band of team volunteers, we were
4 still able to file challenges in the Supreme Court,
5 challenges in the state courts.

6 And I'm not a litigator, but I knew
7 there were certain things we needed to do, and our
8 team surrounded itself with people that were
9 willing to help and people that were fairly
10 knowledgeable in litigation. So please keep that
11 in mind as you listen to our testimony today.

12 Q. So these volunteers, were these people
13 lawyers? Who were these people?

14 A. Like I said before, mostly we're
15 candidates, housewives, just regular hardworking
16 Americans, blue-collar workers, people that felt
17 from a grassroots standpoint something was wrong
18 with our system and we needed to do something. And
19 we knew we were facing a large uphill task because
20 of the COVID situation and because of the statutory
21 deadlines. I don't think the legislature intended
22 to have such tight deadlines, but it makes it very
23 difficult for citizen voters to challenge
24 elections.

25 I've had several discussions with my

1 colleague that this probably should have been an
2 administrative process with the Secretary of State.
3 And then if you wanted to appeal, then appeal to a
4 district court. But to try to manage something
5 like this with the constraints and the requirements
6 of our normal civil litigation is almost
7 impossible. But we still managed to do that.

8 Q. For these voters who went to the
9 postelection reviews, if they saw any concerns or
10 problems, what had you instructed people to do?

11 A. At that point, we had issued
12 postelection review guides, asking people where
13 they should stand, what they should look for. And
14 anything they saw that was an anomaly of some kind,
15 if you can, take pictures, write us an email. If
16 you are willing to prepare an affidavit on our
17 behalf, do so. Get that information to us. And we
18 had the good fortune of a number of people sending
19 information in.

20 For instance, from Dakota County, we
21 were taking pictures of an election worker walking
22 into the counting of the ballots with ballots in
23 her purse. There was boxes that didn't have
24 traceability. We had pictures of Federal Express
25 bill of lading showing that a Dominion voting

1 machine had just been delivered to Dakota County on
2 November 13 how many days after the election, and
3 the director there could not explain that.

4 So going into these cases we had actual
5 evidence. Most cases that were filed around the
6 nation didn't have the evidence. They were waiting
7 for the cases to be adjudicated, allowed to move
8 forward so we can have discovery.

9 But in our case, both at the Supreme
10 Court level and at the state, county level, we had
11 actual pictures. We had two state representatives
12 actually sign affidavits that they saw anomalies.
13 And so we thought, let's present this to the court
14 right now.

15 Q. So how did you know where the
16 postelection reviews were going to be held and when
17 they were going to be held?

18 A. So part of the information came from the
19 Secretary of State's Office, because they were
20 required by statute to have the PERs. So we got
21 that information. We also, with your guidance,
22 Counselor Smith, we were able to get some of that
23 information as well.

24 Ali Jimenez Hopper was working as
25 basically the paralegal on the team. She was

1 employed full-time at the time and also trying to
2 manage all the communications. So we tried to get
3 that information out to everybody.

4 So we would follow the Secretary of
5 State's website as to where these PERs are being
6 held. Regrettably, sometimes the dates were
7 changed, and not to the knowledge of the voters.
8 So we had our own volunteers showing up and people
9 weren't there. So we have to be able to rely on
10 our government officials to be honest with us as
11 voters and as citizens.

12 Q. So could you describe what happened in
13 Ramsey County, for example?

14 A. Well, I think in Ramsey County a number
15 of people were asked to -- Well, a group of people
16 had shown up to the PER, and I think in one case it
17 had already occurred and they came in after the
18 fact. They were, like, oh, yeah, we had it at
19 10:00 o'clock this morning. Well, the schedule
20 said 1:00. So they had had theirs. In another
21 case, they weren't allowed to get very close to
22 watching the ballots themselves and basically how
23 they were being counted against the lists.

24 Q. Do you remember if you had voters show
25 up and there were signs on the door saying it's

1 canceled?

2 A. Pretty much. That's when they reported
3 back to the team and saying, hey, we couldn't get
4 into this PER because it was canceled. The PER was
5 canceled or the location was moved or they already
6 had it.

7 So, again, trying to deal with 87
8 counties, the PER process started the 14th of
9 November and it was over by the 21st. I sent --
10 again, context, I sent my email to the GOP party on
11 the 7th of November and we already had bodies out
12 there on the 14th and 15th. So it's important that
13 as citizens we were out there trying as best we
14 could.

15 Q. Do you remember getting any reports
16 about Hennepin County?

17 A. Hennepin County they were letting our
18 volunteers look basically through the window and
19 through a camera. They weren't even letting them
20 stand close to -- even being six feet away from the
21 counters and from the auditors. And in other
22 counties they actually had taped off locations.
23 Why? We were, like, I guess they knew we were
24 coming and so they wanted to keep us 40 feet way.
25 So we had one affidavit submitted with an actual

1 drawing of how far they were away from the actual
2 people that were counting the ballots.

3 Q. So based on what happened at the
4 postelection reviews did you receive affidavits?

5 A. We did. We actually did. After we
6 received a lot of the evidence that there was
7 concerns about our election throughout numerous
8 counties in Minnesota, we had decided to take
9 advantage of that and start moving toward preparing
10 our petition to -- I think it's under 204B.44 -- to
11 contest the state canvassing board, to make sure
12 that the results that they were receiving at that
13 point were anomalies and that maybe the canvassing
14 board needed to postpone its activities. And they
15 didn't.

16 Q. How did you come to contact me?

17 A. Well, when I was working with Mary
18 Kiffmeyer, and Senator Kiffmeyer said that the PER
19 process was available to citizens, she said to me
20 at that time you really ought to contact counselor
21 Susan Smith. And I said, why? Say says, because
22 she's very knowledgeable in this area of election
23 integrity.

24 Frankly, I'm a patent attorney. Okay?
25 I don't know much about litigation. But as a

1 citizen, I was outraged. And so was Sandra Jimenez
2 and other people. And something needed to be done.

3 So I reached out to you, counselor. We
4 had a conversation and we talked about getting
5 together and trying to work on this. So I
6 distinctly remember that we spoke on November 14,
7 seven days after this started, and still two weeks
8 before we filed everything.

9 THE COURT: This is 2020?

10 THE WITNESS: I'm sorry. 2020.

11 A. November 14, 2020, you and I spoke and
12 we exchanged emails and welcoming each other. Just
13 like in a law firm situation, you know, we work
14 with lawyers at different levels, and sometimes our
15 own clients won't know who that lawyer is who is
16 working on something. So bringing you onboard, I
17 had the confidence in working with you to be able
18 say, okay, you can manage these issues that we
19 needed to do. Because it's now a question of
20 speed, and we needed to get things pulled together
21 quickly.

22 Q. So can you discuss what you believed
23 were the arrangements between the two of us in
24 terms of my assisting you as a pro bono attorney?

25 A. Right. So I have had experience, such

1 as you have, Ms. Smith, in terms of being pro bono
2 counsel. I've worked for the Volunteer Lawyers
3 Network as Spanish-speaking counsel. I've worked
4 for the Linea Legal Latina, working as a pro bono
5 attorney.

6 And a number of these organizations we
7 -- obviously, it's our job as attorneys here in
8 Minnesota we have to volunteer our time. Never was
9 asked to sign any kind of letter, because we were
10 all under the auspices of the Volunteer Lawyers
11 Network or under Linea Legal Latina.

12 So in this situation -- because you and
13 I had experience, Ms. Smith, in working in the
14 pro bono area -- we teamed up with your strengths
15 and my strengths to try to make things happen in
16 this area.

17 Q. Who was directing the path of
18 litigation? Who was the ultimate decisionmaker for
19 the MNEIT?

20 A. With your advice, basically, I was. I
21 was basically the person saying I agree with you
22 and -- we had another colleague that was helping us
23 out, we all agreed that this is probably the best
24 path to file the 204B.44 petition for the Supreme
25 Court, and this is probably the best path to do the

1 five election contests.

2 I'm not a litigator, so I said,
3 hopefully, I will rely on you, Ms. Smith, to help
4 us putting the pleadings together and do what we
5 got to do to meet those deadlines and to be able to
6 satisfactorily file those election contests.

7 Q. Did we discuss your intention to also be
8 an attorney on the cases?

9 A. Yes. Yes. And, again, not being that
10 familiar with the Tylerhost system, because I
11 really don't practice in the circuit courts here in
12 Minnesota too much, trying to get myself into the
13 system, I struggled a little bit in doing that.
14 But I managed to get in the system later in the
15 process. But early on, it was you signing off,
16 doing -- signing off as the attorney on all these
17 cases. Because, frankly, I didn't know how to do
18 it and -- it wasn't working out technologically for
19 me and you were trying to help me.

20 Q. So do you remember when the
21 certification of the state elections occurred?

22 A. It happened on the 24th of November,
23 2020.

24 Q. And do you know then because they
25 certified the election then what happened in terms

1 of the plan that you wanted to pursue for the
2 MNEIT?

3 A. We had already filed our petition with
4 the Supreme Court. We hadn't gotten a decision
5 yet. We were advised of the state canvassing
6 board's decision on the 24th of November, 2020. We
7 had not gotten a decision yet from the Supreme
8 Court, but we still needed to file our election
9 contests on a timely basis. So right over the
10 Thanksgiving day holiday we were starting to
11 prepare the five contests that we were filing in
12 Ramsey County, all of which were filed by December
13 1.

14 Q. So you are saying -- I just want to be
15 clear, so did you decide that you wanted to pursue
16 filing cases?

17 A. Yes. Yes, we thought that was the
18 appropriate -- again, we thought it was the
19 appropriate manner which was stated -- the process
20 was stated in the Minnesota statutes for contesting
21 an election. It happened to be in the form of a
22 lawsuit and it had to be filed, I think, under
23 209 -- I think it's 209.05. Minnesota Statute
24 209.05, 02.

25 Q. Do you remember the number of days that

1 there was to complete these filings?

2 A. Frankly, we basically -- there's 30 days
3 in November, so we probably had seven days. And
4 that was right after we all had just wiped our brow
5 from filing the Supreme Court case, and we had
6 seven days from that timing, through Thanksgiving,
7 through COVID to try to get five more cases filed,
8 and putting together, with your help and Ms.
9 Hopper's help as our paralegal, exhibits for all
10 those five cases and putting all the documents
11 together and having all of us review them to make
12 sure they all made sense and they complied with the
13 statute and then filing them.

14 Q. And during this time were you
15 communicating with any of the volunteers that had
16 been participating?

17 A. Yes, for one, we were communicating with
18 volunteers through email. Primarily through email.
19 Some Zoom calls. We would try to have Zoom calls
20 in order to coordinate our efforts.

21 And, also, one thing I want -- you
22 remind me, Ms. Smith, is that right after the
23 petition was filed with the Supreme Court -- we
24 filed that I think on the evening or morning of
25 11/24/2020 like at 1:00 o'clock in the morning --

1 we issued a press release, letting basically
2 Minnesota citizens know what we had just filed.
3 And also describing who the members of the MNEIT
4 team were. Which was myself, Sandra Jimenez,
5 Ali Hopper Jimenez, Tomas Settel. And then at the
6 end I named you as well.

7 So it was public. We made it public
8 knowledge. It was picked up by Alpha News. It was
9 picked up by the Senate -- the Minnesota Senate
10 Press Corps. So we wanted everybody to know who is
11 the team that is really driving this process.

12 Q. Was anybody being paid?

13 A. No one was being paid. This was being
14 done by the goodness of our hearts, the money out
15 of our pockets. And people at the PERs were, like,
16 what can we do to help you, get coffee, anything.
17 We spent our own money in terms of printer costs and
18 supplies that we needed just to get the job done.
19 Because we truly believed in this effort.

20 Q. What was your expectation as this
21 process evolved for the organization itself?

22 A. We were getting a lot of response and we
23 were actually pretty excited. People were coming
24 forward, helping us with fundraising efforts to
25 take care of some of the filing fees , take care of

1 some of the costs that had unfortunately been
2 adjudicated on us and our plaintiffs because of us
3 losing at the different levels. So, basically --

4 Q. But in the beginning process as this was
5 happening, what was your intent? Was it growing?

6 A. Then, really, as we were building up our
7 lists of emails and volunteers in different
8 counties, our plan eventually was, hey, we should
9 try to formalize this process. We should try to
10 formalize -- because this is not an effort that
11 happens just at one election, one year. This is an
12 ongoing effort, to keep our officials in check in
13 terms of how things are working in Minnesota. So
14 the idea was eventually maybe form a PAC. Maybe
15 form a 501(c)(3), a nonprofit organization to do
16 that.

17 Regrettably -- we were all excited
18 about all the things we wanted to do. Although we
19 lost our cases, we still felt it was important to
20 still keep that momentum going. Unfortunately,
21 January 6 put an end to a lot of that. It was just
22 pandemonium. And I think everybody felt it around
23 the Nation. And people were concerned at that
24 point about being involved in election integrity
25 activities. So while we did the best we could to

1 keep things going, it was hard in our area to keep
2 the group together under those circumstances.

3 Q. So after the state canvassing board
4 certified the elections, can you describe my
5 responsibilities as we agreed between the two of
6 us in terms of communication outside of my
7 communicating with you and Ali?

8 A. Right. So, again, because -- I mean, if
9 this was a patent matter, I know exactly what to
10 do. Okay? But this was litigation, so I was
11 relying on you, Ms. Smith, counselor, to keep us
12 informed, tell us in what areas we needed to reach
13 out to our plaintiffs, what updates we needed to
14 get out to everybody as you were receiving
15 information from the courts.

16 At times, because of the -- again, the
17 environment that we were in and now this was
18 getting to be basically the holidays, the cases
19 were basically over on December 20, now the
20 holidays were happening, people were, like, okay,
21 we are going to spend time with our families here,
22 you were trying to communicate with myself and
23 Ms. Hopper these are the things that need to go
24 out. And, regrettably, some things didn't go out
25 in terms of trying to communicate with some of the

1 clients in terms of what was the outcome of some of
2 the cases.

3 You eventually circled back with us and
4 asked us, hey, Counselor Jimenez, Ms. Hopper, did
5 this go out? And to our chagrin, it had not. So
6 we went ahead and moved at that point to
7 communicate with everyone else.

8 Q. During this time period, were you
9 attempting to bring in other attorneys to help
10 because of the amount of work needed?

11 A. Actually, I'm really glad you asked
12 that. Because at the time we were getting ready to
13 file the election contests, I had reached out to
14 the back-then GOP attorney for the Senate and asked
15 him, I said we are not litigators. You are a
16 litigator. We need some help here. And he said,
17 absolutely not. I'm not going to help you. I'm
18 not going to support this process.

19 We did get a little bit of help from
20 attorney Erick Kaardal. And he said I can only
21 help you by phone if you have questions. Call,
22 check in whenever you can, and I will see what I
23 can do when I have time.

24 So the couple of people we tried
25 getting ahold of, at least those two individuals,

1 basically did nothing or did very little to help us
2 in the process.

3 Q. Did Erick Kaardal discuss what he was
4 doing at all during that process?

5 MS. HUMISTON: Objection. Calls
6 for hearsay.

7 A. He was working on some cases --

8 THE COURT: Hold on. Let's stop.
9 What's the objection?

10 MS. HUMISTON: Calls for hearsay.

11 THE COURT: Response?

12 MS. SMITH: Well, I think it's
13 relevant in Erick Kaardal spoke directly --

14 THE COURT: It doesn't matter if
15 it's relevant. The objection is hearsay.

16 MS. SMITH: So Erick Kaardal
17 spoke directly to him about his limitations in
18 terms of helping and why. I mean, it's about Erick
19 Kaardal --

20 THE COURT: It's sustained. It's
21 hearsay.

22 MS. SMITH: Okay.

23 BY MS. SMITH:

24 Q. So did you reach out to any other
25 attorneys?

1 A. We had just another attorney friend that
2 was helping us out. Ms. Jane Volz was also helping
3 us at that time. But basically it was just those
4 people.

5 Q. I would like to talk a little bit about
6 the process serving that happened.

7 A. Yes.

8 Q. Do you remember any efforts that needed
9 to happen to try and serve the candidates?

10 A. Yes, it was virtually a herculean task
11 at that time to try to get the several -- as part
12 of election contests you have to serve the
13 individual that you are contesting their election.
14 And in some cases these were federal senators,
15 federal congress people, and their addresses were
16 not always the easiest to locate in order to serve
17 them. We tried to personally serve them. That was
18 almost impossible.

19 Q. Were they in session?

20 A. Yes. And then we ended up, I think,
21 having to resort to filing almost like certified
22 mail as a second resort, in order to comply with
23 the service requirement.

24 Q. Did you reach out to anybody in D.C. to
25 try and serve these people personally? I guess let

1 me back up. Do you know if people in congress
2 needed to be present, or because of COVID were they
3 Zooming?

4 A. Most of them were Zooming. Because some
5 of them were still in D.C. And I can't remember, I
6 think it was one of the congress people that was in
7 D.C. -- I might be -- I think it was Tom Emmer that
8 was saying, I'm willing to walk over to, like,
9 Congressman Omar and give her -- basically, her
10 office the service. And some of the other ones as
11 well. I can't remember the exact name of the
12 congressperson that was willing to help us. And
13 not in our district --

14 Q. Were they actually able to find those
15 people? Did anybody make service?

16 A. They didn't find them. But they were
17 hoping to catch them in one of their hearings and
18 catch them in the hallway. But, no. So that's
19 kind of the efforts, that we were going to properly
20 serve these people.

21 Q. So after the filing, after the deadline
22 and after the filing happened, do you recall --

23 THE COURT: When you say, "after
24 the filing," are you talking about the filing of
25 the lawsuit?

1 MS. SMITH: Yes.

2 THE COURT: Okay.

3 MS. SMITH: So December 1.

4 THE COURT: Thank you.

5 BY MS. SMITH:

6 Q. So after the filing happened, did you
7 receive correspondence from me? Did the MNEIT
8 receive correspondence from me regarding the
9 filings?

10 A. Yes, the litigants knew that the cases
11 were filed. You sent over receipts that the cases
12 were filed. And you also shared with us the
13 information as to when the hearings were going to
14 be had for the Ramsey County cases, yes. So we
15 were able to share that Zoom information with other
16 volunteers because of the fact that they were
17 public available hearings. So we did that.

18 I heard from you and I heard from
19 another colleague for the Dakota County hearings.
20 So a number of people were able to watch the
21 hearings, basically, through Zoom. Yes, so you
22 kept us informed of that.

23 Q. So you mentioned there was another case
24 filed by the MNEIT. Can you describe that case a
25 little bit?

1 A. So just by way of summary, to make sure
2 I understand your question, we had filed the
3 Supreme Court petition on the 24th of November,
4 2020 and then we had filed a state Senate contest
5 in Ramsey County in the Tina Smith case and then we
6 had filed four Congressional election contests in
7 Ramsey County.

8 Q. And then did the MNEIT also file a
9 Dakota County case?

10 A. Yes. Thank you for the reminder. We
11 did file a case in Dakota County. And that was
12 against Angie Craig.

13 Q. In the case that was filed in Dakota
14 County, how did that case end? Not the federal
15 cases, but the Dakota County case.

16 A. That was dismissed. We were advised of
17 the hearing and we went to the meeting. All
18 participated in the hearing through Zoom and both
19 sides basically presented their case. The
20 defendants were presenting at that point the motion
21 to dismiss. The judge heard the preliminary
22 testimony and said I will get back to you -- this
23 was on a Tuesday -- and I will get back to you by
24 Thursday. By Thursday, he had dismissed the case.

25 Q. Did the MNEIT take any action on that

1 case to appeal it?

2 A. Yeah, that case was appealed. And I
3 think there was a decision between our team and our
4 counsel and the defendants to basically not pursue
5 the case any longer.

6 Q. And why did that happen?

7 A. Because there were -- there were -- we
8 were going to appeal the case and there were fees
9 that we were going to be assessed against the
10 plaintiffs in that case. So the parties agreed
11 that if we drop the appeal, they will drop pursuing
12 the fees against our team and our counsel.

13 Q. Do you remember were the opposing
14 counsel the same kind of across all the cases?

15 A. I remember that Marc Elias, who is based
16 out of Washington, filed pro hac vice here in
17 Minnesota in those cases to be involved. I can't
18 remember the exact name of the firm he was
19 associated with. But he was at that firm and he
20 was the prime mover of a lot of the opposition to
21 our cases.

22 Q. Was he the only attorney or were there
23 -- was he the only attorney that filed?

24 A. I think each of the defendants, like
25 Ms. Omar, Ms. McCollum, Ms. Craig had their own

1 counsel that were appearing basically in opposition
2 to our filings. I can't remember the exact name of
3 the firms. But it seemed a lot of the efforts were
4 being coordinated with the help of attorney Marc
5 Elias.

6 Q. Were there multiple pro hac vice motions
7 filed, do you remember?

8 A. Multiple what? Excuse me?

9 Q. Out-of-state counsel, pro hac vice
10 counsels added, was there more than one to -- like,
11 do you have an idea --

12 A. Well, the one I do remember is Counselor
13 Elias. But we were actually pretty surprised in
14 all our cases, they swooped in and filed pro hac
15 vice on the cases. We were, like, we are just
16 little Minnesota here. You know? For some reason
17 I think they felt they were threatened by our
18 efforts to shake things up here in Minnesota.

19 Q. So there was an agreement to drop the
20 appeals to avoid the fees?

21 A. Yes.

22 Q. So the federal cases, do you remember
23 the dates of when that case was heard?

24 A. I don't. Unfortunately, I don't.

25 Q. Do you remember approximately? Was it

1 before Christmas, after Christmas?

2 A. I think it was before Christmas. And
3 that was -- it was a three-judge panel that was
4 hearing that case.

5 Q. The Senate case you are talking about?

6 A. Uh-huh. Right.

7 Q. And you sent out an email that did tell
8 people when the hearing was; correct?

9 A. Yes, we did. Unfortunately, I didn't
10 attend the hearing. But we sent out information to
11 all our volunteers.

12 Q. On the Senate case?

13 A. That there was a Senate case hearing.
14 Because I remember clearly the hearing in the four
15 congressional cases in Ramsey. But I didn't
16 participate or listen to the Senate case.

17 Q. Did you send an email about the Zoom
18 hearing?

19 A. Yes.

20 Q. When the case was decided, the four
21 cases, were they heard at the same time or were
22 there different hearings?

23 A. From what I remember, they were heard at
24 the same time because they were all being
25 consolidated under Judge Castro. And the contests

1 were very similar. The issues were very similar in
2 all the cases. And the objections by the
3 defendants were also very similar.

4 Q. So when Judge Castro issued his opinion
5 at the end of December, do you remember did we have
6 conversations about the plan or what you wanted to
7 do?

8 A. Yeah, I think, unfortunately, we were
9 disappointed with what had happened. I think it
10 was on the 18th or 19th it was finally adjudicated.
11 And then I think the final judgment was entered on
12 the 20th with fees being assessed against the
13 plaintiffs. And we talked about what's the next
14 steps. What are we going to do next. We talked
15 about probably we would want to think about
16 appealing the case. But now we were kind of in the
17 throes of, unfortunately, the Christmas holidays,
18 and I think everybody after a three-week herculean
19 effort to get all this done, I think people were
20 looking to take a little break. But we were still
21 in contact.

22 Q. And then after January 6 were there
23 discussions between us about the appellate process?

24 A. Yes, we discussed it a little bit
25 further. We were all concerned about what was

1 going to happen. Because now, basically, the
2 situation had changed in our Nation and the feeling
3 that people were getting in terms of what's
4 happening to us as people that are trying to assert
5 our First Amendment rights. Should we be doing
6 that or are we concerned that we might be
7 prosecuted. So we were still in contact. We were
8 still working together and not quite sure exactly
9 how we were going to move forward and still try to
10 stay engaged.

11 Q. Do you remember if I made you aware that
12 there was a ruling in the case?

13 A. You did. You did make us aware. And
14 that's why I think all of us were sort of
15 disappointed, very disheartened with this whole
16 effort.

17 I think I mentioned this earlier. I
18 think you had asked us -- mostly myself and our
19 paralegal Ali Hopper -- to put together a summary,
20 send the case results to all the plaintiffs so that
21 they knew what had happened with those cases. And,
22 regrettably, I think due to our exhaustion and the
23 holidays, it went by the wayside, unfortunately.

24 Q. Now I'm going to fast forward to
25 February. Do you remember receiving a call from me

1 regarding my concerns over a phone call that I
2 received?

3 A. Yes, I did remember. And we were -- to
4 be honest, we were upset at ourselves and
5 disappointed that -- you had asked me at that point
6 did this communication go out. And we looked back
7 at our records and spoke with Ms. Hopper, and it
8 had not. That update had not gone out.

9 So we quickly put together an update of
10 where we were with cases. There was some concern
11 about some of the fees that were assessed. And we
12 had made a decision at that point -- we had had
13 some fundraising already -- that we were going to
14 cover those fees. It was not really out of our
15 pockets, but it was out of donors.

