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EXHIBIT 18

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MANISTEE

MORAN,

Plaintiff,

v

File No. 07-12845-CZ

RISSER,

Defendant.

_____ /

JURY TRIAL VOLUME V OF XVII

BEFORE THE HONORABLE JAMES M. BATZER, CIRCUIT JUDGE

Manistee, Michigan - Wednesday, May 20, 2009

APPEARANCES:

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Reported By: KATHY J. McBRIDE, CSR-2936
Official Court Reporter

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1 Manistee, Michigan
 2 Wednesday, May 20, 2009 - 9:33 a.m.
 3 THE CLERK: Moran versus Manistee/Benzie CMH,
 4 07-12845-CZ.
 5 THE COURT: Well, you got a witness for us,
 6 Mr. Parsons?
 7 MR. PARSONS: You know, we do. Could I raise one
 8 small issue for the Court to be aware of?
 9 THE COURT: Go ahead.
 10 MR. PARSONS: We have filed plaintiff's renewed
 11 motion in limine to strike defense witness expert Stephonic.
 12 As the court will recall, Friday last, we filed a motion in
 13 limine. The court said take his deposition on Monday in
 14 Traverse City. We showed up to take his deposition, had a
 15 court reporter, Mr. Stephonic didn't show up. And so we are
 16 renewing our motion in limine. We filed a written paper
 17 motion in limine. The court doesn't have to take it up
 18 right now, but I would appreciate the court taking it up at
 19 some point.
 20 THE COURT: Why wasn't he there?
 21 MR. COOKE: Your Honor, Mr. Stephonic was in New
 22 York. We contacted Mr. Parsons' office. My secretary
 23 contacted Mr. Parsons' office to let them know. I'm not
 24 sure if that message got through to --
 25 MR. PARSONS: No.

1 MR. COOKE: -- counsel. Because they did appear.
 2 I got a phone call from the deposition site. We came later
 3 with Mr. Hall. Mr. Stephonic is available. He's back in
 4 town now. Under the circumstances, Your Honor, if the court
 5 will take this under advisement, we may simply withdraw
 6 Mr. Stephonic, in any event.
 7 MR. PARSONS: Sounds great to me.
 8 THE COURT: All right.
 9 MR. PARSONS: In that case, we're going to call
 10 Mr. Risser as our next witness, Your Honor. He's in the
 11 courtroom.
 12 THE COURT: All right.
 13 MR. PARSONS: You can wait until the jury comes
 14 in. I just want to let you know.
 15 THE COURT: We're ready for the Jury.
 16 (Jury enters courtroom at 9:35 a.m.)
 17 THE COURT: Good morning, Members of the Jury.
 18 THE JURY: Good morning (In unison.)
 19 THE COURT: Mr. Parsons.
 20 MR. PARSONS: Thank you, Your Honor. At this
 21 time, the plaintiff will call Mr. Dennis Risser.
 22 THE COURT: All right.
 23 THE CLERK: Please raise your right hand. Do you
 24 solemnly swear or affirm that the testimony you give in this
 25 cause will be the truth, the whole truth, and nothing but

1 the truth, so help you God?
 2 THE WITNESS: I do.
 3 DENNIS RISSER,
 4 called as a witness at 9:36 a.m., was examined and
 5 testified as follows:
 6 DIRECT EXAMINATION
 7 BY MR. PARSONS:
 8 Q. Good morning, Mr. Risser.
 9 A. Good morning.
 10 Q. Will you begin by telling your name to the jury?
 11 A. Dennis Risser.
 12 Q. What is your address, sir?
 13 A. 3248 Crescent Beach Road, Manistee, Michigan.
 14 Q. How are you currently employed?
 15 A. Right now I'm the caregiver of my 92-year-old
 16 mother-in-law.
 17 Q. And how long have you been on the MBCMH board?
 18 A. 11 years.
 19 Q. What experience -- what education in mental health do you
 20 have -- formal education, in other words?
 21 A. I been trained by the CMH. I actually work as a direct
 22 care worker for a brief time before I got on the board.
 23 Q. I was asking -- I don't mean to belittle that at all. I
 24 was starting with formal education. Do you have any
 25 college, or high school, or university training in mental

1 health?
 2 A. Not in the CMH -- just in the CMH system.
 3 Q. All right. Have you ever worked as a mental health
 4 professional?
 5 A. Not a professional.
 6 Q. You've been on the Manistee board for, you said, 11 years?
 7 A. Correct.
 8 Q. And what's the reimbursement you receive for being on the
 9 board?
 10 A. \$40 -- we get a \$40 per diem -- per day.
 11 Q. Each time you meet?
 12 A. No. Each -- for each day. If we meet twice a day, we only
 13 get the \$40 once.
 14 Q. So if you have a committee meeting, you get \$40. If you
 15 have a board meeting on another day, you get \$40 for that.
 16 If you attend a board function, you get \$40. If you go
 17 down state to attend a conference, you get \$40?
 18 A. Yes.
 19 Q. All right. I'd like to show you exhibit 73. Is there a --
 20 okay. Exhibit 73 -- the Court staff has arranged these in
 21 numeric order. 73 has been admitted.
 22 Did you sign -- you recognize this document,
 23 first?
 24 A. Look at the second page. Yes.
 25 Q. Exhibit 73 has your name on it. Could you describe for the

1 jury what this document is?
 2 **A. I guess it would be a -- to find out what -- I'm not really**
 3 **sure what it would be called. A representation statement,**
 4 **I guess.**
 5 **Q. Would you look at the bottom of the first page where you**
 6 **checked the box?**
 7 **A. Yes. I've read the attached code of conduct from the**
 8 **federal Code of Regulations and do not have a conflict of**
 9 **interest as described.**
 10 **Q. All right. This is a conflict of interest disclosure by**
 11 **you, correct?**
 12 **A. Yes.**
 13 **Q. Meaning that you understand a conflict of interest**
 14 **principle, at least under the federal regulations, correct?**
 15 **A. Yes.**
 16 **Q. And you know you have to sign that because MBCMH takes**
 17 **federal money, correct?**
 18 **A. Yes.**
 19 **Q. And so you, as a board member, are bound to follow the**
 20 **ethics rules regarding conflict of interest, right?**
 21 **A. Yes.**
 22 **Q. And you see, Mr. Risser, do you, on the second page, it has**
 23 **examples of the conflict of interest, such a conflict would**
 24 **arise when the employee office, or agent, or any member of**
 25 **his or her immediate family, has a financial or other**

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1 interest in the firm selected for an award. Do you see
 2 that?
 3 **A. Yes.**
 4 **Q. And in fact, your wife does work for a contractor for**
 5 **Manistee/Benzie CMH, right?**
 6 **A. Yes.**
 7 **Q. Now, when you signed -- you signed this document in 2001,**
 8 **correct?**
 9 **A. Yes.**
 10 **Q. And when you signed that document, did you read it? Did**
 11 **you understand it?**
 12 **A. Yes.**
 13 **Q. And you know that you are in a position where you cannot**
 14 **act for the personal gain, either for yourself or your**
 15 **wife, in regard to any contractor with MBCMH?**
 16 **A. Yes.**
 17 **Q. The company your wife works for is Moore Living, correct?**
 18 **A. Currently, correct, yes.**
 19 **Q. They are a subcontractor for MBCMH?**
 20 **A. I'm not sure what their status is.**
 21 **Q. They provide an adult home. They have adult homes that the**
 22 **MBCMH pays money for?**
 23 **A. Yes.**
 24 **Q. Do you have any doubt about that?**
 25 **A. Well, I'm not sure exactly -- I'm not sure exactly what**

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1 **their status is. I'm not sure exactly what it is.**
 2 **Q. Set aside the status, if you would, okay. You know Moore**
 3 **Living employs your wife, and you know Moore Living has one**
 4 **or more contracts with MBCMH?**
 5 **A. Yes.**
 6 **Q. And you know that those contracts involve a significant**
 7 **amount of money?**
 8 **A. Yes.**
 9 **Q. And do you recall what year when -- do you recall what year**
 10 **the specter of conflict of interest about you was first**
 11 **raised by Mr. Moran?**
 12 **A. Before I got on the board.**
 13 **Q. Now, when you got on the board, you became involved in**
 14 **administrative -- or board policy matters, right?**
 15 **A. The board didn't have any policy since I've been on the**
 16 **board.**
 17 **Q. So you haven't been involved in any policy matters?**
 18 **A. Not that the board has.**
 19 **Q. All right. Did you -- for example, did you sign a contract**
 20 **Mr. Moran signed in 2004?**
 21 **A. Yes.**
 22 **Q. Maybe by policy matters, I should have just said duties.**
 23 **Have you been involved in board duties?**
 24 **A. Yes.**
 25 **Q. For the last 11 years?**

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1 **A. Yes.**
 2 **Q. And one of your duties was to apparently cosign a contract**
 3 **with Mr. Moran in 2004, right?**
 4 **A. Yes.**
 5 **Q. Can you find exhibit number 2 in front of you?**
 6 **A. Yes.**
 7 **Q. And do you have that in front of you?**
 8 **A. Yes.**
 9 **Q. And do you see on page 2, there is a -- the first clause in**
 10 **that -- on that page is termination for cause?**
 11 **A. Yes.**
 12 **Q. Termination for just cause. Do you understand -- let me**
 13 **see. And your signature is down at the page, November 14,**
 14 **'04, correct?**
 15 **A. Yes.**
 16 **Q. And next to it is Mr. Moran's signature, correct?**
 17 **A. Yes.**
 18 **Q. Do you understand Mr. Moran bargained for this termination**
 19 **for just cause contract?**
 20 **A. Do I understand he bargained for it?**
 21 **Q. Yes. He negotiated for it?**
 22 **A. No. He presented it to us, and we accepted it.**
 23 **Q. All right. And did you read it before you signed it?**
 24 **A. Yes. This was an act of the board, not my act.**
 25 **Q. All right. And then down below there's another clause, at**

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1 will termination. Do you see that?
 2 A. Yes.
 3 Q. And that says, the board may terminate this agreement and
 4 the CEO's compensation for any other reason. And then it
 5 goes on to include, including but not limited to the reason
 6 that the board in its role deems it to be in the best
 7 interest of the board, or in the event that the DCCMH
 8 contract no longer continued under the current primary
 9 arrangement. Do you see that?
 10 A. Yes.
 11 Q. And you see that there's a reason -- the board has to have
 12 some reason listed?
 13 A. **Best interest of the board.**
 14 Q. But would you go with me on my question first. Is it true
 15 that the board has to state some reason for terminating
 16 Mr. Moran?
 17 A. No. **That's not what I got.**
 18 Q. So even though it says, for another reason, for any other
 19 reason, you don't think the board had to do that?
 20 A. No.
 21 Q. You think the board could wake up some morning and say I
 22 don't like -- I just don't like him, let's get rid of him?
 23 A. Yes. **With this at will contract, we could.**
 24 Q. Well, let me ask you your understanding then, the
 25 whistleblower. I asked Mr. Barnes this question. Is it

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1 your understanding that if you didn't like the fact that
 2 Mr. Moran had written a letter -- a whistleblower letter --
 3 could you fire him under the at will contract for that
 4 reason?
 5 A. **Not for that reason.**
 6 Q. Okay. There's a limit to the at will employment, correct?
 7 A. I don't know.
 8 Q. Meaning you cannot -- would you agree with this statement?
 9 You cannot fire Mr. Moran if his whistleblower letter was a
 10 factor -- was a reason for firing him -- that would be
 11 illegal, right?
 12 A. **If that was the reason. That wasn't the reason.**
 13 Q. It doesn't have to be the reason. You understand it can be
 14 a reason?
 15 A. **It wasn't a reason.**
 16 Q. It's illegal to fire Mr. Moran if partly you're doing it
 17 because of the April 18 letter, correct?
 18 A. **Correct. Does it matter I would have fired him two years**
 19 **ago?**
 20 Q. Sorry. The rules are I get to ask questions. Mr. -- your
 21 defense lawyer will then give you a chance to tell you what
 22 you want to do.
 23 A. Okay. Sorry. Sorry, Your Honor.
 24 Q. Do you recall the April 18 letter written by Mr. Moran?
 25 A. Yes.

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1 Q. And you recall in January 1 of 2007, Mr. Moran was given a
 2 very good performance evaluation?
 3 A. Yes.
 4 Q. That evaluation has been marked as an exhibit in this case,
 5 and you've been sitting in trial, right?
 6 A. Yes.
 7 Q. Mr. Moran received a 2.8 performance evaluation, correct?
 8 A. **Sounds like what I read on that.**
 9 Q. January of 2007, right?
 10 A. Yes.
 11 Q. What happened between January 1 of 2007 and June 14? What
 12 changed?
 13 A. **Well, that wasn't a valid evaluation of Mr. Moran. That**
 14 **was a -- more of an indication of how the agency was doing.**
 15 **If you look at the way that evaluation is weighted, I don't**
 16 **think if we'd a gave him all ones he would have got a bad**
 17 **evaluation.**
 18 Q. All right. So the agency that Mr. Moran had been in charge
 19 of for 18 years got a near perfect score; is that what
 20 you're saying?
 21 A. **Apparently a 2.8.**
 22 Q. 2.8 out of three?
 23 A. Yeah. **Whatever.**
 24 Q. Pretty good score. Mr. Moran has been there for 32 years.
 25 He's been executive director for 18 years. The agency gets

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1 a 2.8 performance evaluation. Doesn't that in some way
 2 reflect Mr. Moran's quality of work?
 3 A. **No. That was in spite of Mr. Moran. We have good staff**
 4 **there.**
 5 Q. You have good staff?
 6 A. **Most of them.**
 7 Q. All right. So as of 1-1-07, the 2.8 evaluation, that's
 8 due, you think, more to the staff than Mr. Moran?
 9 A. Yes.
 10 Q. And Mr. Moran was fired June 14, 2007, correct?
 11 A. Yes.
 12 Q. Now, are you aware of how many of the staff that Mr. Moran
 13 worked with have now left or been fired also?
 14 A. **Yes. Well, not exactly. But I know some of them have.**
 15 Q. Well, start with Mr. Moran, the CEO. Start with Jeff Rose.
 16 MR. COOKE: Well, I object to the relevancy of a
 17 turnover after the termination of Mr. Moran. I'm not sure
 18 that that has any relevance to the case whatsoever.
 19 THE COURT: He's the one who brought it up.
 20 MR. COOKE: He didn't bring up turnover after
 21 Mr. Moran left.
 22 THE COURT: He brought up the importance of staff.
 23 MR. COOKE: I think he brought up the evaluation.
 24 THE COURT: The objection is overruled.
 25 BY MR. PARSONS:

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1 Q. Mr. Moran, the CEO, is gone. Mr. Rose, what position was
 2 he?
 3 A. **Second in command, chief operating officer, I think.**
 4 Q. Let me pause just for a second. Excuse me.
 5 How many other staff have been let go or have
 6 quit?
 7 A. **I have no idea.**
 8 Q. Well, how about Karen Babcock, executive secretary and
 9 office manager?
 10 A. **Yes.**
 11 Q. She's gone. Well, you're still there. Do you know how
 12 many other of these staff with Mr. Moran are now gone or in
 13 the process of leaving your agency?
 14 A. **Well, we've had another pretty significant cut in our**
 15 **Medicare and our money. Medicaid -- general funds right**
 16 **now.**
 17 But no, I don't know how many people have left.
 18 We have the best agency we've ever had. I mean, it is just
 19 incredible the work we're doing for the folks in the
 20 community now.
 21 THE COURT: You're on the board; is that right?
 22 THE WITNESS: Yes, judge.
 23 THE COURT: And you've been on the board for 11
 24 years.
 25 THE WITNESS: Yes, judge.

1 THE COURT: And you have no idea of how many
 2 people have left the board -- I'm sorry -- left the staff in
 3 the last --
 4 THE WITNESS: Not really, judge, because basically
 5 we only deal with the executive director.
 6 THE COURT: Well, isn't that a question, if you're
 7 on the board, you might ask?
 8 THE WITNESS: Well, we -- we periodically get
 9 updates on turnover rate and stuff, but I honestly can't
 10 remember, you know, if it was 10 people, or --
 11 THE COURT: Go ahead. Well, you know, I wasn't
 12 asking precisely how many. Approximately.
 13 THE WITNESS: And I know the folks that we deal
 14 with that have left. I don't know the folks that -- the
 15 clinicians and folks like that. We've had some pretty
 16 significant cuts. And I'm not sure exactly. We've
 17 transferred people to other positions. I'm not sure exactly
 18 how everybody turned out, where everybody is right now.
 19 BY MR. PARSONS:
 20 Q. So somehow you knew that Mr. Moran's apparent success was
 21 due to his staff, but you can't tell us much about that
 22 staff anymore?
 23 A. **Well, the way the -- the way the evaluation is weighted,**
 24 **you know, I mean, he gets a good evaluation if we don't get**
 25 **any gigs on the fire marshal. You know, there's a lot of**

1 **little things in there that don't really truly reflect on**
 2 **what we need to know about Mr. Moran.**
 3 Q. Going back to the issue of what changed between -- the
 4 performance date of 1-1-07 and June 14, '07, do you recall
 5 not much at that agency changed with the exception of the
 6 letters, right?
 7 A. **Could you repeat that again?**
 8 Q. Yes. If you need water.
 9 A. **I got -- I brought some up here, but I got allergies really**
 10 **bad.**
 11 Q. Between January 2007, when the performance evaluation was
 12 done, and June of '07, when Mr. Moran was fired, what
 13 changed at that agency other than the fact Mr. Moran wrote
 14 a couple of letters about the local match and you, what
 15 changed?
 16 A. **We got a new board. We got, I think, three new board**
 17 **members. And that was significant.**
 18 Q. Well, the personalities may have changed, but I'm asking
 19 about what changed at the agency. I mean, you may have
 20 gotten some new people in there, but -- let me ask you if
 21 this refreshes your recollection. I'll show you page 31 of
 22 your deposition?
 23 A. **Sure.**
 24 Q. Do you remember I took your deposition in January of 2008,
 25 a little more than -- about a year-and-a-half ago, right?

1 A. **Okay. Yes, correct.**
 2 Q. And I asked you at that time, between January of 2007 and
 3 June of 2007, what changed?
 4 MR. COOKE: What page? Sorry.
 5 MR. PARSONS: 31.
 6 BY MR. PARSONS:
 7 Q. What did you say during your deposition?
 8 A. **Nothing.**
 9 Q. Nothing changed?
 10 A. **Correct.**
 11 MR. COOKE: Well, I object -- wait a minute. I
 12 object to the form. If this is perceived to be impeachment,
 13 I object to the form of it because the question is
 14 specifically geared towards performance, not agency, on page
 15 31, line 4. That's what we're reading?
 16 MR. PARSONS: All right. I'm not sure I get the
 17 objection.
 18 MR. COOKE: The objection is this.
 19 THE COURT: He wants you to -- you've got to get
 20 the question you asked into the record --
 21 MR. PARSONS: All right. Thank you, Your Honor.
 22 THE COURT: -- as well as the answer.
 23 BY MR. PARSONS:
 24 Q. All right. All right. Between January 11, 2007, when
 25 Mr. Moran got a 2.8 rating, and June 14, 2007, when he got

1 fired, what changed in his performance?
 2 THE COURT: Do you agree, is that the question he
 3 asked you?
 4 THE WITNESS: Yes.
 5 BY MR. PARSONS:
 6 Q. And what was your answer?
 7 A. **Nothing.**
 8 Q. And then the second question. Okay. But what did change
 9 was that Mr. Moran sent a couple of letters regarding
 10 matching funds and an attempt by Dennis Risser, and an
 11 attempt to influence multi-million dollar contracts?
 12 A. **Well, it's a fact he sent that letter. That doesn't mean**
 13 **anything changed in his performance.**
 14 Q. What did you answer?
 15 A. **Yes.**
 16 Q. You answered "yes" to that question?
 17 A. **(Nods head.)**
 18 Q. And you didn't at that time bring -- you didn't offer
 19 anything else, right?
 20 A. **Correct.**
 21 Q. Do you recall Mr. Moran sent the February 22, 2007 letter
 22 to county commissioners asking -- telling he had an
 23 obligation to report the local match?
 24 A. **Do you have that letter here so I could look at it? I**
 25 **can't remember.**

1 Q. That is exhibit 30.
 2 A. **Okay. I can't remember dates very well.**
 3 Q. No, no. It's not exhibit 30. February 22nd letter.
 4 Sorry. That's exhibit 39.
 5 Do you recall, Mr. Risser, Mr. Moran sent the
 6 February 22, 2007, letter saying Manistee/Benzie Community
 7 Mental Health also has a contractual obligation to notify
 8 the Michigan Department of Community Health if a shortfall
 9 in the county match obligation occurs?
 10 A. **Yes. I can't really read it. But it looks like the right**
 11 **date.**
 12 Q. And then exhibit number 30, do you recall the April 18
 13 letter Mr. Moran sent notifying the executive committee
 14 that he was going to have to report you and the board to
 15 enforcement agencies?
 16 A. **Yes.**
 17 Q. And at least at the time we took your deposition in January
 18 of '08, you said, other than those two letters, you didn't
 19 recall anything changed, correct?
 20 A. **That's what the deposition says. I think it's a different**
 21 **question right now, but maybe not.**
 22 Q. It's not intended to be.
 23 A. **Okay.**
 24 Q. So we draw to the close on this issue that other than those
 25 letters, Mr. Moran goes from a performance evaluation of

1 2.8 to getting fired in the space of five months, and the
 2 only thing in the meantime that happened that you could
 3 recall is these two letters, right?
 4 MR. COOKE: Object to the form of the question.
 5 The question was specific as to the change in Mr. Moran's
 6 performance.
 7 THE WITNESS: That's right, yeah.
 8 MR. COOKE: That was the specific --
 9 THE COURT: Look, there was no question to you.
 10 Your attorney is making an objection.
 11 THE WITNESS: I'm sorry. I'm just trying to think
 12 about the deposition.
 13 THE COURT: Just answer the questions of counsel
 14 when they're propounded to you unless there's an objection.
 15 If there's an objection, wait for the Court to rule.
 16 THE WITNESS: Okay. I'm sorry, Judge.
 17 THE COURT: Ask your question again.
 18 BY MR. PARSONS:
 19 Q. Other than the February 22nd letter and the April 18
 20 letter, you can recall nothing else that changed at the
 21 agency between January of '07 and June of '07, correct?
 22 A. **Correct.**
 23 Q. Now, I'm going to show you exhibit 68. Or ask you to look
 24 at exhibit 68. I think that may be -- exhibit 68 is an
 25 April 17, 2007, memo from Peter Barnes to people, including

1 you, right?
 2 A. **Yes.**
 3 Q. Do you remember getting that memo?
 4 A. **No, sir. No.**
 5 Q. Do you believe you probably did get it since it's addressed
 6 to you, or not?
 7 A. **I honestly don't know.**
 8 Q. Does this refresh your recollection that as of April 17,
 9 2007, Mr. Barnes is suggesting a committee draft an
 10 employment contract for the executive director, that they
 11 provide a copy of it to Mr. Moran by July of '07, and have
 12 a completed agreement by October of '07. Does that refresh
 13 your recollection what was going on then?
 14 A. **No. I don't remember ever getting this document. I'm not**
 15 **saying I didn't, but I don't remember it.**
 16 Q. Do you recall those events transpiring at that time?
 17 A. **Not in particular. You know, Pete was always working on a**
 18 **contract.**
 19 Q. For Mr. Moran?
 20 A. **Just any kind of a -- just working. Pete did a lot of**
 21 **letters.**
 22 Q. Let me ask you -- let me step back for a second. I asked a
 23 question, I'll ask you. Isn't it true Mr. Barnes
 24 coordinated the firing of Michael Moran?
 25 A. **Not to my knowledge, he didn't.**

1 Q. All right. Let's go back to this. You see nothing's
 2 changed at the agency, and Mr. Barnes, as of April 17,
 3 2007, has a plan for a process to enter a new contract with
 4 Mr. Moran, you see that, correct?
 5 A. I don't see that it says enter a contract, really. Maybe
 6 negotiate one.
 7 Q. All right. Draft. How about draft an employment contract?
 8 A. Yes.
 9 Q. It says draft an employment contract?
 10 A. Yes.
 11 Q. And you're going to give it -- the board is going to give
 12 it to Mr. Moran, and then it's going to become effective
 13 what date?
 14 MR. COOKE: I object to the form of the question
 15 when we're talking about the board is going to do something.
 16 We know this is Mr. Barne's memoranda, this witness never
 17 saw the memoranda. This was an internal -- at this point in
 18 time, this was an internal process that Mr. Barnes was going
 19 through. So asked the question in the context of the board
 20 was going to do X, Y, and Z.
 21 THE COURT: He can ask the question.
 22 MR. PARSONS: Thank you. And again, Your Honor, I
 23 want to speak to the Court on this issue. I just object to
 24 counsel testifying about what something is. I understand
 25 objections, but I take exception.

1 MR. COOKE: I'm not testifying.
 2 THE COURT: I already ruled on the objection.
 3 It's overruled. Go ahead.
 4 BY MR. PARSONS:
 5 Q. You understand it appears based on this memo there was an
 6 intent by the board, or at least by Mr. Barnes, as of April
 7 17, 2007, to negotiate and enter another contract with
 8 Mr. Moran?
 9 A. No.
 10 MR. COOKE: A compound question, objection.
 11 THE COURT: He didn't have any trouble with it.
 12 BY MR. PARSONS:
 13 Q. Sir, you understand -- you recall my question?
 14 A. Yeah. I said no.
 15 Q. So despite what this memo says, that wasn't Mr. Barne's
 16 intention?
 17 A. I don't know what Mr. Barne's intentions were.
 18 Q. You talked about this stuff with Mr. Barnes all the time,
 19 don't you?
 20 A. Pete and I are friends. We talk about a lot of stuff.
 21 THE COURT: Answer his question.
 22 THE WITNESS: Yeah. I'm sorry. Yes.
 23 THE COURT: He didn't ask if you were friends.
 24 BY MR. PARSONS:
 25 Q. You do talk with Mr. Barnes all the time about this stuff?

1 A. Not all the time. Sometimes we go for a month without
 2 talking.
 3 Q. I'm sorry for the overstatement. You talk often with
 4 Mr. Barnes about MBCMH business, right?
 5 A. I would say occasionally, more than often.
 6 Q. What changed is that in Mr. Moran's April 18 letter, he
 7 made a specific notification that he was going to report
 8 you for trying to influence contracts, correct?
 9 A. Yes.
 10 Q. His letter brought to a head something that had been going
 11 on with you for years, correct?
 12 A. No. He never reported it.
 13 Q. He reported it to you, didn't he?
 14 A. Correct, yes.
 15 Q. You knew he had these concerns about your conduct for
 16 several years, correct?
 17 A. He said he had concerns. I don't know if he had them or
 18 not. Yes.
 19 Q. He said them to you?
 20 A. Occasionally.
 21 Q. He said them to -- brought them up at board meetings?
 22 A. At times.
 23 Q. But it was a mystery, you say -- is it a mystery to you
 24 what he meant by that?
 25 A. In all honesty, yes, because I haven't done that.

1 Q. Well, what specifically was it you haven't done?
 2 A. I haven't tried to influence multi-million dollar contracts
 3 with threats and coercion.
 4 THE COURT: Have you tried to influence them in
 5 any other ways?
 6 THE WITNESS: No, sir.
 7 BY MR. PARSONS:
 8 Q. And in fact, you think Mr. Rooker, your wife's employer,
 9 was the one who approached your wife about the company's
 10 contract, right?
 11 A. That's what I understood.
 12 Q. It wasn't you that initiated any conflict of interest, it
 13 was Mr. Rooker?
 14 A. After he contacted my wife. And it wasn't a conflict of
 15 interest.
 16 Q. And you believe that Mr. Rooker is to blame because he
 17 asked your wife to stay after a meeting?
 18 A. I don't know what happened there. All I know is what I was
 19 told.
 20 Q. Your understanding, I'll take it. You understand that
 21 Mr. Rooker initiated the problem because he asked your wife
 22 to stay after a meeting, correct?
 23 A. Correct.
 24 Q. And he presented your wife, according to you, with papers,
 25 correct?

1 A. Correct.
 2 Q. And those papers show that his company was in trouble,
 3 supposedly?
 4 A. I didn't understand the papers.
 5 Q. Did he tell you that -- did he tell your wife that his
 6 company was about ready to close up, and he wanted to come
 7 to the MBCMH board?
 8 A. That's the impression my wife got.
 9 Q. So this is Mr. Rooker's fault?
 10 A. I -- I don't -- there was no conflict of interest there.
 11 Q. If it's Mr. Rooker's call, why do you think it's
 12 Mr. Rooker's fault? Why do you think Mr. Rooker called
 13 Chip Johnston at the MBCMH to complain about you?
 14 MR. COOKE: I object to the form of the question.
 15 Mr. Risser didn't say anything about --
 16 THE COURT: I'll sustain that objection.
 17 BY MR. PARSONS:
 18 Q. You're aware Mr. Rooker called the MBCMH agency, spoke to a
 19 gentlemen by the name of Chip Johnston, and reported that
 20 he felt you had done something inappropriate?
 21 A. That's what Mr. Moran said.
 22 Q. How about Mr. Rooker?
 23 A. I haven't talked to Mr. Rooker.
 24 Q. Now, sir, you understand you have been sued in this case,
 25 correct?

