

STATE OF INDIANA)
) SS:
 COUNTY OF MARION)

IN THE SUPERIOR COURT OF MARION COUNTY
 CAUSE NO. 49D10-1503-CT-007090

JAMES R. HOLDEN,)
)
 Plaintiff,)
)
 -vs-)
)
 STATE OF INDIANA OFFICE)
 OF THE TREASURER,)
 INDIANA BOARD FOR)
 DEPOSITORIES, and KELLY)
 MITCHELL, in her)
 individual capacity,)
)
 Defendants.)

The videotaped deposition upon oral examination of KELLY M.T. MITCHELL, a witness produced and sworn before me, Marlana M. Haig, RPR, CRI, a Notary Public in and for the County of Marion, State of Indiana, taken on behalf of the Plaintiff at the offices of Circle City Reporting, 135 North Pennsylvania, Suite 1720, Indianapolis, Marion County, Indiana, on the 26th day of February, 2016, pursuant to the Indiana Rules of Trial Procedure.

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A P P E A R A N C E S :

FOR THE PLAINTIFF: Andrew Dutkanych, III
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THE VIDEOGRAPHER: Michael Pratt
CIRCLE CITY REPORTING

ALSO PRESENT: James R. Holden
Jillean J. Battle
Diana Moers Davis

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Plaintiff's Exhibit Nos. 2, 6, and 12 through 14 were previously marked for identification in the depositions of Kimberly K. Logan, Jilleen J. Battle and Richard M. Bramer, respectively.

1 THE VIDEOGRAPHER: This marks the beginning
2 of the video deposition of Kelly Mitchell, in the
3 case titled James R. Holden versus Kelly Mitchell,
4 et al; Case No. 49D10-1503-CT-007090. Today's date
5 is February 26, 2016. We are on the record at
6 12:18 p.m.

7 The court reporter today is Marlana Haig.
8 I'm the videographer. My name is Mike Pratt. We
9 are both from Circle City Reporting.

10 Would all those present please state your
11 name and appearance for the record.

12 MS. PAUTLER: My name is Kelly Pautler. I'm
13 Deputy Attorney General for the State of Indiana.
14 I represent the Office of the Treasurer for the
15 State of Indiana, the Board For Depositories and
16 Kelly Mitchell.

17 MS. SZYPER: My name is Caryn Szyper. I'm
18 also a Deputy Attorney General, and I also
19 represent the defendants in this case.

20 MS. BATTLE: My name is Jillean Battle, and
21 I'm a representative for the Office of the
22 Treasurer of State.

23 MS. DAVIS: I'm Diana Moers Davis, and I'm
24 the Executive Director for the Indiana Board For
25 Depositories.

1 MR. DUTKANYCH: I am Andrew Dutkanych. I'm
2 an attorney with Biesecker Dutkanych & Macer, and I
3 represent the plaintiff, James Holden.

4 MR. HOLDEN: James Holden, plaintiff.

5 THE VIDEOGRAPHER: Would the court reporter
6 please swear in or affirm the witness.

7 K E L L Y M. T. M I T C H E L L, having been first
8 duly sworn or affirmed to tell the truth, the whole
9 truth, and nothing but the truth related to said
10 matter, was examined and testified as follows:

11 DIRECT EXAMINATION,

12 QUESTIONS BY ANDREW DUTKANYCH, III:

13 Q Ms. Mitchell, I know we just met off the record,
14 but I am Andrew Dutkanych, and I represent James
15 Holden in a lawsuit that he's filed against the
16 Treasurer of State, the Board For Depositories and
17 yourself.

18 Are your familiar with that lawsuit?

19 A Yes.

20 Q Have you ever had your deposition taken before?

21 A Yes.

22 Q When was that?

23 A When I was a County Commissioner.

24 Q How long ago was that?

25 A Probably about 16 years ago.

1 Q I am going to refresh your memory as to some of the
2 ground rules for depositions, okay? I'm going to
3 ask you a series of questions today, and we would
4 appreciate it if you gave a verbal response as
5 opposed to a nod of the head, okay?

6 A Yes.

7 Q When I ask you a question, please allow me to
8 finish my question before you begin your answer,
9 and I'll do the same. I'll let you finish your
10 answer before I begin my next question, okay?

11 A Yes.

12 Q That will make for a clear record, okay?

13 If there is a question that I ask that you
14 don't understand, please let me know, and I'd be
15 happy to rephrase the question or ask it in a
16 different way. If you don't tell me that you
17 didn't understand the question, we're going to
18 assume that you understood it. Is that okay?