16 Q. And you and I had conversations prior to
17 this letter about the fees themselves?

18 A. Yes. Yes.

19 Q. And do you remember what you told me?

20 A. We were going to find a way to pay it.
21 We were going to find a way to pay it. We were not
22 going to let our plaintiffs who volunteered be
23 responsible for those fees. So that's when we
24 started our GoFundMe. We started our GoFundMe to
25 try to raise fees, money to try to pay for some of

1 those expenses. And then afterwards we needed to
2 go to GiveSendGo. We were shut down by GoFundMe
3 and then we started up with GiveSendGo, another
4 Christian fundraising organization.

5 Q. So do you remember what I asked you to
6 do immediately in February when we spoke about
7 this, the conversation that we had?

8 A. Yes, get that notice out right away.
9 Yeah, we definitely wanted to make sure that any of
10 the volunteers that were involved in any of that
11 litigation were going to be -- we were going to set
12 aside their fears, let them know that we had this
13 under control. Yes, so we sent out that
14 communication on February 21, letting people know
15 that this was the plan of action, not to be
16 concerned. And as well offering to answer any
17 questions that they had with the process, what was
18 going to happen next, and making ourselves
19 available, pretty much.

20 Q. Did you receive any communications that
21 you remember from people after you sent that out?

22 A. Yes, we received some emails from some
23 of the individuals that had signed the affidavits,
24 and they were concerned and basically said in some
25 cases that they wanted to be either removed from

1 the case or removed from the mailing list. And we
2 said, fine, we will do that. We are not going to
3 include you if you don't want to be included.

4 Q. And so were all the fees paid?

5 A. Can you repeat that again.

6 Q. Were the fees paid?

7 A. Most of the fees were paid. We paid
8 most of the fees. Yeah, actually, we did pay all
9 the fees. But I'm confusing with some other fees.

10 Q. So did the MNEIT at the time have the
11 resources to pay everything, or did I -- did --

12 A. We did not have all the resources to pay
13 all the fees and you were, Ms. Smith, kind enough
14 to pay those fees, while we continued our
15 fundraising efforts to reimburse you for your
16 volunteering that.

17 Q. Did you become then aware of the effort
18 being brought to the court again to Judge Castro?

19 A. Yes.

20 Q. And how did you become aware of that?

21 A. You called me. You called me to let me
22 know that there was another hearing that was being
23 set for the 26th. You shared with me the Zoom link
24 for that hearing.

25 We also shared that information with

1 our volunteers. Because a number of people wanted
2 to know what was that all about. And it was a bit
3 of a surprise, to be honest. It was a bit of a
4 surprise that that hearing was being motioned up by
5 Judge Castro.

6 And you shared with me some of the
7 documents that had been submitted by one of the
8 plaintiffs. And there was a lot of information
9 that was submitted at the last minute.

10 And you and I discussed that we should
11 ask for and you submitted a motion for a
12 continuance, because there was a lot of information
13 to consider, because we didn't know what the
14 purpose of the hearing was and how you and I should
15 prepare for that.

16 Q. Did you draft an affidavit?

17 A. I did.

18 Q. Did you attend the Zoom hearing?

19 A. I did attend the Zoom meeting with you.
20 Finally figured out how the Tylerhost system works.
21 I got my name into the system. I did formally
22 appear as one of the attorneys of record in that
23 hearing.

24 Q. So what happened at the hearing? Can
25 you describe the hearing?

1 A. Yes. So you and I along with counsel
2 for several parties were there. And I think all of
3 us were a little bit surprised what the purpose was
4 of the hearing. And Judge Castro at that point
5 shared with us that one of the plaintiffs, C.B.,
6 C.B. had objected to being in the case and was
7 being asked by -- he, Judge Castro, was being asked
8 by C.B. to be removed from the case.

9 As Judge Castro went through each of
10 the attorneys, yourself, myself and other attorneys
11 present, he was asking questions in terms of who
12 was representing who at this hearing. At one
13 point, he asked me who I was representing. And I
14 said I'm here on behalf of MNEIT, and we are
15 representing the three plaintiffs that are here.
16 Because those were the people that we were
17 representing at the time we filed the election
18 contests. Judge Castro, at that point --

19 Q. Can I stop you?

20 A. Sure.

21 Q. Now I want to go back and -- why did you
22 think that the MNEIT was representing these people?

23 A. I likened the MNEIT situation to a class
24 action lawsuit. Meaning that you are trying to
25 pull a lot of people together in very little time

1 and you may not even know who all the plaintiffs
2 are. And we were the hub of all that activity, all
3 the communication, trying to pull all the affiants
4 together and try to move forward with the cases.

5 But, at one point, Ms. Smith, you and I
6 talked about are we going to put 80 people on the
7 title of cases. Because we had 80 affidavits. And
8 we chose not to.

9 Q. Did we talk about the affidavit?

10 A. We did.

11 Q. So let's talk about this affidavit.

12 A. Okay.

13 Q. Why was there an affidavit?

14 A. Well, there was an affidavit because we
15 wanted to make sure that the people that were
16 stepping up and that wanted to be involved in the
17 election contest, they were sure about the position
18 that they were in and that they really wanted to
19 participate. That we were just not going to get
20 these documents willy-nilly from anybody in the
21 public and present that formal document to the
22 court.

23 Q. Do you remember if I requested the
24 affidavit?

25 A. You did. Again, it was a good practice.

1 It was a good practice for you to make that
2 recommendation. We weren't quite sure who the
3 plaintiffs were going to be, but we needed to find
4 people that were plaintiffs in each of the
5 districts that we were going to be filing and where
6 those candidates were. So we needed to find people
7 in those locations. But we also needed to assure
8 ourselves that these people truly wanted -- these
9 citizens truly wanted to be represented in the
10 lawsuits.

11 So we sent out the affidavits,
12 explained that we are filing voter contests with
13 the understanding that basically that was an offer
14 of representation. And then upon receipt of the
15 signed affidavits, that would be basically an
16 acceptance of the representation and willingness to
17 get involved.

18 Q. Was anybody added to any contests that
19 did not file an affidavit?

20 A. No. Everybody that was added had filed
21 an affidavit -- had sent an affidavit with us.

22 Q. So what you just said is that -- I want
23 to make sure I have this right. You said you sent
24 an email to the people who were volunteers?

25 A. Uh-huh.

1 Q. As an offer related to representation in
2 the election contests?

3 A. That's correct. That's correct.

4 Q. We talked a lot about this email
5 yesterday. There was a lot of discussion about it.

6 A. That's correct.

7 Q. And do you agree with what you heard
8 yesterday in terms of the email and the information
9 was in the email related to the voter contest and
10 volunteer --

11 MS. HUMISTON: I object to the --

12 A. Well, I remember the email we sent out
13 at the end of --

14 MS. HUMISTON: Excuse me.

15 A. November 30 --

16 MS. HUMISTON: Excuse me. I
17 object to the form of the question.

18 BY MS. SMITH:

19 Q. Can you describe what was in the email?

20 THE COURT: Just a second. So the
21 answer is -- we will just strike the answer at this
22 point. Why don't you restate the question.

23 BY MS. SMITH:

24 Q. Do you remember sending out the email to
25 your volunteers, letting them know that you were

1 going to file the contests, that MNEIT was ready to
2 file the contests?

3 A. Yes.

4 Q. Do you remember what was in the email?

5 A. We were advising potential volunteers or
6 people that wanted to be involved in the election
7 contest that if they wanted to contest the
8 elections in Minnesota, they are to fill out the
9 attached affidavit, pretty much that we were
10 submitting with the email, or it could be
11 downloaded from our -- we had a website at the
12 time. It was I think mneit.org. That they could
13 download the form from there. We instructed them
14 how to fill it out in terms of signature and that
15 they should send their executed affidavits back to
16 the MNEIT. mnelectionintegrity@gmail.com.

17 Q. So you said there was a website?

18 A. Yes.

19 Q. And so did you have a lot of information
20 on the website?

21 A. Eventually we were using the website as
22 another tool -- again, because we were dealing with
23 COVID and we had so much to try to do, we were
24 using the website as a tool to upload information
25 to our volunteers, to our plaintiffs as to where we

1 were on different cases, so it would be easy for
2 them to download the pleadings, download the orders
3 by the court. I think press releases we had on
4 there. We tried to make that information available
5 to everybody.

6 Q. As of the website, once this process
7 stopped, did you continue to keep the domain of
8 that website or did it get shut down?

9 A. We did keep it for a while. Probably by
10 sometime mid to late 2021 I think we -- we weren't
11 doing anything with it at that point, so we decided
12 to let it go.

13 Q. So back to the email and just generally,
14 was the MNEIT did it communicate about whether
15 people were paid or volunteer in the
16 communications?

17 A. We stated in all our communications that
18 we were all volunteers. We are all volunteers. I
19 think on the November 30, 2020 email we might have
20 said that we were asking for donations as well. On
21 our website we were asking for donations as well,
22 because of the costs that we were -- I mean, filing
23 lawsuits in five different cases and filing the
24 petition and filing in Dakota County, that all
25 costs money. So initially some of that was coming

1 out of our pockets in order to file those cases.

2 So, yes, we were communicating.

3 Q. When you sent the email out, did you use
4 any services to assist you in sending out the
5 emails or programs?

6 A. We were using Gmail, primarily. We were
7 sending emails through our
8 mnelectionintegrity@gmail.com email address. We
9 used a little bit of Mailchimp at that time, I
10 think. We were using it from sort of our campaign
11 days. Using that as well to try to get information
12 out. I think we were working with a group called
13 Buzz360 to try to help us with some of the
14 communication as well. They were a little bit
15 better than we were in terms of communicating.

16 Q. So when you sent out an email, people
17 could respond back to the email? Did you get very
18 many emails back from people raising questions or
19 concerns?

20 A. We had received some emails. Just
21 people asking questions in terms of the affidavits
22 and how much information they needed to provide.
23 Asking questions like do we need to declare or
24 basically state that we were actual witnesses to
25 some of these activities. And basically the way we

1 laid out the affidavit it didn't have to be,
2 per se. But that they felt that there was
3 something amiss and that this was their way of
4 being involved and being able to be named as a
5 plaintiff in the election contest.

6 Q. And so were you the only person taking
7 those calls or looking at the emails?

8 A. It was mostly myself and Sandra Jimenez
9 and also Ali Hopper. The three of us were really
10 managing a lot of the communications back and forth
11 between plaintiffs, between volunteers, with
12 yourself. You name it. We were the hub of the
13 communication.

14 Q. Did you have an advisory board or a
15 group of people also that helped --

16 A. Other than our volunteers, it was really
17 just us. Along with Sandra Jimenez and Ali Hopper
18 and yourself. Jolynn Good. Jolynn and her husband
19 Troy Good. I think Tomas Settel was helping us.
20 Senator Mary Kiffmeyer would help a little bit. So
21 was Senator Drazkowski. Representative Jeremy
22 Munson. That was the core. We were helping each
23 other. We would have meetings and try to advise
24 each other what we wanted to do next.

25 But because of the fact that, Counselor

1 Smith, you had a lot of experience in all the
2 election integrity and all the statutes that were
3 involved in that, you were advising us a lot in
4 terms of where we go next, what do we do next in
5 this process so that we can be effective in how we
6 challenge these things.

7 Q. So we had the hearing. So let's talk a
8 little bit more about the hearing.

9 MS. HUMISTON: I'm sorry. What
10 hearing are you referring to?

11 BY MS. SMITH:

12 Q. So the 3/26 hearing with Judge Castro.

13 A. Yes.

14 Q. Were you allowed to testify?

15 A. No, I was not. Judge Castro asked me a
16 couple of questions. I said to Judge Castro I want
17 to make myself available for more questions. The
18 primary purpose of my participating was I think it
19 was important for me to give context to Judge
20 Castro and everybody on the call as to why we were
21 there, how we came about. Because even though my
22 name may have appeared on the website or on the
23 press release, I didn't have the opportunity to get
24 a chance to sign off with you, Ms. Smith, on filing
25 some of these cases. So some people may not have

1 known who I was. So I wanted to take that
2 opportunity with Judge Castro at that hearing to do
3 that. To let him know that you and I were working
4 together and this is how this whole thing had
5 gotten started and how we got here.

6 Q. Do you remember whether we asked for a
7 continuance?

8 A. We did. And I remember you and I were
9 scurrying quickly to get something formally filed
10 in the Tylerhost system. And then almost from the
11 get-go, very early on in the hearing you asked
12 Judge Castro could we get a continuance, because of
13 all the documents that had been submitted shortly
14 before the hearing. And some of the documents were
15 not even timely submitted, according to his own
16 order. They were supposed to be submitted seven
17 days before the 26th and they weren't.

18 So you and I thought, Ms. Smith, that
19 it would be a reasonable request, whatever, a week,
20 you know, 10 days to get a continuance, to give us
21 an opportunity to review those documents and be
22 prepared.

23 Secondly, you and I were both surprised
24 that Mr. Erick or Counselor Erick Kaardal was
25 representing supposedly the plaintiffs when he was

1 working with us earlier advising us. And, frankly,
2 I thought at that point was a conflict of interest
3 for him to be representing these three parties,
4 when he had been advising us at the time we had
5 C.B. and others on those lawsuits. He knew who we
6 were. He knew who you were, he knew who I was, and
7 conveniently didn't say anything during the
8 hearing.

9 Q. What did you think the hearing was about
10 before the hearing?

11 A. Basically, just the reading of the
12 order, that it was a narrow issue of relieving C.B.
13 and any other plaintiff from liability and the case
14 for supposed debts that were being charged to them.
15 That was my understanding it was going to be that
16 narrow.

17 I still thought that having a
18 continuance was going to be important so that we
19 could consider all the other documents that were
20 presented and try to get a better understanding so
21 that you and I could be more prepared for that
22 hearing. And that didn't happen.

23 Q. Did you believe that this hearing was
24 going to be some kind of disciplinary hearing?

25 MS. HUMISTON: Objection.

1 THE COURT: Sustained. Counsel,
2 we have gone pretty far afield from the issues, at
3 least as I'm understanding them. Please, proceed.

4 BY MS. SMITH:

5 Q. So you were present on Zoom at the
6 hearing?

7 A. I was.

8 Q. Did you hear me being questioned?

9 A. Yes, I did.

10 Q. So, yesterday, my testimony was labeled
11 as argumentive. Did you perceive me to be --

12 MS. HUMISTON: I would object to
13 the form of the question.

14 THE COURT: Did you testify
15 yesterday?

16 MS. SMITH: We are talking about
17 the hearing. We are talking about the hearing.

18 THE COURT: Oh, you are talking
19 about the March 26 hearing? I thought you were
20 talking about this proceeding. Restate your
21 question.

22 BY MS. SMITH:

23 Q. So you were present at the March 26
24 hearing and heard me testify?

25 A. Correct.

1 Q. Can you characterize my testimony? Do
2 you remember what I testified about?

3 MS. HUMISTON: I would object to
4 relevance. Actually, that's a compound question
5 now.

6 THE COURT: Sustained. The
7 concern I have, counsel, is that that is a
8 proceeding that has already been appealed and that
9 decision is the law of the case, and essentially
10 you are asking this witness to comment on your
11 credibility at that hearing. The issue before me
12 is your -- ultimately, going to be your credibility
13 as you testify tomorrow. And I don't see the
14 relevance of him testifying as to --

15 MS. SMITH: Okay. Okay.

16 BY MS. SMITH:

17 Q. So the relationship between the two of
18 us, can you just confirm -- I'm just about done
19 with my questioning. I would like you to just
20 confirm how I was -- what was my relationship to
21 you at the MNEIT?

22 A. Well, I liken our relationship,
23 Ms. Smith, to a relationship you would have with a
24 law firm. Just as you and I would be working
25 together as colleagues in a law firm, I would be

1 charged with doing one thing and you would be
2 charged with doing something else.

3 And even under our own canon of ethics,
4 we are encouraged as lawyers to reach out to other
5 colleagues that may be experts in other areas of
6 law so that we do a better job for our clients.
7 And it basically says, you know, work together with
8 your colleagues to do that.

9 I've worked with many pro bono
10 attorneys before in an effort to adjudicate the
11 rights of our clients with nothing more formal than
12 a handshake and knowing each other and working
13 together with you.

14 So that's how I liken our relationship.
15 Even though I had my own law firm, we operated
16 MNEIT almost like a law firm, an advocacy group,
17 with you as being a resource. You are more of a
18 hardworking, behind the scenes litigator, trying to
19 get these things filed. And myself and Sandra
20 Jimenez and Ali Hopper were more on the out in
21 public, publically advocating for what we were
22 doing and trying to get attention.

23 Q. And my communications with you were with
24 your law firm?

25 A. Correct.

1 Q. But I wasn't a -- was I a partner in
2 your law firm?

3 A. No, you were not. No, you were not.

4 Q. So was I a pro bono attorney assisting
5 you?

6 A. Yes, you were. I treated you like any
7 other pro bono co-counsel that I work with in other
8 matters.

9 MS. SMITH: At this time, I'm
10 going to rest my questions.

11 THE COURT: Very good.
12 Cross-Examination?

13 THE COURT REPORTER: Would you
14 mind if we took five minutes?

15 THE COURT: Certainly. Let's take
16 a five-minute break.

17 (A recess was taken from
18 9:44 a.m. until 9:57 a.m.)

19 THE COURT: Ms. Humiston, please.

20 CROSS-EXAMINATION

21 BY MS. HUMISTON:

22 Q. Good morning.

23 A. Good morning.

24 Q. My name is Susan Humiston. I'm the
25 Director of the Office of Lawyers Professional

1 Responsibility. And I apologize in advance, I have
2 heard your name pronounced many different ways.

3 Again, it's Jimenez? Mr. Jimenez?

4 A. Jimenez.

5 Q. You confirmed that you are not a
6 litigator; correct?

7 A. I am not a litigator.

8 Q. And would it be fair to say you have
9 never filed a lawsuit on an individual's behalf?

10 A. No, I have never filed -- come to think
11 of it, no. Maybe something on a pro bono basis or
12 small claims court.

13 Q. And you testified that you are currently
14 a licensed Minnesota lawyer?

15 A. I am.

16 Q. And you were a licensed Minnesota lawyer
17 in 2020; is that correct?

18 A. That's correct.

19 Q. And you founded the Minnesota Election
20 Integrity Team, but it's not a legal entity; is
21 that correct?

22 A. That's correct.

23 Q. It's not registered with the Secretary
24 of State as a nonprofit?

25 A. It's not.

1 Q. And you said you collected donations to
2 fund the volunteer activity of the Minnesota
3 Election Integrity Team; is that correct?

4 A. To fund the court fees that related to
5 the legal actions that we were filing. None of the
6 funds were ever used to enrich ourselves or pay
7 ourselves in any way or pay for meal expenses or
8 anything like that.

9 Q. What amount of donations did you receive
10 in November and December 2020?

11 A. I don't think we received any money --
12 any donations in November. I think we received
13 some donations in December. And I can't remember
14 exactly how much.

15 Q. Approximately?

16 A. I would say maybe 5 or \$6,000.

17 Q. And before 2020 had you ever filed an
18 election contest or participated in an election
19 contest as a legal proceeding?

20 A. I had not.

21 Q. Did you perform any legal research
22 regarding the requirements of an election contest?

23 A. I had performed some legal research.
24 But I also relied on my colleague Susan Smith to
25 help me with researching that information.

1 Q. And so it's accurate to say you were
2 relying on Ms. Smith to advise you of the legal
3 requirements relating to commencing and prosecuting
4 an election contest?

5 A. That's correct.

6 Q. There is a notebook in front of you that
7 has a blue cover. I'm going to ask you to turn to
8 Exhibit 6.

9 A. It's entitled Minnesota Election
10 Integrity Team and it says Exhibit 7 on the top.
11 Is that correct?

12 Q. It does, yes.

13 THE COURT: Bear with me for just
14 a second.

15 MS. HUMISTON: Yes, sir.

16 THE COURT: All right. Thank you.

17 BY MS. HUMISTON:

18 Q. Do you recognize this exhibit?

19 A. I do.

20 Q. And did you draft this email?

21 A. I did.

22 Q. And did you cause it to be emailed out
23 to individuals who may have received it?

24 A. I did.

25 Q. And you agree that the email was sent on

1 November 30 of 2020 at 9:54 p.m.; is that correct?

2 A. That is correct.

3 Q. And you agree that this email does not
4 explain what an election contest is; correct?

5 A. It explains that we are filing a voter
6 contest contesting the elections. And it does
7 explain that we are going to be filing something in
8 that regard.

9 Q. My question was it does not explain what
10 an election contest is; you agree?

11 A. It does not cite the statute of what an
12 election contest is. But it does at least explain
13 what a voter contest is.

14 Q. Where in this email does it explain what
15 a voter contest is?

16 A. If you want to be listed as a voter
17 contesting the elections. And in the coming days
18 we are planning on filing a voter contest to each
19 of the following races.

20 Q. Okay, so it uses those words. We will
21 agree with that; right?

22 A. That's correct.

23 Q. Where in this email does it explain what
24 a voter contest is as a legal matter in the state
25 of Minnesota?

1 A. Well, in my opinion --

2 Q. Where in this email, sir?

3 A. Well, I just read the sentences where it
4 explains that.

5 Q. Okay. Nothing else explains what a
6 voter contest is; correct?

7 A. That is correct.

8 Q. Now, this email also does not provide
9 any information about how the affidavits would be
10 used, do you agree?

11 A. No, I don't agree. It says the
12 affidavits will be used for a voter contest.

13 Q. It doesn't explain how those affidavits
14 are going to be used, does it?

15 A. It explains how it's -- it is. It's
16 saying we are using them for a contest. That's the
17 explanation. Now, this is different if it's
18 inadequacy of explanation. But there was an
19 explanation given.

20 Q. It says: If you want to be listed as a
21 voter contesting the election. Do you see where it
22 says that?

23 A. Yeah.

24 Q. If you want to be listed as a voter
25 contesting the election; is that right?

1 A. That's correct.

2 Q. And when it says "we," the people that
3 are going to be filing the contest, it is a
4 reasonable reading of this that it would be the
5 Minnesota Election Integrity Team; is that correct?

6 A. That's correct.

7 Q. And it's true at this time that you were
8 collecting affidavits of people who had lost faith
9 in the Minnesota election; is that correct?

10 A. That's correct.

11 Q. And, in fact, your postings specifically
12 asked people to sign affidavits if you have lost
13 faith in the Minnesota elections; is that correct?

14 MS. SMITH: Objection. Which
15 posting? Is it the same email that --

16 MS. HUMISTON: No. I would like
17 to mark Exhibit 52 for the Director.

18 (Director Exhibit 52 was
19 marked for identification.)

20 BY MS. HUMISTON:

21 Q. And do you recognize this document?

22 A. I don't recognize this document.

23 Q. Are you familiar with the Minnesota
24 Election Integrity Team's Twitter page?

25 A. I am. But my assistant Ali Jimenez

1 Hopper was managing the page for us.

2 Q. And you agree that this document says,
3 Sign an affidavit if you've lost faith in Minnesota
4 elections? Do you see that?

5 A. I do --

6 MS. SMITH: I object.

7 THE COURT: Just a second,
8 Ms. Smith. Was there an answer?

9 THE WITNESS: A partial answer.
10 Because she said the objection.

11 MS. SMITH: I object. I'm just
12 trying to read this to see where it says what she
13 says it says.

14 THE COURT: All right. Take your
15 time, and then we will see if there is an objection
16 or not.

17 MS. SMITH: Oh, you are saying
18 sign an affidavit. Okay, I see it. I just had to
19 read the document. I've seen this --

20 THE COURT: Is there an objection
21 to the question?

22 MS. SMITH: No.

23 THE COURT: You can answer the
24 question.

25 A. Yes, the document states sign an

1 affidavit if you've lost faith in the Minnesota
2 election website.

3 BY MS. HUMISTON:

4 Q. And you agree that affidavits are common
5 tools that are used as evidence in legal
6 proceedings; is that correct?

7 A. I do.

8 Q. And that people generally understand
9 that affidavits might be used as evidence?

10 A. That's correct.

11 Q. Now, the election contests were filed on
12 December 1 of 2020; right?

13 A. That's correct.

14 Q. And you did not efile any of those
15 election contests; is that correct?

16 A. I did not.

17 Q. And you did not explain to anyone
18 returning an affidavit that you were going to use
19 their names to commence legal proceedings, did you?

20 MS. SMITH: Objection. I'm not
21 sure which affidavit she's talking about.

22 THE COURT: Do you want to clarify
23 that part.

24 MS. HUMISTON: Sure.

25 BY MS. HUMISTON:

1 Q. My question is did you explain to anyone
2 returning an affidavit to your organization that
3 you were going to use their names to commence a
4 legal proceeding?

5 A. We were explaining to our recipients of
6 our affidavits through our email communications and
7 our website.

8 Q. Did you explain to anyone returning an
9 affidavit to your organization that you were going
10 to use their name to commence a legal proceeding?

11 A. I personally did not.

12 Q. Did Ms. Smith ask you to explain to
13 individuals who had returned an affidavit to your
14 organization that you were going to use their names
15 to commence a legal proceeding?

16 A. That I don't recall.

17 Q. Did Ms. Smith ask you to explain in your
18 communications to people who were providing
19 affidavits to your organization what an election
20 contest was?