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1 A. Correct.
 2 Q. You understand Mr. Rooker's deposition was taken in this
 3 case -- he gave testimony?
 4 A. Yes.
 5 Q. And have you ever reviewed his testimony?
 6 A. No, sir.
 7 Q. So as you sit here today, you don't know what Mr. Rooker
 8 says about why he reported to the agency?
 9 A. No.
 10 Q. I'm going to show you exhibit number 7 -- proposed exhibit
 11 7. And I'll ask if you recognize that document?
 12 A. It looks familiar, so I'd say yes.
 13 Q. Do you know if you actually got it?
 14 A. I got one similar to it. I don't know if it was exact
 15 text. But yeah, I would say yes.
 16 Q. It's April 25, 2002, correct?
 17 A. Yes.
 18 MR. PARSONS: I'd like to introduce into evidence
 19 plaintiff's proposed exhibit 7?
 20 MR. COOKE: No objection.
 21 THE COURT: Received.
 22 BY MR. PARSONS:
 23 Q. Exhibit number 7 is on MBCMH stationery, correct?
 24 A. Correct.
 25 Q. Dated April 25, 2002, correct?

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1 A. Yes.
 2 Q. And it is to whom?
 3 A. Myself.
 4 Q. And you actually counter-signed it, right? Or is that
 5 somebody else's handwriting?
 6 A. That's not mine.
 7 Q. Okay. And this says it's from Mr. Moran to you. And this
 8 2002 document has attached to it an item called code of
 9 conduct, right? On page 2 down in the lower right hand
 10 corner?
 11 A. Um, I don't see code of conduct anywhere on there.
 12 Q. On the second page on the lower right hand corner of that
 13 document?
 14 A. Okay. That's the third page, sir.
 15 Q. Okay. Excuse me. It's second on mine. But it says page
 16 217 down at the bottom, correct?
 17 A. No, sir.
 18 Q. Go back to the second page.
 19 A. Okay.
 20 Q. See code of conduct down there?
 21 A. Okay. I was looking at the third page. Yes, sir.
 22 Q. All right. And Mr. Moran is addressing comments you have
 23 made to Jeff, Chip, and myself, regarding the residential
 24 services contract which employs your wife. Do you see
 25 that?

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1 A. Yes.
 2 Q. And he says, comment -- they may have been -- or have been
 3 inappropriate and may be construed to be trying to
 4 influence our management of that contract. Do you see
 5 where it says that?
 6 A. Yes.
 7 Q. And this is 2002, correct?
 8 A. Yes.
 9 Q. And then it goes on to say that on several occasions during
 10 the past 18 months, you had told me you either would not or
 11 have not voted for affirmatively on issues regarding wages
 12 and benefits for staff at MBCMH unless economic
 13 improvements similar to those provided to staff were also
 14 included in our residential services contract. Do you see
 15 that?
 16 A. Yes, I do see it.
 17 Q. And that's 2002, Mr. Moran is telling you what's on his
 18 mind, right?
 19 A. Telling me what he thought, I guess.
 20 Q. Yeah. He didn't report you to law enforcement authorities
 21 at that time, did he?
 22 A. No.
 23 Q. What I want to know is this. Did you in fact make a
 24 statement that you would not vote for staff, wages, or
 25 benefits, unless the contractor that employed your wife got

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1 the same benefits?
 2 **A. I don't think I ever said that.**
 3 **Q.** All right. In response to this letter, what did you do,
 4 then? Did you go back to Mr. Moran and say it's not
 5 accurate?
 6 **A. I don't remember what I did. This is only one of many**
 7 **letters I got from Mr. Moran.**
 8 **Q.** On this same issue?
 9 **A. Yes.**
 10 **Q.** All right. Is it fair to say that as of 2002, you were
 11 aware there was a concern about your trying to influence a
 12 contract involving your wife?
 13 **A. Mr. Moran said there was.**
 14 **Q.** But you weren't aware of that?
 15 **A. I didn't think there was, sir.**
 16 **Q.** Did you do anything to try and clear this up?
 17 **A. Mr. Moran and I talked a bunch of occasions on this.**
 18 **Q.** In fact, is it fair to say, sir, that you held the MBCMH
 19 staff salaries and benefits hostage --
 20 **A. No, sir.**
 21 **Q.** -- to your wife's income at her place of employment?
 22 **A. No, sir.**
 23 **Q.** I'm going to show you what's marked exhibit 8. And that's
 24 already been admitted. And that's going to be --
 25 **A. Thank you.**

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1 **Q.** Do you recall exhibit 8?
 2 **A. Yes, sir.**
 3 **Q.** This is a letter August 22, 2005. And the letter is on
 4 MBCMH stationery, correct?
 5 **A. Yes.**
 6 **Q.** Written by Michael Moran?
 7 **A. Yes.**
 8 **Q.** Sent to the Board of Directors?
 9 **A. Yes.**
 10 **Q.** And this is about the same concern again, isn't it?
 11 **A. Yes.**
 12 **Q.** Mr. Moran sends to the board of directors a letter that
 13 says, Mr. Rooker expressed concerns regarding the
 14 appropriateness of the call from board member Rooker -- or
 15 Risser; do you see that?
 16 **A. Yes.**
 17 **Q.** You made a call to Mr. Rooker, correct?
 18 **A. Yes.**
 19 **Q.** Do you know Mr. Rooker now in 2005, this is three years
 20 after the last letter that at least we've seen? Mr. Rooker
 21 called the agency concerned about your call, right?
 22 **A. Yes.**
 23 **Q.** And then you know Mr. Moran called Mr. Rooker, right?
 24 **A. Yes.**
 25 **Q.** And Mr. Moran reports, Rooker -- Mr. Rooker told me last

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1 week he'd met with his administrative staff to inform them
 2 of budgetary problems within his organization which would
 3 lead to salary and wage cuts. Shortly after the meeting he
 4 received a call from Dennis Risser. Is that true, you
 5 called him?
 6 **A. Yes, I did call him.**
 7 **Q.** And you identified yourself as a board member?
 8 **A. I don't know if I told him what I was.**
 9 **Q.** Do you understand why that would be significant because
 10 you're identifying yourself as a board member in a position
 11 of potential control over that contract?
 12 **A. We had no control over these contracts.**
 13 **Q.** MBCMH was a contractor. MBCMH paid Mr. Rooker's agency
 14 money, or home, money, right?
 15 **A. They did. But we -- the board were never involved in these**
 16 **contracts.**
 17 **Q.** Did Mr. Rooker know that?
 18 **A. I have no --**
 19 **MR. COOKE:** Objection to the foundation as to what
 20 Mr. Rooker knew.
 21 **MR. PARSONS:** I'm asking if he knew.
 22 **THE COURT:** I'll sustain that.
 23 **BY MR. PARSONS:**
 24 **Q.** Do you know whether Mr. Rooker knew your board didn't have
 25 any control over those contracts?

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1 **A. I don't know if he knew or not.**
 2 **Q.** Would it be fair to say Mr. Rooker -- well, let me strike
 3 that.
 4 It goes on. In your call to Mr. Rooker, you
 5 wished to discuss the budget and proposed cuts, and
 6 Mr. Rooker's discussion with me he questioned the ethics of
 7 having such a discussion with Mr. Risser.
 8 Do you recall -- do you see that in that letter?
 9 **A. Yeah. I don't necessarily agree with what it says, though.**
 10 **Q.** You don't agree with what Mr. Rooker said?
 11 **A. No. That's not why I called Mr. Rooker.**
 12 **Q.** When you called Mr. Rooker -- well, you called him
 13 regarding wage, salary, and healthcare coverage, all of
 14 which apply to your wife?
 15 **A. That's not why I called him.**
 16 **Q.** So you disagree with this?
 17 **A. Yes, I do. And I told Mr. Moran after he wrote it.**
 18 **Q.** Is it true Mr. Moran had pointed out to you on numerous
 19 occasions that you have a possible conflict of interest in
 20 your contractual relationship with Mr. Rooker's company?
 21 **A. Could you repeat that?**
 22 **Q.** Is it true that even before this letter, Mr. Moran had told
 23 you that there was a possible conflict of interest with you
 24 getting involved in anything to do with Mr. Rooker's
 25 company because your wife worked for Moore?

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1 A. I don't know that he specifically said that. Mr. Moran was
 2 banging on me about things a lot.
 3 Q. Okay.
 4 THE COURT: Well, whatever you called -- whatever
 5 your reason for calling Mr. Rooker, did you discuss your
 6 wife's wages, salaries, benefits?
 7 THE WITNESS: No, sir. No, sir.
 8 BY MR. PARSONS:
 9 Q. And you didn't discuss the wages, or salaries, or benefits,
 10 that were received generally by Mr. Rooker's staff?
 11 A. There was a specific reason I called Mr. Rooker. And if
 12 you'd like, I'll tell you.
 13 THE COURT: No. Answer his question.
 14 THE WITNESS: No. No.
 15 BY MR. PARSONS:
 16 Q. You did not discuss anything about salary or wages of the
 17 staff?
 18 A. Not that I recall.
 19 Q. That's a little different. I want to ask you to plum your
 20 memory here. Do you believe you did discuss something
 21 about wages, salaries, or benefits, of Mr. Rooker's staff?
 22 A. I don't think so, because that's not the intent of my call.
 23 My call was for something totally different.
 24 Q. All right. Now tell us what you think your call was for.
 25 Briefly. Not too long.

1 A. Okay. Sure. My wife came home from work and said that it
 2 looked like Moore Living was about ready to possibly go out
 3 of business. I've seen the provider before go through the
 4 same problem with mental health. Basically they would keep
 5 cutting their contracts, keep cutting them until they
 6 couldn't stay in business any longer. And it was a big
 7 disruption for the consumers. You know, they had different
 8 staff coming and going, people being shuffled around. And
 9 we deal with some very vulnerable folks in these group
 10 homes. It's these big vans you see riding around. And
 11 there was some awful, awful, confusion. You know, people's
 12 lives were really impacted by the company going out of
 13 business. What I called Mr. Rooker was -- for what was I
 14 asked him if he wanted me to contact our chair, who was
 15 Jean Bowers, of the county commission -- or of the
 16 Manistee/Benzie Mental Health board -- to see if he wanted
 17 to come to the full board and tell them what was going
 18 on -- give his side of the story. And I gave him -- I
 19 had -- my wife faxed up Jean Bowers contact information the
 20 next day, and that was as far as -- that was the last I
 21 heard of it.
 22 Q. So you were intending to ask Mr. Rooker if he wanted to
 23 come to the board to talk about transporting people to
 24 other agencies if his agency closed?
 25 A. No, no. I wanted him to come to the board to let the --

1 because the board has no idea what happens. And Mr. Moran
 2 did not keep the board informed of any of the cuts.
 3 Anything that was affecting the lives of all these folks
 4 that we serve. The board was just clueless. The only
 5 reason I knew what was going on was because there was a
 6 time when these folks actually had pretty good lives. They
 7 could socialize with people and stuff. I attended a lot of
 8 functions with these folks.
 9 Q. You were concerned just generally, then, with a contractor
 10 maybe going out of business, and there would be problem for
 11 his clients, right?
 12 A. Exactly.
 13 Q. How many contractors does MBCMH have?
 14 A. I don't know. We don't deal with the contracts.
 15 Q. Scores? Dozens? Hundreds?
 16 A. I don't know -- I don't know what contracts you're talking.
 17 We have hundreds of them.
 18 Q. Hundreds?
 19 A. But that's not residential. That's clean things and things
 20 like that.
 21 Q. How many residential contracts does MBCMH have?
 22 A. I honestly don't know.
 23 Q. How many did you call?
 24 A. I've called one.
 25 Q. Yeah. We know one. That's the one your wife works for,

1 right?
 2 A. That's the one that provides care to a lot of consumers in
 3 this area.
 4 Q. And in 2005, when the agency went through cuts and
 5 contracts were called off, \$2.5 million worth, did you call
 6 each one of those other contractors and invite each one of
 7 them to come to the board to explain the effect on the
 8 consumer?
 9 A. No, I didn't.
 10 Q. No. You called the one where your wife worked, right?
 11 A. That was the one I knew about. The other ones I had no
 12 comprehension of what they were going through cutwise,
 13 because Mr. Moran never told us.
 14 Q. If you don't deal with contracts, why were you inviting
 15 Mr. Rooker to come to a board meeting. You said the board
 16 doesn't deal with contracts. Why would you invite
 17 Mr. Rooker to a board meeting if the board doesn't deal
 18 with contracts?
 19 A. Because I thought the board should know what was happening
 20 in the community, which they didn't know.
 21 Q. Because --
 22 A. Nothing to do with my wife. We have a lot of folks that we
 23 take care of. And it's been getting worse, and worse, and
 24 worse, under Mr. Moran.
 25 Q. Well, let's go to that issue. If the board -- if the MBCMH

1 loses money, that's bad for the people in this community
 2 who are in need, right?
 3 A. Yes.
 4 Q. MBCMH board, every dollar counts for the consumer, right?
 5 A. Yes.
 6 Q. But the local counties, as of 2006, quit making the local
 7 match. The board started losing a lot of money in 2006,
 8 right?
 9 A. Well, I don't know where you're going with that local --
 10 Q. Can you answer my question --
 11 A. Yes. Yes.
 12 Q. -- without worrying where I'm going. The board -- in 2006,
 13 MBCMH started losing a lot of money due to the lack of the
 14 local match, correct?
 15 A. Not due to the local match.
 16 Q. The counties did not make the local match in 2006, correct?
 17 A. I think the local match was raised that year, I think.
 18 Q. Have you seen the exhibit? You sat here.
 19 A. Yeah. But I -- nobody's ever talked about why the local
 20 match went up that year.
 21 MR. PARSONS: Partner, can you tell me what number
 22 the -- exhibit 23.
 23 BY MR. PARSONS:
 24 Q. Do you remember this exhibit? Manistee/Benzie CMH county
 25 funding, actual, fiscal year, 2006, it says county local

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1 funding deficit. Can you read what the 2006 deficit is?
 2 A. The total source?
 3 Q. The total deficit.
 4 A. 279?
 5 Q. No. The bottom number, please?
 6 A. The one that's redacted?
 7 Q. The one that -- I don't know what it is.
 8 A. 128,666 it looks like.
 9 Q. It's \$128,666 short, right?
 10 A. Yes.
 11 Q. \$128,666 short. And that's because the counties didn't
 12 make that match, right?
 13 A. I don't think they were ever told they had to until that
 14 year.
 15 Q. Well, they didn't have to because 2005 was when the \$2.5
 16 million budget cut was, remember that?
 17 A. Yes.
 18 Q. And in 2005, when the state cut the funding by \$2.5
 19 million, that was about 15% of your budget. Do you recall
 20 that?
 21 A. Yes.
 22 Q. And you had to lay some people off, right?
 23 A. Yes.
 24 Q. And some programs had to get trimmed, correct?
 25 A. Yes.

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1 Q. And then the MBCMH could no longer go out and have some
 2 contracts that raised the local match, right?
 3 A. Yes.
 4 Q. And therefore, they needed to go to the counties, to say to
 5 the counties -- your board had to go to the counties and
 6 say, you guys have got to do what's legally required,
 7 correct?
 8 A. As they should have every year.
 9 Q. They should have every year, right. But before 2006,
 10 Mr. Moran had been able to go out and get additional
 11 subcontracts to truly raise local money, right?
 12 A. Yes.
 13 Q. But he was no longer able to do that in 2006, right?
 14 A. I don't know that for a fact.
 15 Q. He told the board that, right?
 16 A. Yes. I don't know if that was true or not, though.
 17 Q. Well, you don't know. Okay. You don't know, you're not
 18 saying it's true, right?
 19 A. I'm not saying --
 20 Q. You're not saying it's true, you're not saying it's false.
 21 So anyway, we come into 2006, you know there's a deficit.
 22 \$128,000. But tell me the answer to this interesting
 23 question. Why did you believe and work to have the agency
 24 come up with the local match instead of following Mr. Moran
 25 to the county and asking the counties for the local match?

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1 A. You'll have to be specific. I don't know what you're
 2 talking about.
 3 Q. In fact, in 2006, you did not support Mr. Moran going to
 4 the counties asking the counties to come up with the money.
 5 Instead, you worked to make your own agency come up with
 6 that money, didn't you?
 7 A. Not that I remember. I think there's probably minutes
 8 showing me voting to authorize Mr. Moran to go to the
 9 county.
 10 Q. You thought the MBCMH should use interest money on the
 11 surplus -- the rainy day fund -- right? You thought that's
 12 the way that deficit should be made up?
 13 A. I don't really have an independent recollection -- I don't
 14 ever remember anything like that.
 15 Q. Let me show you page 79 of your deposition transcript.
 16 A. Okay.
 17 Q. And I'm looking -- you can read anything you want, but I'm
 18 starting at line 5.
 19 A. Okay.
 20 Q. And you can refresh your recollection. Please tell me when
 21 you're done reading.
 22 MR. COOKE: What line, counselor?
 23 MR. PARSONS: I believe it's line 5, Mr. Risser.
 24 THE WITNESS: And what's the question on this now?
 25 MR. PARSONS: I'm asking you to refresh your

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1 recollection.
 2 THE WITNESS: Okay.
 3 BY MR. PARSONS:
 4 Q. Isn't it true that instead of helping Mr. Moran get the
 5 \$128,000 from the county, you wanted your own agency to use
 6 interest --
 7 MR. PARSONS: Your Honor, I can hear Mr. --
 8 defense counsel's comments about what's nonsense, and it's
 9 getting loud enough so I don't want the jury to hear it. I
 10 would ask the Court for some relief on this.
 11 THE COURT: I didn't hear it.
 12 MR. PARSONS: Okay.
 13 MR. COOKE: I'm not making comments over hear.
 14 MR. PARSONS: I don't know who is. I'm hearing
 15 comments.
 16 MR. COOKE: Well, regardless of what Mr. Parsons
 17 wants to testify about things, I don't think that's his
 18 obligation.
 19 THE COURT: Okay. Whoever is making the comments,
 20 let's keep it down.
 21 MR. PARSONS: Thank you.
 22 BY MR. PARSONS:
 23 Q. Mr. Risser, it's true, instead of going to the Manistee
 24 County and Benzie County, and saying you guys have to come
 25 up with money for our agency, you suggested your own agency

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1 make up the local match, correct?
 2 MR. COOKE: I object to the form, if this is being
 3 used for impeachment for refreshment, because the form of
 4 the question being asked is the area that Mr. -- plaintiff's
 5 counsel is referring the witness to.
 6 THE COURT: He can ask the question.
 7 THE WITNESS: Could you rephrase it? Could you
 8 say it again, please?
 9 BY MR. PARSONS:
 10 Q. Isn't it true instead of asking the counties to do what
 11 their legal obligation was to do, you thought your own
 12 agency ought to kick in and make up the local match?
 13 A. **That was one way. I don't think that was the only way.**
 14 Q. Would you answer my question? You wanted to put the burden
 15 on your own agency?
 16 A. **No, I didn't.**
 17 Q. You thought you should use interest from the rainy day fund
 18 to pay the local match, right?
 19 A. **That was one way.**
 20 Q. That's what it says in your deposition. That's what you
 21 testified to in January, 2008?
 22 A. **Yeah.**
 23 Q. Right?
 24 A. **Yes. That's -- I'm not sure how you worked into that,**
 25 **though. I say -- you have to look at the Mental Health**

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1 **Code to be real specific. But there are ways of the agency**
 2 **making up all or part, as far as I know, of the local**
 3 **match. And as far as I know is real critical in this.**
 4 Q. And you mentioned using interest, right?
 5 A. **Yes.**
 6 Q. I'm going to refer you to exhibit 28, which has been
 7 admitted. Do you remember this?
 8 MR. COOKE: What exhibit?
 9 MR. PARSONS: 28.
 10 BY MR. PARSONS:
 11 Q. And this is the April 4, 2007, memo from Mark Kielhorn,
 12 Director, Program Development Consultant, Consultation and
 13 Contracts. Do you remember this?
 14 A. **Not -- not really. We get so many documents at those**
 15 **meetings.**
 16 Q. Well, you get so many documents. But you remember in April
 17 of 2007, the local match issue was a hot issue at your
 18 agency?
 19 A. **Yes.**
 20 Q. Yes, correct?
 21 A. **Yes.**
 22 Q. And you remember Mr. Kielhorn came in from the state and
 23 spoke to the board about it, right? There's a joint study
 24 session with the counties?
 25 A. **Yes. That -- was that the one in Benzie County? I don't**

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1 **see anything -- that doesn't sound like the same time as**
 2 **when Kielhorn came, but I could be wrong.**
 3 Q. And Mr. Kielhorn writes back this memo -- I'm sorry to keep
 4 putting this up there -- but he writes it about the
 5 internal service fund, correct? That's the subject matter?
 6 A. **Yes.**
 7 Q. And down at the -- down -- midway down he underlines, it is
 8 the responsibility of the CMHSP -- that's the Community
 9 Mental Health service provider, your agency, right?
 10 A. **Yes.**
 11 Q. -- to ensure that county funding is available -- to ensure
 12 that county funding is available as mandated by MHC. Do
 13 you see that?
 14 A. **Yes.**
 15 Q. Mr. Kielhorn says, as stated above, the ISF, the Internal
 16 Service Fund, cannot be used to finance the county
 17 financial obligation, right?
 18 A. **Yes.**
 19 Q. And the reason for that is because that ISF fund is the
 20 result of federal and state dollars, right? Or don't you
 21 even know?
 22 A. **Well, I think that's -- internal service fund is the wrong**
 23 **fund that we'd been using it out of. But I could be wrong.**
 24 Q. Here's the question on the floor. County local funds have
 25 to be completely, under the law, generated locally,

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1 correct?

2 **A. Whatever the law says, yes.**

3 **Q.** Well, let me ask you this, I don't mean to -- I hated law

4 school tests. I'm not trying to test you. I'm trying to

5 understand your understanding. Are you aware, from all

6 this discussion about the local match, that the local match

7 is a requirement under law that the counties have to

8 generate, they got to initiate, they got to come up with

9 totally local money?

10 **A. That's -- yes. If that's the question.**

11 **Q.** And so if what you do is you take state and federal money,

12 you put it in a bank and you earn interest on it, you can't

13 use the interest, because it's state and federal money.

14 That's where that came from, right?

15 **MR. COOKE:** Objection to the form of the question

16 and the foundation.

17 **THE COURT:** He's asking him if that's his

18 understanding. Go ahead.

19 **THE WITNESS:** Yes. But I think we're mixing

20 apples and oranges on this.

21 **BY MR. PARSONS:**

22 **Q.** I appreciate you following along with me, though. I'm sure

23 Mr. Cooke will come up with cross-examination. But for my

24 question, it is you can't use interest on state and federal

25 money and call it local money, right?

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1 **A. I don't know that for a fact. I don't know that.**

2 **Q.** Okay. Thank you.

3 Did you attend the meetings when Mr. Kielhorn

4 came up and tried to explain this?

5 **A. Yes.**

6 **Q.** And didn't Mr. Moran -- wasn't he putting a lot of heat on

7 the counties to come up with the local money -- the local

8 match?

9 **A. Actually by April 4th, I thought we had that taken care of.**

10 **Q.** Well, but now you know, I mean, that not only were you at

11 \$128,000 shortfall in 2006, you had a shortfall of \$128,000

12 the next year, right?

13 **A. Yes.**

14 **Q.** So now you know it wasn't being taken care of. And my

15 question is do you understand Mr. Moran was fighting to get

16 the money for your agency?

17 **A. Yes.**

18 **Q.** Okay. And you know the counties weren't providing it,

19 right?

20 **A. What dates are you talking about that they weren't**

21 **providing it?**

22 **Q.** Look at page 33 of your deposition if you want to refresh

23 your recollection. It's the little booklet in front of you

24 up there.

25 **A. The deposition?**

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1 **Q.** Page 33. And the question on the floor is, you know the

2 county -- and you knew the counties were not providing the

3 local funding?

4 **A. Yes. And I said that's my interpretation of it, yes.**

5 **Q.** And your interpretation also is that's illegal under the

6 Mental Health Code, right?

7 **A. Well, I don't know that it's illegal.**

8 **Q.** Isn't that what you said?

9 **A. I don't know if that's correct it's illegal. I'm not sure**

10 **it's illegal.**

11 **Q.** When I asked you at the time, didn't you agree it was

12 illegal?

13 **A. Yes.**

14 **Q.** You said it was illegal when I asked you at your

15 deposition?

16 **A. Under the Department of Health act or -- that was your**

17 **question. I said the Mental Health Code may be.**

18 **Q.** May be illegal, right?

19 **A. Yes.**

20 **Q.** And then at that time you recognized there was a \$128,000

21 shortfall, correct?

22 **A. It says 130 in here, but yes.**

23 **Q.** 138?

24 **A. Yes.**

25 **Q.** And you recall that Mark Kielhorn -- the state sent Mark

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1 Kielhorn up. And Mr. Moran informed Mr. Kielhorn at that

2 meeting the local match is not being made. You see that?

3 Page 34, Mr. Risser?

4 **A. It was Mark Kielhorn was the person they sent up, I say.**

5 **Q.** All right. And there is no proof anywhere in this record

6 that you ever got upset with the counties for not providing

7 the local match, is there?

8 **A. Probably not, no.**

9 **Q.** You wanted your agency, which provides direct services to

10 people in need -- you wanted your agency to come up with

11 that money, didn't you?

12 **A. Not necessarily. That may have been an option.**

13 **Q.** Other than that option, did you state -- you didn't state

14 any other option?

15 **A. Not in the deposition.**

16 **Q.** Okay. Now isn't that unusual for a board member of an

17 organization to want their organization to come up with

18 money that is legally required to come from the other

19 organizations? Isn't that unusual?

20 **A. No.**

21 **Q.** Doesn't that sound like the political fix is in with you

22 and the county and Mr. Barnes?

23 **A. No.**

24 **MR. COOKE:** Object to the form of the question as

25 being argumentative.

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1 MR. PARSONS: All right. I'm sorry. I'll with --
 2 all right.
 3 BY MR. PARSONS:
 4 Q. Look at page 79 of your deposition, sir.
 5 A. Okay.
 6 Q. Here's my question to you. As recently as January of 2008,
 7 you testified under oath that your agency could use
 8 internal service funds interest to make the local match?
 9 MR. COOKE: What line are we referring to?
 10 MR. PARSONS: I don't know. I don't have a copy.
 11 He's got it. Page 79.
 12 MR. COOKE: I think we need to -- Your Honor, for
 13 foundation, I'd like to know what line we're referring to.
 14 MR. PARSONS: I can ask him just without --
 15 BY MR. PARSONS:
 16 Q. Mr. Risser, will you put that down for a second? I don't
 17 have a copy. I'll just ask you. Was it your opinion as
 18 recently as January of 2008 that your agency could use
 19 internal funds, or interest generated on internal funds, to
 20 make the local match?
 21 A. **Was that my understanding? Yes, it was.**
 22 Q. All right. And was it your understanding that the reason
 23 to do that was so it takes the liability off the county?
 24 A. **That was one reason.**
 25 Q. Did you state another reason?

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1 A. **Well, that's what it says in the deposition.**
 2 Q. So it takes the liability off the county, right?
 3 A. **Sure. Yes.**
 4 Q. Did Peter Barnes share your approach to that?
 5 A. **I have no idea.**
 6 Q. You don't recall whether he shared your same idea?
 7 A. **No, I don't, no. On local match, no.**
 8 Q. Would you tell the jury that while you were fighting to
 9 make your county pay the local match out of the internal
 10 service funds, Mr. Moran was fighting with the counties to
 11 come up with a plan for the counties to pay that money?
 12 A. **I have --**
 13 MR. COOKE: Object to the form of the question.
 14 First of all, it's compound. And secondly, the witness
 15 didn't say he was fighting with Mr. Moran to pay -- use the
 16 interest out of the internal service fund. Talked about
 17 methodologies, and ways. So I object to the form of the
 18 question.
 19 BY MR. PARSONS:
 20 Q. All right. Let me rephrase it. At the same time you
 21 believe the agency should make the local match, is it fair
 22 to say Mr. Moran thought the counties should make the local
 23 match?
 24 A. **No. You're characterizing me wrong on that. I never said**
 25 **that was the only way we could do it. I authorized**

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1 **Mr. Moran to go to the county, and votes, at board**
 2 **meetings.**
 3 Q. Go to Mr. O'Shea, for example?
 4 A. **Take it -- they needed to tell the county what they -- what**
 5 **their local match was.**
 6 Q. So you were sitting on a board telling Mr. Moran to get out
 7 there and tell the county what their local match was,
 8 right?
 9 A. **Yes.**
 10 Q. And you know he did that?
 11 A. **Yes.**
 12 Q. And then you know after he gets fired Mr. Alan O'Shea, the
 13 County Commissioner, and Mr. Peter Barnes, are
 14 communicating about this -- Mr. Moran's firing, right?
 15 A. **I don't know what they're communicating.**
 16 Q. Do you believe that maybe you pushed Mr. Moran right into
 17 a -- do you believe you put Mr. Moran in a position where
 18 he would get fired for fighting for your agency?
 19 A. **No. No.**
 20 Q. Do you know any other board member, or any other high
 21 administrator at the MBCMH agency, who was fighting to get
 22 the money from the counties other than Mr. Moran?
 23 A. **No.**
 24 Q. And if your agency had to come up with that \$128,000 from
 25 the internal service fund, that would cut services to

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1 people in need from other programs, right?
 2 A. **I don't know that that's where the money would have come**
 3 **from.**
 4 Q. You do know that that \$128,000 was being used for other
 5 programming, right -- other services?
 6 A. **Not necessarily services. Could have been computers.**
 7 Q. Do you believe that that \$128,000 that you were going to
 8 take and use for the local match was being used and
 9 budgeted for other services of some kind with your agency
 10 for people's help?
 11 A. **Well, I don't know that for a fact, sir.**
 12 Q. So you don't know about contracts. Did you ever read the
 13 budget to know where that money was going?
 14 A. **Yeah. I'm still not clear that this is an internal service**
 15 **fund that we would have been talking about. You're kind of**
 16 **throwing me for a loop on that one.**
 17 Q. I'm asking you sort of the scope of your knowledge. I'm
 18 trying to get a better understanding. You said you had
 19 nothing to do with contracts, right?
 20 A. **No.**
 21 Q. You didn't know where the \$128,000 was going to really come
 22 from?
 23 A. **That was Mr. Moran's decision. That wasn't my decision.**
 24 Q. I know. But did you know if your agency had to stand up
 25 and put the money and the counties wouldn't, do you know

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1 what programs that money would come out of?
 2 **A. No. I don't think anybody did.**
 3 **Q.** Right. Because you were cut right to the bone, weren't
 4 you?
 5 **A. No.**
 6 **Q.** After 2005, and the \$2.5 million cuts, that agency was
 7 struggling to keep the services at the same level it had
 8 been, right?
 9 **A. Yes.**
 10 **Q.** You didn't have \$128,000 fat in your agency anymore, did
 11 you?
 12 **A. No, probably.**
 13 **Q.** That money had to come from -- okay. Let me talk to you
 14 about a different subject. Mr. Moran's performance.
 15 Whether it's Mr. Moran, or the staff, that got the \$2.8, it
 16 has Mr. Moran's name on that performance evaluation?
 17 **A. Yes.**
 18 **Q.** And you gave -- you believe you gave -- well, stop -- the
 19 whole board had input into that process, right?
 20 **A. All the ones that chose to.**
 21 **Q.** All the board members who chose to. And actually their
 22 remarks were included as a part of the evaluation packet of
 23 Mr. Moran, right?
 24 **A. Not all of them.**
 25 **Q.** And you think you gave Mr. Moran some bad comments, right?