19 A Yes.

20 Q Are you on any kind of medication today that would
21 interfere with your ability to recall events or
22 testify truthfully?

23 A No.

24 Q What did you do to prepare for today's deposition?

25 A Over what time period?

1 Q Over the entire time period. Anything that you did
2 to prepare for today's deposition.

3 A I met with my attorneys and talked with them.

4 Q When did you meet with them?

5 A Several times over the last months.

6 Q Did you talk to anyone about today's deposition
7 other than your attorneys?

8 A Family.

9 Q Anyone other than family and your attorneys?

10 A Close friends.

11 Q What did you tell your close friends about the
12 deposition?

13 A That I was being deposed.

14 Q Who did you speak with?

15 A Well, my husband.

16 Q I don't -- I'm not interested in the family members
17 you spoke with. The close friends.

18 A They were all by e-mail, and it was asking for
19 prayers for today.

20 Q And what are those individuals' names?

21 A Courtni Jeffers.

22 Q Anyone else?

23 A Anne Robins.

24 Q Anyone else?

25 A Margaret Paul.

1 Q Anyone else?

2 A Laurie Ross. Alicia Crabtree.

3 Q And you said that was an e-mail?

4 A Yes.

5 Q I don't think that I had you state and spell your
6 name for the record, so can you do that, please.

7 A Kelly, K-e-l-l-y, Mitchell, M-i-t-c-h-e-l-l.

8 Q Have you gone by any other names?

9 A Yes.

10 Q Okay. What other names have you gone by?

11 A Kelly Thompson and Kelly Wood.

12 Q During what time did you go by the name Kelly
13 Thompson?

14 A When I was married from 1989 to 2001. Well, no,
15 sorry. To 2004.

16 Q And during what time did you go by the name Kelly
17 Wood?

18 A Up until 1989 from birth.

19 Q Where were born?

20 A Newport, Rhode Island.

21 Q What brought you to Indiana?

22 A College.

23 Q Where did you go to college?

24 A Valparaiso University for undergrad.

25 Q What year was it that you moved to Indiana?

1 A 1985.

2 Q Where did you go to high school?

3 A Woodstock High School, Woodstock, Illinois.

4 Q When did you move to Illinois?

5 A I believe when I was two.

6 Q Did you receive a degree from -- a high school
7 degree?

8 A Yes.

9 Q What did you study at Valparaiso?

10 A Political science.

11 Q Did you receive a degree?

12 A Yes.

13 Q What was that degree that was conferred on you?

14 A Bachelor of arts in political science.

15 Q Did you have any further education past your
16 bachelor's degree?

17 A Yes. I --

18 Q Describe that for me.

19 A I have a master's in philanthropic studies from
20 IUPUI.

21 Q And when did you receive that master's?

22 A I believe -- sorry. I'm trying to think of the
23 year. December 2010, I believe.

24 Q What year did you receive your bachelor's degree
25 from Valparaiso?

1 A 1989.

2 Q After receiving your bachelor's degree, what was
3 your first job after Valparaiso?

4 A I worked for Porter-Starke Psychiatric Facilities.

5 Q What kind of work did you do there?

6 A I was a semi-independent living case manager.

7 Q What year did you begin working for them?

8 A 1989.

9 Q How long did you work for them?

10 A I'm not sure. It was probably a couple of years.

11 Q Do you remember the names of any supervisors that
12 you had while you were employed there?

13 A Mary Beth for sure. Let me think. Mary Beth
14 Schultz. That's the only name I can remember.

15 Q Was the end of your employment there voluntary or
16 involuntary?

17 A Voluntary.

18 Q And why did you leave employment with them?

19 A I took a different position.

20 Q Which position did you take?

21 A Marketing director with Canterbury Place.

22 Q What is Canterbury Place?

23 A It's a nursing home.

24 Q Where is it located?

25 A In Valparaiso.

1 Q Do you recall what year you started working there?

2 A I don't.

3 Q Do you remember the name of any supervisors you had
4 at Canterbury Place?

5 A No.

6 Q How long did you work there?

7 A Again, probably a year or two.

8 Q And was the separation of your employment from
9 Canterbury Place voluntarily or involuntarily?

10 A Voluntary.

11 Q Why did you leave Canterbury Place?

12 A I'm trying to remember the time line of events
13 here. I know I went to work for Jenny Craig. Yes,
14 I went to work for Jenny Craig.