21 A. She didn't need to explain that to me,
22 because we were trying to explain that to our
23 plaintiffs and our volunteers.

24 Q. And you agree that this email referenced
25 in Exhibit 6 makes no reference to plaintiff, the

1 term "plaintiff," do you agree?

2 A. I do agree from the standpoint that the
3 statute doesn't call us plaintiffs. They call us
4 contestants and contestees. So I wouldn't have to
5 say plaintiff in this email communication. And
6 that's where there is an issue with the legislature
7 in having created this statute that it should be
8 treated as a lawsuit, when it should be treated as
9 an administrative hearing.

10 Q. You understood that this was a lawsuit
11 on November 30 of 2020 and December 1, 2020;
12 correct?

13 A. I understood it was election contests,
14 and how we had to file it in Ramsey and with the
15 Supreme Court. That's what my understanding was.

16 Q. And those are legal proceedings in the
17 state of Minnesota; is that correct?

18 A. Just like these are, yes, that's
19 correct.

20 Q. Did Ms. Smith ask you to explain to
21 individuals returning an affidavit that you were
22 going to use their names in legal proceedings and
23 there might be reasons why they would want to do
24 that and reasons why they would not want to do
25 that?

1 A. We discussed that as a team, and we
2 decided that because of the number of affiants, the
3 80 or 80 that we received, the safe way would have
4 been to cite all 80 in the cases. And we chose not
5 to. We chose to only file with those plaintiffs
6 that were in those districts. So we had discussed
7 it.

8 Q. So you thought the safe way was to
9 include people who didn't have standing to assert a
10 claim in an action?

11 A. Well, we were making sure at the end of
12 the day, and this is through Ms. Shogren's
13 direction, that we had to make sure that the
14 plaintiffs that were filing in those districts were
15 the right voters in those districts. So we were
16 aligning them up.

17 Q. So the only thing you did was to see
18 which -- in order to choose whose name you were
19 going to use to collect a legal proceeding, the
20 only thing you looked at is where the voter lived;
21 is that correct?

22 A. Because the affidavit stated where they
23 lived and what district they voted in. So that's
24 correct.

25 Q. And did you choose the people that would

1 be named as the plaintiffs in a legal proceeding in
2 Minnesota or did Ms. Smith?

3 A. I would say we both did. Because
4 Ms. Smith took direction -- we worked together to
5 do the cases and we advised each other on what was
6 the best thing to do in these cases.

7 Q. And did Ms. Smith ask you to explain to
8 individuals whose name you were using to commence
9 legal proceedings that costs and disbursements
10 could be entered against them?

11 A. She may have. But because of the
12 deadlines that we were facing, we did not.

13 Q. Do you remember being asked to explain
14 that to people on November 30 when you were
15 choosing their names?

16 A. We are talking about that situation.
17 But we didn't have the time because of the
18 deadlines, the statutory deadlines we were trying
19 to meet to the file the cases.

20 Q. So nobody received information relating
21 to whether or not there would be costs and
22 disbursements that could be assessed against them?

23 A. Not by voice, not by phone. Probably by
24 text and by -- I mean, by email and by website.

25 Q. Before you chose their names, someone

1 was provided this information?

2 A. Generally just provided the information.

3 Q. In what way was it generally provided?

4 A. By email and by website.

5 Q. So there is an email that says this?

6 A. We could probably track one down. We
7 could probably track one down.

8 Q. Before November 30, 2020?

9 A. We could probably track one down.

10 Q. That says that costs and disbursements
11 could be assessed against you --

12 A. Well, it's clear in the statute that if
13 you file -- in the statute that if you file a
14 contest under the 209 that the contestants --
15 either party that loses may be assigned costs and
16 fees.

17 Q. So you knew that?

18 A. It's in the statute.

19 Q. So you knew that when you filed those
20 election proceedings in people's names?

21 A. Sure. Right, in the three weeks we were
22 doing all this, in the midst of COVID, in the midst
23 of no face-to-face communication. It was just a
24 quick reminder.

25 Q. And it's your position to this Court

1 that this is an offer of legal representation?

2 A. The affidavit itself was an offer of
3 legal representation. The signature and the return
4 of the affidavit was the acceptance of
5 representation. Again, in the context of the three
6 weeks that we were working, Ms. Humiston -- I hope
7 you did take that seriously, in the three weeks we
8 working this issue, in the midst of COVID, in the
9 midst of what we were trying to do, in the midst of
10 the two weeks that I had gotten to know Ms. Smith,
11 in that time we were trying to do six cases in that
12 time. It was a very difficult time for all of us
13 at that time.

14 Q. You agree that the affidavit says
15 nothing about legal representation; correct?

16 A. The affidavit informs the potential
17 affiants that they are going to be involved in a
18 voter contest.

19 Q. It says nothing about legal
20 representation; is that correct?

21 A. To your literal question, yes.

22 Q. And it says nothing about forming an
23 attorney-client relationship, do you agree?

24 A. You don't have to if it's in a pro bono
25 situation. In a pro bono situation, you don't have

1 to formally sign an engagement letter. You can
2 advise your client you are helping on a pro bono
3 basis to adjudicate your legal rights. And I had
4 done that many times in my career.

5 Q. So it does not express an attorney-
6 client relationship? And it also provides no
7 information about a specific lawyer, do you agree?

8 A. Yeah, I agree. Yes, I agree.

9 Q. And you never filed a certificate of
10 representation in any of the cases; is that
11 correct?

12 A. That is correct.

13 Q. And you understand that there are
14 fiduciary and ethical duties that are owed to
15 clients when you undertake legal representation?

16 A. I do. But I was also aware of the
17 circumstances back then, Ms. Humiston, that it was
18 very difficult to communicate with clients face to
19 face in the short time frame that we had as well.

20 Q. You agree you can send emails; is that
21 correct?

22 A. Say again. Would you repeat.

23 Q. You agree that it's easy to send an
24 email with clear communications?

25 A. It's easier. It's easier. But it's not

1 just easy. But it's easier.

2 Q. You understand lawyers are expected to
3 take the time necessary to do things correctly even
4 when times are tight; is that correct?

5 A. But even as Judge Castro acknowledged
6 yesterday, Ms. Humiston, that times were tough for
7 everybody back then. So we communicated regularly
8 with our plaintiffs and our volunteers --

9 Q. I'm going to get to that.

10 A. Thank you.

11 Q. And that it's up to lawyers to plan so
12 that they can meet their ethical and legal
13 responsibilities to their clients? You agree with
14 that statement?

15 A. With the condition that the pandemic
16 wasn't taken into consideration in that situation.
17 The pandemic created a situation that even lawyers
18 and courts had to deal with something they had
19 never dealt with before.

20 Q. Right. They didn't --

21 A. Not that we should suspend the rules of
22 -- canon ethics.

23 Q. Correct.

24 A. Even if you need to enforce them, we
25 need to enforce them in the context of the

1 situation.

2 Q. But they didn't change the rules that
3 were expected of lawyers?

4 A. No, they did not.

5 Q. Were you responsible for arranging
6 service of the legal contest?

7 A. We were coordinating that with Attorney
8 Smith.

9 Q. And you know that those election
10 contests were actually supposed to be served before
11 December 1 not after December 1; is that correct?

12 A. As I am not a litigator, it was my
13 understanding that you can serve after you have
14 filed. And once you serve, that's when the action
15 commences. You can file the case and then serve
16 the plaintiffs and that's when the action
17 commences. We were trying to get a filing date.

18 Q. But you agree that you are not familiar
19 with the election contest statute; is that correct?

20 A. Well --

21 Q. Or do you believe that's what the
22 election contest statute provides?

23 A. Well, it provides that the election
24 contest be managed within the civil litigation
25 context, civil litigation rules, things like that.

1 Q. And did Ms. Smith ask you to send to
2 each of the contestants whose names were chosen the
3 motions to dismiss that were filed?

4 A. I would say she did. And this is a bit
5 of a memory situation here. But it might have been
6 some miscommunication between Ms. Smith and myself
7 and our paralegal Ali Hopper in getting that
8 communication out.

9 Q. I have only seen one email, and we are
10 going to talk about it here, where she provided you
11 with information that she asked you to provide.

12 A. Uh-huh.

13 Q. One email that didn't get forwarded on.

14 A. So we will have to look at the date
15 specifically when that happened. But it would have
16 probably been at or around the time we filed the
17 cases, like December 1, December 2 time frame.

18 Q. But my question was did she ask you to
19 send to the named contestants that you had chose to
20 sue in their names the motions to dismiss that had
21 been filed?

22 A. She had asked. And, regrettably, that
23 request fell through the cracks.

24 Q. And she made that request verbally to
25 you?

1 A. Yes, she did.

2 Q. And you filed an affidavit. Let's turn
3 to that. Exhibit 14.

4 A. I'm there.

5 Q. Do you recognize this document?

6 A. I do.

7 Q. And did you create it?

8 A. I did.

9 Q. So you drafted it yourself? You chose
10 the language to use?

11 A. I did.

12 Q. Do you see on page 2 of 14 where you are
13 talking about the affidavit that was returned it
14 indicates that the affiant was aware and understood
15 that their sworn affidavit could potentially be
16 used in an election contest as evidence to support
17 any of the filed election contests? Do you see
18 that?

19 A. I'm sorry. Are we on Exhibit A?

20 Q. I'm on Exhibit 14.

21 A. What page?

22 Q. Page 2.

23 A. Okay. What paragraph?

24 Q. Paragraph 4, last sentence.

25 A. Okay. (Witness reviewing document.)

1 Yes. So what's the question again?

2 Q. So you agree that the affidavits that
3 were provided would be used as evidence to support
4 any of the filed election contests, do you agree?

5 A. I agree.

6 Q. And that's consistent with what people
7 would think an affidavit would be, right, used as
8 evidence?

9 A. Yes.

10 Q. And that's different than being named as
11 a plaintiff in a legal proceeding; correct?

12 A. As I'm not a litigator, I'm not sure how
13 to answer that question. Because I could be a
14 plaintiff and I could provide evidence in a case,
15 too.

16 Q. Right. But there is a big difference
17 between those two things; right?

18 A. Well, there is a difference. I'm not
19 sure how big it is. It's depending on the case. I
20 mean, if you are getting a divorce, you are a
21 plaintiff and you are also providing evidence.
22 It's not a big difference.

23 Q. Did you receive a copy of the December
24 18 order of Judge Castro dismissing each of the
25 election contests beforehand?

1 A. I did.

2 Q. Did you receive a copy of the Senate
3 panel order dismissing the lawsuit that had been
4 filed against Tina Smith?

5 A. I did.

6 Q. And you were asked to send each of those
7 orders of dismissals to the individuals whose name
8 had been --

9 A. We were, yes.

10 Q. And you failed to do so?

11 A. We failed to do so. Regrettably. It
12 was not an intentional act. Unfortunately, it was
13 during the holidays and there was just a flurry of
14 activity still going on with the cases.

15 Q. Their actually wasn't a flurry of
16 activity. They had been dismissed; correct?

17 A. Within our group, there were still some
18 things we were still doing. Considering appeals,
19 seeing if some of the other cases -- you know, what
20 were our actions going to be, our volunteers still
21 wanting to be kept informed what was going on,
22 still had our day jobs.

23 Q. You understand it's the client's
24 decision whether to appeal; correct?

25 A. That's correct.

1 Q. And were you discussing whether to
2 appeal these actions with your individual clients?

3 A. We were discussing whether to approach
4 the clients on whether we were going to appeal or
5 not. Because we understand we can't make that
6 decision on our own. They would have to be in
7 there with us.

8 Q. And did Ms. Smith advise you that
9 assessments of costs and disbursements had been
10 received?

11 A. It was in the order.

12 Q. So no one had to tell you?

13 A. Huh-uh.

14 Q. And you agree you did not provide any
15 information to anyone that costs and disbursements
16 had been assessed against each of the individuals
17 on whose behalf Ms. Smith had filed the
18 proceedings?

19 A. Unfortunately, through our
20 miscommunication or lack of communication, that
21 information did not get to the volunteers and the
22 plaintiffs on a timely basis.

23 Q. Actually, it sounded like you were
24 talking about whether or not you would even tell
25 the clients about that?

1 A. We wanted to figure out what our options
2 were going to be at that point. So we needed to
3 speak among ourselves. Just like any law firm or
4 group of lawyers, explore all options and
5 possibilities before we reach out to the client and
6 decide what alternatives that we are going to give
7 them, what options we are going to give them.

8 Q. And you agree all this happened in
9 January of 2021; is that correct?

10 A. Some of this happened at the end of
11 December through our own internal phone calls and
12 some happened in early January as well after the
13 holidays.

14 Q. That judgments were entered against each
15 of the individuals?

16 A. That part -- that part I think I missed.
17 But we know we had lost and we knew we were going
18 to have to do something.

19 Q. And, in fact, that you knew that \$18,000
20 in costs and assessments had been assessed against
21 your clients?

22 A. I didn't know the exact amount. I knew
23 that some amount of money had been assessed against
24 our clients.

25 Q. And you agree having a judgment entered

1 against an individual client is important
2 information for the client to have?

3 A. It is.

4 Q. And you agree that Ms. Smith did not
5 provide that information to the clients herself?

6 A. Ms. Smith would have provided that
7 information through us. And we didn't communicate
8 that on a timely basis to the clients.

9 Q. Did you discuss with Ms. Smith how those
10 costs and disbursements were going to be paid by
11 the clients?

12 A. We didn't broach that subject directly.
13 We were trying to decide how we were going to
14 manage the loss of the cases and what the next
15 steps were going to be. But that specific plan of
16 how that was going to be handled was not kind of
17 talked about at that time.

18 Q. And you agree that Ms. Smith knew that
19 you hadn't talked to any of individual complainants
20 about what they wanted to do with the judgments
21 that had been entered against them?

22 A. I don't remember if she knew or not.
23 Okay? But I had not -- I had spoken to some of the
24 people that were on the cases. Because they were
25 friends. But I didn't speak to everybody on the

1 cases.

2 Q. Which individuals on the five cases that
3 were filed did you specifically speak to?

4 A. Well, I can't remember, at this point.

5 Q. Who paid the cost and disbursements that
6 were assessed?

7 A. I believe, at the time, it was MNEIT had
8 paid some of the --

9 Q. How much?

10 A. I don't remember.

11 Q. Approximately?

12 A. I don't remember.

13 Q. How much did Ms. Smith pay?

14 A. That I don't remember.

15 Q. No approximate?

16 A. No approximate.

17 Q. Are you aware it's unethical to provide
18 financial assistance to clients?

19 A. I am aware. But in the pro bono context
20 and the context of the situation back then, it was
21 a bit challenging to decide if this was one of
22 those situations or not.

23 Q. You understand the point of the rule,
24 don't you?

25 A. Yes, I do.

1 Q. What's the point of that rule?

2 A. You want to make sure that attorneys do
3 not act on their own behalf in filing an action or
4 doing some kind of legal proceeding. So if a
5 client is involved and in a normal client situation
6 where they are paying a retainer, then the attorney
7 knows that they can move forward. In a pro bono
8 situation, it's not really that clear.

9 Q. There is no exception for pro bono
10 cases --

11 A. Okay.

12 Q. -- for whether or not clients get to
13 make individual decisions about their matter, you
14 agree; correct?

15 A. Uh-huh.

16 Q. No change in the ethics rules relating
17 to who makes decisions about whether a lawsuit
18 should be filed, what that lawsuit should entail,
19 who should be sued, and all of those decisions are
20 the client's; is that correct?

21 A. Okay. That's correct.

22 Q. And it doesn't matter if it's a paying
23 client or a pro bono client; correct?

24 A. That's correct.

25 Q. I would like you to turn to Exhibit 12.

1 A. I'm there.

2 Q. And who drafted this email?

3 A. From the document, it appears Ms. C.B.

4 Q. I'm sorry. Exhibit 12.

5 A. Sorry about that. It's Election

6 Integrity Update 2/22/21. I'm there.

7 Q. Do you recognize this document?

8 A. I do.

9 Q. And who drafted this email?

10 A. Myself and Ms. Shogren Smith.

11 Q. What portion of this email did you
12 draft?

13 A. Probably -- I probably started off the
14 email describing the Minnesota Election Integrity
15 Team and what our purpose was. There is a
16 paragraph early on in the email that says, "As you
17 know the Minnesota Election Integrity Team engaged
18 in a concerted effort to hold accountable local and
19 state officials after our state and local
20 elections."

21 Q. So you believe you wrote that sentence?

22 A. I wrote that sentence. I wrote the
23 following sentence. "We had many wonderful
24 volunteers who participated in the postelection
25 reviews, who filled out our affidavits about what

1 they personally observed and who filed with us
2 affidavits expressing their willingness to be
3 included as plaintiffs in complaints against these
4 elections."

5 Q. So you wrote that sentence?

6 A. I probably wrote that, together with
7 Ms. Smith.

8 Q. And you don't believe it's misleading at
9 all to indicate that people had indicated a
10 willingness to be plaintiffs in complaints?

11 A. To our knowledge and belief, we didn't
12 believe it to be misleading. And then, again, I
13 have to remind you of the context that we were
14 still dealing in terms of COVID was still with us
15 and very hard to communicate with clients and
16 volunteers.

17 Q. So sending emails is hard?

18 A. Sending emails is probably the best that
19 we could hope for during the pandemic.

20 Q. And you agree that this is the first
21 time that you or anyone had let people know that
22 they had been named as plaintiffs in complaints; is
23 that correct?

24 A. I would agree that it's the first time
25 that we communicated with the various parties in a

1 very detailed manner. And it was also not as
2 timely as we would have liked.

3 Q. Because this is February 22?

4 A. That's correct.

5 Q. Three months after the actions had been
6 dismissed?

7 A. We know that. That's why I said several
8 times due to the pandemic, due to the constraints
9 that we had, due to the few people that were
10 working with us that some things were missed.

11 Q. And that people didn't actually know
12 they had been listed as plaintiffs in legal
13 proceedings?

14 A. And that also might have been missed.

15 Q. And this was the first time that those
16 individuals had been advised that fees and
17 disbursements had been assessed?

18 A. This probably was the first time it was
19 more formally laid out, but not the first time they
20 probably heard this.

21 Q. Really? There is some other time?

22 A. I'm thinking that we might have
23 communicated some of that information earlier. But
24 in this format, in this manner, with working with
25 Counselor Smith to make sure that we were being

1 very clear. Because we realized that there may
2 have been not as good communication prior to
3 February 21. Excuse me, prior to February 22. But
4 we wanted to make sure at this point, before it
5 went any further, that we were going to try to be
6 as clear as possible with all our plaintiffs and
7 all our volunteers.

8 Q. And you agree that nothing in this says
9 to these individuals you have a judgment against
10 you for several thousand dollars?

11 A. No. All it states is that, again, all
12 fees related to the cases will be paid this week.
13 That's the extent. The gist of that issue.

14 Q. So even then you are still not telling
15 individuals that they had judgments against them?
16 Do you agree?

17 A. Yes, I agree that, regrettably, we had
18 not communicated that sooner.

19 Q. You don't even communicate it here.

20 A. Well, I thought, from my opinion, this
21 was communicating as clearly as we thought back
22 then. But we can have a difference of opinion.
23 Because we are both attorneys.

24 Q. So you agree that clients should know
25 when a judgment is entered against them?

1 A. I agree. And then --

2 Q. And there is not a difference of opinion
3 about that?

4 A. No, it's just a difference of when that
5 information is communicated. And that's a
6 difference that we both have right now. That we
7 are trying to communicate that information on a
8 timely basis, we knew it needed to be communicated,
9 but, unfortunately, due to the situation it didn't
10 happen.

11 Q. It actually didn't happen here.

12 A. But we are not saying that we were
13 holding back information, Ms. Humiston. We were
14 just saying that maybe we weren't as clear as we
15 should have been.

16 Q. You did not in this email or any other
17 circumstance tell individuals whom you are bc'ing
18 on this email; correct?

19 A. I agree.

20 Q. That they had a judgment against them
21 for several thousand dollars?

22 A. Uh-huh.

23 Q. You agree nothing in this letter --

24 A. Nothing in this particular email, that's
25 correct.

1 Q. And I have not seen anywhere you
2 specifically tell an individual you have a judgment
3 against you --

4 A. Uh-huh.

5 Q. -- for several thousand dollars.

6 A. Uh-huh.

7 Q. You agree that's important information
8 for a client to have? You knew it and you didn't
9 tell those individuals?

10 A. As I said before, regrettably, some
11 information was not communicated to some of the
12 plaintiffs and the parties because of the fact that
13 we were dealing with trying to -- challenging
14 communication with each other, trying to manage the
15 situation. So it was not intentional. There was
16 no fraud. There is no deceit. It was just
17 regrettable.

18 Q. Actually, I have some concerns about
19 this email.

20 A. And you may. I agree, you may.

21 Q. Because it --

22 THE COURT: Hold on just a second.
23 We are getting into argument here. I would like
24 you to wait until the question is posed, sir. And
25 I would like you, Ms. Humiston, to wait until he

1 finishes.

2 If you think his answer is
3 unresponsive, you can move to strike and I will
4 act. And I want to make sure, Mr. Jimenez, that --
5 don't say, "uh-huh." I interpret that to mean
6 "yes." But I prefer that you say "yes."

7 THE WITNESS: Yes or no.

8 THE COURT: Please.

9 THE WITNESS: Thank you for the
10 reminder.

11 THE COURT: You're welcome.

12 BY MS. HUMISTON:

13 Q. And you agree in February of 2021,
14 months had past; correct?

15 A. That's correct.

16 Q. And these litigated matters had been
17 closed since the end of December of 2020; correct?

18 A. That's correct.

19 Q. And that these judgments existed and you
20 knew of them?

21 A. Yes.

22 Q. Ms. Smith knew of them; that's correct?

23 A. That's correct.

24 Q. You agree that it's very easy to write
25 an email to individuals that says you have a

1 judgment against you; correct?

2 A. That's correct.

3 Q. And you agree this email does not
4 provide any specific information to individuals
5 about judgments entered against them personally?

6 It doesn't say the amount; correct?

7 A. That's correct.

8 Q. Did this email specifically tell people
9 that the actions had been dismissed several months
10 ago?

11 A. It does not state that.

12 Q. Now, you attended the March 26 hearing
13 before Judge Castro; is that correct?

14 A. That's correct.

15 Q. And did Ms. Smith provide you with
16 notice of that hearing?

17 A. Yes, she did.

18 Q. And you specifically had the court's
19 order setting that matter on for hearing; is that
20 correct?

21 A. I had gotten a copy of it, that's
22 correct.

23 Q. So you knew exactly the concerns the
24 court had relating to that matter; is that correct?

25 A. I knew exactly what the matters were

1 that were going to be discussed as per the order
2 from Judge Castro.

3 Q. He cites case law?

4 A. He cites case law. But even that case
5 law is limited to what a judge can do in a case.

6 Q. And he said he specifically had concerns
7 about fraud on the court; is that correct?

8 A. He stated that I think in his order as
9 well in the hearing. And that's correct.

10 Q. During that hearing, did Ms. Smith
11 apologize to any of the women who attended that --

12 MS. SMITH: Objection.

13 THE COURT: Just wait for the
14 finish before --

15 By MS. HUMISTON:

16 Q. -- for using their names in a litigated
17 proceeding?

18 MS. SMITH: I object.

19 THE COURT: What's the ground?

20 MS. SMITH: My apology, how is
21 that relevant?

22 BY MS. HUMISTON:

23 Q. I'm just asking you --

24 MS. HUMISTON: I'm sorry.

25 THE COURT: I think it's relevant

1 to -- if we get to the issue of whether there is a
2 violation, remorse is an issue. You can answer.

3 A. If you can repeat the question, please.

4 MS. HUMISTON: Sure. Can the
5 Court Reporter please read that back.

6 (The requested portion of the record
7 was read aloud by the court reporter.)

8 A. I do not recall.

9 BY MS. HUMISTON:

10 Q. Did Ms. Smith apologize to Judge Castro
11 for failing to ensure that the individuals whose
12 names she filed a lawsuit in understood that they
13 were being listed as plaintiffs in a lawsuit?

14 A. I don't remember.

15 Q. Did you provide information to the
16 three-judge panel who was also considering whether
17 or not to sanction Ms. Smith?

18 A. I did not provide information to the
19 three-judge panel. Because I was not present at
20 the hearing.

21 Q. There actually wasn't a hearing.

22 A. Wasn't there a hearing on the three
23 judges for the Senate case?

24 MS. SMITH: Objection. Could you
25 clarify what hearing exactly are you talking about,

1 the December proceedings or the June -- or the May
2 order? I think there needs to be clarification of
3 what you are asking.

4 BY MS. HUMISTON:

5 Q. So did you attend any -- you said you
6 didn't attend any hearings relating to the
7 three-judge panel consideration of the Tina Smith
8 matter?

9 A. Right.

10 Q. Do you know if there was a hearing on
11 those motions to dismiss?

12 A. I only knew the results.

13 Q. Did you know that the three-judge panel
14 issued an order to show cause as to why individuals
15 should not be removed from those actions and that
16 sanctions should be entered?