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1 **A. Yes, I do.**
 2 **Q.** And I asked you to show us where those comments were,
 3 right?
 4 **A. Yes.**
 5 **Q.** Show us any record of those comments, right?
 6 **A. Yes.**
 7 **Q.** You don't have any records?
 8 **A. No, I don't.**
 9 **Q.** So I have to ask you. Is the lack of any records of you
 10 giving him bad marks, is that because you didn't
 11 participate, didn't care to participate, or is it because
 12 you just didn't keep the records?
 13 **A. I lost -- I changed computers and lost the records in my**
 14 **computer when I changed them.**
 15 **Q.** But you agree that Mr. Moran was meeting the performance
 16 standards, correct?
 17 **A. As they stood in that evaluation, yes.**
 18 **Q.** Okay. So no matter what's on your lost records, you agree
 19 Mr. Moran met the standards that were established for
 20 performance evaluation at that agency?
 21 MR. COOKE: Asked and answered several times.
 22 MR. PARSONS: Well --
 23 THE COURT: He can answer it.
 24 THE WITNESS: Yes.
 25 BY MR. PARSONS:

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1 **Q.** And you're not going to say that Mr. Moran wasn't as good
 2 as other CMH directors, are you?
 3 **A. He was different.**
 4 **Q.** But my question is -- we're all different, right?
 5 **A. Yes.**
 6 **Q.** But Mr. Moran -- you're not going to say there was another
 7 director out there who was better than Mr. Moran, are you?
 8 **A. In certain aspects.**
 9 **Q.** I asked you, do you remember, at your deposition, the same
 10 question?
 11 **A. Yes.**
 12 **Q.** Now, at the time of your deposition, I asked you whether
 13 you would say Mr. Moran wasn't as good, and you said, no,
 14 he was different, right?
 15 **A. Yes. Yeah.**
 16 **Q.** Why is it so hard -- okay. So your answer -- does it
 17 remain, no, you're not going to say he wasn't as good,
 18 right?
 19 **A. I don't -- personally don't think he was as good as other**
 20 **directors.**
 21 **Q.** But when I asked you that under oath, that's not what you
 22 said, right?
 23 **A. Well, I would have to refresh my memory on the deposition.**
 24 **Q.** Look at page 83.
 25 **A. Okay. And what was your question, again, sir?**

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1 **Q.** My question is you're not going to say that Mr. Moran
 2 wasn't as good as other directors. You're not going to
 3 give us a name of a director who is better than Mr. Moran,
 4 right?
 5 **A. No. No.**
 6 **Q.** And Mr. Moran never did anything to cause a loss of
 7 services in this community, right?
 8 **A. I wouldn't say that.**
 9 **Q.** Look at page 85. See what you said?
 10 **A. I said not specifically.**
 11 **Q.** Well, I asked you, repeat it. Did Mr. Moran -- you were on
 12 the board for 11 years?
 13 **A. Yes.**
 14 **Q.** Did Mr. Moran ever do anything in this community to cause a
 15 loss of services for the people in need?
 16 **A. I don't have any specifics, but I would say yes.**
 17 **Q.** You don't have any specifics?
 18 **A. That's what I said, not specifically in the deposition.**
 19 **Q.** You said not specifically, right?
 20 **A. Yes. We didn't really know what Mr. Moran was doing as far**
 21 **as services on the board. That was not -- the board was**
 22 **not involved with any of that. So it's hard for me to**
 23 **judge that.**
 24 **Q.** I'm trying to exclude a parade of terribles, as we say in
 25 the law. As far as you know, that's understood. But as

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1 far as you know, he didn't cause any loss in services,
 2 right?
 3 **A. Not specifically, I'll say again, because I don't know.**
 4 **Q.** Yeah. And you live in this community, your wife works in
 5 one of the contractor's home, and you still don't know of
 6 any loss of services he caused during the entire time you
 7 knew him, right?
 8 **A. Well, there's been lots of losses of services.**
 9 **Q.** Right. Because of budget cuts?
 10 **A. Maybe budgets, maybe something else. I don't know in some**
 11 **cases.**
 12 THE COURT: Well, if you don't know -- his
 13 question -- counsel's question to you was, you still don't
 14 know of any loss of services he, Mr. Moran, caused during
 15 the entire time you knew him, right?
 16 THE WITNESS: Well, yes. Yes.
 17 THE COURT: Okay. There we go. Move on to the
 18 next question.
 19 This is -- just try to listen to the question, and
 20 answer the question.
 21 THE WITNESS: Yes, sir.
 22 THE COURT: And we can all go home a lot sooner.
 23 We'll take a recess at this point.
 24 (Court in recess at 10:54 a.m.)
 25 (Court reconvenes at 11:19 a.m.)

1 THE COURT: We're ready for the Jury.
 2 (Jury enters courtroom at 11:20 a.m.)
 3 THE COURT: All right. Mr. Parsons.
 4 MR. PARSONS: Thank you, Your Honor.
 5 BY MR. PARSONS:
 6 **Q.** Mr. Risser, I'd like to move to another subject about straw
 7 polling. If you remember, I asked you -- have you heard
 8 the term "straw polling" before?
 9 **A. Yes.**
 10 **Q.** All right. And you know that means where you are a member
 11 of a board, but you ask other people how they're going to
 12 vote on an issue, right?
 13 **A. Yes.**
 14 **Q.** And that's not legal, you understand, under the Open
 15 Meetings Act?
 16 MR. COOKE: I object to the form of that question,
 17 because -- the Court's aware of the law on that.
 18 THE COURT: Yeah. I'll sustain that.
 19 MR. PARSONS: All right.
 20 MR. COOKE: Thanks.
 21 BY MR. PARSONS:
 22 **Q.** That's not something that you would do?
 23 **A. No.**
 24 **Q.** And "no" in this case means you would do it, or you would
 25 not do it?

1 **A. I would not do it.**
 2 **Q.** Because you're supposed to meet publicly and make your
 3 decisions in public, right?
 4 **A. Yes.**
 5 **Q.** That's why you're called a public official, right?
 6 **A. Yes.**
 7 **Q.** Now, before the June 14 meeting, did you discuss your vote
 8 on the resolution to fire Mr. Moran with somebody else?
 9 **A. Not that I recall.**
 10 **Q.** Do you remember June 14 is the meeting when a resolution
 11 terminating Mr. Moran came before the board?
 12 **A. Yes.**
 13 **Q.** Came suddenly, right?
 14 **A. Yes.**
 15 **Q.** And you recall no conversations beforehand, that's what
 16 your testimony under oath is, correct?
 17 **A. About that particular -- about -- no conversations --**
 18 **Q.** About the resolution?
 19 **A. Maybe a couple minor ones.**
 20 **Q.** Couple minor ones?
 21 **A. Well, no. In all honesty, no. It was after the**
 22 **resolution.**
 23 **Q.** No. You say you didn't know that resolution was even going
 24 to come up, right?
 25 **A. No. I got it in the mail the night before, I think.**

1 **Q.** You didn't meet with anybody before the June 14 meeting to
 2 discuss anything about it, right?
 3 **A. Not concerning that particular resolution, no.**
 4 **Q.** You didn't know who drafted the resolution before that
 5 meeting?
 6 **A. Not until afterwards.**
 7 **Q.** Some unknown person, you said, drafted the resolution.
 8 That's all you knew beforehand?
 9 **A. Yes.**
 10 **Q.** But that's not true, is it?
 11 **A. Yes, it is true. I didn't know for sure.**
 12 **Q.** You were in court when Mr. Barnes testified, weren't you?
 13 **A. Yes.**
 14 **Q.** Do you remember the writing we did on the board, Mr. Barnes
 15 met before June 14 to discuss -- he met with Kelley,
 16 Pechacek, and Barnes. And then he met another time with
 17 Pechacek, and Risser, and Barnes?
 18 **A. Yes.**
 19 **Q.** So you did meet before the June 14 meeting?
 20 **A. Months before.**
 21 **Q.** I thought you just said --
 22 **A. Months before.**
 23 **Q.** Well, I know you met years before, right?
 24 **A. Yes.**
 25 **Q.** But you understood when I was asking in your deposition

1 testimony, did you understand that I was asking did you
 2 meet before the June 14 meeting to discuss firing
 3 Mr. Moran? And do you recall you said no?
 4 **A. Yes. That's --**
 5 **Q.** And that's not true, is it?
 6 **A. No. It is true.**
 7 **Q.** Well, how can you not meet, and Mr. Barnes say you met?
 8 **A. That was about the administrative leave that Mr. Barnes was**
 9 **talking about is when I met with Mr. Barnes. And that was**
 10 **months before. I don't know what the date was.**
 11 **Q.** So it's your testimony that before the June 14 meeting
 12 where Mr. Moran got fired is it your testimony no board
 13 member contacted any other board members to ask them how
 14 they would vote if the issue came up?
 15 **A. I don't know what other board members did. I didn't.**
 16 **Q.** But you didn't?
 17 **A. I didn't.**
 18 **Q.** But Mr. Barnes said he met with you. If Mr. Barnes said he
 19 met with you to discuss it before the June 14 meeting, is
 20 that true or false?
 21 **A. False.**
 22 **Q.** It's false. And if somebody were to say that he discussed
 23 the resolution, talked by phone before June 14 on the issue
 24 of the June 14 meeting, if he says that, that's not true?
 25 **A. We spoke on the phone, but not about any resolution.**

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1 THE COURT: Well, what did you speak about?
 2 THE WITNESS: Just general things. Mr. Barnes and
 3 I talk --
 4 THE COURT: Did Mr. Moran come up?
 5 THE WITNESS: He probably did. But I don't know
 6 for sure. I don't -- you know, Mr. Barnes and I would talk
 7 occasionally. There was certainly nothing about any
 8 resolution that I remember. Because I had no idea what was
 9 even up with that resolution.
 10 BY MR. PARSONS:
 11 **Q.** When did you talk -- how far in advance of meeting did you
 12 talk?
 13 **A. I honestly don't know. You know, that was years ago. Two**
 14 **years ago. Um, I don't remember every conversation I've**
 15 **had with people.**
 16 **Q.** This was a pretty big issue?
 17 **A. It was. It was.**
 18 **Q.** Mr. Barnes had already drafted that resolution by June 10?
 19 **A. But unbeknownst to me.**
 20 **Q.** All right. So if -- you're saying under oath you didn't
 21 talk to Mr. Barnes about this resolution. You didn't meet
 22 with Mr. Barnes, or anybody else about the resolution. You
 23 didn't even know that resolution was coming up until the
 24 meeting?
 25 **A. No. I got it the night before -- or the day before in the**

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1 mail.
 2 **MR. PARSONS: That's all the questions I have.**
 3 **THE COURT: Mr. Cooke.**
 4 **MR. COOKE: Thank you, Your Honor.**
 5 **MR. PARSONS: Wait. Could I --**
 6 **THE COURT: I'll give you another.**
 7 **MR. PARSONS: Sorry.**
 8 **THE COURT: That's all right.**
 9 BY MR. PARSONS:
 10 **Q.** Do you remember Mr. Barnes using this phrase -- you were in
 11 court when he said, the only way it could be handled was to
 12 talk to these people beforehand. Do you remember he said
 13 that?
 14 **A. Yes.**
 15 **Q.** And do you maintain still that you're going to stick with
 16 your testimony that you didn't talk to him, and you didn't
 17 know even that resolution was coming up?
 18 **A. I knew -- well, I got it the night before.**
 19 **Q.** I know. But --
 20 **A. Mr. Barnes, and probably most of the board, knew -- it was**
 21 **no secret. Three years ago I probably would have voted**
 22 **against Mr. Moran.**
 23 **Q.** Now you're straying from my question.
 24 **A. I'm sorry.**
 25 **Q.** Thank you.

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1 **A. I'm sorry.**
 2 **Q.** My question is despite the fact that Mr. Barnes said the
 3 only way it could be handled was to talk to the seven
 4 people in advance. You are maintaining you didn't talk to
 5 Mr. Barnes. That's what you're saying under oath?
 6 **A. About that resolution, yes.**
 7 **MR. PARSONS: That's all I have.**
 8 **THE COURT: Did you speak with him about your**
 9 **dissatisfaction with Mr. Moran?**
 10 **THE WITNESS: For several years, judge.**
 11 **THE COURT: Okay. Well, and in the period before**
 12 **the June meeting, for the month or so before the June**
 13 **meeting?**
 14 **THE WITNESS: Yeah. Probably within that month or**
 15 **so, I had.**
 16 **THE COURT: Okay. And did you express to him that**
 17 **you wanted to terminate Mr. Moran.**
 18 **THE WITNESS: Probably a good chance, yes, sir.**
 19 **MR. COOKE: May I inquire?**
 20 **THE COURT: Yes.**
 21 **CROSS-EXAMINATION**
 22 BY MR. COOKE:
 23 **Q.** Good morning, sir, Mr. Risser.
 24 **A. Yes.**
 25 **Q.** Good morning.

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1 A. Good morning.
 2 Q. How are you?
 3 A. Good.
 4 Q. Are you a little nervous up there?
 5 A. A little bit.
 6 Q. Try to relax and listen to the questions, and let's get
 7 some answers to some things. Tell us first about your
 8 background, sir. How did you get involved in the mental
 9 health field?
 10 A. Well, my wife eventually -- had a mid life crisis, I guess,
 11 and changed careers about 20 years ago, and started --
 12 actually, she worked for Community Mental Health for a
 13 year, and then she got laid off. And then she worked for
 14 some of the contractors. I guess with community treatment
 15 services. And things were so good in the mental health
 16 system back then. There was lots of moneys. People were
 17 getting good care. It was just incredible the care these
 18 folks were getting.
 19 Q. So your wife was involved in the mental health field?
 20 A. Yes.
 21 Q. What does she do in the mental health field?
 22 A. Now she's a manager. She was a direct care staff.
 23 Q. What is direct care staff?
 24 A. That's taking care of the individual folks, you know,
 25 whether it be changing diapers, taking them places, just

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1 making sure they try to have a good full life.
 2 Q. When you talk about these folks that we're talking about,
 3 they're people that have mental impairments or
 4 developmental disabilities?
 5 A. That's correct, yes.
 6 Q. Did you at some point in your life become a care provider?
 7 A. Yes, I did. Temporarily.
 8 Q. Tell us what you did?
 9 A. Well, I was actually a direct care worker. I actually
 10 hired in as a sleeper. One of the homes that you could go
 11 there and sleep at night and get paid. Because they had to
 12 have somebody on staff if there was an emergency. But a
 13 conflict with my other job to that I had to quit
 14 eventually. But I got to know a lot of the folks. And it
 15 was real rewarding.
 16 Q. What facility were you assigned to when you were working
 17 there as a sleeper?
 18 A. I was at CLF and a place called Apple Valley, both in Bear
 19 Lake.
 20 Q. How long have you lived in this area, sir?
 21 A. All my life.
 22 Q. Where did you go to high school?
 23 A. Manistee High.
 24 Q. Do you have another career or occupation besides your
 25 interest in mental health?

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1 A. I have a pet grooming business.
 2 Q. Pet grooming. How long have you had that business?
 3 A. About 19 years.
 4 Q. Now, at some point in time you got involved with the
 5 Manistee/Benzie Community Mental Health board?
 6 A. Yes.
 7 Q. Why did you get involved with the board?
 8 A. I kept seeing services being cut, and cut, and cut. And
 9 this was back when things were still good. But they were
 10 still getting quite a few reductions in services.
 11 Q. And how did you see reductions in services?
 12 A. Well, there used to be a lot of community things that the
 13 folks would go to. They had Halloween parties at different
 14 facilities in Manistee. And there was just a lot of
 15 community integration. You know, people would go out and
 16 they'd have a good time together. The folks would get
 17 together. And it was a good time for the staff and for the
 18 folks they were working for.
 19 Q. Your wife was working in one of these facilities at the
 20 time?
 21 A. Yes.
 22 Q. And you would go visit these people that your wife was
 23 taking care of?
 24 A. Yes.
 25 Q. And you'd have personal interactions with these folks?

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1 A. Yes.
 2 Q. You made friends --
 3 A. Yes.
 4 Q. -- with these people. You went on social outings --
 5 A. Yes.
 6 Q. -- with these people. You saw the kind of care that they
 7 were receiving; is that true?
 8 A. Yes.
 9 Q. Did you develop a level of concern for these folks?
 10 A. Oh, yes, I did.
 11 Q. And can you give us a year -- roughly a year time period --
 12 when you were actually interacting with some of these
 13 people in the residential homes?
 14 A. Oh, mid to early '90s. Mid '90s.
 15 Q. All right. And you told the jury that at some point in
 16 time you start seeing services being cut back?
 17 A. Yes.
 18 Q. Tell me what specifically you saw that was of concern to
 19 you?
 20 A. Well, there -- the staffing was being reduced. They didn't
 21 have enough staff to do anything. They had to --
 22 eventually it got to the point where they just had to sit
 23 in their homes pretty much most of day and not get out and
 24 do things, where before they were out almost every day
 25 doing things in the community. You would see them -- go to

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1 **K-Mart, you might see a van load of folks at K-mart going**
 2 **in there having a good time. You just don't see that**
 3 **anymore.**
 4 Q. So at some point in time it looked like they were getting
 5 just more warehousing of these clients?
 6 A. **Exactly.**
 7 Q. Did it appear to you that that's because staffing was being
 8 reduced?
 9 A. **Yes.**
 10 Q. Is that why you became interested in sitting on the mental
 11 health board?
 12 A. **Yes.**
 13 Q. And were you in fact appointed to the mental health board?
 14 A. **Yes.**
 15 Q. And when were you appointed to the mental health board?
 16 A. **It will be 11 years ago. '98, I think.**
 17 Q. Sometime in '98?
 18 A. **Yes.**
 19 Q. Who appointed you to the mental health board?
 20 A. **County commissioners.**
 21 Q. From what county?
 22 A. **Manistee.**
 23 Q. From Manistee County. And you mentioned something earlier
 24 in your examination with Mr. Parsons that, from the moment
 25 that you were appointed, Mr. Moran objected to your

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1 appointment?
 2 A. **Actually even before I got appointed. He sent Mr. Rose**
 3 **down there and tried to get a legal opinion from our county**
 4 **prosecutor that I had a conflict of interest. Mr. -- it**
 5 **was actually -- Dennis Swain was the prosecutor, said there**
 6 **was no conflict.**
 7 Q. So who were you replacing on the mental health board, do
 8 you recall?
 9 A. **No, I don't. I got a two-year term the first time. So I**
 10 **don't remember exactly who -- somebody had left for some**
 11 **reason.**
 12 Q. Did you find it curious that even before you got on the
 13 board Mr. Rose was in front of the Manistee County
 14 commissioners arguing that you had some kind of conflict?
 15 A. **Yes, I did.**
 16 Q. Did you have any idea why Mr. Rose would be down there
 17 arguing that you had some kind of conflict?
 18 A. **I had been to at least one mental health meeting before,**
 19 **and kind of talked to Mr. Moran at the meeting about the**
 20 **cuts in services.**
 21 Q. Oh, so you had gone as a member of the public to one of the
 22 meetings?
 23 A. **Yes.**
 24 Q. And at the meeting you had addressed Mr. Moran?
 25 A. **Yes.**

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1 Q. And had you addressed him in public comment or later
 2 privately?
 3 A. **I think it was public comment.**
 4 Q. So you stood up in public comment and you made some
 5 comments on the record that you felt that there was a
 6 reduction in services --
 7 A. **Yes.**
 8 Q. -- for these folks? Did you inquire as to why there was a
 9 reduction in services for these folks?
 10 A. **Yes, I did.**
 11 Q. Did you get any sort of satisfactory answer as to why there
 12 was a reduction in services?
 13 A. **Not -- not -- not in my opinion, no.**
 14 Q. And that was the one meeting you went to where you raised
 15 that issue?
 16 A. **Yes.**
 17 Q. And then before you were even appointed by Manistee,
 18 Mr. Rose came down and started raising issues of conflict?
 19 A. **Yes.**
 20 Q. Saying that you shouldn't be appointed because of this
 21 conflict?
 22 A. **Yes.**
 23 Q. And you mentioned that somebody -- they went to the
 24 prosecutor to see if --
 25 A. **Well, actually the prosecutor was at the meeting, and he**

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1 **ruled on it right there -- or he made a determination that**
 2 **there was no conflict.**
 3 Q. And at this meeting, when you were appointed to the board,
 4 did you reveal that your wife worked at Moore Living?
 5 A. **Well, actually it was Community Treatment Services at the**
 6 **time. But yes.**
 7 Q. A provider?
 8 A. **Yes.**
 9 Q. You worked for a provider?
 10 A. **Yes.**
 11 Q. All right. So you were appointed?
 12 A. **Yes.**
 13 Q. And did you -- early on in your appointment to the board,
 14 did you start raising these concerns at board meetings that
 15 there's been a reduction in services?
 16 A. **Tried to.**
 17 Q. When you say you "tried to," were you stopped from doing
 18 that?
 19 A. **Yes.**
 20 Q. And when you started raising these concerns about a
 21 reduction in services, did Mr. Moran tell you or take the
 22 position that you were in conflict?
 23 A. **Yes.**
 24 Q. And did he do that lots of times?
 25 A. **Oh, sure. Lots of times.**

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1 Q. Did he do that any time you raised your concerns that the
 2 people that were supposed to be taken care of aren't
 3 getting taken care of the way I think they should be?
 4 A. Yes.
 5 Q. Did you feel it was your role as a member of the board
 6 under the Mental Health Code to assure that the clients,
 7 the end users, were getting services?
 8 A. Yes.
 9 Q. And you've been on the board how many years now?
 10 A. 11 years.
 11 Q. 11 years. For the entire time you were on the board with
 12 Mr. Moran as the CEO, did you try to raise these concerns?
 13 A. Yes.
 14 Q. And on all of these occasions, where you raised these
 15 concerns, did Mr. Moran tell you you had a conflict of
 16 interest, and shouldn't be talking about this?
 17 A. I would say yes.
 18 Q. But did you still continue to talk about this issue?
 19 A. Yes, I did.
 20 Q. Because you felt, sir, it was your job as a board member,
 21 having seen what you saw, to try to change something,
 22 right?
 23 A. Yes.
 24 Q. And were you, for most of the time Mr. Moran was the chief
 25 executive officer, were you in the minority -- voting

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1 minority?
 2 A. Yes.
 3 Q. Was there a substantial, or at least a pretty solid,
 4 majority of the board that pretty much voted with Mr. Moran
 5 most of the time?
 6 A. Yes.
 7 Q. And did you find it frustrating that you couldn't get your
 8 issue to the table about cuts in services?
 9 A. Yes.
 10 Q. And sir, you mentioned, I think in your examination with
 11 Mr. Parsons, that you would have voted to terminate
 12 Mr. Moran years ago; is that right?
 13 A. Yes.
 14 Q. And you would have done that because you felt it was in the
 15 best interest of the agency to get somebody else to run the
 16 agency?
 17 A. Yes.
 18 Q. You felt, sir, that this central issue for you was not
 19 being addressed as far as this cutbacks in services for
 20 these folks?
 21 A. Yes.
 22 Q. So did that letter of April 18 of 2007, did that have any
 23 impact on you whatsoever when you voted to terminate
 24 Mr. Moran?
 25 A. No.

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1 Q. We've seen this in the letter, this idea that you were
 2 trying to influence multi-million dollar federal contracts,
 3 was that -- that same issue that Mr. Moran had been
 4 hammering on you for years -- was that the same issue
 5 that's raised in the letter?
 6 A. Yeah. Yes.
 7 Q. All right. And tell me, other than trying to raise these
 8 concerns about the lack of staffing, was there another time
 9 where you tried to intervene with Mr. Rooker?
 10 A. No.
 11 Q. Did you talk to Mr. Rooker?
 12 A. No.
 13 Q. The Moore Living fellow, at some point in time you did
 14 speak with Mr. Rooker.
 15 A. I talked to him on the phone once, yes.
 16 Q. On the phone one time; is that right?
 17 A. Yes. Yes.
 18 Q. Okay. Tell the jury, please, why you called Mr. Rooker up?
 19 A. I had, you know, I think very valid concerns that if in
 20 fact they were in dire straits that they were, that they
 21 were going to go out of business.
 22 Q. Now, these folks that you were concerned about that you had
 23 made friends with, were they now living at Moore Living --
 24 some of those people?
 25 A. Some of them were.

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1 Q. Did you know them by name -- by first name?
 2 A. Sure.
 3 Q. And you'd go see them once in a while?
 4 A. Yes.
 5 Q. So you learned through your wife that Mr. Rooker was
 6 talking about severe budgetary crises at Moore Living; is
 7 that true?
 8 A. Yes.
 9 Q. And that was roughly in 2005 or thereabouts; is that
 10 correct?
 11 A. Yes.
 12 Q. And did your wife convey to you the concern that Moore
 13 Living might close its doors?
 14 A. Yes.
 15 Q. All right. Tell the jury, please, when you learned that,
 16 what did you say to Mr. Rooker when you called him on the
 17 phone?
 18 A. Well, I called him up and exchanged a few pleasantries with
 19 him, introduced myself, because she had been working for
 20 him for many years, and I never met him, and just pretty
 21 much conveyed the fact that I had heard there was some
 22 problems, and if he in fact wanted to come to the board and
 23 let the board know what's going on. Because the board was
 24 never informed of this type of thing. We were just
 25 isolated.

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1 Q. All right. So you called Rooker and let him know if he
 2 wanted to come to the board what would you do?
 3 A. I would ask Jean Bowers, who was chair, if she would call a
 4 special meeting.
 5 Q. All right. And how did Rooker respond to that offer?
 6 A. I don't really remember if he said -- I don't think he said
 7 yes, but I don't think he said no either. Then we just --
 8 I told him I would send the contact information to him, and
 9 I did. And that was the last I talked to him.
 10 Q. And the contact information you sent was Jean Bowers' phone
 11 number; is that right?
 12 A. Yes.
 13 Q. Have any ever have any further conversations with Rooker?
 14 A. No.
 15 Q. Did you ever advise Rooker to do something illegal?
 16 A. No.
 17 Q. Did you ever try to extort the board, or Mr. Moran, to do
 18 something with these contracts?
 19 A. No.
 20 Q. Let's talk about the contracts for a minute. Did the
 21 board -- actually when Mr. Moran was chief executive
 22 officer, did the board vote to approve contracts?
 23 A. Not individually, or not -- no. No. I would say no.
 24 Q. Does the Mental Health Code require the mental health board
 25 to approve all contracts?