15 Q And where was that located?

16 A Valparaiso.

17 Q What was your position with Jenny Craig?

18 A Teacher.

19 Q Do you recall your supervisor's name while you
20 worked at Jenny Craig?

21 A No.

22 Q How long did you work there?

23 A I'm not sure. A year or two.

24 Q Was the separation of your employment with Jenny
25 Craig voluntary or involuntary?

1 A Voluntary.

2 Q And where did you work next?

3 A Sorry. I'm thinking this through. I had a baby,
4 which is why I left Jenny Craig. And then we
5 moved, and I believe the next job I had was in
6 Logansport.

7 Q And where were you working at that time?

8 A The Pharos-Tribune.

9 Q What was your position there?

10 A Sales.

11 Q Do you recall the name of any supervisors you had
12 while you were there --

13 A I worked --

14 Q -- at the Tribune?

15 A I worked with Dave Kitchell. I'm not certain he
16 was actually my supervisor, but --

17 Q And how long did you work there?

18 A Just about a year.

19 Q Between your work at Jenny Craig and your work at
20 the Tribune, did you take some time off after
21 having the baby?

22 A I did take some time off. I believe I also worked
23 weekends at restaurants here and there.

24 Q About how long was it between your job with Jenny
25 Craig and your job with the Tribune?

1 A Probably about 18 months maybe. I'm not clear on
2 it.

3 Q How did your employment with the Tribune come to an
4 end?

5 A I had another baby, so I left.

6 Q How much time did you take off to help raise that
7 baby?

8 A I stayed at home with my children that time.

9 Q For how long?

10 A Until I became a County Commissioner.

11 Q And do you recall when you became a County
12 Commissioner?

13 A I was elected in November of 1996.

14 Q And which county were you County Commissioner for?

15 A Cass.

16 Q And how long did you serve in that role?

17 A Eight years.

18 Q That would be through 2004?

19 A Yes.

20 Q What was your next position?

21 A I moved to Indianapolis, and I went to work for
22 United Consulting Engineers and Architects.

23 Q I'm sorry. Can you repeat that.

24 A United Consulting Engineers and Architects.

25 Q And how long did you work there?

1 A Three years.

2 Q Do you recall your supervisors?

3 A Yes, Steve Jones and Dave Richter.

4 Q What was your position there?

5 A Business development.

6 Q And was your separation from employment there
7 voluntary or involuntary?

8 A Voluntary.

9 Q And why did you leave that employment?

10 A I was offered a position in the Treasurer's Office.

11 Q And who offered you that position?

12 A Treasurer Mourdock.

13 Q Was it a posted position that you had applied for?

14 A No.

15 Q Did you know Treasurer Mourdock before him offering
16 you that position?

17 A Yes.

18 Q How did you know Treasurer Mourdock?

19 A We were County Commissioners at the same time,
20 different counties.

21 Q Which county was he County Commissioner for?

22 A Vanderburgh.

23 Q And what position were you hired for?

24 A Director of TrustINdiana.

25 Q Other than Treasurer Mourdock, who else

1 participated in your hiring?

2 A Jim Holden.

3 Q Were there interviews?

4 A Yes.

5 Q Did Mr. Holden interview you?

6 A I believe so.

7 Q What were your job duties as Director of
8 TrustINDiana?

9 A The main job duty was to travel Indiana and educate
10 local government officials on TrustINDiana; what it
11 was, how to use it, answer their questions, build
12 the relationships.

13 Q At the time you took that position, was it a new
14 position?

15 A Yes.

16 Q And Mr. Mourdock approached you about filling that
17 position; is that right?

18 A Either he or Jim Holden did. One of them did.

19 Q When did you first meet James Holden?

20 A To the best of my memory, it was at an event where
21 we talked about this position.

22 Q What kind of event was it?

23 A I'm assuming a political event.

24 Q How would you describe your working relationship
25 with Mr. Holden?

1 A While I was in the office?

2 Q Correct.

3 A Good.

4 Q Was he your supervisor when you were hired to be
5 the Director of TrustINDiana?

6 A Yes.

7 Q And your relationship with him, work relationship
8 with him, was good?

9 A Yes.

10 Q Did you feel like he treated you fairly?

11 A Yes.

12 Q When did you decide to run for Treasurer yourself?

13 A Over about a three-month period in the summer of
14 2013.

15 Q Why did you decide to run for Treasurer?

16 A A number of reasons. One is I'd grown to know and
17 love the Treasurer's Office and what we did in
18 Indiana and knew that I was capable of doing it.
19 As well I knew that Treasurer Mourdock, of course,
20 would be leaving at the end of his term, and I was
21 not assuming that I would have a job after he left,
22 so I was looking to the future.