17 A. That I didn't know.

18 Q. You did not know?

19 A. No. No.

20 Q. And --

21 A. And that's not by way of Ms. Smith's
22 fault. It's by way of my fault. I just read
23 almost to basically the beginning that it was
24 dismissed. I didn't read through the order
25 carefully.

1 Q. So did Ms. Smith tell you that the
2 three-judge panel subsequently issued an order for
3 cause, to show cause --

4 A. She may have. I don't remember.

5 Q. Do you believe that it would have been
6 an appropriate response for a lawyer if there were
7 mistakes that had been made in a rush to file a
8 lawsuit to apologize for those mistakes?

9 A. I can't speak for Attorney Smith.

10 Q. I'm not asking you to. My question was
11 do you believe it's appropriate for a lawyer if
12 there were mistakes that were made in a rush to
13 file lawsuits?

14 A. I believe so. Because I think in any
15 situation honest mistakes can be made, and
16 sometimes an apology can go a long way in terms of
17 having the other parties understand that nothing
18 nefarious happened, no deceit happened, no intent
19 to defraud happened.

20 Q. Are you aware that Ms. Smith argued to
21 the Senate panel that clients of yours and hers
22 should be investigated for perjury?

23 A. That I was not aware of.

24 Q. And you agree that is not appropriate;
25 is that correct?

1 A. If that was stated on the record,
2 probably not correct.

3 MS. HUMISTON: If I could have a
4 minute to look at my notes to confirm if I have any
5 other questions. I don't need a recess. Just a
6 minute, if I could.

7 THE COURT: Take your time.

8 BY MS. HUMISTON:

9 Q. Did you personally speak with any of the
10 nine individuals who asked to have their names
11 removed from the election contest?

12 A. I did not personally speak with them. I
13 remember at least corresponding I think with at
14 least one of them.

15 Q. And who was that?

16 A. I think it -- I have to remember here.
17 But it either could have been C.B. or Mr. Patrick
18 Jensen. I can't remember which one it was. But
19 they wanted to be basically removed from the case.

20 Q. And you believe --

21 A. And it was not a phone call.

22 Q. And you believe that's a reasonable
23 request, right, from someone who was surprised to
24 find that they were a plaintiff in an action?

25 A. Yeah, it is. Yes, it is. I'm not going

1 to force somebody to be in an action that doesn't
2 want to be in an action. For some reason if they
3 are not comfortable, then we are not going to force
4 them to do something like that.

5 Q. And you recognize that that could be
6 because they -- or you have no reason to believe
7 that they didn't -- they wanted to be removed for
8 any other reason that they did not understand they
9 were going to be listed as named plaintiffs?
10 Because you didn't speak to any of them --

11 A. My understanding is that they were
12 concerned, and most of the concerns arose in the
13 post January 6 time frame. Because at the time the
14 cases were filed and at the time we were providing
15 updates the plaintiffs knew what was going on. But
16 no one at that point voiced any concern about
17 wanting to be pulled off. After January 6, we
18 started seeing a change in the way people were
19 feeling about being involved in these kind of
20 things.

21 Q. You are speculating to that, aren't you?
22 You did not speak with any of the nine individuals
23 who asked to be removed?

24 A. I did not. And like I said to you
25 earlier, Ms. Humiston, I did receive some emails

1 asking their names to be removed.

2 Q. And they didn't state anything about
3 January 6, did they?

4 A. No, they did not. That's just -- just
5 like a lot of people don't say anything about
6 COVID-19, the pandemic, sometimes it's unspoken,
7 but we all know it's here.

8 MS. HUMISTON: No further
9 questions.

10 THE WITNESS: Thank you.

11 THE COURT: I would like to ask a
12 few questions. If I do it now, I think it will
13 give both counsel a chance to ask any follow-up.

14 And I haven't made up my mind on this
15 case, so don't interpret my questions as going one
16 direction or another. What I'm interested in is to
17 making sure that I understand where you are coming
18 from and what was occurring.

19 THE WITNESS: Thank you, Your
20 Honor.

21 THE COURT: At the time the
22 lawsuit was filed -- I don't think I have the
23 lawsuit or the lawsuits -- there were five of them
24 -- who signed the pleadings?

25 THE WITNESS: Ms. Smith.

1 THE COURT: You didn't sign it?

2 THE WITNESS: I did not.

3 THE COURT: And you weren't listed
4 as counsel of record?

5 THE WITNESS: No, I was not.

6 THE COURT: At that time you had
7 formed this association the MNEIT, or I will call
8 it Integrity for short.

9 THE WITNESS: Uh-huh.

10 THE COURT: And you were the, I
11 assume, kind of the president or the leader of that
12 group --

13 THE WITNESS: That's correct.

14 THE COURT: -- from the business
15 standpoint? And you and Ms. Smith in these
16 proceedings were kind of co-counsel on the case in
17 terms of discussing strategy and making decisions;
18 right?

19 THE WITNESS: That's correct.

20 That's correct.

21 THE COURT: And as of the time of
22 the filing of the lawsuit I think you said, and I'm
23 not sure about this, that you did not talk to any
24 of the nine individual plaintiffs personally?

25 THE WITNESS: That's correct. I

1 knew some of the plaintiffs personally. But I had
2 not spoken to them just before the filing, no I had
3 not.

4 THE COURT: Right. Right. Do you
5 know one way or another whether Ms. Smith had
6 personally talked to any of the nine before the
7 filing of the lawsuit?

8 THE WITNESS: I don't know. But
9 to Your Honor's question, most of the communication
10 at that time with the plaintiffs and the volunteers
11 was through our organization and through our email
12 and our website, keeping them informed. And she
13 was free to speak with anybody. We didn't prohibit
14 that.

15 THE COURT: You are going a little
16 beyond my question.

17 THE WITNESS: I'm sorry. I
18 apologize.

19 THE COURT: I understand that at
20 the time of the filing of the lawsuit either both
21 of you, or at least Ms. Smith had the I think it's
22 the document 6, "The time has come" and these
23 affidavits?

24 THE WITNESS: Yes.

25 THE COURT: I was just focusing on

1 whether you knew whether she had personally talked
2 to any of the nine plaintiffs. You can say you
3 don't know. I'm not asking you --

4 THE WITNESS: I have to be honest
5 with you, Your Honor, I can't say one way or
6 another.

7 THE COURT: Fair enough. You
8 don't have to apologize. "I don't know" is a fair
9 enough answer for me.

10 As of that time you were representing
11 Integrity were you also representing the individual
12 nine plaintiffs personally?

13 THE WITNESS: I guess, Your Honor,
14 I would answer your question this way. The MNEIT
15 team, as said, was really a grassroots
16 organization. Not a formal organization. We
17 weren't even a formal law firm. But we were, in
18 our minds, representing the plaintiffs that were
19 filing those cases.

20 THE COURT: And you had also said
21 earlier that you represented Integrity; right?

22 THE WITNESS: Being the founder
23 like from a business standpoint, I guess I would be
24 representing them from that standpoint.

25 THE COURT: Did Ms. Smith

1 represent Integrity and the nine plaintiffs?

2 THE WITNESS: Well, I would liken
3 Ms. Smith's involvement with our group as she would
4 be as a fellow lawyer in a law firm. That she's
5 doing things for the client and doing things for
6 the law firm. So that's kind of how I saw her
7 role.

8 THE COURT: What I'm exploring
9 with you, just to be very blunt --

10 THE WITNESS: Yes.

11 THE COURT: -- is as of that point
12 in time, as I read 1.14, a lawyer has -- this is
13 the Rules of Professional Conduct: A lawyer shall
14 promptly inform the client of any decision or
15 circumstance to which the client's informed consent
16 is required.

17 And without getting all the words, one
18 of the things is talking about the object and the
19 purpose of the litigation, talking about whether
20 there is any potential conflicts of interest,
21 talking about the prospects of the case.

22 THE WITNESS: Correct.

23 THE COURT: Which, to me, would
24 include whether there is a risk of costs being
25 assessed or a judgment being entered for costs.

1 Is there any document, email or
2 something that you are aware of where any of these
3 topics that I just covered were discussed with
4 these nine plaintiffs before the filing of the
5 lawsuit? And I know your argument with respect to
6 Exhibit 6 and the affidavit. And so I'm carving
7 that out and just trying to see is there any other
8 paper that you want me to --

9 THE WITNESS: There is no other
10 paper, Your Honor, that you can look to that would
11 highlight some of the issues you mentioned today.

12 THE COURT: Fair enough.

13 THE WITNESS: There may have been
14 some conversations.

15 THE COURT: And as of the time of
16 the filing of the lawsuit -- I don't know if you
17 were asked this. If it's been asked and answered,
18 I apologize. But who paid for the cost of filing
19 and the service of process?

20 THE WITNESS: Counselor Smith paid
21 for those costs.

22 THE COURT: Very good. I don't
23 have any other questions. But I do want to say
24 this. I think I should say this -- the lawyers can
25 beat me up -- but there is obviously an election

1 component to this case, and please don't interpret
2 my questions as in any way challenging your right
3 or Ms. Smith's right to exercise your First
4 Amendment rights. I understand passion. Passion
5 fills the room.

6 THE WITNESS: Right.

7 THE COURT: And that is something
8 that I respect. However, what I have to do is
9 apply the law that is before me to these specific
10 facts and the Rules of Professional Conduct. So
11 thank you.

12 THE WITNESS: Thank you, Your
13 Honor.

14 THE COURT: Further questions,
15 Ms. Smith, and maybe -- well, I will go Ms. Smith
16 and then to Ms. Humiston.

17 MS. SMITH: I do have some
18 questions. But can we just, please, take three
19 minutes so I can run to the bathroom?

20 THE COURT: Absolutely. Let's
21 take 10 minutes.

22 (A recess was taken from
23 10:55 a.m. until 11:07 a.m.)

24 THE COURT: We are back on the
25 record. Ms. Smith, you may proceed with your

1 redirect.

2 REDIRECT EXAMINATION

3 BY MS. SMITH:

4 Q. I just want to clarify a few things that
5 were asked about. First, just in reference to the
6 exhibit with the email on the top, the Twitter feed
7 and the reference to affidavits. Were there
8 different affidavits for different things?

9 A. We just supplied the same affidavit for
10 all of the cases.

11 Q. So the affidavit that was sent to the
12 Minnesota voters contesting elections.

13 A. Yes.

14 Q. Was that the only affidavit that you
15 collected, or were there other affidavits?

16 A. We collected other affidavits in
17 connection with the -- I think the 204B.44 filing.
18 And I think we also may have collected some other
19 affidavits as evidence in some of our cases.

20 Q. Were you collecting affidavits prior to
21 the affidavit that we earlier spoke about that I
22 drafted?

23 A. I think we collected some affidavits in
24 connection with our Supreme Court case, to support
25 that case, not the affidavits that went out to

1 support the election contests.

2 Q. So there was a specific affidavit for
3 the election contests?

4 A. That's correct.

5 Q. Okay. I just wanted to clarify that.
6 In terms of the email that was sent out, do you
7 believe that that email that was sent by the MNEIT
8 described an offer? Was the email the offer?

9 MS. HUMISTON: I don't know which
10 email we are talking about.

11 A. Is it November 30?

12 BY MS. SMITH:

13 Q. The November 30 email.

14 THE COURT: Exhibit 6.

15 MS. SMITH: Yes, Director's
16 Exhibit 6.

17 A. Can you repeat the question.

18 BY MS. SMITH:

19 Q. So the email that was in Director's
20 Exhibit 6.

21 A. Uh-huh.

22 THE COURT: Yes? Witness?

23 THE WITNESS: Yes. I was just
24 pulling it up. I'm there.

25 BY MS. SMITH:

1 Q. Do you believe that email was sent as an
2 offer of representation to your volunteers who were
3 engaged in the process?

4 A. That was my understanding.

5 Q. And do you believe that those volunteers
6 and the people on your list were aware --

7 MS. HUMISTON: Objection. Calls
8 for speculation.

9 THE COURT: Sustained. He can't
10 testify to state of mind of a third party.

11 BY MS. SMITH:

12 Q. Was your intent to communicate that the
13 MNEIT was going to be filing election contests?

14 A. Our intent, based on the email, was that
15 we were requesting -- you know, it was an offer of
16 representation for these voter contests. That was
17 our intent. And our intent was to upon receipt of
18 the signed affidavits that they would be considered
19 acceptance of such representations in the voter
20 context -- contents -- contests.

21 Q. And as you are looking at that email,
22 the link for the affidavit is in the body of the
23 email?

24 A. That's correct. It says Affidavit of
25 Eligible Minnesota Voter. Right in the body of the

1 email was a clickable link, basically.

2 Q. And people needed to fill out that
3 affidavit and return it to you if they agreed with
4 that -- it was their responsibility to respond?

5 A. That's correct.

6 Q. And was anybody added to a contest who
7 did not send back that affidavit?

8 A. No, they were not.

9 Q. And did that affidavit have a statement
10 regarding the penalty of perjury?

11 A. It did.

12 Q. Did the affidavit we are talking about
13 include the requirements of the statute, to your
14 understanding? Let me ask it again.

15 A. It was my understanding at the time --
16 it was complying with the statute in terms of
17 identifying for the voter where they lived, which
18 election they were contesting, their belief that
19 there was an issue with the election. So that was
20 laid out.

21 And our expectation was that because we
22 had a perjury/oath provision, that that would have
23 the individual really think twice about do I want
24 to do this or not. This is not just simply a
25 petition. It's an affidavit.

1 Q. At the beginning of this process when
2 you contacted me to get involved, did we have
3 communications about the scope of each of our
4 responsibilities in the process?

5 MS. HUMISTON: I object. I
6 believe we've covered this.

7 THE COURT: It is repetitious and
8 cumulative. The redirect is only to focus on
9 issues that came up that you are trying to respond
10 to. Sustained.

11 MS. SMITH: Okay. Then I think I
12 don't have any more. It will be repetitious.

13 THE COURT: Very good. Recross?

14 MS. HUMISTON: None, Your Honor.
15 Thank you.

16 THE COURT: Is the witness
17 excused?

18 MS. SMITH: Yeah.

19 THE COURT: You are excused.
20 Thank you for your testimony.

21 THE WITNESS: Thank you, Your
22 Honor.

23 THE COURT: Ms. Smith, please call
24 your next witness.

25 MS. SMITH: I just have a quick

1 question for me to sort of be able to plan.

2 Because we are done at 3:00 today?

3 THE COURT: Yes.

4 MS. SMITH: Are we taking lunch
5 today or not?

6 THE COURT: Yes. We will always
7 take lunch.

8 MS. SMITH: We are kind of, like,
9 at the midway point between them, and I just don't
10 know if it makes sense to start and then take a
11 break in a half hour.

12 THE COURT: We are going to keep
13 going.

14 MS. SMITH: How long do you think?

15 THE COURT: Until 12:00.

16 MS. SMITH: Until 12:00?

17 THE COURT: Yes.

18 MS. SMITH: So I am the next
19 witness.

20 THE COURT: Please, come up and be
21 sworn.

22 MS. SMITH: Can I bring the
23 exhibits I've been working on?

24 THE COURT: Bring whatever you
25 want. Whatever you want will be subject to

1 inspection by opposing counsel.

2 MS. SMITH: Yes, it's just my
3 exhibits. If I need one, maybe I'll --

4 THE COURT: You can always come
5 back, if you have others. Don't worry about that.

6 MS. SMITH: Thank you.

7 SUSAN S. SMITH,
8 the Witness in the above-entitled
9 matter after having been first duly
10 sworn, testifies and says as follows:

11 THE COURT: Please, be seated.
12 State your full name and business address.

13 THE WITNESS: My name is Susan
14 Shogren Smith. I live at 600 62nd Avenue North in
15 Brooklyn Center. My zip code is 55430.

16 THE COURT: All right. You may
17 proceed with your testimony.

18 MS. SMITH: Just so I can clarify,
19 do I just talk or do you want me to ask myself
20 questions? I have never done it, like, this way.

21 THE COURT: Well, I think that I
22 would just like you to give us your professional
23 background and then discuss whatever you want to
24 discuss regarding the case.

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DIRECT TESTIMONY

MS. SMITH: So, I guess, my educational background, I attended Carleton College for a couple of years. And then, due to a car accident, had to drop out of school. I went back to school. I actually got my undergraduate degree, after I had several kids, and went to Metro State.

Then I worked as an advocate for children who were disabled for several years, doing parent training, et cetera. I served on some boards, like the State Rehabilitation Council for the Blind, and I learned a lot about gaps in the law and difficulty of people accessing the law.

My husband and I were foster parents and we were regularly being asked to help families struggling in the system. So after years of doing advocacy, I was asked to take a job at PACER Center, which is the Parent Advocacy Center for Educational Rights. Paula Goldberg asked me if I would run the early childhood program. And the purpose of that job was to help families of children with disabilities understand their rights under the law and to help make sure that children were receiving educational services.

Because of my background in disability

1 rights, I ended up really realizing that if I were
2 to go to law school it would give me a much better
3 ability to help these families. So when the
4 University of St. Thomas announced that it was
5 opening a new law school, the mission of that
6 school, of the law school appealed to me greatly.
7 So I did apply to go to St. Thomas and was accepted
8 in its first class. So I did attend the University
9 of St. Thomas and graduated in 2004 with my law
10 degree.

11 I never intended to open a firm and
12 take paying clients. My goal really was to help
13 families and people who I could help avoid
14 litigation. Because what I learned in my years
15 working with people is that average people can't
16 afford lawyers.

17 THE COURT: Did you take the bar
18 exam and get admitted to practice? Did you
19 practice law?

20 MS. SMITH: I took the bar and I
21 passed the bar. And people -- you know, basically
22 through word of mouth. A lot a social workers
23 shared my name. So I have helped people since
24 2004 --

25 THE COURT: You were admitted to

1 practice in November of 2004?

2 MS. SMITH: Yes, 2004.

3 THE COURT: Did you practice law
4 with a firm or on your own?

5 MS. SMITH: I did everything on
6 my own. I had, you know, anywhere usually from
7 10 to 12 kids living at home. So I was pretty busy
8 dealing with my family and advocacy.

9 I also did a lot of political work.
10 You know, I helped -- worked with people who were
11 in politics, answering questions. Because I love
12 politics and I like helping people understand the
13 law. I try hard to do that. So I helped with the
14 Norm Coleman recount, for example. I would be in
15 the war room on election day. That's what they
16 call the war room, with the lawyers. I would be a
17 roving attorney around the state of Minnesota for
18 elections on behalf of the Republican party. So I
19 did that work also pro bono.

20 But most of the time I would -- most of
21 the work that I did was around disability access,
22 families whose kids might be in foster care needing
23 help, helping families and social workers
24 understand the rules about waived services and
25 those sorts of things. But it was all pro bono. I

1 never charged a client or anybody for the help that
2 I would provide.

3 So I have done that for years. I had a
4 child that became ill in 2012. There was a period
5 of time when I did let my license lapse because I
6 had a child that was in the hospital regularly, and
7 she did pass away. And I did reactivate my license
8 really -- honestly, only because of that situation.

9 THE COURT: What year was that?

10 MS. SMITH: That I let it go or
11 that I got it back?

12 THE COURT: Both.

13 MS. SMITH: So she became sick in
14 2012. So I think I didn't renew maybe in 2013 or
15 2014. I wasn't taking clients because of her
16 health. You know, I believe, for sure, that my
17 daughter, she was murdered. They changed her
18 medical records. It was a horrible experience.
19 She lived beautifully and valiantly and -- but it
20 was a long process and --

21 THE COURT: When did she die?

22 MS. SMITH: She died in 2013. And
23 that process taught me a lot about the adversarial
24 nature of litigation which really did affect how I
25 looked at the legal system. Because we did not

1 want in any way to sue the hospital for what
2 happened. We wanted the system to treat people
3 with disabilities fairly.

4 My daughter died in an intensive care
5 room that the nurses refer to the unit of that ICU
6 as the ghetto, because the only people in the rooms
7 on that wing were people with disabilities. And
8 there were different --

9 THE COURT: Let me stop you. Your
10 license, I assume, lapsed in 2012; is that right?

11 MS. SMITH: Yeah. Maybe 2013. It
12 was when I didn't pay the fees.

13 THE COURT: And when did you get
14 reinstated?

15 MS. SMITH: So in approximately
16 2017 I needed to reactivate my license. Because
17 what I learned is that I had no way to bring the
18 issues forward about the disability issues in the
19 hospital outside of court because the hospital
20 wouldn't talk with us about the system. And so we
21 tried, but in order to file a medical malpractice
22 claim, a wrongful death claim, the law requires you
23 to be an attorney. And I talked to many attorneys
24 from different size firms. My husband and I went
25 and talked to many people and we heard the same

1 thing. Big firms were conflicted out. Little
2 firms couldn't afford it. At all couldn't even
3 consider it because of the client -- you know, who
4 it would be opposing. And the medium firms, it was
5 either --

6 THE COURT: Excuse me. I'm just
7 trying to follow. So you were reinstated in 2017?

8 MS. SMITH: Right.

9 THE COURT: All right. Is there
10 anything else you want to tell us about your
11 background before we get to the --

12 MS. SMITH: No. So, basically, I
13 still never really -- I did activate my license
14 again. And people knew I did that, so I would help
15 people, again generally, to try and help them avoid
16 needing lawyers. And I would refer people to
17 lawyers if I couldn't help them or if they asked me
18 to do something that I didn't feel I could do.

19 So then in 2020 I was involved in the
20 election process early on. I did testify, for
21 example, at a hearing in April of 2020 regarding
22 the COVID changes. I was really the only
23 Republican in the room. But I did testify at the
24 hearing about my feeling with the COVID changes. I
25 was, you know, actively involved in talking with

1 people at the party.

2 I started a group within the Republican
3 party, and with the help of Senator Kiffmeyer I
4 formed a committee of people from across the state
5 that included, you know, Trump lawyers and things.
6 I oversaw the first meeting of it. It was a large
7 group of people. And that was in February of 2020.

8 And then because we kind of got up and
9 going, we transferred it to the party. But then
10 COVID happened and all of that. So people did know
11 that I was engaged in that process and trying to
12 help make sure that our people were understanding
13 the changes in the law, also, and things that were
14 coming. So I did that.

15 Then Jose reached out to me about
16 assisting them in the efforts that they were
17 engaged in in the middle of November. I don't know
18 the exact date. But we had some correspondence and
19 some conversations. I was very honest with him, I
20 believe, and he was honest with me about what was
21 needed.

22 I was really clear that because of my
23 family responsibilities that, you know, I wanted to
24 keep my focus. I would volunteer to help him and I
25 would help draft the contests and that we would be

1 -- you know, that that would be a joint process,
2 but I was going to focus on that. The MNEIT and
3 the staff they already had a pretty established
4 network of volunteers and people that were involved
5 and they were doing all that communicating between
6 each other.

7 So I had no access to their emails and
8 any of that. I really was just looking at the law
9 and they would provide me with information about
10 what they were learning from the postelection
11 reviews and the information they were gathering.
12 And I was looking at that information in the
13 context of whether or not that information violated
14 any of the laws and the statutes that were in place
15 and then make recommendations to them about what I
16 thought the options were and what could happen.

17 So I did draft the documents, seeking
18 to -- the 204B petition, seeking to have the state
19 canvassing board review some of the information,
20 because there was evidence that multiple counties
21 did have issues, but also that the -- particularly
22 Dakota County had the biggest problems. They were
23 missing 800 ballots at one of the postelection
24 reviews. Under the Constitution, the state
25 canvassing board has a duty to canvas the

1 elections. So that was the origin of the first
2 case that we filed.

3 THE COURT: Dakota County?

4 MS. SMITH: Well, I wasn't
5 involved in the Dakota County case. I filed the
6 204B petition specifically about the canvas.

7 THE COURT: Okay.

8 MS. SMITH: There was another
9 attorney, I think, that was handling the Dakota
10 County case. But I filed the petition to correct
11 the errors and omissions which we filed. And,
12 ultimately, the court ordered that it wasn't --
13 that we didn't serve all 87 counties. Although, we
14 only, I believe, needed to serve the canvassing
15 board. But constitutionally that was who had the
16 duty. But they did certify the election and that
17 did trigger then the beginning of the timeline to
18 file.

19 So, obviously, this was, basically, the
20 Wednesday before Thanksgiving, and we had a lot of
21 work to do if we were going to draft the contests
22 that the MNEIT people wanted to file.

23 Again, you know, the scope of my
24 responsibility in these cases was drafting the
25 documents and filing. Jose and I had agreed that

1 he would be an attorney of record with me. He
2 would sign onto the cases. And so I did believe
3 that that was happening and I did believe that
4 there was communication. You know, we were sending
5 drafts back and forth and I was getting input on
6 the drafts from them and making the modifications.
7 And I did clearly, I think, indicate my expectation
8 that I really needed to have the confirmation of
9 the people's agreement that they were joining an
10 election contest. So I did draft that affidavit
11 and I do believe that they were communicating with
12 people.

13 I didn't send the email. I didn't do
14 those things. But I was receiving the documents
15 once they gave them to me. So I didn't have access
16 to their whole list of everything --

17 THE COURT: When you say you
18 drafted the affidavit, that's the Exhibit 7? Those
19 are the ones that are filled out, but it was
20 entitled Affidavit of Eligible Minnesota Voter?