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1 A. Yes.
 2 Q. And did you feel like you were not performing a service
 3 that you were required to perform --
 4 A. Yes.
 5 Q. -- when you were on the board?
 6 A. Yes.
 7 Q. Was the reason you couldn't vote on the contracts the fact
 8 that Mr. Moran wouldn't bring them to you to vote on?
 9 A. Yes.
 10 Q. Did you try to ask Mr. Moran about contracts?
 11 A. Yes.
 12 Q. Did you try to ask Mr. Moran about budgetary
 13 considerations?
 14 A. Yes.
 15 Q. Did he bring this information to you?
 16 A. Not usually.
 17 Q. Did he require, sir, a majority vote of the board to direct
 18 him to do something before you do it?
 19 A. Yes.
 20 Q. So if you were in the minority, and you wanted to find out
 21 why these cuts were happening at Moore Living, you couldn't
 22 even get a motion to the floor to tell them to do it?
 23 A. No.
 24 Q. All right. And this is a level of frustration that you've
 25 been experiencing since Mr. Moran was -- from the time you

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1 joined the board until he was terminated in 2007?
 2 A. Yes.
 3 Q. Okay. Did Mr. Moran ever belittle you in front of other
 4 board members?
 5 A. Yes.
 6 Q. Did he do that because he was asserting at these open and
 7 public meetings that you had some kind of a conflict?
 8 A. Sometimes, yes.
 9 Q. Did he ever belittle you in private or call you into a
 10 private area and dress you down for this?
 11 A. Not really. We talked. He never dressed me down in
 12 private.
 13 Q. Okay. And at some point in time you were chairman of the
 14 board; is that right?
 15 A. Yes.
 16 Q. And did you feel like as chairman of the board that you
 17 were able to influence the board to do what you felt the
 18 board was required to do by law?
 19 A. No.
 20 Q. Were you still in the minority, even though you were
 21 chairman of the board?
 22 A. Yes.
 23 Q. Okay. Let's move forward to April of 2007. It's my
 24 understanding at that point in time there were three
 25 positions up for appointment -- new positions on the

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1 board -- is that right?
 2 A. Yes.
 3 Q. And in April 2007, three new people came on the board; is
 4 that right?
 5 A. Yes.
 6 Q. Terri Pechacek came on the board?
 7 A. Yes.
 8 Q. Nipper Wisniski came on the board?
 9 A. Yes.
 10 Q. And Don Smeltzer came on the board?
 11 A. Yes.
 12 Q. Is that correct?
 13 A. Yes.
 14 Q. And had you had any sort of working relationship with any
 15 of those folks before they came on the board?
 16 A. No. I knew Terri just from when she worked at mental
 17 health, but no.
 18 Q. And Terri had come to some meetings as a member of the
 19 public previously; is that right?
 20 A. Yes.
 21 Q. Had you been at some of those meetings where Terri came?
 22 A. Yes.
 23 Q. And was Terri, at some of those public meetings before she
 24 got appointed to the board, was she raising concerns about
 25 services to the clients?

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1 A. Yes.
 2 Q. Was she expressing in public comment that she felt that
 3 services to the clients were being substantially reduced?
 4 A. Yes.
 5 Q. Do you recall any meetings where Mr. Moran threatened to
 6 sue Terri?
 7 A. Yes.
 8 Q. He threatened to sue her for defaming him; is that right?
 9 A. Yes.
 10 Q. And this was at a public meeting?
 11 A. Yes.
 12 Q. Did you feel that that was inappropriate for the chief
 13 executive officer of the mental health board to be telling
 14 a member of the public that he's going to sue them for
 15 defamation at a public meeting?
 16 A. Very. Very.
 17 Q. All right. And do you think that was in the -- not in the
 18 best interest of the agency, or the board, for the chief
 19 executive officer to act that way?
 20 A. Yeah. That was not.
 21 Q. All right. But other than seeing Terri come to these
 22 public meetings, you hadn't talked to her privately about
 23 the way she might vote on certain issues?
 24 A. Oh, no.
 25 Q. Same with Don Smeltzer. Had you talked to him privately

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1 about the way he might vote on certain issues?
 2 A. No.
 3 Q. And Nipper Wisniski, had you talked to him privately about
 4 the way he might vote on certain issues?
 5 A. No.
 6 Q. So when the board composition changed in April, you didn't
 7 know where the majority really of the board was going to
 8 flesh out; is that correct?
 9 A. No, I didn't.
 10 Q. All right. So I want to direct your attention to the May
 11 10th of 2007 meeting, is that the meeting where Mr. Moran
 12 came in with a proposal to extend his contract?
 13 A. Yes.
 14 Q. And when Mr. Moran came to that meeting, was that proposal
 15 introduced by him, or by the executive committee?
 16 A. I think the executive committee, if I remember correctly.
 17 Q. What was your impression at the May 10, 2007, meeting when
 18 the executive committee brought this contract into the
 19 meeting?
 20 A. I was extremely mad. I couldn't believe that they would do
 21 that. It was a violation of the law to do that that way.
 22 And it just wasn't the way we did things -- the way we
 23 should have done things at agency.
 24 Q. Why do you think it was a violation of the law?
 25 A. Because the three committee members met in a quorum with

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1 Mr. Moran to negotiate.
 2 Q. And the executive committee is a standing committee of the
 3 board; is that right?
 4 A. It is, yes.
 5 Q. And is it your understanding that a standing committee of a
 6 public body is governed by the Open Meetings Act?
 7 A. Yes.
 8 Q. So when three -- and it was a committee of three; is that
 9 right?
 10 A. Yes.
 11 Q. So when the full executive committee met with Mr. Moran to
 12 talk about a contract, you felt that was a violation of the
 13 law?
 14 A. Yes.
 15 MR. PARSONS: Can I object? I believe for the
 16 same reasons that I was prevented from asking Mr. Risser his
 17 awareness of Open Meetings Act law in my line of
 18 questioning --
 19 MR. COOKE: I just asked if he felt that, Your
 20 Honor.
 21 THE COURT: Yeah. He's asked if -- if he thought
 22 it was -- if he felt it was. That's not evidence that it
 23 was a violation --
 24 MR. PARSONS: Thank you.
 25 THE COURT: -- of the Open Meetings Act.

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1 MR. COOKE: Thank you, Your Honor.
 2 BY MR. COOKE:
 3 Q. And you had bylaws that were in place in May of '07; is
 4 that right?
 5 A. Yes.
 6 Q. Was it your understanding that bylaws required the
 7 executive committee, if they met, to give notice to the
 8 full board?
 9 A. Yes.
 10 Q. And the idea was to give notice to the full board so they
 11 could attend?
 12 A. Yes.
 13 Q. Now, when the executive committee came in, it actually
 14 turned into a resolution that they tried to pass; is that
 15 true?
 16 A. Yes.
 17 Q. And we've seen the minutes. It wasn't just a suggestion.
 18 It was moved as a resolution, and there was an attempt made
 19 to pass that?
 20 A. Yes.
 21 Q. And if that had passed, Mr. Moran's contract would have
 22 been extended for another three years?
 23 A. Yes.
 24 Q. And would that have been a frustration of yours?
 25 A. Oh, yes.

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1 Q. There was a recalibration study going on at the same time;
 2 is that true?
 3 A. Yes.
 4 Q. And the agency had hired an outside firm to come in and
 5 look at everybody's salary structure; is that right?
 6 A. Yes.
 7 Q. And the reason you did that is because -- one of the
 8 reasons is because there was this big cut in 2005, and you
 9 personally were concerned about are administrative salaries
 10 too high?
 11 A. Yes.
 12 Q. And you wanted to compare administrative salaries across a
 13 spectrum, including Michigan, to see how you stacked up; is
 14 that right?
 15 A. Yes.
 16 Q. And as of May, 2007, that study hadn't even been concluded
 17 yet; is that right?
 18 A. No.
 19 Q. Okay. So when Mr. Moran -- then when the executive
 20 committee came in, even though nobody else's salary had
 21 been set at that point in time, and tried to get a contract
 22 extension for Mr. Moran, how did you vote?
 23 A. No.
 24 Q. And did that resolution pass?
 25 A. No.

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1 Q. Was this the first time a majority of the board had
 2 defeated a proposal that was important to Mr. Moran?
 3 A. Yes.
 4 Q. Did you at that point in time, in the May 2007, meeting
 5 believe that there could now be potentially your issue
 6 brought to light about services?
 7 A. Yes.
 8 Q. Did you feel that there was now some light maybe shining on
 9 some issues that you wanted to raise?
 10 A. Yes.
 11 THE COURT: Did that vote -- did the way that vote
 12 went, did that surprise you?
 13 THE WITNESS: Yes, it did.
 14 MR. PARSONS: The May 10 meeting, we're talking?
 15 THE COURT: Yes.
 16 MR. COOKE: The May 10 meeting.
 17 BY MR. COOKE:
 18 Q. And at the May 10 meeting, the vote 7-5 not to extend
 19 Mr. Moran's contract, occurred before this April 18 letter
 20 ever surfaces; is that true?
 21 A. Yes.
 22 Q. All right. Now, did you get a copy of the April 18 letter?
 23 A. Yes.
 24 Q. Did you get it after the May 10th meeting?
 25 A. Yes.

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1 Q. Did it surprise you that you received a copy of a letter
 2 dated April 18 after you had this meeting May 10th?
 3 A. Yes.
 4 MR. COOKE: All right. If I may hand out my
 5 exhibit books, Your Honor, for the next piece of my
 6 examination.
 7 THE COURT: All right.
 8 BY MR. COOKE:
 9 Q. All right, sir. I would like to have you turn to
 10 exhibit Q. Take a look without the jury turning to exhibit
 11 Q?
 12 MR. PARSONS: Exhibit 30.
 13 MR. COOKE: All right. That's already been
 14 admitted into evidence. We've seen that as a plaintiff's
 15 exhibit.
 16 THE COURT: All right. Then exhibit Q is already
 17 in evidence, defendant's Q, as plaintiff's 30. So the jury
 18 can look at it.
 19 MR. COOKE: Thank you, Your Honor.
 20 BY MR. COOKE:
 21 Q. Please look at Q with me, sir. Now, is that the letter of
 22 April 18 of 2007 that you received after the May 10th
 23 meeting?
 24 A. Yes.
 25 Q. And it says, I am writing to inform you of two actions I

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1 will be taking as part of my legal and contractual
 2 responsibilities as CEO of Manistee/Benzie Community Mental
 3 Health. I am taking these actions to protect this agency.
 4 Is that true?
 5 A. Yes.
 6 Q. That seemed like -- when you read that document, it seems
 7 like a fairly serious statement; is that correct?
 8 A. Yes.
 9 Q. Seems like a fairly high profile thing that Mr. Moran is
 10 about to talk about; is that correct?
 11 A. Yes.
 12 Q. A sense of urgency to this letter?
 13 A. Yes.
 14 Q. And did Mr. Moran say anything at the May 10th board
 15 meeting that he felt you should be reported to the U.S.
 16 attorney for your conflicts?
 17 A. No.
 18 Q. In fact, this entire period of time of ten years or more
 19 that you've been on the board when he was saying you had
 20 this conflict, did he ever time one time go to a law
 21 enforcement official and try to prosecute you?
 22 A. No.
 23 Q. And if he had gone to a law enforcement official and tried
 24 to prosecute you, were you comfortable, sir, that you
 25 weren't in conflict of any kind?

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1 A. Yes.

2 Q. Were you actually hoping he might do that so you could

3 resolve the issue?

4 A. Yes.

5 Q. Are you in some way glad this issue's out here right now to

6 see if it can be resolved?

7 A. Yes.

8 Q. Has the fact that Mr. Moran raised this issue with you time

9 and time again, has that been stressful for you?

10 A. Oh, extremely so.

11 Q. And has that at times caused you to maybe want to leave the

12 board?

13 A. Yes.

14 Q. But you didn't?

15 A. No, I didn't.

16 Q. Now, the first thing that he says here. First I'll be

17 writing to the Michigan Department of Community Health to

18 inform their compliance officer that Manistee and Benzie

19 Counties are currently out of compliance with county local

20 funding requirements as mandated by the Michigan Mental

21 Health Code.

22 Do you see that?

23 A. Yes.

24 Q. And at that May meeting, did Mr. Moran say, look, I am at

25 my wit's end with the two counties. They're not paying any

780

1 money in. I've got to report them?

2 A. No.

3 Q. Did the context of this April 18 letter, does it seem to

4 be, as compared to what's important in your organization,

5 more important than extending Mr. Moran's contract?

6 A. No.

7 Q. Do you understand the question, sir, about --

8 A. No, I don't.

9 Q. -- the issue being raised in the May meeting was

10 Mr. Moran's contract?

11 A. Yes.

12 Q. The issues raised of the local match -- what's more

13 important in your mind to the agency? Getting the matching

14 money in, or extending Mr. Moran contract?

15 A. Getting the matching money in.

16 Q. But although this letter seems to convey a very important

17 issue about the local match, that was never raised at the

18 May meeting, was it?

19 A. No.

20 Q. Was it your understanding at the May meeting that the

21 counties were in fact paying in additional moneys to the

22 match?

23 A. Yes. My understanding.

24 Q. Back in October of 2006, or September/October of 2006,

25 weren't there a series of meetings that took place between

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1 county officials and people from the state, Mr. Kielhorn,

2 et cetera, over this local match issue?

3 A. Yes.

4 Q. And it was your understanding that those were working

5 sessions between the counties; is that true?

6 A. Yes.

7 Q. And what was presented at those meetings was that --

8 Mr. Moran was there at those meetings, true?

9 A. Yes.

10 Q. You attended some of those meetings right?

11 A. Yes.

12 Q. Mr. Kielhorn was there at some of those meeting -- from the

13 state?

14 A. Yes.

15 Q. And the purpose of those meetings was to impress upon the

16 two counties that they had an increased responsibility to

17 contribute; is that true?

18 A. Yes.

19 Q. And was it your impression that they were in fact agreeable

20 to do that?

21 A. Yes.

22 Q. And so when you got this letter from April 18 where

23 Mr. Moran says, I've got to report him for not complying

24 with the local match, was that totally contrary to what

25 your impression was as far as what was going on with the

782

1 local match?

2 A. Yes.

3 Q. Between the May meeting and the June 14th of 2007 meeting

4 where Mr. Moran was discharged, did you meet in a quorum of

5 the board members?

6 A. No.

7 Q. Did you meet with seven board members in person or on the

8 phone, or in any other way?

9 A. No.

10 Q. Did you commit that you would vote a certain way on a

11 resolution to terminate Mr. Moran?

12 A. No.

13 Q. Did you even know the resolution to terminate Mr. Moran was

14 going to be presented at the board meeting until the night

15 before?

16 A. No.

17 Q. And the night before is the first time you saw a resolution

18 that was a proposal to terminate his contract?

19 A. Yes.

20 Q. And whatever meeting Mr. Barnes recalls having with you,

21 there was never a discussion at any meeting with anybody

22 that you would vote in favor to terminate Mr. Moran; is

23 that true?

24 A. No.

25 Q. All right. When you came into the meeting June 10th of

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1 2007, having seen this resolution, did you know whether or
 2 not that resolution would pass?
 3 A. No.
 4 Q. Did you know whether or not that resolution would even be
 5 seconded?
 6 A. No.
 7 Q. Did you have any idea the way the vote would come out?
 8 A. No.
 9 Q. Were you surprised when the vote came out the way it did?
 10 A. Yes.
 11 Q. On July 12 of 2007, did you participate in a regularly
 12 scheduled meeting where the resolution terminating
 13 Mr. Moran was reenacted?
 14 A. Yes.
 15 Q. And I think that's our exhibit Z, which is in evidence.
 16 Take a look at that quickly, sir. Page five of eight,
 17 subparagraph letter (E.) Now, is sub (E) the minutes of
 18 the same resolution terminating Mr. Moran's contract being
 19 ratified on that day -- on July 12 of 2007?
 20 A. Yes.
 21 Q. And the vote was slightly different; is that right?
 22 A. Yes.
 23 Q. It was 7-4?
 24 A. Yes.
 25 Q. And so the resolution was passed on that day as well?

1 A. Yes.
 2 Q. All right. I want you to, sir, flip to another exhibit
 3 with me. And this is in evidence. It's defendant's P, but
 4 we've seen this already in the plaintiff's presentation --
 5 the February 22, 2007 letter?
 6 MR. PARSONS: Exhibit 39.
 7 THE COURT: All right. Defendant's P is
 8 plaintiff's 39, which is in evidence.
 9 BY MR. COOKE:
 10 Q. And exhibit P is the February 22nd of 2007 letter that
 11 Mr. Moran wrote to the two county boards; is that true?
 12 A. Yes.
 13 Q. And it says at the preamble, at the February 8 monthly
 14 meeting of the Manistee/Benzie Community Mental Health
 15 board, action was taken by the board directing me to send a
 16 letter to all county commissioners for Manistee and Benzie
 17 Counties asking to address the local match shortfall issue.
 18 Do you see that?
 19 A. Yes.
 20 Q. It says, this shortfall which came to the attention of the
 21 Michigan Department of Community Mental Health last year as
 22 noted in the management letter and the board's 2006
 23 independent auditor's report. This report is sent annually
 24 to both the Michigan Department of Community Health and the
 25 Michigan Department of Treasury. The annual audit report

1 is also on file at the county clerk's office in both Benzie
 2 and Manistee County.
 3 And it concludes, Manistee/Benzie Community
 4 Mental Health also has a contractual obligation to notify
 5 the Michigan Department of Community Health if a shortfall
 6 in the county match obligation occurs. Is that true?
 7 A. Yes.
 8 Q. All right. I'd like you to look, then, if you would just
 9 keep your finger in P. Hold that for me. And then look at
 10 the minutes of the meeting February 8 of '07. And this is
 11 not in evidence yet, so I ask you to just without the jury
 12 turning, you turn to L, please, for me. And do these
 13 appear to be the minutes of the February 8, 2007 meeting,
 14 sir?
 15 A. Yes.
 16 MR. COOKE: Move their admission.
 17 MR. PARSONS: No objection.
 18 THE COURT: Received.
 19 BY MR. COOKE:
 20 Q. All right. Keep your finger in P, and then flip to L, and
 21 take a look, sir, at page 3 of 4 of the minutes of the
 22 February 8, 2007 meeting?
 23 A. Yes.
 24 Q. Are you there?
 25 A. Yes.

1 Q. Three of four of the February 8th, 2007 meeting. And that
 2 second paragraph I want you to look at on the page, you see
 3 it?
 4 A. Yes.
 5 Q. It said, Ruth Meikle recommended to the board that they
 6 take action to comply with the recommendations of the audit
 7 management letter regarding the 2006 audit. Jean Bowers
 8 moved, supported by Dennis Risser, to send a letter to both
 9 the Benzie and Manistee County Board of Commissioners
 10 asking them to address the local match shortfall issue,
 11 true?
 12 A. Yes.
 13 Q. And that's letter defendant's P, the February 22nd, '07
 14 letter; is that true?
 15 A. Yes.
 16 Q. And it continues, a roll call vote was taken with the
 17 following yes votes. Everybody voted yes, true?
 18 A. Yes.
 19 Q. So the board, with your second on the resolution, directed
 20 Mr. Moran to go to the two counties, and inform them about
 21 the local match obligation?
 22 A. Yes.
 23 Q. And that's letter defendant's P, right?
 24 A. Yes.
 25 Q. So it's true to say, Mr. Risser, that you were concerned

1 that both Manistee and Benzie Counties pay in what they
 2 were required to pay in by law; is that right?
 3 **A. Yes.**
 4 **Q.** And you made no bones about that?
 5 **A. No.**
 6 **Q.** When we talk about whether or not the agency, the CMH
 7 health agency, could use interest on funds to make up the
 8 local match?
 9 **A. Yes.**
 10 **Q.** It's your understanding that had been going on for some
 11 period of time, right?
 12 **A. Yes.**
 13 **Q.** In fact, Mr. Moran is the one who told the board you could
 14 do that?
 15 **A. Yes.**
 16 **Q.** And Mr. Moran is the one who said, we can take interest
 17 what we earn on our general funds, and apply it then to
 18 make up whatever difference we need to make up?
 19 **A. Yes.**
 20 **Q.** Okay. So you weren't trying to force Mr. Moran to use only
 21 local interest on local funds, were you, to make up this
 22 match?
 23 **A. No.**
 24 **Q.** You were interested in getting money from whatever source
 25 you could get money?

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1 **A. Yes.**
 2 **Q.** So you could ultimately help those folks that you had
 3 befriended; is that true?
 4 **A. Yes.**
 5 **Q.** Now, we talked a little bit about there's this letter that
 6 we see about internal service fund, or ISF fund from
 7 Mr. Kielhorn, where he says you cannot use interest from
 8 that fund to make up the match. Did you see that letter?
 9 **A. Yes.**
 10 **Q.** Is it your understanding that the internal service fund is
 11 different from the general fund?
 12 **A. Yes.**
 13 **Q.** And the internal service fund is a fund that's specifically
 14 earmarked for, for instance, buildings, correct?
 15 **A. Yes.**
 16 **Q.** Or automobiles?
 17 **A. Yes.**
 18 **Q.** In the context of Mr. Kielhorn's letter is you cannot dip
 19 into an earmarked fund, interest from a building fund, to
 20 make up local match money; is that right?
 21 **A. Yes.**
 22 **Q.** But it's still your understanding that you can get interest
 23 from the general fund to make up the local match?
 24 **A. Yes.**
 25 **Q.** And besides that, you know, this agency had a \$3 million

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1 reserve, didn't it?
 2 **A. Yes.**
 3 **Q.** So when we're talking about a \$128,000 shortfall, if that's
 4 indeed a shortfall, that's not something that's going to
 5 immediately threaten the agency, is it?
 6 **A. Not at all, no.**
 7 **Q.** And was it in your -- was it your intention to -- let me
 8 ask it a different way. Manistee County and Benzie County
 9 are not rich counties, fair statement?
 10 **A. Fair. No.**
 11 **Q.** And those counties have their own budget concerns and
 12 problems, true?
 13 **A. Yes.**
 14 **Q.** And it was your understanding that up until 2005, the
 15 counties had been paying in money, but maybe not the full
 16 match that needed to be paid in; is that true?
 17 **A. Yes. Yes.**
 18 **Q.** Is it also your understanding Mr. Moran was saying, look,
 19 that's not a problem. I can make that up with interest.
 20 Is that true?
 21 **A. Yes.**
 22 **Q.** But then when the 2005 cuts hit, obviously you lose two and
 23 a half million dollars, you can't get the same amount of
 24 interest, true?
 25 **A. Yes.**

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1 **Q.** And so in '06 is when you start having meetings with county
 2 commissioner saying, we need more money; is that true?
 3 **A. Yes.**
 4 **Q.** And is it fair to say that Manistee and Benzie County
 5 commissioners also have all sorts of other competing groups
 6 asking for money; is that right?
 7 **A. Yes.**
 8 **Q.** And so you put in a budget request to them for your agency,
 9 correct?
 10 **A. Yes.**
 11 **Q.** And then that gets negotiated, true?
 12 **A. Yes.**
 13 **Q.** And they eventually disburse money that they think they can
 14 afford to disburse; is that right?
 15 **A. Yes.**
 16 **Q.** And then did you feel that both Manistee and Benzie County
 17 commissioners were indeed working with your request to try
 18 to get to the level of funding they needed to get to?
 19 **A. Yes.**
 20 **Q.** So this letter, April 18 of '07, didn't make much sense to
 21 you, did it?
 22 **A. No.**
 23 **Q.** Sir, the resolution itself, and we don't need to look at
 24 it, we've seen it a few times, does talk about terminating
 25 Mr. Moran according to the at will provisions of the

791

1 contract; is that true?
 2 A. Yes.
 3 Q. And you've looked at the contract, and there is an at will
 4 provision in there; is that true?
 5 A. Yes.
 6 Q. And that provision says Mr. Moran can be terminated if it's
 7 in the best interest of the board; is that right.
 8 A. Yes.
 9 Q. And the resolution referred to that section of the
 10 contract; is that true?
 11 A. Yes.
 12 Q. And did you think it was in the best interest of the board
 13 to terminate Mr. Moran's contract?
 14 A. Yes.
 15 Q. Did you feel it was in the best interest of the agency to
 16 terminate his contract?
 17 A. Yes.
 18 Q. And that contract was set to expire of its own terms on
 19 December of 2007; is that right?
 20 A. Yes.
 21 Q. Mr. Parsons asks you if you felt there was a better
 22 director out there in '07 when you voted to terminate the
 23 contract; is that true?
 24 A. Yes.
 25 Q. Do you feel you have a better director now?

792

1 A. Yes.
 2 Q. Do you feel that there is more information being provided
 3 to the board?
 4 A. Yes.
 5 Q. Do you feel like the board has more ability to understand
 6 and interact on important issues?
 7 A. Yes.
 8 Q. So comparing the two directors that you're familiar with,
 9 in your own experience, do you feel that your current
 10 leadership is much more responsive to the agency needs?
 11 A. Yes.
 12 Q. There was also an issue in Mr. Moran's tenure with jail
 13 staffing; isn't that correct?
 14 A. Yes.
 15 Q. And a jail staffer was, I think, placed in the Manistee
 16 County jail to help with mental health issues?
 17 A. Yeah. Benzie, too, yes.
 18 Q. I'm sorry?
 19 A. Benzie also.
 20 Q. Benzie also?
 21 A. Yes.
 22 Q. But Sheriff Kowalkowski is the sheriff in Manistee; is that
 23 right?
 24 A. Yes.
 25 Q. And did that mental health worker get cut from the program?

793

1 A. Yes.
 2 Q. And did the sheriff come to any meetings and express
 3 concern that they didn't have a mental health staff in the
 4 jail?
 5 A. Yes.
 6 Q. And did Mr. Moran take the position that he wasn't going to
 7 replace that person?
 8 A. Yes.
 9 Q. And was that, sir, a source of controversy between the
 10 board and the sheriff's department?
 11 A. Yes.
 12 Q. Now, since Mr. Moran's termination, has a jail worker, or a
 13 mental health worker, been placed back in the jail?
 14 A. Yes.
 15 Q. Do you think it's in the best interest of the agency to
 16 accommodate that request by the sheriff?
 17 A. Yes.
 18 Q. I do want to show you one more thing, sir. The evaluation
 19 of 2006 also included a summation of comments -- additional
 20 comments, 2006 director's evaluation. Do you recall that?
 21 A. Yes.
 22 Q. Turn to defendant's exhibit B?
 23 A. Okay.
 24 Q. And do you recall that this is the summation of additional
 25 comments that was attached to the 2006 director's

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1 evaluation?
 2 A. Excuse me. I lost it. It was B?
 3 Q. Yes, sir. It's B.
 4 A. Yes.
 5 MR. COOKE: All right. Move its admission, Your
 6 Honor.
 7 MR. PARSONS: Can I voir dire on this very
 8 briefly, Your Honor?
 9 THE COURT: Yes.
 10 MR. PARSONS: Thank you.
 11 VOIR DIRE
 12 BY MR. PARSONS:
 13 Q. It's exhibit B -- what is this, again?
 14 A. It's part of the -- part of the evaluation that people
 15 wrote on separate papers that didn't include --
 16 THE COURT: "People" being?
 17 THE WITNESS: There were other mental health board
 18 members that -- the evaluation had really no place that you
 19 could type on it.
 20 THE COURT: So these are comments of board
 21 members.
 22 THE WITNESS: Yes.
 23 THE COURT: They're not comments of visitors, or
 24 the general public, or anything like that?
 25 THE WITNESS: No. These were handed in with the

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1 evaluations.

2 MR. PARSONS: Okay.

3 BY MR. PARSONS:

4 Q. So I mean, they range from parking in Manistee area,

5 potential liability, to comments about Mr. Moran, to

6 comments about the agency. And these are just taken off of

7 all the input from the board members?

8 A. As far as I know, yes.

9 MR. PARSONS: Okay. Thanks. I have no objection

10 to this, Your Honor.

11 THE COURT: Received.

12 MR. COOKE: Thank you.

13 MR. COOKE: If the jury can turn to, with the

14 Court's permission --

15 THE COURT: Yes.

16 MR. COOKE: -- letter B in defendant's booklet.

17 BY MR. COOKE:

18 Q. And I want to specifically direct your attention to page 2

19 of that. And it would be the third full paragraph from the

20 bottom. Do you see that, sir?

21 A. Yes.

22 Q. It says here, has very little respect for neighboring CMHs.

23 May be a reflection on ability to be a team player.

24 Defensive attitude. A chairperson's challenge.

25 Continually interrupts board meetings with unrelated

796

1 topics?

2 MR. PARSONS: Where is this?

3 MR. COOKE: No ability to stay on topic at board

4 meetings.

5 THE COURT: Third paragraph from the bottom.

6 MR. PARSONS: Great. Thank you. Page two.

7 BY MR. COOKE:

8 Q. Speaks on and on. Not always relevant. No way for board

9 members to judge attendance and time management. Appears

10 to not be in the office enough. It is difficult for board

11 members to know for sure. Written director reports have

12 been helpful in this area. Is that correct?

13 A. Yes.

14 Q. Would you say that that is a reflection of some negative

15 evaluations for Mr. Moran?

16 A. Yes.

17 Q. And is it your impression that when you look at the form

18 itself that has the numerical system, that form doesn't

19 reflect these comments?

20 A. No.

21 Q. And were some of those comments things that you believed?

22 A. Yes.

23 Q. As far as people leaving the agency, Mr. Rose was the

24 second in command in Mr. Moran's administration; is that

25 true?

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1 A. Yes.

2 Q. And for a period of time the board appointed Mr. Rose as an

3 interim director; is that right?

4 A. Yes.

5 Q. And he served in that position till he left voluntarily

6 from the agency?

7 A. Yes.

8 Q. And I think he served in that position for a year or more,

9 didn't he?

10 A. Yeah. Somewhere in that vicinity, yes.

11 Q. And without taking time to look at this conflict of

12 interest part of the federal code, do you remember Mr. --

13 plaintiff's exhibit number 7 -- where he showed you that

14 you checked off that conflict of interest form, and then

15 there was a section of the code of federal regulations in

16 behind it?

17 A. Yes.

18 Q. Did you, as a board member, have responsibility for

19 selection, award, or administration of the Moore Living

20 contract?

21 A. No.

22 Q. Did you ever get to vote on staff salaries?

23 A. No.

24 Q. Were those things that Mr. Moran said were in his

25 discretion?

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1 A. Yes.

2 MR. COOKE: I have no further questions. Thank

3 you.

4 MR. PARSONS: Thank you.

5 **RE-CROSS-EXAMINATION**

6 BY MR. PARSONS:

7 Q. Well, now in fairness, let's look at exhibit B. Mr. Cooke

8 quoted one excerpt where he says, very little respect for

9 neighboring CMHs, and it goes on pretty negatively about

10 Mr. Moran, correct?

11 A. Yes.

12 Q. If you start at the top of the first page, there's a

13 question about parking. Then there's general fund equity.

14 And then there's self-development. But then virtually

15 every other comment in this evaluation, except for the one

16 Mr. Cooke talked about, they're all positive, aren't they,

17 about Mr. Moran?

18 A. Yes. But they all weren't put in there.

19 Q. Look under quantity of work. Michael must navigate through

20 a constantly changing world. Michael has kept us in touch.

21 Look at under quality of work. Michael has been deeply and

22 passionately involved with articulating this issue

23 throughout the state systems. He has met with state

24 legislators, DCH officials, affiliation leadership, and has

25 spent a great deal of time helping us understand. Do you

799

1 see that?

2 **A. Yes.**

3 **Q.** The next one, self-determination for consumers. Talks

4 about, we have had consumers visit the board meetings,

5 relate their satisfactions. Many counties do not even

6 recognize this term, right? And then it talks about

7 training for board members?

8 **A. Yes.**

9 **Q.** Michael has made available to us, the staff, information,

10 time, and knowledge, in order for us to be effective

11 members of the board. We have met almost monthly for two

12 years averaging two hours per session. The quality of the

13 information and the dedicated time to us has been

14 invaluable to me, right?

15 **A. Yes.**

16 **Q.** Financial reporting. The quality and quantity of reports

17 and information has been great. Always well-dressed.

18 Continues to fight for equality. Remains proactive. Keeps

19 the board informed. Maintains a positive role. Do you see

20 these comments?

21 **A. Yes.**

22 **Q.** The director has continued to accomplish the direction of

23 the board.

24 Next one. Excellent adaptation to severe fiscal

25 changes. Then there's the comment. He doesn't disrespect

800

1 the board. He doesn't have respect for board, right?

2 **A. Yes.**

3 **Q.** There's a dissident view. One dissident comment, right?

4 **A. (No response.)**

5 **Q.** And then it goes back, overall good skills. Thanks for a

6 good job. My opinion Michael continues to do a very good

7 job. Knowledgeable staff that he has surrounded himself

8 with. He's done an excellent job. To the best of my

9 knowledge, the CEO's responsible and performs within with

10 the parameters. A great job on educating the board.

11 Right? All those comments are in there?

12 **A. Yes.**

13 **Q.** And those were part of the minutes of a board meeting.

14 They were attached to -- they were given out to the board,

15 right?

16 **A. I think this was a copy of the evaluation.**

17 **Q.** Right, right. And the board saw that?

18 **A. Yes.**

19 **Q.** And can we assume that if the board -- if somebody had

20 taken exception and said that doesn't represent the

21 performance, that would be somewhere in the minutes?

22 **A. No. I made a comment to the fact that all my comments**

23 **weren't put into this part. I specifically thought he did**

24 **some things wrong.**

25 **Q.** And nobody moved to put -- add minutes to it. This is the

801

1 record, correct?

2 **A. Yes.**

3 MR. PARSONS: Your Honor, I'm going to be short

4 and try to get this done.

5 BY MR. PARSONS:

6 **Q.** The conflict of interest. When you got on the board,

7 Mr. Moran questioned whether you had a conflict of interest

8 because your wife worked for a contractor, right?

9 **A. That's what Jeff Rose said, yes.**

10 **Q.** And in fact, under the code of federal regulations, it says

11 a member of a board, or a personal member of their family,

12 that may be a conflict of interest, right?

13 **A. I don't think so. I don't believe so.**

14 **Q.** Where is that first exhibit we had? 73. That code of

15 conduct you signed back in 2001?

16 **A. Yes.**

17 **Q.** A conflict of interest would arise when the employee,

18 officer, or agent, or any member of his or her immediate

19 family, his or her partner, has a financial or other

20 interest in the firm selected for an award. Do you see

21 that?

22 **A. Yes.**

23 **Q.** Now Mr. Moran, do you see, may have had a reason to

24 question the conflict of interest question?

25 **A. Yes.**

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1 THE COURT: Where is it established that she has a

2 financial interest in --

3 MR. PARSONS: She works for them.

4 THE COURT: That's not a financial interest.

5 MR. PARSONS: Oh, Your Honor.

6 THE COURT: That's not a financial interest.

7 MR. PARSONS: Well, it says the officers,

8 employee, or agents of the recipient shall neither -- well,

9 here's the question.

10 BY MR. PARSONS:

11 **Q.** Could it have appeared to Mr. Moran that there might be a

12 concern here?

13 **A. Not if you understood the law, I would say, no.**

14 **Q.** All right. And then he asked Mr. Swain for an

15 interpretation, correct -- the prosecuting attorney?

16 **A. No. This was before that. This is a separate time. The**

17 **prosecuting attorney was back in '99, I think.**

18 **Q.** Okay. Okay. But you understand if --

19 THE COURT: Members of the jury, the prosecuting

20 attorney in Manistee County has traditionally been civil

21 legal counsel to the county Board of Commission. That is to

22 say, in addition to the prosecuting attorney's job of

23 prosecuting criminal cases, another part of the prosecuting

24 attorney's job in Manistee County has been to offer the

25 Board of County Commissioners legal opinions on noncriminal

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1 matters.

2 Go ahead, Mr. Parsons.

3 MR. PARSONS: I didn't mean to imply there was

4 anything criminal.

5 BY MR. PARSONS:

6 Q. We understand that Mr. Moran simply sought an advisory

7 opinion from Mr. Swain about this, right -- when you first

8 came on the board?

9 A. Yes.

10 Q. He wasn't accusing you of breaking a law. He questioned

11 whether there should be a legal opinion whether this might

12 constitute a conflict of interest?

13 A. **He wanted me disqualified because of it, from the running.**

14 Q. And you were not disqualified?

15 A. **No, I was not.**

16 Q. And you worked on that board for years?

17 A. Yes.

18 Q. Do you understand that under federal procurement law, if

19 there were, if the feds thought there was a conflict of

20 interest, that might influence the contract?

21 MR. COOKE: That calls for speculation.

22 MR. PARSONS: I'm asking him if he understands

23 that. If that's a fair understanding of his.

24 BY MR. PARSONS:

25 Q. There's concern, if they violate federal code of conduct

804

1 laws, could it affect the agency's business.

2 A. Yes.

3 Q. You do understand that?

4 A. Yes.

5 Q. Okay. The loss of services. You expressed concern about

6 local services, in your response to defense counsel's

7 questions, correct?

8 A. Yes.

9 Q. You're deeply committed to those delivery of services,

10 right?

11 A. Yes.

12 Q. Do you remember, you also told me Mr. Moran never caused

13 any loss of services in all the time you were on the board,

14 right?

15 A. **I said that, yes.**

16 Q. The contract -- the first extension of the contract

17 recommendation that was brought to the board on May 10, do

18 you recall contract negotiations had not even begun at that

19 point?

20 A. **Apparently they had with the executive committee.**

21 Q. Were you sitting in court when Mr. Barnes said contract

22 negotiations hadn't even begun?

23 A. **They hadn't begun with the board.**

24 Q. Right. Or with Mr. Moran. It takes two to negotiate,

25 right?

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1 A. Yes.

2 Q. Do you agree that the contract negotiations, as of May 10,

3 hadn't even begun yet?

4 A. **Yes. With the board.**

5 Q. The April 18 letter, it's clear Mr. Moran is not going

6 around the back. It's clear he's telling the board he's

7 going to do something in advance, right?

8 MR. COOKE: Object to the form of the question as

9 being argumentative.

10 BY MR. PARSONS:

11 Q. Was it clear to you Mr. Moran was not sneaking around the

12 back door. He was coming right to the board and informing

13 the board clearly what he was going to do?

14 MR. COOKE: Same objection. When you talk about

15 sneaking around. I think that's argumentative.

16 BY MR. PARSONS:

17 Q. Would you say that Mr. Moran was stabbing the board in the

18 back, or was he informing the board clearly of his

19 intention to report?

20 A. **Intention, yes.**

21 Q. Okay. And you got that letter about May 11?

22 A. **Somewhere in there. I don't remember exactly what day it**

23 **was, but somewhere in.**

24 Q. And a little more than four and a half weeks later you

25 voted to fire him -- you voted personally to fire him?

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1 A. Yes.

2 Q. In response to defense counsel's question about the April

3 18 letter being totally contrary to what was going on, you

4 indicated that letter was somehow totally contrary to what

5 was going on. Do you recall that?

6 A. **I don't understand that question.**

7 Q. Okay. I didn't either. As a matter of fact, as of April

8 18, the local match was a very significant issue that had

9 come before the board a number of times, right?

10 A. Yes.

11 Q. And the local match -- \$128,000 per year -- that was a very

12 significant amount of money at issue, right?

13 A. Yes.

14 Q. And that was exactly what was going on at the time when

15 Mr. Moran wrote that letter, that the county was not making

16 that local match, right?

17 A. **I don't know that -- that the county was or not. At that**

18 **time.**

19 Q. In response to defense counsel's question about using the

20 \$3 million service fund, should Mr. Moran have waited until

21 the \$3 million surplus rainy day fund was used up before he

22 blew the whistle on the local match issue?

23 A. No.

24 Q. Mr. Moran had to follow the law and bring that to the

25 attention of the counties and the MBCMH board, right?

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1 A. Yes.
 2 Q. You said, I believe in response to defense counsel's
 3 questions, you indicated that you have a better director
 4 now?
 5 A. Yes.
 6 Q. You also indicated that things are going better now, in
 7 your opinion?
 8 A. Yes.
 9 Q. Are you willing to state that after Mr. Moran was
 10 terminated, there was a corrective action plan put in place
 11 in this county by down state officials?
 12 A. Yes.
 13 Q. And as a part of the corrective action plan, the down state
 14 people said you're not going to hire an executive director
 15 until we're involved, right?
 16 MR. COOKE: What's the relevance of this --
 17 MR. PARSONS: I'm going to --
 18 MR. COOKE: -- line of questioning. It's also
 19 hearsay.
 20 MR. PARSONS: Well, this is --
 21 THE COURT: Well, you went there. He can go there
 22 on cross.
 23 MR. PARSONS: All right.
 24 BY MR. PARSONS:
 25 Q. Local counties and the local MBCMH only have local control

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1 so long as they follow state laws on the funding, right?
 2 A. Yes.
 3 Q. And for example, the 10% local match of \$128,000, if the
 4 state wanted to, it could cut the actual amount of state
 5 funding represented by that 10% slice, which is \$128,000,
 6 right?
 7 A. I think. I'm not positive on that.
 8 Q. All right. \$128,000 is 10% of how much?
 9 A. 10% of a million two, you mean?
 10 Q. Yeah. The rule is that the state and feds will not give
 11 their share until the counties come up with their 10%.
 12 That's what the rule is, right?
 13 A. Yes.
 14 Q. Yes. And so if the county -- if the state and the feds
 15 really wanted to do what they could do, they could cut out
 16 a million two hundred and eighty thousand bucks, take it
 17 away from this community, right?
 18 MR. COOKE: Oh, I object to that. There's no
 19 foundation for that whatsoever.
 20 MR. PARSONS: Yes. I'm asking if he knows that.
 21 MR. COOKE: No foundation as to what they could
 22 do.
 23 THE COURT: I'll sustain the objection to that
 24 specific question.
 25 MR. PARSONS: Can I ask does he know -- does he

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1 understand --
 2 THE COURT: He already says that he understands
 3 that -- his understanding of the requirement is that the
 4 county fund it's 10% before the state, and the federal
 5 government put in their -- the rest of their pot. That's
 6 his understanding. He said that.
 7 MR. PARSONS: All right.
 8 BY MR. PARSONS:
 9 Q. And it's your understanding also, sir, that in terms even
 10 of hiring this new executive director, state officials got
 11 concerned about the operation of this board, correct?
 12 A. Yes.
 13 Q. And in fact, they wrote in a corrective action plan that
 14 they sent up here you had to adopt, right?
 15 A. We did adopt one. Some of us voluntarily, though.
 16 Q. Right. Exactly. And then they also -- they had to sit in
 17 on -- take part in the meetings to approve a new director?
 18 A. No. They were invited for that.
 19 Q. Did they in fact send communications up here that said, we
 20 want to know before you hire who you're hiring?
 21 A. I'm not sure if they wanted to know exactly. I'm not sure
 22 if they were -- I don't know on that question.
 23 Q. Had you ever had that kind of state intrusion into the
 24 operation of the local MBCMH before that?
 25 A. No.

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1 Q. No. In all the years you were on the board.
 2 MR. PARSONS: All right. That's all I have.
 3 Thank you.
 4 THE COURT: I'm going to send the jury to lunch.
 5 Unless -- if you just had one or two questions, we'll do it.
 6 But if you got more than that, we've got the Manistee County
 7 jury bus waiting for the.
 8 MR. COOKE: Five minutes, and I think I'll be
 9 done.
 10 THE COURT: Let's take the five minutes after.
 11 MR. COOKE: Very good.
 12 THE COURT: So Members of the Jury, when you see
 13 the Manistee County jury bus there, you can just proceed to
 14 it. Get aboard, and it'll take you to lunch. And when
 15 you're done, come on back, and we'll get started again.
 16 (Jury exits courtroom at 12:32 p.m.)
 17 THE COURT: I'm going to estimate that it'll take
 18 an hour and 10 to 15 minutes for them to get out there and
 19 back and have lunch.
 20 MR. PARSONS: 1:45.
 21 MR. COOKE: Quarter to. Thank you, Your Honor.
 22 (Court in recess at 12:33 p.m.)
 23 (Court reconvenes at 1:56 p.m.)
 24 THE COURT: All right. We're ready for the Jury.
 25 (Jury enters courtroom at 1:57 p.m.)

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1 THE COURT: Mr. Cooke.
 2 MR. COOKE: Thank you, Your Honor.
 3 **RE CROSS-EXAMINATION**
 4 BY MR. COOKE:
 5 Q. Just a few more questions, Mr. Risser. Is it true that
 6 Assistant Prosecutor Swain determined in 1999 that you
 7 didn't have a conflict of interest serving on this board?
 8 THE COURT: It wouldn't have been assistant
 9 prosecutor.
 10 MR. COOKE: Or Prosecutor Swain. Excuse me.
 11 THE WITNESS: Yes.
 12 BY MR. COOKE:
 13 Q. And despite the prosecutor's determination, Mr. Moran
 14 continued to assert that you had a conflict of interest; is
 15 that correct?
 16 A. Yes.
 17 Q. As far as negotiating for a new contract with Mr. Moran, to
 18 your knowledge in 2007, the only negotiation that went on
 19 was whatever the executive committee did when they met with
 20 Mr. Moran; is that true?
 21 A. Yes.
 22 Q. And after May 10th of 2007, was there any intention that
 23 you were aware of on the part of the board to negotiate any
 24 extension of his contract?
 25 A. No.

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1 Q. Now, this letter of April 18 of 2007, sir, if this was not
 2 a good-faith threat to report a violation of the law, but
 3 was in fact issued by Mr. Moran after the May 10th meeting
 4 where his contract extension was voted down in an effort to
 5 booby trap the board should they take employment action
 6 against him, that would be stabbing the board in the back,
 7 wouldn't it?
 8 A. Yes.
 9 MR. COOKE: I have no further questions. Thank
 10 you.
 11 **RE CROSS-EXAMINATION**
 12 BY MR. PARSONS:
 13 Q. After -- Mr. Swain was asked to rule on one issue, was it a
 14 legal conflict of interest for you to be on the board if
 15 your wife was employed by a subcontractor, right, and
 16 Mr. -- that was even before you got on the board, right?
 17 A. Yes.
 18 Q. All right. Mr. Swain said that was not a conflict of
 19 interest, right?
 20 A. Yes.
 21 Q. Mr. Swain didn't say it would not be a conflict of interest
 22 if you tried to influence a subcontractor's contract for
 23 your family's personal gain, right?
 24 A. No, he didn't say that.
 25 Q. So if the facts were to be that if you did try to influence

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1 a contract that would be a completely different question,
 2 wouldn't it?
 3 A. Yes.
 4 MR. PARSONS: All right. That's all the
 5 questions I had.
 6 MR. COOKE: Nothing further, Your Honor. Thank
 7 you.
 8 THE COURT: Thank you, Mr. Risser, you may step
 9 down.
 10 (Witness steps down at 1:59 a.m.)
 11 MR. PARSONS: I hear there's a gentlemen by the
 12 name of Mr. Rooker here. Mr. Rooker?
 13 JAMES ROOKER: Yes.
 14 MR. PARSONS: Could you come up to the front and
 15 be sworn, please?
 16 THE CLERK: Please raise your right hand. Do you
 17 solemnly swear or affirm that the testimony you give in this
 18 cause will be the truth, the whole truth, and nothing but
 19 the truth, so help you God?
 20 JAMES ROOKER: Yes.
 21 JAMES ROOKER,
 22 called as a witness at 2:01 p.m., was examined and
 23 testified as follows:
 24 **DIRECT EXAMINATION**
 25 BY MR. PARSONS:

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1 Q. Good afternoon, Mr. Rooker, thank you for coming, would you
 2 please tell the board -- the jury, your name and address?
 3 A. James Rooker, my address is 3333 Bass Lane, Mulliken,
 4 Michigan.
 5 Q. Where?
 6 A. Mulliken.
 7 Q. Mulliken. Where is that near?
 8 A. Lansing. West of Lansing.
 9 Q. Okay. Up here, below a certain line. Anyway. What do you
 10 do for a living?
 11 A. I'm the chief executive officer of Moore Living
 12 Connections.
 13 Q. Moore Living Connections. And does your -- what does your
 14 company do?
 15 A. We provide residential and support services for individuals
 16 with developmental disabilities and mental illness.
 17 Q. Now, sir, you're going to be a little hard for some of the
 18 jurors to hear perhaps if you don't speak up just a little
 19 bit, I think. How many homes for people with developmental
 20 disabilities does your company operate?
 21 A. Throughout the state?
 22 Q. Yes.
 23 A. 25, 30, I guess.
 24 Q. And as the chief executive officer, what are your -- what's
 25 your role in regard to those homes?

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1 A. I'm the chief administrator of the agency. I supervise the
 2 individuals and provide the clinical work and the
 3 administrative services.
 4 Q. How long have you been in that position?
 5 A. Since December of '96.
 6 Q. Can you give us an idea how many CMH agencies you contract
 7 with?
 8 A. Six. Six, I believe. Six or seven.
 9 Q. Six to seven. And how many years have you been involved in
 10 CMH contracts?
 11 A. I used to work for community mental health boards, and I
 12 started there in probably '84ish, 85.
 13 Q. So doing the math, about 25 years?
 14 A. Roughly.
 15 Q. And how many consumers do you service at any typical time?
 16 A. We probably --
 17 Q. How many people live in your homes, in other words?
 18 A. Probably somewhere to around 150 to 170, I guess, somewhere
 19 around there, I don't know the exact number. There are
 20 around 50 up here in the Manistee/Benzie area.
 21 Q. That's where I was going. How many consumers in the
 22 Manistee/Benzie area do you have? You think about 50?
 23 A. Roughly 50 to 55.
 24 Q. And what's the local home known as?
 25 A. We have about 13 separate programs that we individually

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1 contract for for Manistee and Benzie County.
 2 Q. Mr. Risser commented -- or a gentlemen commented earlier
 3 today that the -- there's been a change in direction over
 4 many years in Community Mental Health from having people in
 5 institutions, and now they're more out in community houses;
 6 is that correct?
 7 A. Correct.
 8 Q. And the purpose of that is to get rid of the huge mental
 9 institutions and put people into private assimilated
 10 circumstances, correct?
 11 A. Correct.
 12 Q. But the state still needs to contract through local CMHs
 13 with your business, for example, to provide housing for the
 14 people, correct?
 15 A. Yes. We don't necessarily own the homes. We do own some
 16 through our HUD and MISHDA contracts. A lot of them are
 17 leased individually by the consumers, others are state
 18 leases or CMH leases that we occupy and provide the
 19 services in the home.
 20 Q. Okay. Now, is your business Moore Living, is that a
 21 for-profit or not-for-profit?
 22 A. Not for profit.
 23 Q. Currently, do you have any contracts with the
 24 Manistee/Benzie CMH board?
 25 A. Yes.

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1 Q. Do you know how many?
 2 A. Roughly 13 contracts.
 3 Q. And on an annualized basis, do you have any idea what those
 4 contracts are -- what money we're talking?
 5 A. Around \$2.5 million per year.
 6 Q. And does Mr. Risser's wife work for you?
 7 A. Yes.
 8 Q. Do you know what her first name? We call her Mrs. Risser.
 9 Does she have a first name associated with it?
 10 A. Patsy.
 11 Q. Patsy. And what is her position with your company?
 12 A. She's a program director.
 13 Q. In the past few years, has Moore Living experienced
 14 budgetary problems?
 15 A. We are nonprofit, and the state is suffering, yes.
 16 Q. All right. There has been -- there has been pressure on
 17 nonprofit funding in this area in the state, correct?
 18 A. Yes. I would say so.
 19 Q. And from time to time have you had to make your staff aware
 20 that there was -- there were budget problems?
 21 A. Yes.
 22 Q. And have you had to make your staff aware whether there
 23 were perhaps cutbacks in the offering?
 24 A. Yes. We have discussed those, and made changes to our
 25 budgets to accommodate our revenue.

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1 Q. And during one such period, around 2005, was that a period
 2 when there was some pressure on your revenue?
 3 A. Yes.
 4 Q. And did you mention that in a way at your business, or did
 5 somebody else, tell us who, mention it in such a way that
 6 Mrs. Risser would have gotten wind of that?
 7 A. Yes. I had a meeting with the program directors informing
 8 them that we were going to make some temporary cuts to our
 9 salaries -- of staff salaries. Reductions.
 10 Q. After that was made known to the staff, did you receive a
 11 call from Mr. Dennis Risser?
 12 A. Yes.
 13 Q. And did Mr. Risser identify himself as an MBCMH board
 14 member?
 15 A. I don't recall him identifying himself as that.
 16 Q. Did he wish to talk with you about staff salaries or
 17 benefits?
 18 A. Yes.
 19 Q. And was he concerned about his wife perhaps being cut back?
 20 A. He didn't specifically mention his wife that I recall.
 21 Q. Was he concerned that staff was going to be cut back?
 22 A. Yes.
 23 Q. Do you remember what else occurred during that
 24 conversation?
 25 A. I don't remember a lot of the details, that was four years

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1 ago. My main concern was that it was, in my personal
 2 opinion, our issue to deal with. We signed a contract for
 3 a set amount of dollars. We were overspending those
 4 dollars, and we needed to make internal moves to get our
 5 budget back in line. And that was my issue, yes.
 6 Q. All right. Did you seek Mr. Risser out? Did you call him?
 7 A. No.
 8 Q. Did you seek Mr. Risser's help in getting more money from
 9 Manistee/Benzie CMH?
 10 A. No.
 11 Q. Did you ask for Mr. Risser's help in taking your revenue
 12 issue before the Manistee board -- Manistee/Benzie CMH
 13 board?
 14 A. No.
 15 Q. Did you later call a gentlemen by the name of Chip Johnston
 16 at the Manistee/Benzie CMH?
 17 A. Yes.
 18 Q. Do you recall whether that call would have been made about
 19 middle of August, August 15, 2005?
 20 A. It was around that time period, yes.
 21 Q. And what did you report to Mr. Johnston?
 22 A. I let him know that I did have a conversation with
 23 Mr. "Risser," and my concern was, again, that in this
 24 business -- I mean it was our internal issue. We had to
 25 deal with that issue. And I wasn't trying to seek any help

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1 from anybody to get that resolved, nor did I -- I wanted to
 2 disclose to Chip that the call happened, so that the
 3 administration in Manistee/Benzie was aware -- or was
 4 notified that I wasn't looking -- going around them to the
 5 board to deal with our issue. That was my concern.
 6 Q. As a contractor for CMH revenue, are you aware there are
 7 federal and state procurement regulations concerning
 8 conflicts of interest?
 9 A. Yes.
 10 Q. And were you concerned that Mr. Risser's call might be
 11 inappropriate under those conflict-of-interest laws?
 12 A. I don't know that that was my focus at the time.
 13 Q. All right. Were you concerned that Benzie --
 14 Manistee/Benzie CMH might perceive you as having initiated
 15 a contact with a board member that was inappropriate?
 16 A. Yes.
 17 Q. And is that why you made the report to Manistee/Benzie CMH?
 18 A. I made the report because the community of directors, and
 19 CMH is quite small, and I did not want to have the
 20 reputation of being a person who has issues with his budget
 21 and goes around the administrators of CMH boards to their
 22 board of directors to resolve my issues. I wanted to make
 23 sure that mental health knew that Chip knew that it was our
 24 internal problem, not their problem.
 25 Q. And so we're clear, you are not the one that set the

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1 interaction with Mr. Risser in motion, right? That was
 2 Mr. Risser who initiated that whole thing?
 3 A. Correct.
 4 Q. Now, tell the jury, how many times over the 25 years that
 5 you've been involved with CMHs and contracts have you
 6 gotten calls like this from board members?
 7 A. I don't believe I have. This is the only time.
 8 Q. So six or seven CMH organizations, 25 years, you've never
 9 had another call like this, correct?
 10 A. Not of that nature, no.
 11 MR. PARSONS: Thank you. That's all the questions
 12 I have.
 13 CROSS-EXAMINATION
 14 BY MR. COOKE:
 15 Q. Good afternoon, Mr. Rooker.
 16 A. Good afternoon.
 17 Q. The call -- I think it has been pinpointed August 2005
 18 call, do you have a good recollection of that call as we
 19 sit here today?
 20 A. Not really, no. I know I was on my way home, and the
 21 reception is not that good.
 22 Q. But I think what you do remember about that call is you
 23 remember that it appeared to you that Mr. Risser was on
 24 some sort of fact-finding venture?
 25 A. Yes. He was inquiring about our deficit and why we had to

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1 make the cuts.
 2 Q. And he wasn't trying to influence you at all to do
 3 something improper; is that correct?
 4 A. Not that I recall, no.
 5 Q. It was more a nature of trying to determine what's
 6 happening within your organization that caused these cuts;
 7 is that true?
 8 A. Correct.
 9 Q. And did you at any time think that Mr. Risser was trying to
 10 somehow influence this contract between you and the CMH?
 11 A. No.
 12 Q. Now, you mentioned the contract is with the CMH board.
 13 With the CMH, or with the board, or do you know which one?
 14 A. Well, technically it's with the board because the board
 15 oversees the Community Mental Health, but my interactions
 16 are usually with the administration of the CMH.
 17 Q. Usually with the agency?
 18 A. With the agency.
 19 Q. And Chip Johnston was one of the -- was the principal
 20 contract person that you dealt with at Manistee/Benzie CMH?
 21 A. Correct.
 22 Q. And your concern about the phone call wasn't about the fact
 23 that it was a conflict of interest, or an attempt to
 24 influence, you were concerned that word might get out that
 25 you had a conversation with a board member, right?

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1 A. Correct.

2 Q. And word might get back to Chip Johnston, or somebody else,

3 that there was a conversation directly between you and a

4 board member regarding your financial situation?

5 A. Correct.

6 Q. And you thought that somebody over at -- if it got back to

7 Manistee/Benzie CMH they would misinterpret that as you

8 going around them to try to get to the board?

9 A. Correct.

10 Q. And that's why you made the phone call?

11 A. Yes.

12 Q. And then you got a phone call later from Mr. Moran; is that

13 true?

14 A. Yes.

15 Q. And Mr. Moran talked to you; is that right?

16 A. Correct.

17 Q. And Mr. Moran --

18 A. **I believe I called Mr. Moran. Chip asked me to call**

19 **Mr. Moran.**

20 Q. You called Chip, Chip asked you to call Mr. Moran?

21 A. Yes.

22 Q. Did Mr. Moran ask you to write a letter to him about this

23 incident?

24 A. Yes.

25 Q. Did you in fact write a letter?

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1 A. No.

2 Q. Did Mr. Moran, then, send you a copy of a letter he wrote?

3 A. Yes.

4 Q. Did you think, or did you tell Mr. Moran at any time that

5 you thought that Dennis Risser in this conversation was

6 violating federal procurement laws?

7 A. **I don't recall saying that.**

8 Q. Was that even in your mind when you were having this

9 discussion?

10 A. **I think it was. I mean, I knew at some level that that was**

11 **an issue. Or could be an issue. Because of his -- Patsy**

12 **working for us.**

13 Q. But the fact that Patsy works for you, are you familiar

14 with the actual federal regulation, the code of conduct in

15 the federal register as far as -- the federal code of

16 regulations as far as what conflict of interest is?

17 A. **Somewhat familiar. I couldn't recite it.**

18 Q. Couldn't recite it.

19 So you thought there may be a conflict of

20 interest, but you don't know as we sit here right now if in

21 fact that was a conflict of interest?

22 A. **No, I don't.**

23 Q. Now, I want to show you -- I think it's been previously

24 marked as Plaintiff's Exhibit 8. It's 8. It's this letter

25 of August 22nd, 2005. Do you recall that being a copy of

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1 the letter that Mr. Moran copied you regarding the phone

2 call?