21 MS. SMITH: Right. Right. And so
22 I did draft that affidavit. It was possible that
23 there -- that there was another attorney also doing
24 cases. So it was really more about the election
25 contest. And what I was filing -- and it could

1 have been modified for the other attorney as well
2 -- but I did ask them to be sure that in their
3 communications with the people that they needed --
4 they couldn't just say I wanted to join a contest.
5 They had to fill out the affidavit.

6 And it was very -- I mean, I appreciate
7 we don't want to think about timelines, but I was
8 very focused on not only drafting a brief in the
9 petition to correct errors and omissions on not
10 just finality and mootness that was also due -- the
11 204B petition there was an order to submit a brief,
12 a memorandum on that petition. So I also needed to
13 draft that response to that order during the same
14 time period of the -- that we also needed to file
15 the election contest, that those needed to be
16 drafted. So I was drafting those as well. And it
17 was over Thanksgiving. So I was trying to also --
18 so that's what I was doing. I was literally
19 drafting and I communicated what I needed by the
20 end deadlines. And we needed to get service
21 contacts. So I was not the person trying to track
22 down the contestants that needed to be served. The
23 MNEIT was doing all that. I was just drafting the
24 documents, going through the laws, making sure that
25 the election contests as written complied with the

1 law.

2 And then once we had agreement on the
3 contests that they wanted to go forward, then they
4 needed to let me know with the affidavits who was
5 in fact going to be the petitioners. We had
6 discussion about how many people should be added.
7 Because they had -- I believe, actually, I was told
8 they had over 150 affidavits. And they asked if
9 everybody could be on them. And I said no.
10 Because there was really no logistical way from a
11 timing standpoint to just get all of that done.
12 So I just asked for them to decide amongst
13 themselves -- however they wanted to -- just to let
14 me know who were going to be the contestants on the
15 case.

16 So I was provided with that information
17 about who those people were going to be and with
18 the affidavits for those people. We had to make a
19 decision about who were the contestants. And so I
20 believe, and I still believe, that because we were
21 asserting that there were material violations of
22 election law, that that was one of the most serious
23 issues that was being raised.

24 So people think of election contests as
25 primarily about the number of votes received. But

1 part of what I believed in all that information
2 that I was being given and just as a person who was
3 watching the news that the issue was no matter
4 whether x candidate won or lost, that the laws that
5 were being violated right in front of us and we saw
6 it being violated, that there had to be a
7 discussion about the need to follow the law.

8 Because no matter whether, you know, a Democrat or
9 a Republican or a Legal Marijuana Now party, it
10 doesn't matter, whoever wins we wanted people to
11 know that the win is legitimate. And so the issue
12 was not just the count. It was about how were the
13 laws violated.

14 And, also, there were laws being
15 violated, it appeared, not even necessarily because
16 people intended to violate the law. But because
17 election judges often didn't understand the law.
18 And we had election judges with MNEIT who were
19 volunteering who were very frustrated because of
20 the confusing messages that they were getting from
21 different people about what they were supposed to
22 do and what their duties were. And we had county
23 auditors who really felt like they didn't
24 understand what they were supposed to do, because
25 perhaps rules that were issued by the Secretary of

1 State's Office were not clearly compatible with the
2 law.

3 And so what we were trying to do is
4 raise the issue that the laws needed to be looked
5 at so that, whether you win or lose, you at least
6 feel like the laws are being followed. And so,
7 therefore, we named Steve Simon as a contestant --
8 or that he was a respondent. And so one of the --
9 and so that was a serious issue.

10 And I want to explain the justification
11 for that -- because I do think it's important, and
12 maybe you will ask me about it later -- is that we
13 had watched as a state and across the country many
14 states having lawsuits filed in May and June that
15 were -- we call them -- they were these consent
16 decree cases. There were issues raised about
17 advocacy groups sued the secretary of states across
18 the country to change election law. In many cases
19 election law that had been in existence, you know,
20 for decades, and that everybody understood that.
21 And I know, because I testified at the hearing in
22 April where there was a proposal made to -- this is
23 at an elections the committee hearing which is on
24 the record and you can watch the video, there was a
25 Zoom -- but there was a proposal made to grant the

1 Secretary of State powers during a pandemic that
2 even if the pandemic ended the powers would be
3 irrevocable. And so I, of course, testified
4 against that. A lot of people testified for it.
5 Then the session ended. So it failed. The Senate
6 did not pass that. So they did not agree to change
7 the law.

8 And then in May, basically at the end
9 of the session, there were multiple cases filed
10 against the Secretary of State, seeking to have all
11 those changes made that the Senate rejected. So
12 there was litigation happening and there were
13 consent decrees entered into that changed the law
14 that made many people across the state extremely
15 frustrated. Now, if we look at party lines,
16 probably most Democrats agreed with it and most
17 Republicans didn't. There was some Republicans
18 that didn't care and there were some Democrats that
19 were opposed to it because they felt --

20 THE COURT: Can I --

21 MS. SMITH: So I'm saying it was
22 just a very serious issue.

23 THE COURT: Can I stop you for
24 just a second. I know these election issues you
25 feel passionate about.

1 MS. SMITH: Uh-huh.

2 THE COURT: I would like to see if
3 I can get you to answer some questions or address
4 what happened beginning with the email that went
5 out on November 30 and take us through that
6 timeline of what you did up through the March 26
7 Castro hearing.

8 MS. SMITH: Yes.

9 THE COURT: The memo which is
10 November 30 which is marked Exhibit 6 in the
11 Director's papers, is that something that you had a
12 hand in drafting?

13 MS. SMITH: I did not draft the
14 email. So I believed that throughout this process
15 while I was working on the contest that there was
16 communication happening between the MNEIT and their
17 volunteers. There was a lot of people. But I made
18 it clear that I needed them to get an affidavit
19 from those people.

20 So I know that they sent out an email.
21 I don't know that I got the email, actually. But
22 the point of the email was to get the affidavit
23 that I said I needed. Because there was
24 communication. And people were asking for the
25 contest to be filed. I said I need to know that

1 they are agreeing to join an election contest. And
2 I think the language of an election contest, it's
3 not really very complicated language. I do
4 understand the concerns. I just wanted to have an
5 affidavit that assured me that they understood they
6 were joining a contest. I believed that that was
7 clear. But I also believed that there was
8 communication happening beyond just the affidavit.

9 THE COURT: So to get to my
10 question, you didn't see this email before it went
11 out, didn't draft it, but it was asking for the
12 affidavit that you had talked to --

13 MS. SMITH: Yes, the affidavit,
14 that I wanted it. Correct.

15 THE COURT: Am I understanding it
16 correctly?

17 MS. SMITH: Yes.

18 THE COURT: All right. Please,
19 continue.

20 MS. SMITH: And so then they gave
21 me the affidavits. But, again, this is happening
22 very -- there are hard deadlines that things have
23 to be filed. I believe that we -- I believe we
24 served Steve Simon. It was very difficult trying
25 to figure out how to serve the representatives.

1 And I do think it's important to note
2 that the rules about election contests are not
3 strict service requirements. People talk about it
4 like there are strict service requirements for the
5 contestants. It's really a notice that -- you
6 aren't suing, like, Ilhan Omar. She wasn't
7 actually being sued, per se. She is being put on
8 notice that the people's seat she was elected to
9 fill that that seat is being contested. It's not
10 her seat. It belongs to the people. It's being
11 contested. She certainly has every right to hire
12 lawyers and send people in to fight to protect the
13 seat she wants to keep. But the notice
14 requirements in regular litigation is personal
15 service. There is not an exception to, like, send
16 it to the last known address.

17 In this case, the election law, you can
18 end up sending it to the last known address if you
19 can't serve the person. If you can't find the
20 address. And so one of the issues was that we
21 weren't sure -- additionally, congress people don't
22 have to live in their district. Most people don't
23 know that. The Judge didn't know that. Judge
24 Castro didn't know that. At the hearing, he said
25 that. So I could run for CD3, but I could live in

1 CD7. It doesn't matter. I can live anywhere.

2 So when the law requires that you must
3 file the contest in the county where the person
4 lives -- there is multiple counties in every
5 congressional district, and if you don't know where
6 they live for sure, if you can't confirm it in your
7 guessing because you don't know for sure, they
8 might have two residences, et cetera, and you are
9 trying to personally serve them but they are in
10 D.C. because they are in session, right, and then
11 nobody is answering doors, et cetera, that it is
12 actually very complicated service rules.

13 But we did serve Steve Simon, because
14 we believed that as the chief election official who
15 was in fact sued in those consent decree cases to
16 change the law before the election and he is the
17 person who drafts the rules potentially which
18 governed -- and he trains everybody across the
19 state, it's his job, and we believe some of his
20 training misled people, that he was responsible for
21 the violations. I'm not saying he is a terrible
22 person. I'm just saying it's his job. It's his
23 job. So we served time.

24 THE COURT: So let's get back to
25 the timeline.

1 MS. SMITH: So we were trying to
2 get the service done.

3 THE COURT: I'm interested in as
4 of the time of the filing of the complaint, who was
5 your client?

6 MS. SMITH: So I believed that the
7 MNEIT, Jose, was my co-counsel. And he was going
8 to sign the cases, but because of the timing he
9 didn't. So I believed all these people that we
10 were adding on had signed the affidavit and I
11 believe there was communication between them. And
12 I appreciate that it's the position of the Director
13 that I dropped the ball. I should have been
14 personally communicating with them. I understand
15 that. At the time, I believed that these people
16 did know had information about, you know, I was one
17 of the volunteers, that I was filing the contest.
18 I know that they did send out a press release they
19 told me, also. I thought they were communicating.

20 So the intention was that Jose was
21 going to also going to sign on, but because of the
22 logistics and the timing of it and just with his
23 schedule and where he was, I had to decide just to
24 file the case without a blank signature on it, in
25 essence, because I needed to get it done. And then

1 he was going to file in also, is what I thought,
2 after I filed the cases. That he would be filing
3 into the cases as well. That was always my
4 understanding that he was going to be filing in as
5 co-counsel. Does that answer your question?

6 THE COURT: I think so. So your
7 expectation was that he was going to file a
8 petition pro hac vice to participate as co-counsel
9 for the nine individual plaintiffs in the lawsuit,
10 yes?

11 MS. SMITH: Right. Because --

12 THE COURT: Okay. Stop.

13 MS. SMITH: Okay.

14 THE COURT: I want to do this
15 orderly, but I want to have you have the
16 opportunity to present your case.

17 So as of the time of the filing of the
18 lawsuit, was it your understanding that you were
19 representing these nine plaintiffs and that you
20 were also representing Integrity at the same time?

21 MS. SMITH: Well, I believed that
22 the people all knew. So the example I would give
23 you -- for example, in the petition to correct
24 errors and omissions, that there were filing
25 attorneys -- so somebody filed it, but then there

1 were also eight other attorneys that got added in
2 on the other side. Like in the contest that we
3 filed with Ilhan Omar we had a local firm that was
4 on, but then Marc Elias did sign it. And I think
5 seven people perhaps signed in as also attorneys on
6 the case. Right? There is a lead attorney. Do I
7 think that Ilhan Omar had personal meetings with
8 every single one of those attorneys? Maybe she
9 did. I don't know.

10 THE COURT: Well, that's not my
11 question.

12 MS. SMITH: So I believed that
13 the people all understood Jose was the contact
14 attorney. I mean, people knew, I believe, that he
15 was an attorney. I believe that that communication
16 was all clear, he was the lead attorney. I was a
17 volunteer that came in to help draft the cases for
18 him. And I believed when I filed them that people
19 knew that he was also an attorney, but I didn't --
20 I needed to file the cases and get it done, and
21 just because of the timing of it, I thought it
22 didn't make sense -- I didn't want to just have a
23 blank signature block, you know, without him
24 signing it. He was going to add in. So I would be
25 like one of those other attorneys. It appears I

1 might have been wrong to do that. But I'm saying I
2 was, like, the attorney that was helping draft the
3 case.

4 THE COURT: Let me try it a
5 different way. I understand that you thought that
6 Jose was going to be co-counsel with you on the
7 case. That part is clear to me. He was
8 representing also Integrity.

9 My question to you -- let me just try
10 it a different way -- is were you also representing
11 Integrity at that time?

12 MS. SMITH: Well, I believe I was.
13 I truly believed that he was communicating -- that
14 the MNEIT was communicating and that people knew I
15 was involved.

16 THE COURT: What I was trying to
17 get at is his testimony seemed to be that the two
18 of you were, for lack of a better term,
19 collaborating on the strategy of the litigation and
20 how you were going to do things and you were
21 working together.

22 MS. SMITH: Uh-huh.

23 THE COURT: And both of you were
24 representing the nine individuals and you also were
25 representing Integrity at the same time.

1 MS. SMITH: Right. I mean, I
2 think that I --

3 THE COURT: Okay.

4 MS. SMITH: I just want to be
5 clear that I'm understanding your question. So I
6 believed at the time that we were actually
7 exercising with a lot of integrity. And I think
8 that's why I wanted to have that affidavit, to
9 ensure that people were saying they were joining
10 the contest. That was in the context of my beliefs
11 that there was communication happening with people.

12 I mean, they had hundreds of people
13 that were actively engaged. This isn't like a
14 Listserv that just formed. I mean, these were
15 people that were going to postelection reviews and
16 they were showing up and going to events and
17 activities related to the elections. There was a
18 lot happening. Those people knew Jose was an
19 attorney. So I believed that that is the situation
20 and that people were made aware that I was
21 volunteering. That they knew that that was
22 happening. And I believed that -- like I said,
23 that's why I asked -- I wanted it to be clear that
24 I had an affidavit they were joining an election
25 contest. And I did believe at that time that that

1 was integrity. I found out later that people
2 didn't know that. But I had no idea that they
3 didn't know that.

4 THE COURT: I understand. So as
5 of the time of the filing of the lawsuit, had you
6 personally talked to any of the nine plaintiffs?

7 MS. SMITH: I think I have been
8 clear about this. I was drafting the cases as
9 co-counsel, just like -- I mean, I've had attorneys
10 in the past that I have worked with that people
11 assist with drafting and they do those things. Not
12 everybody is in every meeting with the clients.
13 And by the way, particularly in COVID, there were
14 really -- I would be able to say that didn't
15 matter. You couldn't have big meetings with people
16 coming together.

17 So I believed that those people knew
18 that I was assisting with drafting. I believed
19 that. But I believed that Jose was communicating
20 with those people and that they knew what was
21 happening. I believed that.

22 THE COURT: But you personally
23 hadn't talked to any of the nine plaintiffs as of
24 the time of the filing of the lawsuit?

25 MS. SMITH: Right, I did not. And

1 I have been very honest about that. Yes, I mean --

2 THE COURT: Okay. Fair enough.

3 When did you --

4 MS. HUMISTON: I just also wanted
5 to just clarify for the Court, there were 14
6 plaintiffs.

7 THE COURT: Fourteen. Okay.

8 MS. HUMISTON: Nine were removed
9 of the 14.

10 THE COURT: I'm sorry. All right.
11 My mistake. Just in terms of when was the first
12 time that you had contact with any of the 14
13 plaintiffs?

14 MS. SMITH: So I got the email
15 from C.B. in February and I responded to her right
16 away. And is now an appropriate time to talk about
17 that conversation?

18 THE COURT: Absolutely. I'm
19 trying to give you free rein here and still get
20 some fact details as we go.

21 MS. SMITH: So I got an email from
22 her and I called her as soon as I saw the email and
23 responded to her. We did, I think, play phone tag
24 twice that same day. But we ended up having a
25 55-minute conversation. I do remember that

1 conversation. It was very pleasant. We talked
2 about a lot of things. She asked me about my
3 family, you know, over the course of the
4 conversation. But the first thing she asked is if
5 she could be removed from the contest. And I
6 answered her honestly that it was closed. And I
7 honestly didn't know. I didn't tell her no. I
8 don't believe I said any of that. I said the case
9 was closed and it was over.

10 She asked about -- and I did talk to
11 her about the fees. I think I brought that up,
12 actually. That other than the fees, that the case
13 had been decided. Nothing was happening with it.
14 And I did apologize to her on that day. I had no
15 idea that she didn't know. I absolutely believe I
16 apologized to her about it. And I also assured her
17 that when we got off the phone I would be calling
18 Jose right away. Because I had no idea how that
19 could have possibly happened based on what I
20 understood.

21 And during the course of that
22 conversation she absolutely did ask me if I would
23 take her case in Hopkins. Because she had some
24 problems with Facebook and they banned her name or
25 whatever. I told her that I didn't practice that

1 kind of law. I would be happy to sit down with her
2 and go through whatever her concerns where. I
3 didn't know that she needed litigation. But I also
4 offered to find her an attorney who practiced law
5 in that area.

6 There was nothing controversial. She
7 raised the issue to me in that conversation that
8 she thought that I was also the victim of fraud.
9 Maybe I didn't understand. We talked about her
10 affidavit and the emails. And she did say she
11 remembered signing it. She didn't understand. But
12 she was never upset. She was not -- and I didn't
13 know her at all at that time other than, you know,
14 this interaction. We did not leave that
15 conversation in any way with me feeling like why is
16 she mad. She said that she stumbled upon it and
17 she wasn't sure what happened and I explained it to
18 her. We had I think a very nice conversation.

19 I do want to address the "Taking one
20 for the team." That in no way did I suggest her.
21 We were talking about in the context of
22 Thanksgiving and how crazy it was and the
23 hecticness of it all. And the "Taking one for the
24 team" was really more about me and my family and
25 the timing of it. You know, it was a lot. We

1 talked a lot about that whole day, you know, what
2 happened the week -- you know, the day of filing.
3 It was busy. It was an hour-long conversation.
4 And so it had nothing to do with her taking one for
5 the team at all.

6 And, also, I think we talked about that
7 I had believed that -- I believe that we had this
8 conversation -- about the fees. Because I had --
9 we got the order about the fees and -- can I just
10 digress and talk about the fees now or no? Should
11 I finish this part?

12 THE COURT: It's your case.

13 MS. SMITH: So one of the
14 interesting things about the fees in terms of the
15 discussion was that the original case that was
16 filed -- not the original case, the second case, I
17 guess that was filed -- the Dakota County case,
18 which I was not on, that case was determined before
19 our cases. And so that case was appealed. And I
20 believe basically the same attorneys and law firms
21 were involved in all the cases. You know, there
22 was, like, eight lawyers and it was local with
23 Lockridge. And so that attorney, she filed the
24 appeal, and then they made an arrangement that
25 because if they would withdraw the appeal that they

1 would waive the fees.

2 So, again, I believe our people were
3 being communicated with. This case was decided
4 first. We hadn't even gotten the order yet in our
5 case. Then when the order came, which I think was
6 the 29th, right before New Year's, the discussion
7 that we had was there were no fees yet, but we did
8 have a discussion about being prepared for the fees
9 and to be talking about this issue of if they
10 decide to appeal, right, then -- that's a
11 negotiation, then you appeal and then they waive
12 the fees. That's what they did in the other case.
13 So my expectation, my belief was there was these
14 communications, that we understood that and I was
15 very -- you know, it's not up to us. We had this
16 conversation, the people have to decide. It's not
17 up to us if they appeal or don't appeal.

18 I know we did talk, also, about
19 appealing of the Supreme Court case. I know that
20 we had discussion about that. And I do believe
21 that some people --

22 THE COURT: Let me stop you for a
23 second. You use the pronoun "we." Who is the we?

24 MS. SMITH: So Jose and I had a
25 conversation about the certification case, 204B

1 petition and the appellate limits for that. Just
2 as a reminder that those people needed to decide if
3 they were going to appeal that case. And I did
4 hear from some people specifically who did get
5 contacted about that appeal. So, I mean, I did
6 think that people were getting information.
7 Because people wanted to know what I thought about
8 it also, if they should be appealing that. So
9 there was discussion about that appeal happening
10 kind of at the same time as we were waiting for
11 this other information to happen.

12 So we got the order closing down the
13 four cases and it was New Year's. So, you know, it
14 would have been that next week.

15 THE COURT: Why don't I stop you
16 there. It's about noon. It seems like an
17 appropriate time to recess for lunch. Can we say
18 we will return in 45 minutes. Is that acceptable?

19 MS. SMITH: Uh-huh.

20 THE COURT: We will be returning
21 at a quarter to 1:00. Thank you.

22 (A luncheon recess was taken
23 from 12:02 p.m. until 12:45 p.m.)

24 THE COURT: Ms. Smith, you can
25 resume your place. So I think during the break or

1 before the break we were sometime in January of
2 '21. Maybe you can pick up your testimony from
3 there and proceed in a chronological fashion, if
4 you could.

5 MS. SMITH: Your Honor, I would
6 like to clarify. I think I misunderstood your
7 question about integrity. I thought you were
8 asking me not about the organization but if I was
9 acting with integrity. So I didn't understand. So
10 I apologize.

11 So I believe that I was working as a
12 volunteer attorney on behalf of the Minnesota
13 Election Integrity group. That I had become, like,
14 a volunteer attorney. Jose was kind of lead
15 counsel. I was working at his direction, doing the
16 things he asked me to do and that he was
17 representative of his organization while he was
18 having that communication.

19 Does that make sense? I don't know if
20 that answers your question now. I'm sorry for
21 misunderstanding.

22 THE COURT: Well, I think I
23 understand your testimony. Please, proceed.

24 MS. SMITH: So we were in January?
25 The fees, is that what we are talking about, the

1 costs?

2 THE COURT: Yes.

3 MS. SMITH: So when we got the
4 order, it was New Year's. So we really didn't talk
5 over the weekend because it was New Year's weekend.
6 So then the next week we spoke about what happened.
7 And I believe that they were -- you know, again, I
8 didn't realize I needed to ask them all the time if
9 they were sharing every document. Because they had
10 the information, I was forwarding it to them, and I
11 believe they were communicating with all their
12 members, the people, the plaintiffs, et cetera.

13 And so we spoke about the appeal. And
14 I know that I was clear that they just needed to
15 make decisions about what they wanted to do. That
16 he needed to communicate with the people, with the
17 contestants and ask them what they wanted to do.
18 And whatever they decided, just to let me know. So
19 that's kind of where we were at about that, about
20 the appeal piece.

21 Then January 6 happened. And then we
22 had a conversation about January 6. And my
23 recommendation was to him, I said, you know, I just
24 feel like I would be just recommending probably
25 that people be very careful and be aware of the

1 risks and just let me know. That's kind of how I
2 left it with him. Because it did change things.
3 And so I was sort of just in -- if they let me know
4 whatever people wanted to do, I would do it. And
5 so that was our conversation about that.

6 And then as to the fees. Because if
7 they were going to appeal, that could affect the
8 fees. So then we did talk about that. And they
9 just needed to decide. That that was a risk what
10 the fees could be. Because we knew what happened
11 in December --

12 THE COURT: When you say "they,"
13 who was the they?

14 MS. SMITH: That Jose needed to
15 talk with the contestants. That the contestants
16 would need to decide. So I believed Jose was
17 talking to them then.

18 THE COURT: You believe in January
19 Jose was talking with the 14 contestants?

20 MS. SMITH: Yes. That the
21 information was being forwarded. That I was giving
22 them the information and then they were forwarding
23 the information. I had no reason at that point not
24 to believe that. I mean, he is another lawyer. We
25 had an arrangement.

1 THE COURT: And then when you talk
2 about fees, who paid the filing fee and the service
3 of process fees when the lawsuit was filed in
4 December?

5 MS. SMITH: So what Jose and I
6 had agreed is that I would pay it and then he would
7 reimburse me. I would just submit him a bill.
8 Because they were raising money -- I feel like
9 that's common that there is oftentimes people raise
10 money for legal costs for nonprofit things. So I
11 guess I didn't think there was anything sketchy
12 about that. He said he had people that were
13 offering to pay those things. So I guess that's
14 what I -- in the overall scheme of things, it
15 wasn't a huge amount of money to pay the filing
16 fees and stuff. So that was the deal.

17 So then when we were -- we had the fees
18 -- I got the information. I did contact the court.
19 I talked to a person. They weren't sure. They
20 told me not to send a check yet. Not to pay them
21 yet because they hadn't gotten the orders and they
22 weren't sure how to put the fee, is what they told
23 me. So I kept in contact. And then --

24 THE COURT: Now, you are talking
25 about which fees?

1 MS. SMITH: When they notified us
2 -- you know, when we got the order for the fees.

3 THE COURT: The judgment?

4 MS. SMITH: Yeah, the judgment.
5 Yeah, that there were fees. Then I contacted the
6 State, you know, the phone number or whatever, and
7 I asked where do we send the check. How do we do
8 it. How do I submit the payment. And I'm sure I
9 can find communication with the person who I talked
10 to.

11 THE COURT: This would have been
12 someone in Ramsey County?

13 MS. SMITH: Yeah. Where you would
14 pay the fees. And they told me that they hadn't
15 yet gotten the information from the Attorney
16 General's Office or whoever they need to get it
17 from and keep in touch and they would let me know.
18 And so that's what I did.