3 A. Yes.

4 Q. And that was something Mr. Moran wrote, and you didn't

5 participate in the drafting of that letter; is that right?

6 A. Correct.

7 Q. How long was this conversation with Mr. Risser?

8 A. **It was not very long. I don't recall. Five, ten minutes,**

9 **maybe. I know the phone was breaking up quite a bit and we**

10 **had a hard time connecting with each other.**

11 Q. Did you ever speak with him again?

12 A. **I don't believe so, no.**

13 Q. Do you recall whether or not Mr. Risser invited you to

14 attend a board meeting, or felt you should?

15 A. **I don't recall that.**

16 Q. During this phone call with Mr. Risser, did you think that

17 he was attempting to influence multi-million dollar

18 contracts involving federal Medicaid funds?

19 A. No.

20 MR. COOKE: Thank you, sir. I have no further

21 questions.

REDIRECT EXAMINATION

23 BY MR. PARSONS:

24 Q. Mr. Rooker, do you recall -- you were kind enough to give

25 us a deposition May 19, 2008, almost exactly a year ago,

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1 right?

2 A. Correct.

3 Q. Now, you still have contracts with Manistee/Benzie CMH

4 board, correct?

5 A. Correct.

6 Q. Since giving us that deposition, have you received a call

7 from defense counsel, or anybody associated with MBCMH to

8 discuss anything about this?

9 A. **About this case?**

10 Q. Yes.

11 A. No.

12 Q. All right.

13 A. **Not that I recall anyways.**

14 Q. The issue of conflict of interest, and whether you felt it

15 was or was not, I think at the beginning of defense

16 counsel's examination, he asked you -- or he said, you

17 didn't think it was a conflict of interest, and I believe

18 you responded, no, you didn't. Do you recall that question

19 and answer?

20 Let me show you page 12 and ask if this refreshes

21 your recollection regarding your testimony a year ago about

22 whether you felt Mr. Risser had a conflict of interest?

23 A. **As I indicated, I knew that that was in the back of my mind**

24 **that, you know, that conversation was probably**

25 **inappropriate.**

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1 Q. And could I ask you -- you did say back a year ago that you
 2 did feel it -- he had a conflict of interest, it was a
 3 conflict of interest, didn't you?
 4 A. If that's what you have written, yes.
 5 Q. Well --
 6 A. I mean, I think I've indicated here that I do believe that
 7 there is some issue with that.
 8 Q. Yes. Yeah. And I'm just trying to be --
 9 MR. COOKE: I object to counsel displaying the
 10 transcript now to the jury as a substantive piece of
 11 evidence. If he's refreshing or impeaching, it doesn't get
 12 into substantive evidence.
 13 MR. PARSONS: Your Honor, I'll withdraw --
 14 THE COURT: I'll sustain that objection.
 15 MR. PARSONS: All right.
 16 BY MR. PARSONS:
 17 Q. Just -- Mr. Rooker, I didn't write this transcript, you
 18 understand?
 19 A. Sure.
 20 Q. This is an official transcript of your testimony. And you
 21 have not had a chance to review this apparently in the last
 22 year, correct?
 23 A. No.
 24 Q. You see at line, approximately 3, it says, I also knew that
 25 Mr. Risser's wife worked for us, and for him to be a board

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1 member and talking to me as a provider, and having some
 2 contract between the contracts, I felt it was a conflict of
 3 interest. Do you recall saying that at that time?
 4 A. No, I don't recall saying it at the deposition.
 5 Q. All right. You see that you did say it, though?
 6 A. Yes. Oh, yes, yes.
 7 Q. And after that, you called the agency, and then Mr. Moran
 8 called you back to discuss it, correct?
 9 A. After the phone call?
 10 Q. Yes.
 11 A. Yes.
 12 Q. And do you think at that time you would have repeated to
 13 him your feeling that it was a conflict of interest?
 14 A. I probably could have said that, yes.
 15 MR. PARSONS: Thank you, sir. That's all the
 16 questions I have.
 17 MR. COOKE: No further questions of the witness,
 18 your Honor. Thank you.
 19 THE COURT: You said when Mr. Risser called you
 20 that you didn't know he was a board member on the
 21 Manistee/Benzie CMH; is that correct?
 22 THE WITNESS: No. I don't believe I said that.
 23 THE COURT: I thought that was his testimony
 24 initially. Maybe I misunderstood it.
 25 MR. PARSONS: My question was had Mr. Risser

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1 identified himself. And I think Mr. Rooker said he didn't
 2 recall him bringing up that.
 3 THE COURT: Oh, all right. But you just knew from
 4 knowing who the board members were and various entities that
 5 you contracts with; is that it?
 6 THE WITNESS: I knew because of his wife working
 7 for us.
 8 THE COURT: All right. Okay.
 9 THE WITNESS: I don't know any of the other board
 10 members.
 11 THE COURT: Okay. All right.
 12 MR. PARSONS: All right. That's all the
 13 questions. Sir, thank you very much.
 14 MR. COOKE: I have nothing further.
 15 MR. PARSONS: Thank you very much --
 16 MR. COOKE: You're free to go. Thank you.
 17 MR. PARSONS: -- for driving all the way up here.
 18 (Witness steps down at 2:21 p.m.)
 19 MR. PARSONS: At this time, we'll call Mr. Tom
 20 Kelley, please.
 21 THE CLERK: Please raise your right hand. Do you
 22 solemnly swear or affirm that the testimony you give in this
 23 cause will be the truth, the whole truth, and nothing but
 24 the truth, so help you God?
 25 THOMAS KELLEY: I do.

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1 MR. PARSONS: Good afternoon, Mr. Kelley.
 2 THOMAS KELLEY: Afternoon, sir.
 3 T H O M A S K E L L E Y ,
 4 called as a witness at 2:22 p.m., was examined and
 5 testified as follows:
 6 CROSS-EXAMINATION
 7 BY MR. PARSONS:
 8 Q. Would you -- and every witness knows if you need water,
 9 please ask, all right?
 10 A. Thank you.
 11 Q. You're welcome. If you would please identify your name and
 12 address to the jury?
 13 A. Thomas Kelley, Nostrick Road, Thompsonville, Michigan.
 14 Q. Are you currently employed?
 15 A. I am retired.
 16 Q. Are you currently involved in local government?
 17 A. Yes, I am, sir. I'm the Sixth District Commissioner for
 18 the County of Benzie.
 19 Q. You're a Manistee County commissioner, correct?
 20 A. Benzie County.
 21 Q. I'm sorry. You said it, and I -- I am Mr. Grant. How long
 22 have you been a Benzie County commissioner?
 23 A. Since January of 2005.
 24 Q. January of 2005. And how long have you been a member of
 25 the MBCMH board?

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1 A. Since January of 2005.
 2 Q. Same time, right?
 3 A. Yes, sir.
 4 Q. So yearly, did you play a role in doing a performance
 5 evaluation for Michael Moran?
 6 A. Well, I recall at least one evaluation that was performed,
 7 yes.
 8 Q. And you heard us -- were your sitting in court today when
 9 we discussed the performance evaluation comments by the
 10 board?
 11 A. Yes, sir.
 12 Q. And you saw that, with one exception, there were a lot of
 13 great comments in there about him, correct?
 14 A. Yes, sir.
 15 Q. And as far as you know, did the Manistee/Benzie CMH have a
 16 good representation in the State of Michigan?
 17 A. Yes, sir, they did. I believe they did.
 18 Q. You've heard nothing bad, correct?
 19 A. Not at this time, no.
 20 Q. And not at the time of your deposition a year or so ago,
 21 right?
 22 A. No, sir.
 23 Q. The June 14, 2007, meeting, before that meeting had anybody
 24 informed Mr. Moran that he was about to be fired?
 25 A. Not that I'm aware of, sir.

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1 Q. Do you know who drafted the resolution to fire Mr. Moran?
 2 A. I believe it was Peter Barnes.
 3 Q. And you know he drafted a second resolution criticizing the
 4 executive committee?
 5 A. Yes, sir.
 6 Q. And then he drafted a third resolution in which Mr. Barnes
 7 was given a lot of new duties over the operations of the
 8 Manistee/Benzie CMH?
 9 A. I heard that's possible, yes, sir.
 10 Q. And in fact, in his other resolution, Mr. Barnes was to
 11 become a liaison with the state, between the state and the
 12 local agency; do you recall that?
 13 A. I recall he was going to be some type of liaison.
 14 Q. He was going to be involved in a daily manner in the
 15 operation of the MBCMH, correct?
 16 A. Had it passed, yes.
 17 Q. Had it passed. Mr. Barnes drafted a resolution that said
 18 that if it passed, he would be involved in the daily
 19 operation of the Manistee/Benzie CMH, right?
 20 A. Well, I don't know if those are the exact words. But he
 21 was going to be more involved than he was at that present
 22 time.
 23 Q. Mr. Moran -- you observed him at the June 14 meeting,
 24 correct -- the board meeting?
 25 A. Correct, sir.

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1 Q. Did Mr. Moran act like he had heard the train coming, he
 2 was going to get fired?
 3 A. I think he reacted like the train had come by and ran him
 4 down. Okay.
 5 Q. So the answer is no, he did not act like he had heard the
 6 train coming, right?
 7 A. Well, if he had heard it, he should have listened to the
 8 whistle. Because it wasn't blowing. To be honest with
 9 you.
 10 Q. Mr. Moran was astonished?
 11 A. I -- I really can't say what was on his mind. But he had
 12 the appearance of somebody that was upset.
 13 Q. I'm referring to page 23 of your deposition, sir.
 14 A. Yes.
 15 Q. You can review that. When I asked you a question, you
 16 perceived him at the June 14 board meeting, he was
 17 astonished, right?
 18 A. Yes, he was.
 19 Q. He didn't look like he was expecting anything of the sort,
 20 did he?
 21 A. To read what I said. I think he was astonished, just the
 22 look on his face, the way he conducted himself.
 23 Q. All right. Now, you knew before that meeting Mr. Barnes --
 24 or Mr. Moran had sent an April 18 letter -- you'd gotten
 25 that about a month before that meeting, right?

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1 A. I got that two days after the May meeting, I believe it
 2 was. That was on a Thursday.
 3 Q. May 12?
 4 A. Whatever. That was on a Thursday. I received it on a
 5 Saturday.
 6 Q. My question is did you get the letter about a month before
 7 the June 14 meeting where he was fired?
 8 A. Yes.
 9 Q. Thank you. Do you recall that in August of 2005, Mr. Moran
 10 had sent a letter to the board identifying the fact he
 11 thought Mr. Risser had a conflict of interest?
 12 A. There was a lot of things going on in August of 2005.
 13 Q. Do you recall this letter suggesting Mr. Risser may have a
 14 conflict of interest?
 15 A. I do recall something about Mr. Rooker, and about Dennis,
 16 and that there was some type of a conflict of interest,
 17 correct, sir.
 18 Q. And as a board member of the MBCMH, you received that
 19 letter, what did you ever do to investigate that
 20 allegation?
 21 A. I was under the thinking that it was already being taken
 22 care of by Mr. Moran.
 23 Q. But my question is what did you do about it? Did you do
 24 anything?
 25 A. No, I did not, sir.

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1 Q. You did nothing about it?
 2 A. No.
 3 Q. To this day, you have still never done anything, correct?
 4 A. Correct, sir.
 5 Q. Let me ask you about the local match. Presently, the -- at
 6 the time of the deposition anyway, the local match had not
 7 been made, correct?
 8 A. I believe you're correct, sir.
 9 Q. Do you remember what the date of your deposition was?
 10 A. No, I don't, sir.
 11 Q. January 29, 2008, does that sound reasonable?
 12 A. That sounds correct.
 13 Q. So the local match -- do you recall that the local match
 14 that was in issue was a deficit of approximately \$128,000?
 15 A. That sounds correct.
 16 Q. That's for 2006. Do you remember how much it was for 2007?
 17 A. No, I don't, sir.
 18 Q. Would it be reasonable to assume it's about the same
 19 number?
 20 A. I would think so.
 21 Q. And then do you remember how much the local match deficit
 22 was for 2008?
 23 A. No, I don't, sir.
 24 Q. Would it be reasonable to assume that it's another roughly
 25 \$128,000?

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1 A. Possibly.
 2 MR. COOKE: No foundation.
 3 THE WITNESS: I really don't know. I couldn't
 4 answer that for you.
 5 BY MR. PARSONS:
 6 Q. Okay. Would you give me this? If you keep mounting up
 7 \$128,000 deficits, eventually you run up with some
 8 significant money here, right?
 9 A. In these times, \$128,000 is significant in and of itself.
 10 Q. At the time Mr. Moran was fired, there was no reason given,
 11 correct?
 12 A. The reason was that basically --
 13 Q. Was there a reason given? I'm not asking you for something
 14 that you now have thought about.
 15 A. The reason was --
 16 Q. At the time was a reason given.
 17 A. He was an at will employee. That was the reason.
 18 Q. Okay. But no reason for -- that's a legal reason, right,
 19 you say?
 20 A. Correct.
 21 Q. But there was no reason for his performance, right?
 22 A. (No response.)
 23 Q. Nobody criticized his performance and said, here's why he's
 24 got to be fired, right?
 25 A. No, sir. It was --

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1 Q. Do you agree that you never saw a loss of services caused
 2 by Mr. Moran in this county -- this two-county area?
 3 A. Have I ever seen a loss of service?
 4 Q. Yes.
 5 A. I wouldn't know if there was a loss of services or not.
 6 Q. You never disciplined Mr. Moran?
 7 A. No, sir.
 8 Q. As far as you knew?
 9 A. No, sir.
 10 Q. He had excellent job performance rating in January of '07,
 11 2.8 out of 3?
 12 A. I believe he had done well.
 13 Q. Then he writes the letter dated April 18, you get it May
 14 12, and the very next board meeting, he's fired, correct?
 15 A. Correct.
 16 Q. Now, I'd like to play a clip and see if you can identify
 17 your voice. You attended the -- okay. Let's see if that's
 18 high enough to play.
 19 Again, it's the young lawyers who know
 20 technology?
 21 A. Absolutely.
 22 (Tape played at 2:34 p.m.)
 23 BY MR. PARSONS:
 24 Q. Is that your voice?
 25 A. It sure sounds like me.

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1 Q. It does. Now in reverse order -- this is a heated
 2 conversation about something that has surprised at least
 3 five of the board members, right?
 4 A. Yes, sir.
 5 Q. And there's some uproar going on. And you step in and you,
 6 in your words, describe what's going on here, right -- what
 7 it's about from your perspective, right?
 8 A. Yes.
 9 Q. And when you say -- click it up one more. This -- hold it.
 10 This is about one of our board members being put to the
 11 iron. The board member you're talking about is Mr. Risser,
 12 isn't it?
 13 A. I believe that's being taken out of context.
 14 Q. Well, it was taken out of your mouth.
 15 MR. COOKE: I object to that as being
 16 argumentative.
 17 THE COURT: It is argumentative.
 18 BY MR. PARSONS:
 19 Q. Okay. I'm sorry. I apologize. You said it.
 20 A. I said this is about trust, and then naming some of the
 21 issues that were of trust. What is of trust is the fact
 22 that we have a board meeting in May talking about a pay
 23 raise which Mr. Moran did not get. And then now it's so
 24 important that our executive committee apparently met and
 25 discussed this with Mr. Moran about Mr. Risser, and this

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1 10% match, which both have been dealt with, being an
 2 important issue, yet not brought to the board meeting when
 3 they had an opportunity to do that two days before. That's
 4 what the issue is. The issue is trust. It's not the
 5 objects. It's the issue -- the issue of trust. He didn't
 6 trust the board. And that's why he was terminated -- is
 7 because of the will of the board because he could not work
 8 with the board. There was a trust issue.

9 Q. I understand you want to make a speech, and I'm now going
 10 to interrupt. Thank you.

11 A. Thank you, sir.

12 Q. In fact, you were saying what was done wrong was done by
 13 the executive committee. They met, right?

14 A. Yes, they did.

15 Q. They didn't meet with Mr. Moran?

16 A. They met with Mr. Moran.

17 Q. How do you know that?

18 A. Because they have told us so.

19 Q. But if you're -- well --

20 A. Janice McCraner, Ray Kadlec.

21 Q. You're going to --

22 A. Ray Nichols. I met with them.

23 Q. Can you respond to this question?

24 A. I can try.

25 Q. Mr. Moran was not the one that you were mad at. You were

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1 mad at MBCMH executive committee, right?

2 A. I was -- it's not a point of being mad.

3 Q. Can you answer my question. Were you angry at the MBCMH
 4 executive committee, or not?

5 A. I admonished them for what they had done at the
 6 orchestration of Mr. Moran, according to Ray Kadlec.

7 Q. All right. Now, can you answer this question? Were you
 8 talking about Mr. Risser, a board member of ours, that's
 9 what you said, that's what it's about --

10 A. A deal that had already been taken care of, yes.
 11 Mr. Risser --

12 Q. Can you answer my question?

13 A. A matter that had already been taken care of some time
 14 before.

15 MR. PARSONS: All right. Your Honor, I'd like a
 16 direction.

17 THE COURT: He did. He answered it. He agreed
 18 with you. What you're talking about right there is
 19 Mr. Risser.

20 THE WITNESS: I'm trying to answer your questions
 21 as best I can.

22 THE COURT: His answer is responsive.

23 BY MR. PARSONS:

24 Q. Okay. How about the answer about -- what's the next
 25 answer? This is about --

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1 A. About the 10% match?

2 Q. Would you listen -- could I ask that --

3 THE COURT: Don't ever -- Mr. Parsons, in my
 4 courtroom, don't ever turn on a witness like that and start
 5 shouting at a witness, or I'm maybe going to shout at you.
 6 And when I'm done, you won't like it. Guaranteed.

7 MR. PARSONS: All right.

8 BY MR. PARSONS:

9 Q. Mr. Kelley, the two things that you brought up, number one,
 10 you felt Mr. Risser was being put in iron, correct?

11 A. That's what I said.

12 Q. Did you also feel the county -- the counties were being put
 13 to the stake without it being discussed?

14 A. What I said is what I said.

15 Q. Did you believe the counties were being put to the stake
 16 for the local match?

17 A. What I was saying there was the county was being put to the
 18 stake when we've had both county administrators, and
 19 chairmen of our boards, Mark Kielhorn, and two -- and the
 20 entire MBCMH board meet to discuss the county matches. And
 21 when Mr. Moran had said time and again --

22 Q. Is this a "yes," or is this a "no?" I'm sorry to
 23 interrupt.

24 A. I'm trying to answer your question.

25 Q. I asked a simple question. Did you believe the counties

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1 were being put to the stake for the local match without it
 2 being discussed?

3 A. What I said was that there was a trust issue with Mr. Moran
 4 due to these facts that he was trying to bring up something
 5 that had already been dealt with. He didn't get what he
 6 wanted, so it's like a young person -- two boys sitting in
 7 the sand box, one brings his toys, if you don't play the
 8 game my way, I'm taking my toys and going home. It's as
 9 plain and simple as that.

10 THE COURT: And the things that he was trying to
 11 bring up that had already been dealt with were Mr. Risser
 12 and the issue of the county match; is that correct?

13 THE WITNESS: That's correct, sir.

14 BY MR. PARSONS:

15 Q. And those came to a head because of Mr. Moran's April 18,
 16 2007, letter, correct?

17 A. No.

18 Q. Where did you --

19 A. Those things came to a head -- all the trust issue --

20 Q. Did you just happen to pick them up out of the blue
 21 because -- because they were in Mr. Moran's letter of April
 22 18?

23 A. Correct.

24 Q. Thank you.

25 A. That is one issue of several. We had a \$2.5 million budget

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1 when I came in in 2005, that was cut, yet there was no
 2 administrative cuts. These were frontline service people
 3 who were serving our consumers. Their jobs were being cut.
 4 In fact, in between that time and the time of this letter,
 5 administrators were getting pay raises while other people
 6 were being cut. It was important for them to hire the
 7 Sullivan and Cotter at thousands of dollars to do a
 8 compensation study for Benzie County administration and
 9 staff when that money could have been spent on somebody to
 10 be a frontline worker working with our consumers. This is
 11 taxpayer dollars from Manistee and Benzie Counties to help
 12 the consumers. This board's responsibility is to make sure
 13 that gets done. And when you spend all kinds of money on
 14 high wages, that isn't getting the job done when it's not
 15 frontline workers working with the developmentally disabled
 16 and those who are being stressed out every day with mental
 17 illnesses.

18 Q. Anything else you want to say?
 19 A. Probably if you ask me another question.
 20 Q. You just said there were no administrative cuts?
 21 A. Not that I was aware of. Not that I saw.
 22 Q. When are you talking about?
 23 A. Jobs.
 24 Q. Are you talking about the budget cuts in 2005?
 25 A. Yes. And ongoing money constraints that we had.

1 Q. So it's your impression, you're telling the jury under
 2 oath, that when the 2005 budget cuts were made, there were
 3 no administrative cuts, right?
 4 A. Not that I was aware of. Not that I saw of the 30 or 40
 5 jobs that was lost.
 6 Q. And who gave you that information?
 7 A. Through our board meetings.
 8 Q. Did Mr. Barnes add to that anger you felt?
 9 A. No.
 10 Q. Did Mr. Risser add to it?
 11 A. Pardon?
 12 Q. Did Mr. Risser add to the anger you felt about Mr. Moran?
 13 A. No. I'm Irish. And I'm a hot head. And that's the way we
 14 are, to be very truthful.
 15 Q. Now, these are the budget cuts in 2005. Those have been
 16 going on at this point for about a year-and-a-half, or two?
 17 A. Yes, sir.
 18 Q. Why do you wait until June 14, 2007, to fire Mr. Moran?
 19 A. The opportunity prevailed itself, and things were just
 20 disintegrating, I didn't think we could wait any longer if
 21 the opportunity prevailed itself.
 22 Q. So Mr. Moran and the agency get a 2.8 out of a 3.0
 23 performance evaluation in January of 2007. That sounds
 24 like the agency's disintegrating?
 25 A. Real fast.

1 Q. All right. You felt you had to act June 14, right?
 2 A. I felt the opportunity did prevail itself to act at that
 3 time.
 4 Q. And the opportunity was caused in part by Mr. Moran's April
 5 18 letter, correct?
 6 A. In a very, very small part.
 7 Q. How small?
 8 A. Small.
 9 Q. Any percentage of fault for his letter leading to him being
 10 fired?
 11 A. 5% maybe.
 12 Q. 5%. 5% part of the June 14 firing?
 13 A. Correct. There were several other things. Since --
 14 Q. 5% is your figure. I'll go with that. All right.
 15 A. Would you let me finish?
 16 Q. I didn't have a question.
 17 A. Well, you asked me what part it played, and I'm trying to
 18 explain it to you. The other part is since January 2005,
 19 I've been appointed to several different boards throughout
 20 Northwest Michigan. This is the only board that I was on
 21 that had no committees. And I was hearing from other board
 22 members on this CMH board saying, well, we're a policy
 23 committee, but they didn't know what a policy committee
 24 was. We didn't have many policies. And others were saying
 25 that some of us on the board were trying to micromanage by

1 trying to figure out what the board was doing. It was our
 2 responsibility to the people of our communities to make
 3 sure that the board ran properly. We hire one person --
 4 that's the executive director -- to make sure that our
 5 mission was held out according to the Mental Health Code.
 6 And I don't believe it was.
 7 Q. So what part -- I mean, do you have percentages?
 8 A. We had no input on the running of the business of the
 9 mental health for Benzie County and Manistee County, except
 10 for to be like a rubber stamp, not to even know for sure
 11 what was going on. Jeff Rose got a promotion halfway
 12 through these two or three years when everybody else was
 13 getting laid off. And nobody knew about it until there was
 14 a job title change.
 15 Q. I'm going to show you what's been marked as exhibit C.
 16 This is the board packet from the May 11, 2006, meeting of
 17 the MBCMH board, all right?
 18 A. I don't know what it is. Do you have it here?
 19 Q. Exhibit C right in here, I believe. You just said you
 20 didn't have any idea what was going on. You weren't given
 21 any information, right? Is that correct, Mr. Kelley?
 22 A. Which line are you on here?
 23 Q. I'm not on any line yet. I'm asking you if you just said
 24 you got no information, you got no -- you had no idea what
 25 was going on?

1 A. We got very little information. But what I want to --
 2 Q. Now we're looking at --
 3 A. Go ahead.
 4 Q. -- exhibit C. Now, the board packet materials, would you
 5 just read those for just one meeting?
 6 A. Yes. Sure. I can read all that to you if you want me to.
 7 Board packet materials. Monthly meeting notice, May 11,
 8 2006. Draft agenda. Minutes of April 13th, 2006 board
 9 meeting, which we had to ratify. MBCCMH director's report,
 10 April, May, 2006.
 11 Q. Director's report would include his report of everything
 12 he'd been doing?
 13 A. Balance sheet for six months.
 14 Q. Balance sheet of the agency for six months?
 15 A. Ending March 31st. Letter dated April 4th to the community
 16 leaders of Benzie County from Benzie Bus Initiative.
 17 There's several things. We --
 18 Q. MBCMH check register?
 19 A. We would get a booklet like this once a month,
 20 approximately.
 21 Q. That was the point in my question. Mr. Moran gave you a
 22 lot of information, didn't he?
 23 A. To the point where it was almost like a smoke screen.
 24 Q. All right. I think --
 25 A. Because at the same time none of the board members were

1 involved with any standing committees except for the
 2 executive committee. There was no other personnel
 3 committee, there was no policy committees, there was no
 4 finance committees. None of those.
 5 Q. I forgot to ask you something.
 6 A. Sure.
 7 Q. For the fiscal year 2006, and for the fiscal year 2007, you
 8 were on Benzie County Commission at that time, right?
 9 A. Correct, sir.
 10 Q. What was the Benzie County Commission's shortfall in 2006?
 11 A. You mean moneywise?
 12 Q. Contribution to the local matchwise?
 13 A. Looks like 161,000.
 14 Q. And what was the Benzie County Commission shortfall
 15 estimated for 2007 on the next page?
 16 A. 165,000.
 17 Q. I'm sorry?
 18 A. 165.
 19 Q. And just so the jury understands it, you sat on the MBCMH
 20 board, but then you also sat on the county commission for
 21 Benzie County at that time, right?
 22 A. Yes, sir.
 23 Q. And you were one of the Benzie County Commissioners who had
 24 to vote on whether or not to pay the local match, right?
 25 A. Sure.

1 Q. And you knew that Mr. Moran was trying to get the local
 2 match from Benzie and Manistee County, right?
 3 A. Correct, sir.
 4 Q. And you knew he brought up Mr. Mark Kielhorn --
 5 A. Yes, sir.
 6 Q. -- from the state? And Benzie County Commissioners, you
 7 said yourself included, I assume, took part in that meeting
 8 with Mr. Kielhorn, right?
 9 A. Yes. And I believe we had some of our board members there
 10 as well.
 11 Q. And you know Mr. Kielhorn's memo that we've talked about,
 12 his April 4th memo, you can't use internal service funds to
 13 provide the local match, right?
 14 A. I don't recall him saying that. But.
 15 Q. Did you recall Mr. Kielhorn saying you can't use interest
 16 on the agency's surplus funds?
 17 A. I recall Mr. Kielhorn saying you've got to do your best to
 18 make that match. That's under the Mental Health Code.
 19 Q. And did you understand from Mr. Kielhorn that -- where the
 20 local match had to come from?
 21 A. It had to come from local money.
 22 Q. That originated with whom?
 23 A. With us in Benzie County, and with Manistee County.
 24 Q. And the County Commissions had to come up with that money,
 25 right?

1 A. Got to do their best to make that match.
 2 Q. And Benzie County Commission did not do that in 2006,
 3 correct?
 4 A. They done their best to make that match.
 5 Q. Did Benzie County Commission vote to pay the entire local
 6 match?
 7 A. No, they did not, sir.
 8 Q. In 2006?
 9 A. They did not.
 10 Q. How did you vote that?
 11 A. I believe I would have voted to make the match.
 12 Q. You don't know, though, do you?
 13 A. I don't recall.
 14 Q. And did Benzie County Commission vote in 2007 to make the
 15 match, or not?
 16 A. I believe we would have, if it had gone to a vote. I don't
 17 recall if it did, or not, sir.
 18 Q. And you don't recall, again, if it did, or how you voted,
 19 even though you're on the MBCMH board?
 20 A. I know we have an obligation to make it.
 21 Q. And do you know that if you don't make the local match, you
 22 risk nine times that money upstream?
 23 MR. COOKE: Objection. No foundation.
 24 BY MR. PARSONS:
 25 Q. Do you know that, or not?

1 A. No. I don't know that for sure, sir.
 2 Q. Did you receive -- you know, you believe you got too much
 3 information in your board packet from Mr. Moran?
 4 A. Yes, sir, I do.
 5 Q. Did you get the idea, though, in early 2007, when Mr. Moran
 6 sought and received a joint meeting with the state
 7 official, Mr. Kielhorn, and Benzie County, that the local
 8 match -- he was taking that pretty seriously?
 9 A. I believe that was the two county commissioners that called
 10 Mr. Kielhorn for the meeting. That would have been Don
 11 Howard and Alan O'Shea called for that meeting.
 12 Q. Do you think Mr. Moran was pushing the local match issue
 13 with the counties pretty hard?
 14 A. No.
 15 Q. You don't think it really was a big deal with him?
 16 A. No, I don't. It was an issue with him, yes. But on the
 17 other hand, we were also told that Bob Sheehan from the
 18 PIHP was helping cover it until we can make the match. It
 19 was not as much of an issue as you're making it to be.
 20 MR. PARSONS: Excuse me one second.
 21 THE COURT: Let me ask. You said you thought the
 22 Community Mental Health Board should have had more
 23 committees.
 24 THE WITNESS: Yes, sir, I do.
 25 THE COURT: Why didn't the board make more

1 committees?
 2 THE WITNESS: Well, prior to the vote to terminate
 3 Mr. Moran, that's the first time that the board -- there was
 4 so much tension going on on our board. There was a complete
 5 division. Five to seven just about. Six to six for a long
 6 time.
 7 BY MR. PARSONS:
 8 Q. About what?
 9 A. About --
 10 Q. About votes?
 11 A. Pardon, sir?
 12 Q. Six to six division on votes?
 13 A. Yes. Or seven to five. There was -- there was a lot of
 14 tension. There was a lot of derision between us.
 15 THE COURT: But any member of the board could have
 16 brought up at a meeting and said, Mr. Chairman, I suggest we
 17 have a personnel committee.
 18 THE WITNESS: Correct, sir.
 19 THE COURT: I suggest we have this kind of
 20 committee, or that kind of committee. Is that not so?
 21 THE WITNESS: Yes, sir. And I do believe some of
 22 those things were brought up from time to time.
 23 THE COURT: Okay. Go ahead, Mr. Parsons.
 24 BY MR. PARSONS:
 25 Q. Look at May 11, 2006, meeting minutes, since you have them

1 there?
 2 A. May 11, 2006. Okay. Go ahead.
 3 Q. That's exhibit C.
 4 A. Pardon?
 5 Q. At the top of page -- well, start down at the bottom of
 6 page 2. There's a motion for a financial report. Moved,
 7 and supported, and carried. That means unanimously, right?
 8 A. Correct.
 9 Q. Top of the next page, motion made, and carried unanimously?
 10 A. Correct.
 11 Q. The next motion, Ms. Meikle presents a report of progress
 12 to the board on the proposed plan of action. Motion moved
 13 and supported unanimously, right?
 14 A. Correct.
 15 Q. Next motion to approve early payoff of the administration
 16 addition loan. Moved, and supported, carries unanimously,
 17 correct?
 18 A. These were administrative informations given to us. These
 19 were not committees.
 20 Q. I understand. But you weren't trying --
 21 A. Work was still being done. Work was still being done
 22 without committees, yes.
 23 Q. Okay. You weren't trying to tell the jury that all -- that
 24 the board was "devoted" on all these motions that were
 25 passing unanimously, right?

1 THE COURT: You meant was "divided."
 2 MR. PARSONS: Pardon me?
 3 THE COURT: You meant you're not trying to tell
 4 the jury that the board was divided on all these motions.
 5 BY MR. PARSONS:
 6 Q. You're not trying to tell the jury that?
 7 A. No.
 8 Q. No matter what I said.
 9 A. He's right.
 10 Q. He's right, you bet. June 8, 2006, the motions are being
 11 approved by a full board after votes?
 12 A. Yes.
 13 Q. Right?
 14 A. Yes, sir. Business was going on as usual, yes. But the
 15 board itself had very little input on the running of the
 16 operation.
 17 Q. All right. I asked if you thought Mr. Barnes had
 18 coordinated the firing of Mr. Moran. Do you recall that?
 19 A. No, I don't recall you asking me that.
 20 Q. All right. Did Mr. Barnes call you about the idea of
 21 firing Mr. Moran before the June 14 board meeting?
 22 A. I don't recall if he called me about that or not. I do
 23 recall him calling me about the admonishing of the
 24 executive board. Possibly he did. Possibly he did.
 25 Q. Page 16 of your deposition.

1 A. Okay. Thank you.
 2 Q. You're welcome. Do you recall now?
 3 A. Let's see. Which one -- okay. Just a minute. He -- all
 4 right. He may have mentioned it to me, yes. Okay.
 5 Q. You said -- the question is, before that meeting -- I said,
 6 fair enough. Now, okay, you come into that meeting June
 7 14, you had talked to Mr. Barnes. And you said, that's
 8 correct?
 9 A. That's correct. I had talked to Mr. Barnes about what?
 10 Q. Before that meeting, about the idea of firing Michael
 11 Moran, correct?
 12 A. Uh-huh.
 13 Q. Answer, Mr. Barnes approached me about that on the
 14 telephone, correct?
 15 A. Yes, okay.
 16 Q. And you saw Mr. Barnes' resolutions that he made up, right?
 17 A. The day of the meeting, yes.
 18 Q. And you thought Mr. Barnes said he had some ideas he wanted
 19 to put them on paper. I said, well, I said, I really don't
 20 want to discuss it. I said, if you've got something you
 21 want me to read, send it to me, and I'll think about it.
 22 Do you remember that?
 23 A. I might have said that, if that's what the transcript says,
 24 yes, sir.
 25 Q. So Mr. Barnes already had those resolutions drafted when he

1 called you to discuss them, correct?
 2 A. I don't know if he did or not, sir. 15 here, or 16. Which
 3 one are you talking about? Let's see here. Excuse me a
 4 minute.
 5 (Witness reading.)
 6 Q. The question is, Mr. Kelley?
 7 A. I don't believe I saw those until the day of the meeting.
 8 Q. But it appears from your testimony there that he offered to
 9 show them to you, correct? Mr. Barnes had the
 10 resolutions --
 11 A. Well, yeah, he could have.
 12 Q. -- written, and he was calling you to see what you thought
 13 of those resolutions, right? Isn't that what it appears to
 14 be?
 15 A. I think so.
 16 Q. Okay. And those resolutions are the public business that
 17 were later to be voted on -- that were later voted on?
 18 A. Correct. This was a phone conversation between myself and
 19 Barnes, yes.
 20 Q. Right. But wasn't it true Mr. Barnes was calling you to
 21 tell you the resolutions that were going to be voted on
 22 later in public, and find out how you were going to vote on
 23 this matter of public interest?
 24 A. He may have.
 25 Q. Did anybody else call you with any other resolution ideas?

1 A. No. Just him. In which I believe I responded I'm not
 2 going to make a decision at this point.
 3 Q. Did Mr. Barnes mention to you during that conversation that
 4 he was making this call because he thought that was the way
 5 to handle it?
 6 A. I don't recall that.
 7 Q. All right. Let's go -- Mr. Moran gets fired June 14,
 8 right?
 9 THE COURT: We'll take a recess at this time.
 10 (Jury exits courtroom at 3:05 p.m.)
 11 (Court in recess at 3:05 p.m.)
 12 (Court reconvenes at 3:29 p.m.)
 13 THE COURT: All right. We're ready for the Jury.
 14 MR. PARSONS: Your Honor, I indicated that we will
 15 not be talking so if the jury overhears us, we don't --
 16 there was a concern about that.
 17 THE COURT: But you know, in no way am I telling
 18 you you can't have conversations with your client. But
 19 maybe --
 20 MR. PARSONS: Yep, thank you.
 21 (Jury enters courtroom at 3:30 p.m.)
 22 MR. PARSONS: Thank you.
 23 BY MR. PARSONS:
 24 Q. Mr. Kelley?
 25 A. Yes, sir.

1 Q. I'm going to finish up with a few quick issues. I wasn't
 2 sure where we wound up. Did you think you got too much in
 3 the packet or too little in the board member packets, or
 4 you want me to check them both?
 5 A. I don't want you to check either one.
 6 Q. All right. You were bothered by the fact that the -- you
 7 thought that the MBCMH should have more committees, right?
 8 A. Correct, sir. Yes, sir.
 9 Q. You never met with Mr. Barnes, or anyone about the June 14
 10 resolution, right?
 11 A. Only --
 12 Q. Until after the meeting?
 13 A. No. I just talked to Peter on the telephone.
 14 Q. You talked once with Mr. Barnes, and you did not want him
 15 to read the resolution to you, right?
 16 A. Correct, sir.
 17 Q. So if somebody says you and Mr. Barnes met at Rosie's Diner
 18 to discussion a resolution, that's not true, right?
 19 A. That's not true. Though we did meet at Rosie's.
 20 Q. To discuss a resolution?
 21 A. No.
 22 Q. But it wasn't about the resolution?
 23 A. No.
 24 Q. We got that one -- okay. Let me ask you, then, about this
 25 committee business. I'm going to show you what's been

1 marked plaintiff's exhibit number 5. Okay?
 2 A. Thank you, sir.
 3 Q. You're welcome. Those are the board minutes -- or the
 4 board bylaws of the Manistee/Benzie Community Mental
 5 Health, correct?
 6 A. Appears as such, yes.
 7 Q. And you've seen these before because you've been on a
 8 board, and you get one of these when you go on that board,
 9 right?
 10 A. I believe so, sir.
 11 Q. Now committees, that's defined by bylaws, correct, whether
 12 you have committees?
 13 A. Correct, sir.
 14 Q. The bylaws, in other words --
 15 A. Yes.
 16 Q. -- tell a board how to have or not have committees, right?
 17 A. Yes, sir.
 18 Q. And if a board wants to have committees, all a board has to
 19 do is change the bylaws, right?
 20 A. Correct, sir.
 21 Q. Perfectly within a board's power to add committees,
 22 subtract committees?
 23 A. Yes, sir.
 24 Q. So if you wanted to add committees, why didn't you just add
 25 committees?

1 A. That was a difficult thing to do when several of the board
 2 members liked things the way they were.
 3 Q. Do you --
 4 MR. PARSONS: I would like to move the
 5 introduction of plaintiffs proposed exhibit 5, Your Honor,
 6 the bylaws.
 7 MR. COOKE: No objection.
 8 THE COURT: Received.
 9 BY MR. PARSONS:
 10 Q. Look at the last page of the bylaws, Mr. Kelley, if you
 11 would. First of all, I'll show the jury the front page
 12 which is exhibit 5. These are the Manistee/Benzie
 13 Community Mental Health services board's bylaws. And the
 14 last page specifically concerns amendment of the bylaws.
 15 Do you see that, Mr. Kelley?
 16 A. Yes, sir.
 17 Q. They may be amended, altered, changed, added to, or
 18 repealed by the affirmative vote of a majority of the
 19 members of the board at any regular or special meeting,
 20 correct?
 21 A. Correct, sir.
 22 Q. And in fact, then, it has list down the left margin of all
 23 the times those bylaws have been amended by the board,
 24 right?
 25 A. Correct, sir.

1 Q. And the last time was in October of 2005, correct?
 2 A. Correct, sir.
 3 Q. Mr. Moran did not have the power under the bylaws to add or
 4 subtract committees, right? That was board, right?
 5 A. Correct, sir.
 6 Q. Look at page 5, section 15?
 7 A. Yes, sir.
 8 Q. The executive committee. Do you see that section?
 9 A. Yes, sir.
 10 Q. Do you remember you were upset about the fact that the
 11 committee met and came up with these recommendations for
 12 Mr. Moran's salary -- contract, right?
 13 A. Correct, sir.
 14 Q. Now, it says the executive committee shall consist of the
 15 board chairperson, vice chairperson, and secretary. All
 16 other board members are encouraged to attend meetings and
 17 participate, right?
 18 A. Correct, sir.
 19 Q. And then, (B), shall have the authority to act on behalf of
 20 the board for any emergent matters in which immediate
 21 actions would be of benefit to the agency. Any such
 22 actions taken shall be reported to the board at the next
 23 scheduled meeting. All right?
 24 A. Correct, sir.
 25 Q. Do you remember when that executive committee meeting was?

1 A. It was prior to our May meeting.
 2 Q. Prior to the exec committee meeting.
 3 Do you recall seeing notes that say -- that
 4 referred to them as having met on May 5th?
 5 A. I don't recall, sir.
 6 Q. All right. We'll leave a question mark. Maybe take some
 7 other testimony.
 8 But that executive committee was supposed to
 9 report to the board at the next scheduled meeting anything
 10 that it did, right?
 11 A. That meeting should have been posted. It was never posted.
 12 It was a public meeting of a public body. It should have
 13 been posted.
 14 Q. Okay. I mean, I don't know that. Okay. You say it should
 15 have been posted.
 16 A. Other board members weren't aware of the meeting.
 17 Q. Okay. They had the authority to act on behalf of the board
 18 for any emergent matters. Now, they didn't act. The
 19 executive committee didn't act at that May 5th meeting.
 20 Assuming it was the May 5th meeting. They didn't act other
 21 than to draw up recommendations, right?
 22 A. And try to cause a resolution to be passed.
 23 Q. But correct me if I'm wrong, but the executive committee
 24 brought the recommendations as recommendations to the board
 25 to vote on?

1 A. Correct, sir.
 2 Q. They didn't enact?
 3 A. No, they did not.
 4 Q. Okay. So these bylaws anticipate that that committee
 5 meets. And if there's something emergent, they could act
 6 on behalf of the board, right?
 7 A. Yes, they can, on --
 8 Q. This was not an emergent matter.
 9 A. No, it was not.
 10 Q. Okay. So we're both on the same track here. So they
 11 didn't take action. What they did was they met. And then
 12 any such action shall be reported to the board at the next
 13 scheduled meeting. And assuming they met on May 5th, they
 14 brought those recommendations regarding the contract five
 15 days later, May 10, right?
 16 A. Correct, sir. But it was not posted for the board members
 17 to be there.
 18 Q. Okay. And so what you're mad about is that it wasn't
 19 posted publicly?
 20 A. It isn't the point of being mad.
 21 Q. Okay.
 22 A. It's a point of violating the Open Meetings Act.
 23 Q. All right. That's the problem you take with it, not the
 24 fact that they drew up some non-binding recommendations,
 25 right?

1 A. Correct.
 2 Q. Okay.
 3 A. That's part of it, yes.
 4 Q. And each one of those people, the chairperson, vice
 5 chairperson, and secretary, they're now gone -- they're all
 6 gone -- right?
 7 A. Correct, sir.
 8 Q. And just to fresh our recollection about what they brought
 9 to that board meeting, exhibit 35, remember this one-page
 10 set of -- excuse me, I'm sorry --
 11 A. I got it. Is there one here?
 12 Q. Yes. If you want me to find that one.
 13 A. Yeah.
 14 Q. These are -- do you recall that this is what they brought
 15 back to you five days later on May 10th?
 16 A. Not necessarily, but this very well could be the record,
 17 yes.
 18 Q. Does it refresh your recollection that this is not even in
 19 the form, for example, of a resolution? It's not in the
 20 form of a formal resolution?
 21 A. No, it's not.
 22 Q. It's not like a formal resolution as exhibit number 43.
 23 That's the one -- okay. So they bring it back not as a --
 24 okay. We're all set on that.
 25 Let me ask the last issue.

1 Were you in court when we introduced exhibit 49,
 2 these Barnes reference memos?
 3 A. I have no idea. There was a lot of things.
 4 Q. Well, let me ask you this, Mr. Kelley. Did you meet with
 5 Peter Barnes after Mr. Moran was fired to talk about
 6 setting up a file of slanderous information about
 7 Mr. Moran?
 8 A. No, sir.
 9 Q. Did you talk with him by phone?
 10 A. Possibly I talked to him on the telephone, yes.
 11 Q. About -- I'm referring to it as slanderous information.
 12 Would you agree with me that it was slanderous?
 13 A. There's -- I had no idea if it was slanderous or not. What
 14 information are we referring to?
 15 Q. Well, I'm going to ask you first. And then I'm going to
 16 show you this memo which has been marked as an exhibit. Or
 17 do you have the memo in front of you?
 18 A. Yes, I do. I think I do.
 19 Q. How about -- would you consider it, if somebody said it of
 20 you -- let me ask you this. You're a former detective with
 21 what agency -- police agency?
 22 A. Benzie Sheriff's Department.
 23 Q. Benzie Sheriff's Department. And you know that it is
 24 slanderous to accuse somebody falsely of using illegal
 25 drugs, right?

1 A. Well, there's -- you know, there's a lot of people say a
 2 lot of things, but with and without foundation. So.
 3 Q. Did you discuss with Mr. Barnes putting together a file?
 4 And did you in fact advise Mr. Barnes to start a file of
 5 information that would hurt Mr. Moran's character?
 6 A. No, I did not.
 7 Q. Look at --
 8 A. Absolutely not.
 9 Q. -- reference memo 4?
 10 A. I'm looking at it.
 11 Q. This is a detail out of exhibit 59, which is Bates stamped
 12 page 85?
 13 A. Yes, it is.
 14 Q. June 27, '07, reference memo 04, signed by Peter Barnes.
 15 After my telephone conversation with Alan O'Shea, I called
 16 Tom Kelley, MBCMH board member, Benzie County commissioner,
 17 retired Benzie County detective, to share all the data not
 18 yet confirmed facts that had accumulated. And you advised
 19 him to start a file, right?
 20 A. No, I did not. That's what it says, but I did not tell him
 21 that.
 22 Q. I assured him I would do this and add things from others as
 23 they became available.
 24 Mr. Barnes told you that he would follow your
 25 instruction, didn't he, and start that file, and add things

1 to it?

2 A. I have no idea what was on his mind. Whatever he typed. I

3 never told him to create a file.

4 MR. PARSONS: That's all the questions I have.

5 THE COURT: Mr. Cooke.

6 CROSS-EXAMINATION

7 BY MR. COOKE:

8 Q. Good afternoon, Mr. "Barnes."

9 A. Mr. Kelley. Thank you.

10 Q. Oh. Mr. Barnes. Mr. Kelley. I've fallen in the same trap

11 sitting over here in the courthouse.

12 How old a man are you, sir?

13 A. 59.

14 Q. And tell me about your educational background? Where did

15 you go to school?

16 A. After graduating from high school in 1967, and after

17 spending four years in the Navy, I attended Grand Rapids

18 Junior College, got my associates. And then I went to --

19 while I was continuing work, I went to Grand Valley State

20 College -- at the time state college -- and then I

21 graduated from NMU with a bachelor's degree.

22 Q. What was your degree in?

23 A. Criminal justice and sociology.

24 Q. After you got your criminal justice degree, what did you

25 then next do in your profession?

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1 A. I continued police work, which I had been in since '72.

2 Q. And how long have you -- since '72 you've been in police

3 work?

4 A. Yes, sir.

5 Q. Did you recently retire?

6 A. 2005, yes.

7 Q. And what was your last employment in police work?

8 A. Detective/sergeant with the Benzie County Sheriff's

9 Department.

10 Q. And how long were you employed with the Benzie County

11 Sheriff's Department?

12 A. 25 years.

13 Q. 25 years?

14 A. Yes, sir.

15 Q. And then, sir, after retirement from the Benzie County

16 Sheriff's Department, how is it you became involved with

17 the Manistee/Benzie Community Mental Health board?

18 A. I ran for and was elected to the 6th District as the

19 Commissioner for Benzie County, which is Colfax and Inland

20 Townships, southeast end of the county.

21 Q. All right. So you ran for a seat and got elected to the

22 Benzie County board?

23 A. Yes, sir.

24 Q. Now, how did you get, then, on to the Manistee/Benzie

25 Community Mental Health board?

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1 A. I was appointed by the chairman of the Board of

2 Commissioners of Benzie County.

3 Q. Who is that?

4 A. That was Don Howard at the time.

5 THE COURT: He didn't like you -- appointed you to

6 the --

7 THE WITNESS: I will save my remarks, Your Honor,

8 if I may.

9 THE COURT: I'm just kidding.

10 BY MR. COOKE:

11 Q. All right. Did you ask for that appointment, or is that

12 part of the duties you accepted?

13 A. That's part of the duties I accepted. I was the new guy on

14 the block, so I did as I was told.

15 Q. And your first meeting where you went to the board, when

16 was that?

17 A. I believe that would have been the January meeting.

18 Q. Of what year again, sir?

19 A. 2005.

20 Q. 2005. All right. Now, does the Manistee/Benzie Community

21 Mental Health board -- do they have the power to appoint or

22 remove their own members?

23 A. I believe that they suggest to the prospective counties who

24 are going to make the appointments, and they help make that

25 determination.

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1 Q. Who had the authority to make the appointments to the

2 board, though, is my question?

3 A. The county commissioners.

4 Q. From?

5 A. From the respective counties. Seven appointments, which

6 includes the commissioners from Manistee County, and five

7 from Benzie. That's due to the population.

8 Q. So seven members of the Manistee/Benzie Community Mental

9 Health board are appointed from Manistee?

10 A. Yes. And five from Benzie.

11 Q. Five are appointed from Benzie?

12 A. Correct, sir.

13 Q. And those are done by the county boards; is that right,

14 sir?

15 A. Yes, sir.

16 Q. So the board itself, the Community Mental Health board

17 itself, doesn't have the authority to remove or appoint

18 members; is that right?

19 A. Correct, sir.

20 Q. All right. When you first got on the board in January of

21 2005, tell us about your observations about how things ran

22 up there?

23 A. Well, the first thing that we ran into was a peculiar

24 situation with the Mental Health Code. Mary Pitcher and I,

25 another Benzie County Commissioner, were appointed to the

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1 board, and were advised by our commission to start in
 2 January, where in fact we were not really to start until
 3 the April meeting of 2005, because that's what the dictates
 4 are of the Mental Health Code, that the -- that the
 5 appointments go from April, not from January.
 6 Q. All right. So your first few meetings there was
 7 duplicative --
 8 A. It was kind of like a training session for us. We didn't
 9 have a vote really to speak of. But we got to sit, and
 10 observe, and watch, and see how things were done.
 11 Q. Once you assumed your role in April of 2005, did you start
 12 making some observations about the way Mr. Moran interacted
 13 with the board?
 14 A. Yes, sir.
 15 Q. And what observations can you tell the jury about, sir?
 16 A. Well, at this time I -- I was learning about boards --
 17 county boards. When I became commissioner, I guess I
 18 really didn't know what I was getting into. But you go --
 19 you're assigned all these boards throughout the state
 20 representing your county, and that particular interest of
 21 that board. And you know, one of the first things that I
 22 noticed was -- and of course one of the first things we
 23 were plagued with was this \$2.5 million cut. That was a
 24 tough thing. And that the board really didn't have much
 25 invested of themselves in the running of the operation.

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1 Q. All right. Did you review the Mental Health Code at some
 2 point during your orientation?
 3 A. Yes. Fortunately, Mr. Moran distributed one of those to
 4 all of us.
 5 Q. And did you read it?
 6 A. Oh, yes, sir.
 7 Q. And from reading the Mental Health Code, did you believe
 8 that the board had a responsibility to be active in
 9 decisions regarding the agency itself?
 10 A. Yes, sir. I mean, you know, first of all, you know, you're
 11 appointed by a county, the taxpayers and community members.
 12 And you have that responsibility to represent not only that
 13 jurisdiction, and the taxpayers, but also those people that
 14 you're serving -- the consumers of mental health
 15 services -- whether it be developmentally disabled, or
 16 whatever.
 17 Q. With that understanding that you had, you believe that the
 18 board had an obligation to be active in the running of the
 19 agency. Can you tell us, please, if the board was in fact
 20 active?
 21 A. In my opinion, no.
 22 Q. And why is that?
 23 A. Well, number one, it was almost like we were spoon fed
 24 everything, and we had no committees. We had no investment
 25 into the operation of the mental health board -- or of the

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1 mental health system.
 2 Q. When you say you had no committees, Mr. Parsons showed you
 3 the bylaws where you could in fact create committees; is
 4 that true?
 5 A. Yes, sir.
 6 Q. And from time to time did certain members of the board
 7 request to create committees so the board could work on
 8 certain issues?
 9 A. Yes, sir.
 10 Q. And did Mr. Moran take a position in opposition to those
 11 requests?
 12 A. Well, to a point he did. But then other board members
 13 would say, like Ray Kadlec, would always say, we're a
 14 policy committee. Carver Edwards would say, now you're
 15 micromanaging. And the only thing we're trying to do is
 16 invest of ourselves because of that's our obligation,
 17 according to the Mental Health Code.
 18 Q. So was there a period of time where the majority of the
 19 board members did not want to form committees?
 20 A. That's correct. When I first got on that board, there was
 21 very few people attending the meetings. There was times
 22 that we had a difficulty meeting a quorum.
 23 Q. And did you speak out about that?
 24 A. No, I didn't. I just found it peculiar.
 25 Q. And at some point in time, did you see the way Mr. Moran

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1 interacted with certain of the board members?
 2 A. Yes, sir, I did.
 3 Q. And specifically with respect to Mr. Risser, can you
 4 describe for the jury the different interactions you saw
 5 between Mr. Moran and Mr. Risser?
 6 A. There was times that you could see some reservations with
 7 Mr. Risser to where he wasn't -- I wouldn't say hostile
 8 with him, but he was very businesslike -- stand-offish.
 9 Q. Did you ever see Mr. Moran dress Mr. Risser down at a
 10 meeting?
 11 A. I don't recall.
 12 Q. Did you have personally some problems with getting
 13 information from Mr. Moran?
 14 A. Well, I remember one time in particular.
 15 Q. All right. Tell us about that.
 16 A. It was July or August of 2005. This was during the time of
 17 the \$2.5 million cuts, people were losing jobs. I'm
 18 hearing that a lot of the top level administration was
 19 making big money. So I asked -- well, first of all, I had
 20 gone to -- in February -- I had gone to a conference, and I
 21 later contacted a young lady by the name of Tresha from the
 22 Michigan Association of Community Mental Health Boards in
 23 Lansing.
 24 Q. Without getting into hearsay discussions, I want you to
 25 tell us what your experience was trying to get information

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1 that you felt was important to you?

2 **A. It was difficult. I had sought -- and after having a**

3 **motion passed -- a copy of the pay scale of all members and**

4 **employees of the Manistee/Benzie Community Mental Health**

5 **staff, including the administration.**

6 **Q.** So you were interested in seeing what the salary ranges

7 were for the administration and staff?

8 **A. Administration and staff right on down to the lowest least**

9 **senior person.**

10 **Q.** And was that because of -- in part, because of these 2005

11 cuts that were playing out?

12 **A. Yes, yes.**

13 **Q.** Was it important to you to find out if services and staff

14 is being cut to the clients, what's happening at the

15 administrative end?

16 **A. Exactly.**

17 THE COURT: And that took a motion passed --

18 THE WITNESS: Yes, sir.

19 THE COURT: -- to get -- by the board to get a

20 copy?

21 THE WITNESS: Yes.

22 BY MR. COOKE:

23 **Q.** Why is it that it took a motion to get this information?

24 **A. I have no idea. I was on several other boards, and we**

25 **never had to do that. But it seems like everything we had**

1 to do took a motion.

2 **Q.** All right. Was it -- did you ever have an interaction with

3 Mr. Moran where he told you, I don't work for any

4 individual board member but for the board as a whole?

5 **A. He never told me that particularly.**

6 **Q.** All right.

7 **A. I heard that being said, but that's hearsay.**

8 **Q.** Okay. So it was your impression, though, that you had to

9 get a motion passed before you could get some information?

10 **A. Yes, sir.**

11 **Q.** And you proposed a motion and got it passed?

12 **A. Yes, sir.**

13 **Q.** And tell us what happened as a result of passing that

14 motion to look at the salary structures of administration?

15 **A. That was towards the end of one meeting. And I asked to**

16 **have it distributed at the next meeting for each board**

17 **member to look at.**

18 **Q.** Who did you ask?

19 **A. I asked -- well, in a motion, I asked that Mr. Moran**

20 **furnish that to us.**

21 **Q.** All right.

22 **A. So the next meeting came around, and didn't get a packet,**

23 **didn't get a packet, throughout the meeting. And our**

24 **meetings lasted about four hours. And towards the end, I**

25 **said, I believe in the prior month I asked for this packet**

1 for each board member. And Mr. Moran said that he will

2 furnish it. And he had Jeff Rose step out and bring in all

3 these packets. They were thick packets -- envelopes -- big

4 envelopes -- two pages each for each employee, totally

5 skewed, not alphabetical, not pay level, just totally

6 skewed. And that was not reminiscent of how I usually

7 receive stuff from the mental health.

8 **Q.** Was there anything in that packet that was an outline, or a

9 summary, or anything, that could let you look at salary

10 structures?

11 **A. No.**

12 **Q.** What did you do then?

13 **A. Well, I got a little frustrated over that. I wanted to see**

14 **how things were. Talking a couple -- I don't know how many**

15 **people were in these pay ranges. And so I took all of**

16 **these two-sheet things. I was up until 4:00 in the morning**

17 **that night putting things alphabetical, and by pay level.**

18 **And then my wife put it on the computer for me, and just**

19 **hit the one little button -- I'm not a computer literate**

20 **person. All right. But she hit the one -- the one little**

21 **magic button. I don't know. Maybe it is from Heaven. I**

22 **don't know. But it would line it all up, alphabetically,**

23 **and it lined it up by pay grade. And then I brought that**

24 **to the next meeting, copies for every board member. I gave**

25 **them to Mr. Moran to ask him to distribute them.**

1 **Q.** Did you feel, sir, that there was some barrier between the

2 board and the board's ability to get information about the

3 agency?

4 **A. Yes, there was. That was evident.**

5 **Q.** Did you feel that barrier was caused in part by Mr. Moran's

6 actions?

7 **A. And his staff under his direction.**

8 **Q.** All right. I want to direct your attention to May 10th of

9 2007. Were you at that meeting? That was the meeting

10 where there was a proposal to extend Mr. Moran's contract.

11 Do you remember that?

12 **A. Oh, yes. Okay.**

13 **Q.** All right. Now, when you got to that meeting, had it

14 been -- had anything been preannounced that the executive

15 committee was going to bring in some sort of resolution to

16 extend Mr. Moran's contract?