19 So then Jose knew the amount of the
20 fees. Again, I thought that they had the resources
21 to pay the fees. Ultimately, he said that they
22 didn't have enough money to pay all the fees. And,
23 frankly -- and so perhaps this was a violation of
24 the rules -- I personally decided that I was -- I
25 told him I will pay it. If you end up raising

1 money, then you can reimburse me. But it didn't
2 seem right that -- I believe that it had been
3 represented to people that they wouldn't have to
4 cover the fees. That there were volunteers who
5 donated money and were willing to pay for any
6 costs. And so it was important to me as a person
7 that I would cover those costs, because I didn't
8 believe that people who volunteered to be
9 contestants should be having to pay something that
10 they thought that there were volunteers who were
11 going to pay it.

12 THE COURT: So you paid the
13 judgment costs?

14 MS. SMITH: I paid the judgment
15 costs that Jose didn't have the resources to pay.

16 THE COURT: I see.

17 MS. SMITH: I paid those.

18 THE COURT: Do you have any idea
19 how much you paid?

20 MS. SMITH: It was probably, like,
21 I don't know, 7 or \$9,000. I mean, I could get the
22 exact amount, of course.

23 THE COURT: That's fine by my
24 account, for me. There may be questions --

25 MS. SMITH: You know, I will be

1 honest with you, if it's against the rules in this
2 situation, I would still pay them. Because I think
3 that the people, they thought that -- what I
4 believed is that they were told that there were
5 volunteers, there were people who had said they
6 would cover the costs of litigation.

7 THE COURT: Let's move to the next
8 topic. So at some point you became aware that
9 there was going to be a hearing in front of Judge
10 Castro which occurred on March 26. Do you want to
11 cover that topic?

12 MS. SMITH: So when we got the
13 order that there was going to be a hearing with all
14 the different "Whereases," and he did cite the case
15 law -- I believe the case law he cited was about
16 the court has the right to substitute -- or to
17 remove somebody so they aren't obligated for
18 something that they didn't know about, basically.

19 And he did raise the issue of fraud on
20 the court. But I didn't think that particular
21 hearing was going to be a sanction hearing or about
22 contempt or any of that. I thought it was going to
23 be a hearing about having her be removed. And just
24 as I had told C.B. when we talked on the phone and
25 when I communicated with the Hopkins police officer

1 the same thing, that I, of course -- if she
2 believed that she didn't want to be on it or if she
3 didn't understand, she shouldn't have to be on it.
4 And by this time I had learned because of the phone
5 call that she and I had and that I immediately
6 called Jose, I learned that the people hadn't
7 gotten the information that I thought they had
8 gotten.

9 So, obviously, at that point, once I
10 realized that, you know, I would never think that
11 somebody should be named in something that they
12 didn't understand. And I believe that they had.
13 So I thought the hearing, that particular hearing
14 was going to be about removing C.B. Right? Then
15 we submitted our documents about it.

16 Again, I still didn't know a lot about
17 C.B., other than what I had learned. Because I was
18 cited in the police report about -- the officer,
19 they contacted me to see if I also thought I was a
20 victim of fraud as well. Because that's what the
21 officer had said. She represented that both of us
22 were victims of fraud. So I got the police report
23 and saw what the police report said. I mean, I
24 wouldn't have any way contested at all of her being
25 removed from the case. But then it morphed very

1 quickly into a very much more adversarial hearing.

2 I did submit the motion, the notice of
3 motion that I was going to ask for a continuance
4 before the hearing. And at the hearing I did ask
5 for that. Just because I felt that then we would
6 have time to figure out for sure what the hearing
7 was about and what the goals were.

8 You know, I've obviously never been a
9 part of anything like that. Nor would I want to
10 be. But it was very adversarial. There was a tone
11 that was clear and I wasn't -- I didn't want to
12 have an adversarial hearing. But I definitely was
13 -- I believe I was being attacked.

14 And when Jose wasn't allowed to
15 participate -- you know, he had submitted an
16 affidavit and was going to help share the facts of
17 like what he did today. Right? He was going to
18 say those things. He was prepared to say this is
19 what happened. And it was clear that that wasn't
20 going to be allowed at all. I expected --
21 truthfully, I expected Erick Kaardal to ask me some
22 questions, because he was the attorney representing
23 C.B. And he really didn't say much of anything.
24 But Judge Castro did. But the questions he was
25 asking were he only wanted a yes or a no, and I

1 wanted to answer the questions. I wasn't yelling
2 at him or screaming at him. But I definitely
3 believed that I should have been able to answer the
4 questions beyond a yes or a no. He threatened me
5 with contempt. I asked I believe -- I think the
6 transcript will show I asked in whatever words that
7 I would like just to let the record stand how it
8 was and let him make his decisions based on the
9 record. And then he called me a bamboozler. I'm
10 sorry.

11 THE COURT: Are you okay? Do you
12 need a minute to compose yourself? I know this is
13 an emotional time.

14 MS. SMITH: Anyways, he called me
15 a bamboozler and then fined me \$10,000. And then
16 there was this discussion amongst the other
17 attorneys about how to handle the case. And there
18 was discussion about whether it should be a
19 nullity, you know, they could substitute me in for
20 the case as the petitioner, or they could just seal
21 it because the case was thrown out. But then what
22 would they do about the fees. Because the lawyers
23 wanted the fees. If they just made it a nullity,
24 then there was concern that then that could be for
25 all the cases, potentially. You know, then how do

1 they deal with the fees that have been paid and
2 those things. So I think the reason they just
3 didn't declare it a nullity is so the law firms
4 could get the money. Which I just kept thinking to
5 myself -- because I went to high school with
6 Dean Phillips -- I wonder if Dean Phillips actually
7 cares about those fees. What I'm saying is it was
8 just an interesting thing to be listening to this
9 conversation about the lawyers just wanted the
10 fees. It wasn't really about anything else.

11 So they made me the petitioner. Which
12 was fine. I mean, I actually live in that
13 district, anyway. I live in the district. CD5 is
14 my district. And then that was it. That was the
15 deal. That's what they decided to do. So that's
16 how that day ended. But then that was only the
17 beginning. You know? Because then the Bar
18 Association called me a bamboozler. Not the
19 Minnesota Bar.

20 THE COURT: Okay.

21 MS. SMITH: The American Bar
22 Association. So, you know, my daughter's
23 boyfriend's family Googled me to figure out who I
24 was. They were concerned. You know what I'm
25 saying? I don't know what the legal definition of

1 bamboozler is. I don't know that it's actually a
2 legal term.

3 THE COURT: Probably not.

4 MS. SMITH: Correct.

5 THE COURT: Well, is there
6 anything more that you want to cover with respect
7 to that hearing or the ruling of Judge Castro that
8 you haven't already discussed?

9 MS. SMITH: Well, I would just
10 like to say for the record that I think the
11 timeline of how things unfolded after that was
12 certainly not in the pursuit of justice. Because
13 we were waiting for a legal memorandum to reply to
14 what happened. So what was actually his legal
15 memorandum. So he did sign an order of judgment.
16 But on the 9th. But there was no memo attached to
17 it.

18 And then the Senate panel issued an
19 order for me to serve documents. And I think this
20 is also in the record. I have -- two of my
21 children are on ventilators and my -- and this is
22 relevant, because it goes to the state of what was
23 happening at this time when they issued this order.
24 I had to submit a motion to basically change the
25 deadlines for when things were due. Because I did

1 not realize they had served me with that.

2 My house abuts a churchyard. And not
3 only us, but a young woman that lives two houses
4 down has cystic fibrosis, and they were ripping our
5 sewers up. And the issue was that the staging area
6 for this project was behind my house and the dust
7 was awful.

8 So I had to engage with the City about
9 changing the deadlines about all this. And because
10 of COVID issues, because we were still in COVID and
11 because of the shortage of medication related to
12 steroids, inhaled steroids and things like that,
13 there were a lot of concerns that it would affect
14 my children's health and this young woman down the
15 road. So we were working with trying to help make
16 sure that that -- so, anyways, I literally was not
17 keyed in at all to what was happening with these
18 orders. I wasn't expecting the Senate panel to
19 issue orders asking me to do something. So when I
20 found that out, I did petition and they did agree
21 to change the date. So that was first.

22 And I would like to note that I did
23 comply. I was ordered to send a letter explaining
24 what the court said had happened. Which I couldn't
25 have appealed because I didn't have the memo. And

1 I had to send a form -- you know, I think that we
2 talked about it a little bit -- that offered these
3 people the ability to just basically check a box to
4 get out of the case. And I did send that. And I
5 didn't add anything to it.

6 I did talk to some friends or lawyers.
7 I talked to my husband about what I should do in
8 talking to these people. And I was told, and I
9 think it's right, that if people wanted to contact
10 me, they could or contact Jose. But I didn't want
11 to be seen to be intimidating people in any way.

12 I immediately called Jose and said you
13 have got to send out an email on February -- you
14 know, after I talked to C.B. And he did that. And
15 we did talk about it. I told him what I felt
16 needed to be in it. Which was all the information
17 they have the right to know. And he sent an email.

18 After that, once we had the hearing and
19 all this happened, I really don't think it would
20 have been appropriate for me to be reaching out and
21 contacting them, because they had their right to do
22 what they wanted to do. I didn't want in any way
23 to be seen as pressuring people. If people
24 contacted me, that was one thing.

25 And so I sent out the documents. I did

1 not add anything to what they said to try and color
2 people or convince people. If people wanted out,
3 they should have checked the box. That's how I
4 felt about it. I understood. So that happened. I
5 did respond.

6 I mean, I feel like I do have the right
7 to defend myself. And I do think that people who
8 sign affidavits under penalty of perjury at least
9 what was in that affidavit should have been true
10 what they signed. So I'm sorry if it offends
11 people to raise that issue. But that's why we put
12 the language in there -- not just in this document
13 -- but that's why that's in lots of documents.

14 So then in terms of the timeline. So I
15 was ordered to do that. And then there were
16 deadlines when things had to be due. So
17 submissions were due May 10. And then there wasn't
18 going to be a hearing about that. It was all on
19 written submissions only.

20 And then Judge Castro, on May 4, he put
21 in an order of the same thing. But still there was
22 no memo. Right? So I'm still feeling like I
23 should be able to respond to the court and appeal
24 it, but there is no memo. So these people are
25 getting all this right away, and I think I have

1 been mischaracterized. That's not to say that I
2 think what happened was right. Just my belief was
3 I didn't realize -- so, I'm sorry. I'm not trying
4 to make excuses. I'm saying I literally didn't
5 know these people didn't know. And I'm sorry about
6 that. I never would have filed a contest if I had
7 know that they didn't.

8 So, anyways, he ordered me to do that.
9 I did have people contact me. There were also
10 people who were not listed as contestants who
11 wanted to be sure that these cases didn't just
12 disappear. People actually asked if they could get
13 a new affidavit saying they wanted to be on the
14 cases and to acknowledge that they thought that I
15 was the attorney. So people did that voluntarily.

16 Julie Quist contacted me and she wanted
17 to respond. Actually, several people contacted me
18 and wanted to respond and stay in. They did not
19 understand how it wasn't understood. So those
20 people -- I knew who some of those people were.

21 Judge Castro's deadline was that those
22 contestants needed to respond directly to the court
23 by June 1 and then I would get those responses -- I
24 believe that's what was happening. Then I would be
25 able to respond. My deadline was June 15.

1 So on June 9 -- so on June 9 I received
2 the documents of the people who wanted out. And
3 you could tell from the dates on that
4 correspondence that the court had actually had some
5 of those documents since early May and they didn't
6 forward them. They were holding on to them. So I
7 didn't know who was out or who was in because the
8 court was holding on to them. And my response was
9 due -- I thought I was going to have two weeks to
10 go through the responses and look at it. And Judge
11 Castro didn't have those things sent to me until
12 June 9. So he sat on them for nine days after the
13 deadline of June 1.

14 And then he issued his memo on June 14,
15 the day before I had to respond to this whole
16 process. And that, to me, did seem a little bit
17 odd. Because I think his memo was important to
18 this whole process, in my opinion.

19 So I filed a motion to enlarge the
20 dates. Which was not responded to. And then I
21 learned -- because, actually, I didn't get Julie
22 Quist's response with the responses, and so we
23 contacted the court and then learned that they -- I
24 don't know if it was a mistake or what happened,
25 but not only Julie but one of the other people who

1 wanted to get out they had sent information to the
2 clerk or something but they didn't file it. So
3 then they did send me Julie's letter. So I didn't
4 know if anybody else had also sent things to the
5 court because they weren't filing the documents.
6 They were treating it like correspondence or
7 something.

8 So, anyways, the court did not respond
9 to my request to have more time because they hadn't
10 sent me the documents, and then I got the memo on
11 the 14th. So I was trying to go through the memo.
12 So I did end up filing my response technically one
13 day late. But that was really because -- I mean, I
14 was trying to figure out how to argue, because his
15 memo would affect me and how I respond. So I felt
16 very much, and I still do, that it was
17 inappropriate. The timeline that was put in place
18 was inappropriate and it created an intentional
19 barrier. And it's hard not to feel that way. It's
20 just that it's too coincidental. It's just a mess.

21 Then on July 19 the Senate -- so,
22 interestingly, on the Senate side two of the
23 contestants stayed in. One got out. But the
24 Senate fined me another \$15,000, like Judge Castro.
25 You know, I'm not so comfortable with the idea that

1 this also was a disciplinary process or a sanction
2 hearing or whatever. It's just the whole process
3 was not -- I guess I don't know anybody who has
4 ever seen anything like it. I got a lot of
5 feedback from lawyers on this.

6 Then on September 14 then Castro issued
7 orders and dismissed the other contestants. I was
8 named the petitioner in CD2 -- Congressional
9 District 2. No, CD4. I'm sorry. CD4. Is that
10 the Ramsey County case? And CD2 -- somebody stayed
11 in CD2. Anyway, so basically that's what happened.
12 So two people remained in Congressional District 3
13 and then I was a contestant in 4 and 5 is what
14 happened.

15 So do you have a question?

16 THE COURT: I was going to ask --
17 I think you covered the timeline -- what else would
18 you like to present?

19 MS. SMITH: So we haven't really
20 talked about the Lawyers Board part at all. You
21 know, about that piece of it. I suppose we maybe
22 should go there.

23 Well, I guess I should say this. I do
24 believe there was a fraud on the court. But the
25 fraud on the court was not -- I didn't intend to

1 commit a fraud on the court. I'm horrified about
2 it, actually. I actually am. It's tragic. But I
3 also think that lots of things happened that did a
4 tremendous disservice to the courts, to lawyers in
5 general. And that was that from the hearing on
6 March 26 forward in terms of these procedures and
7 processes that I don't believe I was afforded the
8 due process I was entitled to and I don't believe
9 that I was offered an opportunity to defend myself.

10 So I was vilified publically across the
11 country. My name was added to the Trump
12 litigation, because people didn't read the cases.
13 And that was upsetting to me. Because I literally
14 did speak to some of the attorneys for people, like
15 Cindy Powell. And I said I don't agree with what
16 they're doing. Some of the attorneys for Donald
17 Trump, I believed that those cases were not
18 technologically correct. I didn't agree with them.
19 And I did try to get other people to not do those
20 things. But I was being lumped in with people that
21 really -- I didn't believe the merits of their
22 cases, necessarily. We were about the law. That
23 was what we cared about was the law. So, number
24 one, they were mischaracterizing what my cases were
25 about, which was the protection of the law. But

1 then also they were attacking my character. I
2 mean, it just affected me this last week, because
3 I'm trying to help people hold the Republican party
4 responsible for following the law. Which there are
5 people not doing that and not following the law, I
6 believe.

7 I spent so much time talking to people
8 who were concerned because they thought I was
9 already disbarred. And I'm not. Right? So my
10 reputation has been horrifically harmed because I
11 really wasn't able to get the story out. And there
12 is a narrative about me that is untrue. And that
13 Judge Castro calling me a bamboozler, it's
14 impossible to redact that from the internet, no
15 matter what happens. And I did look up the
16 definition of bamboozler, and it absolutely
17 requires intent. Not a species of intent, but
18 actual intent.

19 And so this discussion about
20 cooperation with the Board, especially in the
21 context of the many issues about the Board that
22 people don't want to talk about, but that I don't
23 believe that this process has been about getting to
24 the truth of the matter. So I believe that once I
25 submitted my voluminous response, that this was an

1 issue about events that occurred during a time
2 period that was over, and all that could happen is
3 to create more of an illusion that there is ongoing
4 noncooperation that piles on to the situation.

5 Frankly, I believe that once I
6 submitted those voluminous records -- which maybe
7 the Director likes, maybe they don't like what I
8 put, they don't like my answers -- the Director
9 always had the option to immediately file the case
10 against me immediately. There was no need to have
11 it go on and on. It could have been done two years
12 ago. Right? So here we are.

13 I did intend actually to appeal the
14 case based on my beliefs that there was fraud on
15 the court. Because I think the court is not a
16 judge. I think the court is bigger than the judge.
17 And that judge also had duties, and he did not
18 allow facts to come forward. And that itself is a
19 fraud on the court. When you interfere with the
20 truth intentionally, you are committing a fraud on
21 the court. I believe that. So I believe that I
22 would have done that.

23 However, I became aware of -- I'm going
24 to be careful how to speak about this. It's in the
25 file -- and I believe I filed my response with a

1 cover letter to be not public. Because I wanted
2 Judge Castro to know what I believed about all of
3 this and the problems and concerns I had. But I
4 believed that there was a person in danger because
5 of her living situation, and that a person
6 connected to this litigation does have issues of
7 instability. And I absolutely, based on my
8 personal experience dealing with a person with a
9 serious mental health disorder who causes harm, I
10 believe that stressing a person who is providing
11 care for a very vulnerable adult could lead to that
12 vulnerable adult being harmed.

13 So I made a commitment to family
14 members that I, absolutely, would not do anything
15 or take any action that could cause upset in that
16 person and I did not do anything else after that
17 filing. I stopped. I dropped it until now. And
18 that woman has since passed away. There is a lot
19 of litigation going on right now about those
20 issues. Which we will see how that plays out. But
21 that person was removed from the custody -- from
22 the care of the person who was in danger a few
23 weeks before she died. And so the family was --
24 her brothers were able to see her again. I'm happy
25 about that. But I waited. She did pass away

1 basically last September. And so I would have been
2 able to begin this process again, going forward
3 with what I believe I still have the right to do
4 under fraud. I don't know. Maybe not. We'll see.
5 But then the Lawyers Board did initiate the
6 procedure. So we started the process again in
7 August. So the timing just coincidentally
8 happened.

9 I have no desire to harm the court. I
10 love the law. People who I work with will tell you
11 I diagram the law. Literally, clause by clause, I
12 break it down so people understand it. That's what
13 I do. People need to know the law. They need to
14 understand it. They need to break it down. And
15 I've become I think much more diligent about that
16 because of this.

17 I can absolutely tell you I have
18 learned -- I will never ever trust any person to do
19 anything on my behalf ever again, because I would
20 never -- I have learned a lesson, absolutely. And
21 I think those people that testified yesterday, I
22 have no desire -- I mean, C.B., I do feel like I
23 have a right to question her because of the things
24 she said about me publically, regularly, still
25 doing it. The other people, I don't have any --

1 anything but sadness about this whole situation. I
2 hope I was polite with them yesterday. I think I
3 did apologize to them. This is the appropriate
4 venue, at this point. Because I didn't even want
5 to call them and have them see me and feel nervous
6 about it. I honestly didn't want -- I haven't
7 contacted the other people who didn't show up as
8 witnesses. Because people who chose to be
9 witnesses, they chose to be here. So I think it's
10 appropriate. I definitively will never ever leave
11 anything to anybody, period. I won't.

12 So I don't know, do you have more
13 questions for me?

14 THE COURT: I don't. I would like
15 to give you the opportunity to say whatever you
16 want to say about the petitions or the allegations.
17 I think that they have been generally covered
18 through the testimony and I think that you have
19 said something that has touched on each of them.
20 They are serious, all of them. And so I want to
21 make sure you can walk out of the courtroom here
22 saying to yourself, well, at least Judge Dietzen
23 let me say what I wanted to say.

24 MS. SMITH: I think you have let
25 me say what I wanted to say. And I appreciate that

1 I'm not, you know, the most informed litigator.
2 Because, again, I really do spend everything trying
3 to help people avoid litigation. Because I think
4 that's a healthier, better way. I wish everything
5 had to go through a true mediation process. I
6 think we would be much better off, all of us, in
7 general about that.

8 I think there are a lot of documents in
9 the record already that cover a lot of this.
10 Because of Jose's testimony -- which I do want to
11 say is that I respect him tremendously for coming
12 here and telling the truth.

13 I think that the Director I feel has
14 tried to imply at times that it was like some
15 horrific collusion to put -- almost like people
16 were picked from a phonebook or something. You
17 know, I always think about William Buckley saying I
18 would rather be governed by people in the
19 phonebook. Like I just sort of randomly selected
20 people to put in cases. It's just a distortion of
21 the truth. It was I believed one thing and I was
22 mistaken. That doesn't mean I intended to be
23 capricious or horrifically irresponsible or hurt
24 people.

25 I think that the Lawyers Board has an

1 important job, an important job and it should be
2 about educating people and encouraging lawyers to
3 not be -- no lawyer should be afraid of the Board.
4 People are afraid of the Board. I was warned to
5 never speak to you by so many people. And that's
6 tragic. But I don't know who to believe, because I
7 don't know you. All I know is what's in the
8 newspaper. I don't know.

9 But I will tell you that we have a
10 problem in our country. We have a problem with
11 people seeking the worst, believing the worst. And
12 I maybe should have trusted you. But I was being
13 attacked. So I had to be defensive. And that's
14 what lawyers told me, by the way. And by the way,
15 how could I have afforded to hire an attorney to
16 defend me in this process. Literally, I'm the
17 bamboozler. Right?

18 So this whole process it has shined a
19 serious light on problems. I have learned a
20 lesson. Jose has admitted his mistakes. He's a
21 kind man, who the fact that he is here, right,
22 knowing the risks, knowing the risks, and knowing
23 that you could now decide to bring the full force
24 of whatever you want to do on him as well. Right?
25 He still came here to tell the truth, because he's

1 a good man and a good lawyer who cares about the
2 truth. And I care about the truth.

3 And bad lawyers -- I can tell you in my
4 own life when I've had to hire lawyers and we've
5 had judges engage in terrible mistakes and
6 misconduct, and the lawyers who say don't file
7 complaints against the judges because they will
8 punish you. That's what you hear. Right?

9 So I'm saying to you lawyers are afraid
10 -- I can tell you I have had every lawyer I know
11 who is a Republican has said to me they will never
12 file an election case after what's going on. They
13 would never do it again. They would never even
14 think about it. They don't want to talk about it.
15 What does that mean for this year? What does that
16 mean for this year? What if the people want --
17 what if they are afraid the laws are being
18 violated? We now have a law in Minnesota that if
19 you make an election person feel intimidated even
20 if you don't intend it, you can be charged with a
21 crime now. I have election judges who have
22 contacted me and said I have been an election judge
23 for decades and if I question the county auditor,
24 I've been basically told I'm not going to be an
25 election judge this time.

1 So I'm saying to you this case has
2 caused a lot of damage. But I don't think the
3 damage was caused by me. I think the process has
4 caused the damage.

5 So to me, I don't know what's going to
6 happen. I think that I have provided a voluminous
7 amount of information. I certainly will try to not
8 submit any exhibits with the response I'm going to
9 give you that you don't already have. Because I'm
10 going to write a brief obviously in the next week,
11 focusing on the law and the rules, but also
12 including the facts, what happened here today.
13 And, obviously, the Director will question me
14 shortly, and I hope that she listened to everything
15 I said and does it respectfully.

16 I literally concede that I did not
17 speak to people because I believed that the other
18 attorney was doing it. And if that was wrong --
19 but I know it happens all the time. That's normal
20 when lawyers divide up responsibilities.

21 So I'm going to say I hope, I hope that
22 the facts are considered in this case. Because
23 people are watching this case. Not just the people
24 here. So that's all I have. So I'm ready to --
25 come at me, I guess.

1 THE COURT: All right. Well,
2 thank you for your testimony. Ms. Humiston.

3 DIRECT/CROSS-EXAMINATION

4 BY MS. HUMISTON:

5 Q. So other than the time period that you
6 estimated was between 2013 and 2017 you have been a
7 licensed attorney; is that correct?

8 A. I don't have the exact dates, I guess.
9 I don't want to tell you exactly the dates of --

10 Q. But --

11 A. But I believe, yes. I believe, yes.

12 Q. You have been a licensed and practicing
13 lawyer for more than 15 years; correct?

14 A. Yeah, I believe I have.

15 Q. So you filed five election contests on
16 behalf of 14 plaintiffs; is that correct?

17 A. Yes, I think we established that.

18 Q. And I want to turn to those. So if you
19 could pull from your documents your Exhibit 227, I
20 believe it is.

21 A. Okay.

22 Q. Just one second while I grab it. So
23 Exhibit 227, do you have it before you?

24 A. Which page?

25 Q. I'm just asking if you have the exhibit

1 in front of you?

2 A. Let me get to page 1.

3 THE COURT: Counsel -- oh, I'm
4 sorry, it's right here. Too many notebooks here.

5 A. You are talking about the postelection
6 review guide?

7 Q. No. 227.

8 A. So 227. I thought you were telling me
9 to find an exhibit inside of the case.

10 Q. No. Just Exhibit 227.

11 A. Okay.

12 Q. Now, Exhibit 227 is a multipage document
13 that is one of the election contests that you
14 filed; is that correct?

15 A. Yes.

16 Q. And this one happens to be the one
17 involving Betty McCollum; is that correct?

18 A. Correct.

19 Q. And this is similar in respect to all
20 five of the contests that you filed; is that
21 correct?

22 A. Yes.

23 Q. And this was filed in district court on
24 December 21; is that correct?

25 A. December 1.

1 Q. I'm sorry, December 1 of 2020.

2 A. Right.

3 Q. You signed that on page 29; is that
4 correct?

5 A. Correct.

6 Q. And you included the required notations
7 that you understand that sanctions can be awarded
8 relating to your filing of actions in state court;
9 is that correct?

10 A. Yes.

11 Q. And so you included all of the
12 representations under section 549.211; is that
13 correct?

14 A. Yes.

15 Q. And you understand the court can
16 sanction lawyers and does sanction lawyers who sign
17 pleadings in state court?

18 A. I understand they can. And I believe
19 that they have a process generally to do that and
20 that those sanctions should be consistent.

21 Q. And you did so -- you signed each of
22 those pleadings? It's Exhibit 228, 229 and 230 --

23 A. I think I established that. I don't
24 know that we have to -- do you want me to say for
25 each one? Yes, I did that for each of them and

1 there was a sanction notice for each of them. And
2 I'm not disputing that at all. At all.

3 Q. And you understood that it's your job to
4 ensure that when matters are filed everything has
5 been taken care of relating to that representation;
6 right?

7 A. And I believe I did that. Because I
8 believed that another attorney that I was working
9 with did those things. And I believe we've
10 addressed that issue.

11 Q. And each of the 14 plaintiffs was your
12 client; correct?

13 A. I believe that, yes, each of them were
14 jointly our client. Yes, me. But also they came
15 to this process through Jose. And I believe that
16 those people all believed that Jose and I were both
17 their counsel. I believe they knew that. I
18 believed that. I believed they knew that.

19 Q. And the belief you have of that is
20 because they signed a generic affidavit; is that
21 correct?

22 A. My belief was because Jose and I had an
23 agreement that he testified earlier to that he was
24 communicating with those people. And then I asked
25 them to ensure -- him, Jose, to be sure to have an

1 affidavit. Which I drafted. And I believed that
2 that affidavit in conjunction with the
3 communications that I believed had occurred, I
4 believed -- I believed that those people knew and
5 that I was representing those people and I believed
6 that. I know you don't believe that I believed
7 that. But I --

8 THE COURT: Ms. Smith, I want to
9 be clear here. Answer the question and stop.

10 MS. SMITH: Okay.

11 THE COURT: Okay?

12 BY MS. HUMISTON:

13 Q. Please turn to Exhibit 6.

14 A. Now, in my book?

15 Q. No.

16 A. Well, because you weren't clear. Before
17 you asked me to take mine.

18 Q. There is only one Exhibit 6. You did
19 not draft Exhibit 6, did you?

20 A. I did not draft this email.

21 Q. And you did not ask to see what
22 communications were provided to potential
23 contestants, did you?

24 A. No, I did not. I believe that Jose
25 was -- I trusted him to do the things that we

1 agreed to.

2 Q. You drafted Exhibit 7, however, right,
3 the generic affidavits?

4 A. I did draft the affidavit, yes. That I
5 did draft. Because I asked for that specifically.

6 Q. And you agree that nothing in this
7 affidavit explains what an election contest is;
8 correct?

9 A. Well, actually, the conditions that are
10 listed in 5a -- those are actually part of the
11 election contest. That is part of the statute
12 about election contests. And particularly the
13 material violations of election law. That is
14 actually a reason that a voter can file an election
15 contest. So that is actually why those are in
16 that -- that's why they are in here, because that
17 was the focus, actually, of the election contest
18 that was filed was about the laws that were
19 violated.

20 So, actually, I did believe that. But
21 I believed that this affidavit was not the only
22 communication with the people. I believed that
23 this was in the context of -- I was getting phone
24 calls from people every day saying, When are you
25 guys going to sue these people? So at the time

1 that this was happening, okay --

2 Q. Of course, the judge has asked you to
3 answer the question.

4 A. I'm sorry. Okay.

5 Q. Where in this affidavit does it explain
6 that an election contest is a legal proceeding in
7 Minnesota that is commenced by individuals?

8 A. So this affidavit says: I am contesting
9 the election of the candidate(s), listed below, for
10 whom I had the right to vote. And it says under
11 number 5: I contest the aforementioned elections
12 for the following reasons. And then it lists them.
13 And then it says: I understand I will be joining
14 with other voters to contest Minnesota election
15 results of the ones for A and B.

16 Q. Where does it say in this document what
17 an election contest is, that it's a legal
18 proceeding? You agree that there is nowhere in
19 this document that it explains to the reader that
20 there is an election contest that is a legal
21 proceeding that needs to be commenced by
22 individuals? You agree with me that that is not
23 listed anywhere in this document; correct?

24 A. Yes. But I don't believe it needed to.
25 I believe that this document, defined under penalty

1 of perjury, that says I am contesting an election
2 contest is contesting an election. So I believed
3 that this captured both what was happening and
4 their acknowledgment in the context of them
5 communicating with Jose that they were signing this
6 as an informed person. I guess that that's the
7 issue that this will all be decided at. I believed
8 -- I believed that I actually was covering my
9 basis. I've been in litigation. I've never signed
10 an affidavit at all with an attorney. At all. So
11 I did think that this actually was, like, extra
12 insurance. So I thought that they had the consent
13 for them to join.

14 Q. And nothing in this affidavit says that
15 you are going to be using this information to
16 select named plaintiffs; is that correct?

17 A. I wasn't a part of the selecting of the
18 plaintiffs. I was drafting the cases and I wanted
19 to know that it was for a reason that there were
20 actually people that wanted this to happen.

21 Q. And you agree that nothing in this
22 document communicated to the signer that if they
23 were selected as a plaintiff in an election contest
24 they could be responsible for costs and
25 disbursements? You agree that that is not listed

1 in this document?

2 A. That wasn't the purpose of this
3 document. And I wasn't the one having those
4 communications. That was discussed earlier today.

5 Q. Right.

6 THE COURT: Just a second.

7 MS. SMITH: Can I object --

8 THE COURT: No.

9 MS. SMITH: Okay. Fine.

10 THE COURT: You are pro se, so now
11 you have to respond to the questions. And you have
12 in your main testimony explained why you did what
13 you did. The purpose of cross-examination is to
14 see if you will admit certain things are true. And
15 if someone handed you this piece of paper and said
16 does it have typewriting on it (indicating), the
17 answer could be yes. It could be no. Or it could
18 be I don't know. But the explanation of why you
19 believe what you believe has not been asked in the
20 question. So try and answer, if you can.

21 A. Okay. So ask your question again,
22 please.

23 BY MS. HUMISTON:

24 Q. You agree that individuals should be
25 able to rely upon lawyers to explain the

1 information they need to know to make informed
2 decisions about whether or not they want to be in a
3 lawsuit; correct? People should be able to rely
4 upon lawyers to provide them that information?

5 A. Of course.

6 Q. Each of the five election contests that
7 were filed were dismissed due to various errors
8 that were made; correct?

9 A. I don't -- I don't agree with their
10 being dismissed because of service -- technicality.
11 Right? That's what you are saying? So Steve Simon
12 I believe should have been -- we filed it because I
13 believe he was responsible for material violations.
14 So cases get dismissed all the time. Yeah, it was
15 dismissed for whatever reason the judge said it was
16 dismissed for. I guess I'm not sure -- am I being
17 -- go ahead. Ask me another question. I don't
18 understand the relevance.

19 Q. My question is you agree that Minnesota
20 state law provides that the Secretary of State is
21 only to be named in a contest, in an election
22 contest if he is on the ballot or if the contest
23 relates to a Constitutional challenge? That is
24 what Minnesota law says; correct?

25 A. Yep. And cases are filed all the time

1 that push the limits of the laws and whether those
2 laws should be challenged or turned. Judges make
3 decisions all the time about whether or not a
4 person -- when the law says that we are asserting
5 deliberate serious material violations of the law
6 and Steve Simon is the one we believe responsible
7 for that -- if I can't name the person responsible
8 for that, then how do you challenge material
9 violations of election law?

10 Q. Well, that was one of the many reasons
11 why these lawsuits were dismissed; correct?

12 A. It raised an important issue, I hope.
13 Right? Because he was the violator. Who should we
14 name about the violations of the law? That's my
15 question.

16 THE COURT: Ms. Smith, there is no
17 question pending.

18 BY MS. HUMISTON:

19 Q. And you agree that you did not timely
20 serve any of the contests; is that correct?

21 A. We tried very hard. And I think this is
22 another issue on appeal that we would have raised.
23 Because they don't actually --

24 MS. SMITH: Am I allowed to
25 answer? I don't want to overstep.

1 THE COURT: Let's wait for the
2 next question.

3 MS. SMITH: Okay.

4 BY MS. HUMISTON:

5 Q. And that some of the individuals sued
6 were in the wrong district, that's correct, part of
7 the basis for why the matters were dismissed?

8 A. As I said earlier, you don't necessarily
9 know where they live. That's part of the problem.

10 Q. And everything relating to service was
11 supposed to have taken place before December 1;
12 correct?

13 A. So that goes back to the issue of it's
14 actually not strict compliance with service laws,
15 service rules. That the court is not accurate
16 about that. Because the fact that you can send the
17 documents to the last known address -- we tried to
18 personally serve these people, personally serve
19 them as long as we could. So the strict compliance
20 rules, right, they are not strict compliance,
21 because then it says you can just send it to the
22 last known address. And so, I guess --

23 Q. Well, the chapter, the statute has
24 specific service requirements in it; correct?

25 A. Right. But the rules --

1 Q. Yes or no?

2 A. It says you can send it certified.

3 Q. It has strict service requirements that
4 were to be accomplished by November 1; correct?

5 A. Yep. And we did serve Steve Simon, I
6 believe, properly. The documents were filed, I
7 believe. Steve Simon was actually the person who
8 we believed really was the litigant who needed to
9 answer the issues. It's a gap in the law.

10 Q. But you had read chapter 209 beforehand
11 and knew that that was not a basis for seeking
12 relief for an election contest?

13 A. Well, I think that in the whole thing I
14 believed that we would have argued if people would
15 have wanted to contest the elections, which didn't
16 happen, that there would have been a lot of
17 arguments made about the application of the law and
18 what does it mean to be in strict compliance. That
19 is how the legal system works.

20 Sometimes you file cases that you know
21 you are fighting an uphill battle but they need to
22 be fought to make the system better. So I think we
23 did the best we could trying to get these things
24 filed in a system that is not very effective.
25 Because we couldn't serve the campaigns. You can't

1 serve their campaigns. It's personal service on a
2 candidate. Sorry.

3 Q. You understand that that's the type of
4 information that individuals need to know in order
5 to make informed decisions about whether or not
6 they want to file an election contest; correct?
7 Whether there is legal validity to the matter,
8 whether or not they believe you understand the
9 legal merits?

10 A. Uh-huh. Yes.

11 Q. And the likelihood of success? Those
12 are the types of things individual clients have a
13 right to know from their lawyer before --

14 A. And I believe those discussions were
15 happening.

16 Q. So you believe that somebody called up
17 each of these individual 14 people and explained to
18 them the legal basis that you were asserting for
19 these claims and how you did not have a basis to
20 sue Steve Simon but you are going to do it anyway?
21 Those are the conversations that you think happened
22 with 14 people?

23 A. I believe that people knew that -- I
24 really believe that there were conversations
25 happening with these people who were I believed to

1 be engaged in this process. Okay? I believe that.
2 I'm sorry you don't believe that I believe that.

3 Q. I just want to know what the basis for
4 that belief is? Because it doesn't seem to me that
5 you asked that individual what conversations did
6 you have with each of these 14 individuals. You
7 agree you did not ask Mr. Jimenez what conversation
8 did you have with each these of these 14
9 individuals? You did not --

10 A. That's correct, I did not. Because he
11 is a lawyer and I believe that he was following the
12 rules. Yes, I believe that.

13 Q. And you did not specifically speak to
14 any of the individuals to ensure that they wanted
15 to be named in an election contest?

16 A. That has been asked and answered many
17 times.

18 Q. And you did not speak with the
19 individuals about their individual objectives of
20 why they would join a lawsuit, why they wouldn't;
21 correct?

22 A. I believe those conversations were
23 happening with the other lawyer.

24 Q. And so you agree you didn't direct
25 anyone to have those specific conversations? You

1 just assumed they were happening?

2 A. I believed that the other attorney was
3 having those conversations.

4 Q. I've only seen one email where you've
5 asked people to forward specific information to
6 named contestants. And that was after you had
7 already filed the actions. Are you aware of any
8 other emails where you specifically asked MNEIT to
9 forward information to specific individuals,
10 Minnesota Election Integrity Team?

11 A. I forwarded documents to them and I
12 believed that they were forwarding things. Once
13 the cases got the number on them, then I wrote a
14 very clear email with the actual case number,
15 because then the people could be looking up the
16 case number whenever they wanted, to look at the
17 docket. They would be able to look at the record.
18 So that was a much more detailed email, once we had
19 that. But I believed that the people had already
20 been getting it. And I believe that's clearly on
21 the record.

22 Q. So I want to turn to that. I'm going to
23 come back to that email. Because I have only seen
24 one email in everything that has been provided
25 where you have forwarded information to MNEIT.

1 A. I mean, I didn't know that I needed to
2 send you all of my emails.

3 Q. Did you send the notice of -- and we
4 agree you didn't send the notice of taxation to any
5 one of your clients; is that correct?

6 A. I believe that was being forwarded.

7 Q. You did nothing to ensure that it got
8 forwarded; is that correct?

9 A. Well, I believed that I forwarded it and
10 it was being forwarded. I believed that
11 information was being forwarded.

12 Q. So who did you provide the notice of
13 taxation to?

14 A. I forwarded the documents that I got. I
15 forwarded the emails to Jose. I think it was
16 approximately maybe January 20. Do you know? Do
17 you have it?

18 Q. So you didn't tell anyone that judgments
19 had been entered against them; is that correct?

20 A. I believed they were told by Jose.

21 Q. And did you ask anyone if they had told
22 anyone?

23 A. No, I trusted him he was doing it.

24 Q. And you came to know that actually no
25 information had been provided to any individuals;

1 correct?

2 A. Correct.

3 Q. And you learned that when an individual
4 called you and told you that they had been, without
5 their permission, included in a lawsuit --

6 A. Yes, she said she didn't know.

7 Q. -- that had been filed by you? And you
8 had no reason to question that; correct?

9 A. Before she said that?

10 Q. Uh-huh.

11 A. I don't think I did have a reason to
12 question Jose.

13 Q. So then the email -- it's Exhibit 12.
14 Excuse me. Did you review and approve Exhibit 12
15 before it was sent out?

16 A. I don't know that I reviewed and
17 approved it. I contacted Jose. We talked about
18 the things that I felt needed to be shared and the
19 documents should be forwarded to them, to the
20 contestants. I don't know that I saw the final
21 draft of it. But I think he did include a lot of
22 information in this document. You know, he
23 forwarded it to me as well, this one, so I could be
24 sure -- that I received -- you know, because now I
25 know there was a communication problem. But, yeah.

1 Q. What part of this email did you draft?

2 A. I don't know that I drafted it. Like, I
3 didn't -- I don't know that I sat down -- I didn't
4 sit down and do this. Are you asking, like, did we
5 talk about it and go over it, yes?

6 Q. Yes.

7 A. I mean, I definitely demanded that it
8 happen.

9 Q. What part of it did you draft?

10 A. I don't know that I drafted -- are you
11 saying that you think that Jose didn't have
12 anything -- I guess I don't understand your
13 question. I'm not really sure what you are asking
14 me.

15 Q. Why don't you just listen to the
16 question. What part of it did you draft?

17 A. I don't know that I drafted -- that I
18 drafted it --

19 Q. You can say none, if that's the answer.

20 A. But I don't know that it was none.
21 Because we talked about it. So is some of the
22 language what I believed we talked about? Yes, I
23 mean, I -- so I don't know, I guess. I don't know
24 exactly which words of this came from my mouth or
25 my response. Because, I mean, it was -- it was

1 three years ago.

2 Q. And you got a copy of this; correct?

3 A. Yep.

4 Q. Your email is right there?

5 A. Yep.

6 Q. And you believed that it's accurate to
7 say that individuals had returned affidavits
8 expressing their willingness to be included as
9 plaintiffs in complaints regarding these elections?
10 Do you see that?

11 A. So you are saying that we had many
12 wonderful volunteers who participated in -- I'm
13 just trying to make sure I'm in the right
14 paragraph.

15 Q. I'm saying you believe that it is
16 accurate where it says people had returned
17 affidavits expressing their willingness to be
18 included as plaintiffs in complaints regarding
19 these elections? You believe that it was an
20 accurate statement?

21 A. I mean, I absolutely do. And I think
22 the proof of that is that there was I think five
23 people that stayed in the contest and affirmed
24 exactly that, despite being told they could get out
25 of it.

1 Q. And you knew at this point that people
2 actually had not been told they had been selected
3 as plaintiffs in election cases; correct?

4 A. Yep, correct, I did know that. That's
5 why I demanded that Jose contact all of them. He
6 was their contact person. He was the one. It was
7 his organization, yes.

8 Q. And you know that this email did not
9 include copies of anything that had been filed on
10 their behalf; that's correct? Right?

11 A. I don't know what else he sent to them
12 besides this email. Our conversation was that
13 people had the right to know and have all the
14 information.

15 Q. And you got a copy of it; right?

16 A. I got this. I got this email. And I
17 also know that he told people in this email if you
18 have any questions or concerns, do not hesitate to
19 contact the MNEIT directly. So anybody who got
20 this also could have responded to him. But --

21 Q. You know that this did not include any
22 specific information to the individuals that
23 judgments up to and including almost \$18,000 had
24 been entered against them? There is no reference
25 to those specific judgments in this matter;

1 correct?

2 A. I think he indicated that they were --
3 all fees related to the cases will be paid this
4 week. I think he did put that in there, that it
5 was a true -- that was factual. That if people had
6 questions, they could contact him. And, again, we
7 had a conversation that documents -- that the
8 people should be sent the docu -- that the people
9 should be provided the information.

10 Q. So you still, knowing that nothing is
11 being communicated, took no steps to ensure that
12 people got exactly what was filed on their behalf
13 and that in fact people knew that judgments -- not
14 just generically fees had been assessed -- but
15 judgments had been entered against them personally?

16 A. So I don't know how else --

17 Q. I'm just saying that you knew at this
18 time -- this is what you got? This what you got a
19 copy of and you knew it didn't include any of that
20 information; correct?

21 A. This particular document.

22 Q. Correct. What steps did you take to
23 ensure that each of those individuals that were
24 your client knew the specific information that you
25 now knew they didn't know?

1 A. So I called Jose and said, Jose, please,
2 this needs to be handled. These people need to
3 know what's going on. And I asked him to do it. I
4 don't know how many more ways I can say that to
5 you.

6 Q. And I'm just saying that this was the
7 only thing that was done and you think this was
8 adequate?

9 A. I don't know if this was the only thing
10 that was done, or if there were other things that
11 were done. I don't know what he did. I guess you
12 could ask him. Or you did ask him.

13 Q. I did. And you knew why you received
14 notice from Judge Castro about the hearing that he
15 was going to have; is that correct?

16 A. Yes.

17 Q. And you understand that courts have the
18 inherent authority to issue sanctions to a lawyer
19 that has appeared before them; correct?

20 A. I actually -- I don't know that I know
21 it or even today agree with necessarily how you are
22 characterizing that.

23 Q. You cannot agree with it, but you
24 understand the court --

25 A. I did not believe that the hearing

1 notice that was sent was going to be a sanction
2 hearing. I believe that hearing was to get the
3 truth out. The whole truth. Which is why Jose was
4 there to speak. That's what I believed.

5 Q. Here's my question for you. You
6 understand that the courts have the inherent
7 authority to sanction lawyers that appear before
8 them; correct?

9 A. I actually don't agree legally
10 necessarily that they have unlimited authority to
11 do that under the law.

12 THE COURT: So is your answer yes
13 or no?

14 A. I guess my answer is no, that I don't
15 agree with you.

16 BY MS. HUMISTON:

17 Q. So Exhibit 15. Please, turn to that.
18 Judge Castro told you verbally and then issued an
19 order sanctioning you for \$10,000; is that correct?

20 A. Yes, he definitely did that.

21 Q. And Exhibit 15 is his order doing that.
22 And he indicated that judgment is entered
23 forthwith. Is that correct?

24 A. Yeah, he said that.

25 Q. And you understand that then became an

1 appealable order; correct?

2 A. Well, actually --

3 Q. Did you understand --

4 A. No, I actually --

5 THE COURT: Just a second.

6 Counsel or Ms. Smith, you keep interrupting before
7 the question has been finished. Let her finish her
8 question.

9 MS. SMITH: I'm sorry. I thought
10 she had finished and then started again.

11 BY MS. HUMISTON:

12 Q. Did you understand when a court enters
13 judgment that it becomes an appealable order? You
14 understand legally that's how judgments work;
15 correct?

16 A. No, I didn't think it was that simple.
17 Because generally there is a memo with the
18 information to appeal.

19 Q. And you did not appeal any of the orders
20 that Judge Castro entered; is that correct?

21 A. Not yet, no.

22 Q. And you have 60 days to appeal orders;
23 is that correct?

24 A. No, I'm not going to concede that that
25 is the only deadline. I don't know that I agree

1 with that.

2 Q. The Senate also issued an order to show
3 cause, is that correct, why you should not be
4 sanctioned?

5 A. Yes.

6 Q. And they ultimately sanctioned you; is
7 that correct?

8 A. Correct.

9 Q. Can you turn to Exhibit 20. I'm sorry.
10 No. Exhibit 19.

11 A. Which one?

12 Q. Exhibit 19.

13 A. Okay.

14 Q. And this Exhibit 19 is a detailed order
15 of the Senate panel issuing sanctions against you
16 referring the matter to my office and striking one
17 of the individuals from the named individuals who
18 had requested their name be removed; correct?

19 A. Uh-huh.

20 Q. This order contained a memorandum;
21 correct?

22 A. Uh-huh.

23 Q. Explained the basis; correct?

24 A. Right.

25 Q. And you did not appeal this?

1 A. No, I haven't done it yet. No.

2 Q. And you believe you have a basis to
3 appeal this three years later?

4 A. We will see. Maybe. If there is fraud.

5 Q. What fraud did the individual in this
6 matter -- what fraud did someone engage in in the
7 Senate matter?

8 A. I think that the court ignored the truth
9 of the matter. I guess, you can -- I'm willing to
10 just -- I guess I don't want to get into a
11 discussion about what I might do in the future.
12 Because this hearing is about what happened in the
13 past. So I guess that is --

14 Q. But this also is about the fact that you
15 understand that if the court -- if you disagree
16 with an opinion of the court, you should appeal
17 that? That is what competent lawyers do; correct?

18 A. I think that competent lawyers appeal
19 things for lots of reasons, and people don't always
20 agree with those reasons. And I guess it will be
21 for other courts to decide when appeals are made
22 for various reasons whether or not those appeals
23 are valid under whatever laws things are appealed
24 under. So --

25 Q. If you disagreed with this order, you

1 had the opportunity to appeal it; correct?

2 A. I agree that people have the opportunity
3 to appeal orders.

4 Q. That you had the opportunity to appeal
5 this order after it was issued up to and including
6 60 days following its issuance; correct?

7 A. Under the rules you are speaking about,
8 I guess, yes, that is the limitation.

9 Q. Now, this court took very careful
10 consideration of your supposed claim that returning
11 a generic affidavit was an offer and acceptance of
12 representation. Do you remember reading that?

13 A. Yes, I believe that.

14 Q. So the court in fact considered your
15 argument and rejected it; correct?

16 A. Yes, this court rejected it.

17 Q. And the court concluded that you had in
18 fact submitted your pleadings for an improper
19 purpose; is that correct?

20 A. Yes, that's what this court determined.

21 Q. And you did not request a hearing;
22 correct?

23 A. I did not request a hearing.

24 Q. And you have never spoken to the
25 individual who requested to be removed?

1 A. No. For the reasons I stated earlier.

2 Q. And the court took great issue with your
3 suggestion that the individual who requested to be
4 removed from this matter had somehow perjured
5 themselves; is that correct?

6 A. I guess they took issue. I mean, okay,
7 I will --

8 Q. Let's go to page 24. Do you see that
9 part? I'm just going to read it to you.

10 "Finally, this court is also
11 particularly concerned about certain allegations in
12 Shogren Smith's written submission to the order to
13 show cause. She urges this court to consider
14 whether" -- and the individual's name is redacted
15 -- "perjured himself when he asked this court to
16 dismiss him from the case." The court then said,
17 "It is a grave allegation to assert that one's
18 purported client has committed perjury and we
19 discern no good-faith basis in fact or law to
20 support that allegation."