17 **A. Not that I recall.**

18 **Q.** And when you got to that meeting, did in fact the executive

19 committee propose to extend his contract under certain

20 terms?

21 **A. When I got to the meeting, did they propose one?**

22 **Q.** Yes, sir.

23 **A. Oh, yes.**

24 **Q.** And did you learn during that meeting that the executive

25 committee had met with Mr. Moran prior to the meeting?

1 A. Yes.
 2 Q. And that he met with them to talk about extending his
 3 contract?
 4 A. Yes, we did.
 5 Q. Now, was that an emergent situation like we see in the
 6 bylaws?
 7 A. No, sir, it was not emergent.
 8 Q. And the bylaws that we looked at also have a statement that
 9 the board -- the board as a whole -- is invited to attend
 10 executive committee meetings; is that true?
 11 A. Those meetings are to be posted.
 12 Q. Let me ask about the bylaws.
 13 A. Yes.
 14 Q. The bylaws say that the full board is invited to attend
 15 those meetings?
 16 A. Yes.
 17 Q. And can the full board attend those meetings if they're not
 18 given notice of the meetings?
 19 A. It's very difficult to do that.
 20 Q. And it is your understanding that the executive committee
 21 is a standing committee on this board?
 22 A. Yes, sir, it is, sir.
 23 Q. And as a standing committee, they have to post the meeting
 24 according to the Open Meetings Act?
 25 A. Yes, sir.

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1 Q. And was that upsetting to you that this contract was being
 2 proposed by the executive committee after they had met --
 3 three of them had met together with Mr. Moran?
 4 A. Yes, sir.
 5 Q. All right. And did you express your dissatisfaction with
 6 that at the meeting?
 7 A. Oh, I believe I did.
 8 Q. How did you vote, sir?
 9 A. I voted not to extend that contract, not to enter into that
 10 contract that they were trying to pass into a resolution.
 11 Q. And was that then voted down -- that resolution?
 12 A. Yes, it was, sir.
 13 Q. Was that the first time since you'd been on the board in
 14 2005 that the board as a whole had refused to pass
 15 something that Mr. Moran was interested in?
 16 A. Surprisingly, yes.
 17 Q. Now, after that meeting, did you receive this April 18th of
 18 2007 letter in the mail?
 19 A. Yes, sir. I received that in the mail on -- two days later
 20 at my home. It would be on a Saturday.
 21 Q. I'm showing you, sir, what I've marked at defendant
 22 proposed exhibit letter T. Do you recognize that?
 23 A. Yes, sir.
 24 Q. And is that the actual envelope and letter that you
 25 received after that May meeting?

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1 A. Yes, sir.
 2 Q. And you put some handwritten notes of some kind on the
 3 envelope; is that true?
 4 A. That's true, sir.
 5 Q. And could you take a look inside the envelope?
 6 MR. PARSONS: I'm sorry. He has the actual
 7 envelope?
 8 MR. COOKE: He's got the envelope.
 9 MR. PARSONS: Okay. Could I see that?
 10 MR. COOKE: Yeah. In a second.
 11 BY MR. COOKE:
 12 Q. And is that the letter that you received in that envelope,
 13 sir?
 14 A. Yes, sir.
 15 Q. Could you put it back in the envelope?
 16 MR. COOKE: I'm showing proposed defendant's
 17 exhibit T to plaintiff's counsel. I would move for its
 18 admission.
 19 MR. PARSONS: Could I simply voir dire on this,
 20 please?
 21 THE COURT: Yes.
 22 VOIR DIRE
 23 BY MR. PARSONS:
 24 Q. Mr. Kelley, this looks like an envelope that came to you
 25 personally --

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1 A. Yes. At my home.
 2 Q. -- at your house from the Manistee/Benzie Community Mental
 3 Health services office, right?
 4 A. Yes, sir.
 5 Q. What do you call that thing, the --
 6 A. Post mark.
 7 Q. The post mark, but it's a stamp in a machine, right?
 8 A. Yeah, uh-huh.
 9 Q. When did you discover you had this envelope still?
 10 A. Oh, God, I -- I gave that to Chris a long time ago.
 11 Q. A long time ago?
 12 A. Yes.
 13 Q. Like how long?
 14 A. I don't recall when it was.
 15 Q. Well, could you try and think, please?
 16 A. Shortly after he came on as our defense.
 17 Q. So that would have been --
 18 A. You know, I don't remember exactly when that was.
 19 Q. Mr. Moran, we know, retained me within, say -- within a
 20 week after he was terminated, so June of '07. Did you give
 21 him -- Mr. Cooke -- this envelope in about June of '07?
 22 A. I don't recall. It was shortly after he came on as
 23 counsel.
 24 Q. So summer of '07, that's safe?
 25 A. Right. Well, probably, yes.

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1 Q. Probably. Well, we're dealing with probably. Okay.
 2 Summer --
 3 A. **It was shortly after he came on as counsel.**
 4 Q. Okay. Summer of '07. And this is exhibit T. Okay. Thank
 5 you very much.
 6 MR. PARSONS: I have no objection to exhibit T.
 7 THE COURT: Received.
 8 BY MR. COOKE:
 9 Q. I have a question about the envelope. Didn't you just hand
 10 that to me prior to this trial starting -- the envelope
 11 itself?
 12 A. **Oh, yes.**
 13 Q. You said you'd found it amongst some papers when you were
 14 getting ready for trial?
 15 A. **Yes.**
 16 Q. So the actual envelope is something you just found
 17 recently?
 18 A. **Yes. But the letter itself a long time ago.**
 19 MR. PARSONS: May I voir dire again?
 20 THE COURT: Yes.
 21 MR. PARSONS: Sorry.
 22 THE WITNESS: If you want another stamp on it,
 23 fine.
 24 **VOIR DIRE**
 25 BY MR. PARSONS:

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1 Q. Mr. Kelley, I'm sorry. Did you understand me when I was
 2 showing you the envelope, and I was saying when did you get
 3 this?
 4 A. **Hmm, I thought you meant the letter.**
 5 Q. Okay. Okay.
 6 A. **This here -- this here, I was going through some old**
 7 **papers, and I saw this, I said, well, okay, maybe Chris can**
 8 **use that, so I gave it to him.**
 9 Q. What old papers? I'm just interested why an envelope --
 10 A. **Well, let me --**
 11 Q. He doesn't come up --
 12 A. **Let me put it this way. Every December, after Christmas, I**
 13 **sit down as a commissioner and destroy old papers -- throw**
 14 **them away -- just because of the sheer volume of different**
 15 **boards I'm on. You have tons of paper. And there was a**
 16 **stack of papers that I hadn't gotten to. So I was going**
 17 **through them, and I found it.**
 18 Q. Just old MBCMH --
 19 A. **No, no. All kinds of different boards that I'm on. Just a**
 20 **bunch of junk papers. And usually what I would do is I'd**
 21 **tear them up, put them in little bags, and put them out in**
 22 **the garbage. And I found this, and I thought to myself,**
 23 **huh. And then I realized that I already gave that to**
 24 **Chris, but he's never had this. I thought you were talking**
 25 **about the letter itself because that was the important**

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1 **thing.**
 2 Q. So the notes -- when did you actually make the notes on the
 3 envelope?
 4 A. **My gosh, it would have had to have been a long time ago.**
 5 **This is old stuff here.**
 6 Q. Did you make those notes before Mr. Moran was fired, or
 7 after he was fired?
 8 A. **I believe I made these notes right away as soon as I got**
 9 **the note -- or the letter. Because I got it -- well, I'll**
 10 **let you read it.**
 11 Q. I know that's his April 18 letter.
 12 A. **Yes.**
 13 Q. Okay. So you made those handwritten notes on --
 14 A. **On the day that I got the letter.**
 15 Q. On the day you got the letter. All right.
 16 MR. PARSONS: That's all I have. Thank you.
 17 BY MR. COOKE:
 18 Q. Could you just put the letter back inside the envelope so
 19 we know where it came from, sir.
 20 MR. COOKE: And if there's no objection, Your
 21 Honor, now that T is in evidence, I have copies of T in the
 22 exhibit book that I'd like the jury to turn to.
 23 MR. PARSONS: No objection.
 24 THE COURT: All right.
 25 BY MR. COOKE:

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1 Q. You can hold T in your hand for this part of the
 2 examination. All right. The letter is addressed to your
 3 actually residence; is that correct?
 4 A. **Correct, sir.**
 5 Q. And the postage stamp is May 11 of 2007; is that correct?
 6 A. **That's correct, sir.**
 7 Q. And that would have been the day after the May 10th meeting
 8 where Mr. Moran's contract extension was voted down; is
 9 that true?
 10 A. **That's true, sir.**
 11 Q. All right. And it comes to you on Manistee/Benzie
 12 Community Mental Health services letterhead -- an envelope
 13 head -- is that right?
 14 A. **Yes, sir.**
 15 Q. And inside of the envelope is -- turn to the next page of
 16 the exhibit -- is this letter of April 18 of 2007; is that
 17 right?
 18 A. **That's correct, sir.**
 19 Q. Okay. And when you received the envelope and opened it,
 20 you took a pencil and you wrote certain things on that
 21 envelope; did you not?
 22 A. **Yes, I did, sir.**
 23 Q. And the first thing at the top we see is why did not
 24 executive board notify full board on Thursday, May 10th,
 25 written 4-18-07; isn't that true?

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1 A. Yes, sir.
 2 Q. So you immediately wondered why that May 10th meeting was
 3 completely devoid of any mention of the necessity to file
 4 this report? Is that correct?
 5 A. That's correct, sir.
 6 Q. All right. Then you also wrote, board meeting on Thursday,
 7 May 10th, why weren't we told about this, true?
 8 A. That's true.
 9 Q. And once again, your focus is why wasn't this brought up at
 10 the meeting; is that right?
 11 A. That's correct, sir.
 12 Q. And then help me out with -- oh, it says mail out May 11,
 13 Friday?
 14 A. Right. May 11th, the day after. That's what the post mark
 15 is.
 16 Q. So the day after the meeting?
 17 A. Yes, sir.
 18 Q. All right. And so the issues you were raising when you
 19 received this letter is why didn't Mr. Moran bring these
 20 things to the attention of the board at the May 10th
 21 meeting; is that true?
 22 A. True.
 23 Q. Now, I want you to look at the letter itself. The letter
 24 of April 18th of 2007. There's two things that Mr. Moran
 25 mentions in there. And I want to be on the second

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1 paragraph. It says, first, I will be writing to the
 2 Michigan Department of Community Health, correct?
 3 A. Yes, sir.
 4 Q. All right. So this is a letter addressed to the executive
 5 committee where Mr. Moran says he will be writing to the
 6 department, true?
 7 A. True, sir.
 8 Q. Hasn't said I have written or reported anything; is that
 9 correct?
 10 A. Correct.
 11 Q. And these same three people, Kadlec, McCraner, and Nichols,
 12 were the same people that had met with Mr. Moran apparently
 13 on May 5th to talk about extending his contract; is that
 14 right?
 15 A. Correct, sir.
 16 Q. So you had some concerns about why the executive committee
 17 had retained this letter from April 18 of '07 and not done
 18 anything with it, right?
 19 A. Correct, sir.
 20 Q. Now, when it says that Mr. Moran is going to report the two
 21 counties for being out of compliance with the local match,
 22 was it your understanding that as of the date you received
 23 the letter, both counties had been cooperating to pay in
 24 additional money to the CMH?
 25 A. Yes, they were. Both were working on catching up with our

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1 match as quickly as we could.
 2 Q. All right. And you as being a Benzie County Commissioner
 3 had voted, or agreed, to increase Benzie County's
 4 contribution into the CMH; is that true?
 5 A. Yes, it was.
 6 Q. And even though you didn't give Mr. Moran as much money as
 7 he was asking for, did you feel that there had been an
 8 agreement as to how much money Benzie was going to pay him?
 9 A. Correct, sir.
 10 Q. So in your mind, when you receive this letter on May 11th,
 11 where it's talking about a threat to report the counties
 12 for not cooperating, you believe that that was untrue; is
 13 that right?
 14 A. Yes.
 15 Q. Because at least Benzie was cooperating, correct?
 16 A. Uh-huh.
 17 Q. Yes?
 18 A. Well, yeah. And I heard that Manistee was as well.
 19 Q. And you heard Manistee was. And at that May 10th meeting
 20 where the topic of conversation with Mr. Moran's salary,
 21 Mr. Moran never said, hey, board, I got a real problem
 22 because these two counties are just not cooperating at all?
 23 A. That never entered into the conversation.
 24 Q. But it looks like the context of this letter suggests that
 25 nobody's cooperating with Mr. Moran; is that true?

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1 A. That's true.
 2 Q. All right. And then it says, second, I intend to file a
 3 complaint with the office of the United States attorney for
 4 the Western District of Michigan. I intend to file.
 5 Apparently the letter is not saying, I did file it. It
 6 said, I intend to report. Is that right?
 7 A. Yes, sir.
 8 Q. And then it says Mr. -- accuses Mr. Risser of an attempt to
 9 influence multi-million dollar contracts involving federal
 10 Medicaid funds; is that true?
 11 A. Yes, sir, it does.
 12 Q. Now, you had heard -- or had you heard previously back when
 13 you first joined the board, or shortly thereafter,
 14 accusations, or allegations by Mr. Moran that Mr. Risser
 15 had a conflict interest?
 16 A. Yes, sir.
 17 Q. Had you heard anything else from Mr. Moran that Mr. Risser
 18 was somehow trying to influence multi-million dollar
 19 federal contracts?
 20 A. I never heard that. I mean, I heard he was trying to
 21 influence some things.
 22 Q. All right.
 23 A. I didn't put much stock into it.
 24 Q. Those accusations had been going on for years; is that
 25 right?

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1 A. Yes, sir.

2 Q. Did you feel as a -- well, you yourself based on your law

3 enforcement experience, that if there was some sort of

4 infraction, it was incumbent upon Mr. Moran to report it in

5 a timely fashion?

6 A. That was his obligation to do that.

7 Q. And what was the -- if you can recall, before receiving

8 this letter on May 11th, when was the last time Mr. Moran

9 had said anything to the board or to you personally about

10 Mr. Risser trying to influence multi-million dollar

11 contracts?

12 A. I don't recall.

13 Q. So this allegation that Risser was doing something that

14 appears to be improper, would that -- did that impress you

15 as being some kind of new allegation that was coming out?

16 A. No. I just thought it was just bringing up old bones

17 again.

18 Q. Now you've heard -- you've been sitting here listening to

19 testimony. You heard Mr. Rooker's testimony; is that true?

20 A. True, sir.

21 Q. And based on what you've heard to this point, in any event,

22 do you see anything that suggests that Mr. Risser was

23 trying to influence multi-million dollar federal contracts?

24 A. No. He didn't have that ability.

25 Q. And you didn't think Mr. Risser had the ability to

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1 influence contracts?

2 A. No, no.

3 Q. Have you seen anything based on Mr. Moran's allegations

4 that requires a further investigation?

5 A. Myself? No.

6 Q. Now, you told the jury, and Mr. Parsons wrote it up on the

7 board here, that this letter influenced your decision to

8 vote to terminate Mr. Moran's contract; is that correct?

9 Some sort of 5% influence?

10 A. Well, yeah.

11 Q. All right.

12 A. Yes.

13 Q. Now, sir, were you concerned that Mr. Moran was going to

14 report the two counties to the Department of Community

15 Health?

16 A. No.

17 Q. Were you concerned that Mr. Moran was going to report

18 Mr. Risser to the U.S. attorney?

19 A. No.

20 Q. Were you concerned that if this was such a critical issue,

21 why didn't he bring it to us at the May meeting?

22 A. That, and it seems as though his contract was more

23 important than this.

24 Q. All right. And is that where you lost -- you talk about

25 loss of trust. Is that where you lost trust with

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1 Mr. Moran?

2 A. I had been losing trust in Mr. Moran for some time before

3 that. But this added to it.

4 Q. All right. So it wasn't the, sir, the substance of the

5 letter, or the possible report to these agencies that

6 concerned you?

7 A. No, no, no, no.

8 Q. It was the fact that Mr. Moran never brought this to your

9 attention, right -- at the May meeting?

10 A. He claims to have brought it. Not only he, but an

11 executive board. An executive board apparently knew about

12 this as of April 18th, or shortly thereafter, but they had

13 a meeting with him, and they had a meeting they brought to

14 us, and nobody said anything.

15 Q. And that assumes that the letter was even in existence on

16 April 18 of 2007, doesn't it?

17 A. Well, I can only assume that. And then they apparently met

18 sometime thereafter.

19 Q. And you can only assume it based on the date of the letter;

20 is that true?

21 A. Yes.

22 Q. But you can't make that assumption based on the date you

23 received it, can you?

24 A. No. There's almost a month period of time.

25 Q. So the first time you knew the letter even existed was May

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1 11, when it shows up at your door?

2 A. May 12.

3 Q. Or May 12 when it shows up at your door, right --

4 postmarked May 11?

5 A. Yes.

6 Q. And that letter showed up all by itself; is that right?

7 A. Yes, sir.

8 Q. It didn't show up with a board packet of materials, true?

9 A. No.

10 Q. True?

11 A. True.

12 Q. It didn't show up with a packet of materials for the June

13 meeting?

14 A. Correct.

15 Q. And it wasn't in any packet of materials for the May

16 meeting, true?

17 A. True.

18 Q. All by itself, right?

19 A. (Nods head.)

20 Q. And that was after the board had voted 7-5 not to approve

21 Mr. Moran's contract extension, right?

22 A. Correct.

23 Q. In your discussions with Mr. Barnes, or with anybody else

24 from the May meeting to the June meeting, did you ever meet

25 in a quorum with the board?

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1 A. No.
 2 Q. Did you ever meet in a group of seven?
 3 A. No.
 4 Q. Did you ever meet in a -- other than this phone
 5 conversation between you and Mr. Barnes, did you ever meet
 6 in any other group to discuss the possibility of
 7 terminating Mr. Moran's contract?
 8 A. No.
 9 Q. When you talked to Mr. Barnes on the phone, and you raised
 10 this issue about possible termination of the contract, did
 11 you commit your vote?
 12 A. No.
 13 Q. Did you know how you were going to vote until you got to
 14 the meeting that day?
 15 A. No, I did not.
 16 Q. Did you know how anybody else was going to vote when you
 17 got to the meeting that day?
 18 A. No, I did not, sir.
 19 Q. Were you surprised that the board voted 7-5 to terminate
 20 this contract?
 21 A. Yes, I was.
 22 MR. COOKE: I have no further questions. Thank
 23 you.
 24 **RECROSS-EXAMINATION**
 25 BY MR. PARSONS:

1 Q. Mr. "Barnes," pretty quickly here. Or Mr. Kelley, quickly
 2 here. I'm going to show you what's been marked plaintiff's
 3 exhibit 79. Do you recognize that as an affidavit that you
 4 swore under oath July 31, 2008?
 5 A. Yes, I do.
 6 MR. PARSONS: And I'll move the introduction of
 7 plaintiff's proposed exhibit 79.
 8 MR. COOKE: The 79 I have is not an affidavit.
 9 MR. PARSONS: Was it 79? Maybe I said it wrong.
 10 MR. COOKE: I don't have an objection, but it is
 11 not 79 in my book here.
 12 MR. PARSONS: What does the Court --
 13 THE COURT: I have 79.
 14 MR. PARSONS: Affidavit?
 15 THE COURT: Right.
 16 MR. COOKE: I have -- oh, there's two things.
 17 Okay.
 18 MR. PARSONS: So I would move the introduction of
 19 plaintiff's proposed 79.
 20 MR. COOKE: No objection to 79.
 21 THE COURT: Received.
 22 BY MR. PARSONS:
 23 Q. Exhibit 79 is an affidavit you said under oath you have no
 24 personal notes pertaining to Mr. Moran and/or the facts and
 25 circumstances of a termination of his contract for the

1 period May 1, 2007 through June 14, 2007?
 2 A. Correct, sir.
 3 Q. Further, affiant says nothing. And that's as of July 31,
 4 2008, right?
 5 A. Correct, sir.
 6 Q. You did have notes, right?
 7 A. I had this. Apparently I had this when I was going through
 8 my papers.
 9 Q. When you signed this under oath, did you understand that we
 10 were involved in this litigation, and we were trying to
 11 find notes that you had. Did you -- I mean, you signed
 12 this affidavit knowing that?
 13 A. Yes, I did.
 14 Q. And when did you first produce that --
 15 A. Just a short time ago.
 16 Q. -- note?
 17 A. This here. This here I had already turned over.
 18 Q. That's not your notes, though, right? The notes are on the
 19 envelope.
 20 A. Right.
 21 Q. And you said you had a stack of material at home?
 22 A. Yes. My wife was on me to get rid of that pile of papers.
 23 Q. As a detective, sir, how many times have you had to deal
 24 with evidence matters? How many times?
 25 A. Hundreds of times.

1 Q. And you know when somebody signs an affidavit under oath
 2 that they don't have any evidence, that means --
 3 A. I didn't know I had any evidence. When I signed that, I
 4 wasn't aware of this.
 5 Q. All right. How did you become aware of it? You just
 6 happened on to it?
 7 A. It was in a stack of other papers.
 8 Q. All right. Let me go back to the Barnes memo, the creating
 9 a file -- maybe I -- maybe I surprised you with that.
 10 Having reflected on that for the last half an hour, 45
 11 minutes, Mr. Barnes says you told him to create a file.
 12 Does it remain your testimony that you don't know what he's
 13 talking about?
 14 A. I have no idea what he's talking about.
 15 Q. All right.
 16 A. I would not have told him to create a file.
 17 Q. Looking at exhibit 5, the bylaws. Right there. Do you
 18 understand that the bylaws at page 3 talk about board
 19 duties, powers, right?
 20 A. Okay. I'm there.
 21 Q. Your primary duty is to do annual reports, secure funds --
 22 secure funds and evaluate the quality of the board, right?
 23 A. Go ahead.
 24 Q. Your primary duty was not to manage the day-to-day
 25 operation of the agency, right?

1 A. Well, there's several things here that are duties. I'm not
 2 saying they're primary, but powers and duties, that's what
 3 it says.
 4 Q. Yes. Would you tell the jury that the Manistee/Benzie CMH
 5 board was supposed to involve itself in the daily operation
 6 of the board?
 7 A. No, we're not.
 8 Q. Or in the daily operation of the agency?
 9 A. No, we're not.
 10 Q. Your duty as a board was to establish general policy
 11 guidelines within which the executive director shall
 12 execute the Community Mental Health program, right --
 13 general policy guidelines?
 14 A. That's letter J?
 15 Q. Yes.
 16 A. Okay. Yes. That's one of several.
 17 Q. Finally, in response to defense counsel's questions, you
 18 said you believed the counties were cooperating at that
 19 time to produce the local match. Is that what you said?
 20 A. To the best they could, yes.
 21 Q. Okay. Well, they did not produce the local match in 2006,
 22 correct? And they did not produce the local match in 2007,
 23 correct?
 24 A. I don't know that for sure, sir. I mean, that's what you
 25 say.

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1 Q. Isn't that what we already covered? So they were
 2 cooperating, but that's like when you go to somebody --
 3 isn't it like --
 4 A. To what point, I don't know, sir. I say, to what point, I
 5 don't know how much they were able to give.
 6 Q. Okay. All right. But you're not taking back your
 7 testimony that they did not give 128 in 2006, they did not
 8 give 128 in 2007?
 9 A. All I'm saying is I don't know.
 10 MR. PARSONS: Okay. Thank you. That's all I
 11 have.
 12 MR. COOKE: I have a couple follow-up, Your Honor.
 13 Well, some of which are directed to Mr. Parsons'
 14 examination, and some might be slightly outside the scope,
 15 but rather than re-call Mr. Kelley, I'd ask some leeway in
 16 just a few questions.
 17 THE COURT: I haven't heard an objection.
 18 MR. PARSONS: No objection.
 19 MR. COOKE: Thank you.
 20 **RE-CROSS-EXAMINATION**
 21 BY MR. COOKE:
 22 Q. When you found that envelope, did you turn it over to me?
 23 A. Yes.
 24 Q. All right. And that was just a week before we started the
 25 trial; is that right?

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1 A. Yes.
 2 Q. And as far as you know, that was incorporated in an exhibit
 3 book that was turned over to plaintiff's counsel right
 4 away?
 5 A. Yes.
 6 Q. All right. This meeting where we heard excerpts and seen
 7 some excerpts on the screen that are your voice saying some
 8 things, this meeting lasted about five hours; is that
 9 right?
 10 A. Yes, it did.
 11 Q. And lots of things were said during that meeting about lots
 12 of different issues; is that true?
 13 A. A lot of blood pressure issues.
 14 Q. Okay. And do you recall during the meeting Mr. Moran
 15 asking, are you, I heard that -- something about me -- and
 16 I don't see it in here -- contacting the department about
 17 the local match thing. Am I being reprimanded for that
 18 also?
 19 Do you recall him asking a question similar to
 20 that?
 21 A. Yes.
 22 Q. And do you recall people responding, no, that he's not
 23 being reprimanded for that?
 24 A. Well, he wasn't being reprimanded for that. He had an
 25 obligation to do those things.

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1 Q. Do you recall Mr. Moran asking, so you're saying that that
 2 was not an appropriate letter for me, and people telling
 3 him, no, that's not what they're saying at all. Do you
 4 recall those discussions?
 5 A. Yes.
 6 Q. All right. Did you know that that meeting was being
 7 recorded?
 8 A. No. No, I did not.
 9 Q. And tell us, sir, why did you vote to terminate Mr. Moran's
 10 contract?
 11 A. Because we had a board that was a nonfunctioning board.
 12 And I believe that it was due to the fault of the present
 13 administration.
 14 MR. COOKE: Thank you, sir. No further questions.
 15 THE COURT: Well, he wasn't reprimand at all, was
 16 he? He was fired.
 17 MR. PARSONS: No, he wasn't.
 18 THE WITNESS: Yes, sir.
 19 **RE-CROSS-EXAMINATION**
 20 BY MR. PARSONS:
 21 Q. Out of the blue, he's fired, no reprimand, no censure, no
 22 discipline, no nothing.
 23 A. At will. He was an at will employee.
 24 Q. And your board -- if your board wasn't functioning
 25 correctly, this agency was functioning beautifully, wasn't

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1 it? The agency delivering Community Mental Health services
 2 was functioning very, very well?
 3 **A. I don't know that, sir.**
 4 **Q.** All right.
 5 MR. PARSONS: Thank you. That's all.
 6 MR. COOKE: Nothing further, Your Honor. Thank
 7 you.
 8 THE COURT: Thank you, Mr. Kelley, you may step
 9 down.
 10 (Witness steps down at 4:30 p.m.)
 11 THE COURT: We'll conclude here for the day. I've
 12 got another case I've got to take up yet.
 13 Members of the Jury, remember the Court's
 14 admonition you're not to discuss the case. You know the
 15 drill by this time. Leave your note pads in on the table
 16 and they'll be secured. No one will read them. They'll be
 17 back there for you tomorrow morning. I'll ask you to be
 18 back at 9:15 and we'll get started shortly thereafter. Have
 19 a pleasant remainder of the afternoon, and a good evening,
 20 and we'll see you tomorrow morning.
 21 (Jury exits courtroom at 4:31 p.m.)
 22 THE COURT: Anything else?
 23 MR. COOKE: I have nothing further, Your Honor.
 24 THE COURT: How many witnesses tomorrow?
 25 MR. PARSONS: We are going to call Ms. Pechacek,

1 we're going to try and have -- maybe we can talk about this.
 2 Mr. Kadlec is in Indiana. I've got a letter from him saying
 3 his wife is sick, he's her caregiver. We got him on a
 4 deposition. I'm proposing that we play him because I can't
 5 get him up here.
 6 MR. COOKE: I'll look at that issue. I think
 7 there's some things we need to redact. I do know that
 8 Mr. Kadlec has got a sick wife, and I'll try to accommodate
 9 that.
 10 THE COURT: All right.
 11 MR. PARSONS: All right. And then I think we're
 12 going to call certainly Mr. Moran, Mr. Kielhorn.
 13 Ms. Babcock we're going to have to play her deposition.
 14 She's got some problems. She introduces this meeting
 15 tape -- the June 14 meeting tape. And we took her
 16 deposition, it's an hour-and-a-half long, and we need some
 17 court help on some of those objections, I believe.
 18 THE COURT: All right.
 19 MR. PARSONS: Okay. And I've asked for
 20 Ms. Pechacek, certainly, to be present.
 21 THE COURT: Have you tried to purge all of those
 22 that you can? Or resolve all of them?
 23 MR. PARSONS: We just got Babcock's deposition
 24 transcript on the way to court. So we will try that maybe
 25 tonight. Ms. --

1 THE COURT: I meant Ms. Babcock.
 2 MR. PARSONS: Yes. Yeah. We just got it. And so
 3 Ms. Berry and Mr. Cooke will talk about it. Or my name's
 4 not Mr. Grant.
 5 THE COURT: Does that mean there's less friction
 6 than you and Mr. Cooke?
 7 MR. COOKE: I'm not sure that's true.
 8 MR. PARSONS: Maybe Mr. Kelley and I could sit
 9 down and talk.
 10 MR. KELLEY: We could try.
 11 MR. PARSONS: 9:15, Your Honor?
 12 THE COURT: Yes.
 13 MR. PARSONS: Thank you very much.
 14 THE COURT: All right.
 15 (Court adjourned at 4:33 p.m.)