21 Do you see where the court said that?

22 A. I see where the court said that.

23 Q. And you testified earlier that you had
24 no reason to object to people's names being removed
25 from the litigation? You said if they wanted to be

1 removed, why not? You thought that's what C.B.
2 was, why not let her be removed?

3 A. Yes.

4 Q. So why were you objecting to this
5 individual's name being removed and suggesting that
6 he was committing perjury?

7 A. I believe that at that time I had to
8 raise the issues -- perjury is an issue that I do
9 believe there are times people may commit perjury.
10 I think that there are people who sign on to
11 litigation sometimes that do that, and I don't
12 think it's wrong to raise those concerns at least
13 to ask people. We didn't have a hearing. There
14 was no hearing in this case. So I don't think it's
15 illegitimate to raise the question about what they
16 understood.

17 Q. The court also took care to make a point
18 of the fact that your actions that they deemed
19 sanctionable should be separated from the
20 importance that people had -- the important right
21 of eligible Minnesota voters to contest elections;
22 correct?

23 A. Could you rephrase that again. I'm
24 trying to figure out exactly what you are getting
25 at.

1 Q. The court took pains at page 25 to
2 emphasize that individuals -- and I will just read
3 it to you. "We stress the importance of the right
4 of an eligible Minnesota voter to contest an
5 election result and highlight this right to the
6 foundation of our democratic process. Our order
7 should not be construed to discourage counsel from
8 representing an individual who desires to vindicate
9 that right and agrees to pursue an election contest
10 in district court with the counsel of their
11 choosing."

12 Do you see where the court said that?

13 A. Well, I see they said that.

14 Q. And that the basis of the sanction is
15 the presentation of the claims in this case without
16 the person's knowledge and consent; correct?

17 A. They said that, yeah.

18 Q. And that the court took pains to say
19 that they were not addressing the substance of the
20 underlying election contest; correct?

21 A. Yes, they said that.

22 Q. You have not paid either the \$10,000
23 sanction issued by Judge Castro nor the \$15,000
24 sanction issued by the Senate panel; is that
25 correct?

1 A. That's correct.

2 Q. Now, the Director received several
3 ethics complaints regarding your conduct in these
4 election contests; correct?

5 A. Yes.

6 Q. In fact, there were four; correct?

7 A. Right.

8 Q. And you provided a limited response
9 to the -- the district ethics committee that
10 investigated the first complaint recommended
11 further investigation; is that correct?

12 A. About the Judge Grewing complaint you
13 are saying?

14 Q. Yes.

15 A. I mean, I can -- I believe, yes, because
16 this complaint came on -- because this situation
17 happened, and so that --

18 Q. Please, turn to Exhibit 24. You
19 received this letter from me; is that correct?

20 A. I don't remember. I think I did get
21 some things. I think some things I didn't see.
22 But, that's fine, I'll take your word -- I'm not
23 going to dispute that. So go ahead and --

24 Q. And I shared with you the district
25 committee's report that they recommended further

1 investigation of your non-cooperation?

2 A. Of the non-cooperation.

3 Q. Yes. That's what they recommended;
4 correct?

5 A. Yes, based on non-cooperation.

6 Q. I sent that to you; correct?

7 A. I believe, yes.

8 Q. Then can you turn to Exhibit 25. We
9 received a complaint from Judge Castro; correct?

10 A. Yes. You told me this.

11 Q. And I provided notice of that complaint;
12 correct?

13 A. Yes.

14 Q. We received another complaint from
15 Nathan Hartshorn?

16 A. From the Attorney General's Office?

17 Q. Correct.

18 A. Uh-huh.

19 Q. That is reflected in 26. That was
20 provided to you; correct?

21 A. Yes.

22 Q. And that's your email; correct?

23 A. I don't use that anymore, but yes.

24 Q. It was the email that you used in the
25 lawyer --

1 A. Right.

2 Q. And I indicated that I'm going to
3 combine Judge Castro's and Mr. Hartshorn's
4 complaints?

5 A. Uh-huh.

6 Q. I requested a response from you; is that
7 correct?

8 A. I'm not sure about the dates, et cetera,
9 and when I saw them. But I think I did eventually
10 reply.

11 Q. We then received a complaint from the
12 court administrator for Ramsey County on behalf of
13 the three-judge panel; is that correct? And that's
14 listed in Exhibit 28.

15 A. That's correct.

16 Q. You replied on July 2. Do you see
17 Exhibit 28?

18 A. Yes. 28 or 29?

19 Q. 29. Excuse me.

20 A. Yes.

21 Q. I just want to refer your attention to
22 that. You specifically responded that, "I did not
23 feel any need to meet with the investigator or
24 respond further to the complaint." Do you see
25 that? You stated that?

1 A. Which page?

2 Q. The first page, fifth line down. I will
3 quote you. "I did not feel there was any need to
4 meet with the investigator or respond further to
5 the complaint. I still do not."

6 Do you see where you stated that?

7 A. Yes, because I believed that I had
8 provided all the information I was required to
9 provide.

10 Q. I sent you a letter requesting a
11 meeting; is that correct?

12 A. I know that you have said that. I don't
13 know when I knew about that. So I'm not sure --

14 Q. Turn to Exhibit 30. I used the same
15 email address for that letter; correct?

16 A. Yep.

17 Q. I requested to meet with you to discuss
18 the complaints; correct?

19 A. Yep, that's what the letter says.

20 Q. Exhibit 31, an email follow-up to my
21 letter; correct?

22 A. Yes.

23 Q. I also reminded you of your obligation
24 to cooperate with my office; correct?

25 A. Yes, it says that.

1 Q. And that failure to cooperate with the
2 request can be grounds itself for discipline; do
3 you see that?

4 A. I know it says that.

5 Q. And do you understand our office tried
6 to call you?

7 A. No. I mean, you said that. I don't
8 know that I got calls or messages. I don't know.

9 Q. We were unable to leave a message. Your
10 voicemail was full. Exhibit 33. I wrote you a
11 letter that said that; right?

12 A. There is a letter.

13 Q. It says my paralegal attempted to
14 contact you at your office number and got a
15 voicemail message followed by an alert that your
16 mailbox is full and cannot accept messages. Do you
17 see that?

18 A. And this was about the same matter that
19 I responded to previously? Right? So that is what
20 we are talking about?

21 Q. It says the re line is the complaints of
22 all four individuals; correct?

23 A. Uh-huh.

24 Q. And I am reiterating my request to meet
25 with you; correct?

1 A. Yes.

2 Q. I am reiterating to you I'm sending it
3 by mail and email; correct?

4 A. Yes.

5 Q. And I reminded you again that it's
6 professional misconduct to fail to cooperate in a
7 disciplinary investigation; correct?

8 A. Yes.

9 Q. I emailed you and wrote you again; is
10 that correct?

11 A. Yes.

12 Q. That's listed in Exhibit 34.

13 A. Uh-huh.

14 Q. And again, correct --

15 A. Yep.

16 Q. -- you ignored each one of those? In
17 Exhibit 35, I used various emails; correct?

18 A. Yes.

19 Q. Including also sending things by mail;
20 correct?

21 A. Yep.

22 Q. And you have always lived at the same
23 address? It's where you still live today; correct?

24 A. I mean, I do live there. We have a
25 tremendous mail problem. But, yeah.

1 Q. And you agree that at no time before I
2 issued charges for public discipline did you
3 contact my office?

4 A. Well, I submitted a voluminous response.

5 Q. The one that we addressed; right?

6 A. Right. About the same issue. I mean,
7 it was the same -- right, yes. Uh-huh. I mean,
8 my -- I get to -- go ahead. Go ahead.

9 Q. I actually asked you if I was supposed
10 to consider that response as your response to all
11 of the complaints and you did not respond, do you
12 agree?

13 A. Yes. Uh-huh. I guess.

14 Q. So you didn't even provide the courtesy
15 of letting me know that that is your one and only
16 response; is that correct?

17 A. Yep, I guess that's correct.

18 Q. Now, I would like you to turn to your
19 Exhibit 232. Now, Exhibit 232 is a filing in the
20 Senate matter; correct?

21 A. Yes.

22 Q. That was purportedly submitted by
23 Ms. Quist?

24 A. It was submitted by Ms. Quist.

25 Q. But you drafted it; correct?

1 A. I assisted her at her request, because
2 she was -- well, can I give a more -- you are
3 asking if --

4 Q. I will have a question for you. Does it
5 anywhere indicate in this filing that you assisted
6 Ms. Quist in filing this?

7 A. Well, I didn't file it. She filed it.
8 And so I doubt that she added that. And I don't
9 know that there is a rule she has to have that.
10 It's her response.

11 Q. So you think it is appropriate for
12 lawyers to ghostwrite things for individuals?

13 A. I mean, isn't every complaint filed on
14 behalf of people written by a lawyer? What I'm
15 saying is --

16 Q. Well, they sign it; right?

17 A. Well, so you are saying that --

18 Q. I'm just asking you do you believe it is
19 appropriate --

20 A. I think that it is appropriate when she
21 asked me to assist her, to make sure that it was
22 clear. I think it is appropriate for me to assist
23 her. I think she has the right to get help doing
24 that, yes.

25 Q. And you don't believe there is anything

1 inappropriate with not signing or indicating that
2 you drafted it? How much of this did you draft?

3 A. I have no idea. We had many
4 conversations about it.

5 Q. But you drafted it yourself?

6 A. No, I did it with her.

7 Q. What parts did she do and what parts did
8 you do?

9 A. I literally don't know. It's a very
10 long document. It was a back and forth. It was
11 editing. And I believe she has the right to seek
12 help to respond to a document that she felt
13 strongly about an issue that was raised. And I'm a
14 little bit disturbed that you don't think that she
15 has the right to seek help from a counsel.

16 Q. I think she has ever right to accept
17 help from counsel. My question is do you think
18 it's appropriate to draft something on someone's
19 behalf to not indicate that you drafted it?

20 A. I think it was up to her to decide how
21 to present that. She's a very smart, intelligent
22 woman who asked for some help and I helped her.
23 And I think that I had a duty to help her.

24 Q. Now, you paid -- you understand that
25 it's unethical to provide financial assistance to

1 clients; correct?

2 MS. SMITH: Can I just ask a
3 question?

4 THE COURT: No. You have to
5 answer the question, Ms. Smith. You can either say
6 yes, no, or I don't know.

7 A. I don't know, actually.

8 BY MS. HUMISTON:

9 Q. Are you familiar with Rule 1.8(e)?

10 A. I mean, I don't know the rules, off the
11 top of my head. Am I charged with this?

12 Q. I'm asking you if you understand that
13 it's unethical?

14 A. I'm not going to -- I'm not going to
15 concede that at this moment that it's unethical. I
16 mean, ethics are complicated. They go beyond the
17 lawyers ethics. Really, I'm bound by many ethical
18 rules not just lawyers rules.

19 Q. Do you understand where there might be
20 an ethics rules that lawyers should not provide
21 financial assistance to clients relating to
22 litigation?

23 A. I mean, I understand why there is a
24 rule. And I also understand that the circumstances
25 are relevant.

1 Q. The basis of the rule is to ensure, as
2 Mr. Jimenez says, that individuals are making
3 claims, it's not the lawyers that are making the
4 claims, correct, and that individuals are
5 responsible for the legal matters that they submit?
6 You understand that's the point of the ethics rule?

7 A. I do understand that that's the point of
8 the ethics rule.

9 Q. And do you agree that the ethics rules
10 do not change whether you are providing pro bono
11 legal assistance or are charging clients for that
12 legal assistance; correct?

13 A. I think that is generally true.
14 Sometimes pro bono work happens in emergencies and
15 crisis and circumstances are different. Sometimes
16 the circumstances change because it's pro bono. So
17 I think it depends on the circumstances of the
18 individual case.

19 Q. But the rules do not change; correct?
20 You agree with me on that? The same rules apply?

21 A. But the rules presuppose the application
22 of facts and circumstances to the rules. So how
23 you apply those rules cannot be separated from --
24 you have to look at those things together.

25 Q. The same rules apply, agree or no? You

1 can say no. It's fine.

2 A. I'm going to say I'm not going to
3 100 percent agree with you.

4 MS. HUMISTON: I'm just going to
5 review my notes, if I may, Your Honor.

6 THE COURT: Yes, please.

7 BY MS. HUMISTON:

8 Q. And you agree that it was each of the
9 individual clients on whose behalf you filed the
10 litigation it was their right to determine whether
11 or not to appeal; correct?

12 A. Yeah. I believe I answered that.

13 Q. And you agree that you willingly chose
14 to sign your name to those pleadings on December 1;
15 correct?

16 A. Yes, I absolutely did.

17 Q. And in doing so you understood that you
18 were going to be considered counsel of record and
19 that you were responsible for the content of those
20 pleadings?

21 A. Yes, I believe I was filing a document
22 legally.

23 Q. And you did not have to file that;
24 correct?

25 A. I did not have to file that.

1 Q. Did you apologize to either Judge Castro
2 or the three-judge panel for any mistakes you might
3 have made in failing to address, you know, kind of
4 the prehearing, the pre-lawsuit requirements that
5 lawyers are expected to follow?

6 A. I did not apologize. And I didn't know
7 that there was a rule that I had to apologize to
8 them.

9 Q. To either Judge Castro or the
10 three-judge panel did you indicate that you were
11 taking responsibility for any mistakes that might
12 have been made relating to the individuals not
13 getting notice that their names were chosen?

14 A. I'm unsure of what the process is or --
15 is there a form I'm supposed to fill out? How does
16 that work?

17 Q. I just asked a question.

18 A. Well, I don't know the answer. I guess
19 I'm unaware of where --

20 THE COURT: I think what she's
21 getting at is did you say at any hearing in front
22 of the judges that you were responsible?

23 MS. SMITH: Well, since that first
24 time, the first hearing in March, there hasn't been
25 a hearing, and the Senate panel didn't allow a

1 hearing. So there hasn't been a hearing. And then
2 there were the decisions issued. I believe that
3 there are people -- I did apologize to the people
4 that were here yesterday.

5 BY MS. HUMISTON:

6 Q. For what? What's the basis of your
7 apology?

8 A. For this process. I am very sorry that
9 these people didn't know what was happening. I had
10 no idea. I had no idea. And I have not tried in
11 any way to taint the waters by contacting them to
12 manipulate this process so they could come
13 yesterday. I will contact them now, if that's
14 okay, sure.

15 Q. But you still objected to people's names
16 being removed; correct?

17 A. I have a much better understanding now
18 of what people understood why they did the things
19 that they did. And I will assure you I will reach
20 out to the people in the case and apologize. I had
21 no -- I didn't know that they didn't know. And I
22 wish they all would have stayed and listened to
23 this, because then they would have heard all the
24 information and maybe they will want to talk.
25 Maybe they won't. I will leave it to them going

1 forward.

2 Q. And all of this information was known to
3 you and knowable by you up to and including March
4 of 2021; correct? What happened and what didn't
5 happen all was knowable by you in March of 2021;
6 correct?

7 A. I don't think everything was knowable.
8 I knew that the people hadn't received information
9 and that Jose was going to talk to the people and
10 send the information in the email. But then we got
11 the notice of the hearing and -- I believe I just
12 needed to let the process play out.

13 Q. I just want to be a little more
14 specific, though. I mean, you knew no one had
15 talked to any of these individuals before the
16 lawsuit was filed; correct? You knew that?

17 A. I found that out in February.

18 Q. So you knew that in February.

19 A. And I --

20 Q. And so that's not a mystery. You knew
21 that fact. You didn't need this hearing to learn
22 those facts. You knew that. You knew the
23 individuals had no idea their names had been picked
24 to be plaintiffs; correct? You knew that?

25 A. I did know that.

1 Q. Okay.

2 MS. SMITH: Am I supposed to
3 respond?

4 MS. HUMISTON: I don't have --

5 THE COURT: No, there is no
6 question.

7 MS. SMITH: Oh. Because she was
8 looking at me like --

9 THE COURT: Just wait for the next
10 question.

11 MS. HUMISTON: I would like just
12 five minutes to review my notes.

13 THE COURT: Let's take a five-
14 minute break.

15 (A recess was taken from
16 2:35 p.m. until 2:42 p.m.)

17 THE COURT: We are back on the
18 record. Ms. Humiston.

19 MS. HUMISTON: Just a couple of
20 follow-up questions.

21 BY MS. HUMISTON:

22 Q. Ms. Smith, what ethics rules do you
23 believe that you violated?

24 A. I didn't knowingly violate the rules.
25 Other than you had alleged the non-cooperation. I

1 will agree that I did not cooperate. But I don't
2 know how to quantify the amount of cooperation
3 necessary. So I can't even really fully concede
4 that. So I'm unsure, actually. I don't want to
5 violate any of them. I don't want to violate any
6 of them.

7 Q. And what would you have done
8 differently?

9 A. About -- could you be -- which specific
10 thing?

11 Q. I'm going to ask you both in filing the
12 election contest the way in which you did and in
13 cooperating with the Director's Office what would
14 you have done differently?

15 A. Well, if I could go back and do it
16 differently, I would have made 100 percent certain
17 that all the -- again, I said this earlier, I will
18 personally not ever trust another lawyer. I will
19 never do that again. I will always be responsible
20 for everything. Even though people tell me that
21 that's extreme. Because lawyers do it all the
22 time. But mistakes were made and I won't ever -- I
23 will never do it again. I would never take the
24 risk again.

25 Q. Anything else you would have done

1 differently?

2 A. I mean, can you be more specific about
3 which thing you are talking about?

4 Q. No.

5 A. I mean, I struggle with the cooperation.
6 Because I didn't feel and I don't feel that
7 cooperation would have made any difference. I
8 don't -- I don't believe that in this case that it
9 would have mattered. Maybe it would have. I just
10 don't know that it would have mattered. I
11 certainly didn't believe it would have mattered.

12 Q. My question is what, if anything, would
13 you have done differently?

14 A. I mean, if I would have been the only
15 person doing it and I would have handled it all
16 myself, then these other things wouldn't have
17 happened. So I think it's like dominos. But I
18 believed that -- but what I did, I believe the
19 actions I took at the time my belief was that
20 things were being done right. I didn't know what I
21 didn't know.

22 MS. HUMISTON: No further
23 questions.

24 THE COURT: Very good. Do you
25 have anything further to add by way of testimony on

1 the petition?

2 MS. SMITH: Yes. I have to think
3 back on the order of what I want to say based on
4 the questions. Because I didn't have a pen. I
5 should have brought a pen up here with me when we
6 started this.

7 REDIRECT TESTIMONY

8 MS. SMITH: I want to briefly
9 comment, again, about the payment of the fines. I
10 never -- the rule is, I believe, to prevent people
11 on the front end of a case agreeing -- or the rule
12 is to prevent attorneys on the front end of a case
13 from personally agreeing to pay for cases so as
14 they can artificially manufacture cases.

15 That didn't happen in this instance.
16 There was no gain for me. I wasn't manipulating
17 anything. I felt that these people should not have
18 to pay the fees. Because Jose was not in a
19 position at that point really after January 6 to
20 fund raise --

21 I will be honest with you, if I would
22 have been the petitioner from the beginning, I,
23 100 percent, would have appealed these cases. If
24 it were up to me when, right, when the issue was
25 raised about who has the right to appeal the

1 election cases, if I had been the petitioner, I
2 would have appealed them. I would have appealed
3 all of them. But it was too late to appeal the
4 cases in March when I was made the petitioner. But
5 I would have appealed them and I would have taken
6 the hit. I would have done that.

7 It would have been not popular at the
8 time after January 6, but I would have done it
9 because it was important. And in Minnesota, I
10 believe our election laws were violated and I think
11 they have been violated since then, because I think
12 some people have been emboldened. And I believe
13 they will be violated again in '24.

14 So I would have absolutely -- if it
15 were up to me, I would have appealed the cases.
16 But it wasn't up to me. And as I said to Jose, I'm
17 here if anybody wants to appeal it. And that
18 didn't happen.

19 But then as to the fees -- because
20 originally those charges were on the list of
21 charges, because I paid the fees. And then when
22 we had the panel hearing -- and Ms. Humiston told
23 me that she thought that those were the most
24 serious charges, actually, that they had at the
25 time. That's what she told me. But the fact is is

1 they did turn me into the petitioner, so they would
2 have been my fees anyways. I didn't know that at
3 the time. And I would still pay them in the same
4 circumstances again. Because ethical principles
5 you -- that's a philosophy issue. I had to
6 sacrifice an ethical principle for another one.
7 And in this case, protecting people who thought
8 that there were donors who would cover it. So I
9 think it's just important to say that. I would do
10 that again. But I don't think that charge still
11 exists, anyways. So there is that.

12 So, obviously, there have been a lot of
13 filings in this matter. I believe that what I
14 thought was true I was following the rules and the
15 law and any characterization otherwise is just
16 wrong. Just wrong.

17 Yeah, so, but I appreciate -- do you
18 have any more questions for me? I'm happy to
19 answer them. We've got 11 minutes.

20 THE COURT: No more questions.
21 You are excused.

22 MS. SMITH: Thank you.

23 THE COURT: We are going to quit
24 at 3:00. I have a couple of matters to cover. One
25 matter, really. Ms. Humiston, you are standing, so

1 I'm assuming you want to --

2 MS. HUMISTON: I was just going to
3 see if we were going to talk about tomorrow
4 morning? I had a suggestion relating to that.

5 THE COURT: Oh. Okay. That was
6 one of my topics, is what are we going to do
7 tomorrow morning at 8:30?

8 MS. HUMISTON: One of the things
9 that I think it might be just best if we did it
10 fully Zoom for the one witness, instead of coming
11 here and going down. Because the remote testimony
12 is in a conference room on the first floor of this
13 building. It doesn't accommodate a number of
14 people. And we are going to be on Zoom as it
15 relates to that, anyway. And so I'm wondering if
16 it might just be better to do that fully Zoom?

17 THE COURT: Why don't you tell me
18 what you think and I will tell you what I think.

19 MS. SMITH: I think that there are
20 people who have come from across the state to be
21 here. They want to see this. I think it's great
22 if you can keep it on Zoom. But I do think that
23 the people that are here, the people got hotel
24 rooms because they want to see this. I do think
25 in-person is something that -- even as Judge Castro

1 said -- there is something about being in this room
2 that adds a weight of importance to it. And I
3 think that both to honor the people that are here,
4 I would prefer that it be here.

5 THE COURT: Ms. Humiston makes a
6 good point. We are going to be hauling all of our
7 stuff down to the B level, right, for the Zoom?

8 MS. HUMISTON: Yes, G31. And it
9 won't be here, is the point.

10 MS. SMITH: But we would move back
11 here, wouldn't we?

12 MS. HUMISTON: No. I mean, that's
13 the only thing we are doing.

14 THE COURT: Just to project, this
15 is how I see the day unfolding tomorrow. We have
16 one witness and then you rest. And the Director
17 has already rested subject to your testimony, which
18 is accomplished. So we are done with the
19 testimony, as far as I know.

20 At the end of these cases, one of the
21 things I like to do is to talk about the -- I know
22 we have a schedule -- are we on the record?

23 THE COURT REPORTER: I'm writing.
24 I can go off.

25 THE COURT: Let's go off the

1 record.

2 (At this time a discussion
3 was held off the record.)

4 THE COURT: We are back on the
5 record. We were off the record, discussing the
6 logistics for the testimony tomorrow which will be
7 via Zoom. We will start at 9:00 o'clock. We will
8 make accommodations to have it in room G31. We
9 will make accommodations so the members of the
10 public that want to participate will have a place
11 to sit.

12 At this point, we also have the matter
13 of Exhibit 52. Ms. Humiston.

14 MS. HUMISTON: The Director moves
15 to admit Exhibit 52.

16 THE COURT: Any objection?

17 MS. SMITH: No.

18 THE COURT: No objection. It will
19 be received. Thank you. Is there anything else we
20 need to cover tonight?

21 MS. HUMISTON: No, Your Honor.

22 THE COURT: Very good. We are
23 adjourned until tomorrow at 9:00 o'clock.

24 (The hearing adjourned at 3:00 p.m.)

25

REPORTER'S CERTIFICATE

1
2
3 I, Susan M. Strom, do hereby certify and
4 state that I recorded in shorthand the proceedings
5 of the Lawyers Professional Responsibility: In Re
6 the Petition for Disciplinary Action against
7 SUSAN S. SMITH, on April 16, 2024, at 25 Rev. Dr.
8 Martin Luther King Jr. Blvd., St. Paul, Minnesota.
9

10 I further certify and state that thereafter
11 and on this date I caused to be transcribed into
12 typewriting the foregoing typewritten transcript of
13 said recorded proceedings.
14

15 I further certify and state that the
16 foregoing typewritten transcript of said recorded
17 proceedings is true and correct to the best of my
18 ability.
19

20 /s/SUSAN M. STROM
21 Susan M. Strom
22 Court Reporter

23 Dated this 29th day of April, 2024.
24
25