23 Q And Mr. Mourdock was leaving office because of a
24 term limit; is that right?

25 A Correct.

1 Q And for what political party were you running for
2 Treasurer?

3 A Republican.

4 Q Who were the other Republicans vying for that
5 nomination?

6 A Wayne Seybold and Don Bates.

7 Q When did you first announce your run for Treasurer?

8 A I publicly announced it on October 14th, I believe,
9 that year, Columbus Day.

10 Q Who was assisting you with your campaign?

11 A Whitney Foughty.

12 Q Can you spell that name for me.

13 A F-o-u-g-h-t-y.

14 Q What was her role in your campaign?

15 A Campaign Manager.

16 Q Who else was assisting you with your campaign?

17 A These people all kind of came on over time, so we
18 didn't all start together, but Megan Umlauf
19 assisted as well, Amy Stansfield.

20 Q Who else?

21 A Let's see. Tom Weatherwax. Tom and Kay Weatherwax
22 were the Chairs of my campaign.

23 Q Anyone else?

24 A Oh, I had volunteers.

25 Q Okay. Who were your main volunteers?

1 A Actually, mostly everybody was volunteer then. I
2 had -- Cindy Barger assisted, and then I had -- I'm
3 sorry. I'm trying to think of other names.

4 Jennifer Gilson and Tarran Day assisted. Jillean
5 Battle. That's all I'm remembering at the moment.

6 Q What kind of things did Tarran Day volunteer to
7 assist you with?

8 A She drove me to evening and weekend events.

9 Q What about Ms. Gilson?

10 A Same.

11 Q Other than driving you to events, did Ms. Day or
12 Ms. Gilson do anything else to support your
13 campaign?

14 A Probably. We would have meetings where we stuffed
15 envelopes and wrote addresses and things like that.
16 I'm sure they were in attendance.

17 Q They were in attendance and they were helping?

18 A Yes.

19 Q What about Ms. Battle?

20 A Well, she made my announcement, introduced me at my
21 announcements, and then just assisted as she was
22 able.

23 Q What kind of assistance did she provide?

24 A Kind of general support, I'd say. Other end of the
25 phone a lot. I don't believe she had time to do

1 very much.

2 Q Was Ms. Battle employed elsewhere during that time?

3 A I believe so.

4 Q Do you recall where she was employed?

5 A INPRS.

6 Q What does that acronym stand for?

7 A Indiana Public Retirement -- now I'm going to blank
8 on the S part of it. It's the retirement system
9 for Indiana.

10 Q Okay.

11 A System; right?

12 Q Where was Ms. Gilson working at the time of your
13 campaign?

14 A In the Treasurer's Office.

15 Q What about Ms. Day?

16 A For the Board For Depositories and IESA, the
17 Indiana Education Savings Authority.

18 Q Who were your biggest financial supporters?

19 A Friends.

20 Q Anybody specific?

21 A Tim Dooley, Tim and Christina Dooley, Anita
22 Maillho.

23 Q What was the last name?

24 A Maillho, M-a-i-l-l-h-o.

25 Q Anyone else come to mind?

1 A Not at the moment.

2 Q Did anybody at Ice Miller contribute to your
3 campaign?

4 A I believe so.

5 Q Did they ever -- did Ice Miller ever hold a
6 fundraiser to support your campaign?

7 A Yes.

8 Q Was that before or after you received the
9 republican nomination?

10 A I believe it was right before, but I could be
11 wrong.

12 Q Did Richard Mourdock support your run for
13 Treasurer?

14 A How so?

15 Q Financially.

16 A No.

17 Q Did Mr. Holden support your run for Treasurer?

18 A I believe so.

19 Q Financially?

20 A Yes.

21 Q Did he serve as a volunteer?

22 A No.

23 Q Did you support Richard Mourdock in his run for
24 Senate in 2012?

25 A How so?

1 Q As a volunteer?

2 A Yes.

3 Q Financially?

4 A Yes.

5 Q What types of things did you volunteer to do for
6 Mr. Mourdock during his Senate run?

7 A I believe I walked in a parade or two. I know I
8 went to headquarters one evening; stuffed
9 envelopes, I believe. That really was about the
10 limit of it.

11 Q When did you receive the nomination as the
12 republican candidate?

13 A June of 2014.

14 Q Do you recall what day in June?

15 A It's kind of a blur, but I think June 6th.

16 Q Were you surprised that you were nominated?

17 A If you'd asked me three months before that, yes,
18 but I knew going in that we had a good chance.

19 Q Between the time that you announced your run for
20 Treasurer in October of 2013 and your nomination on
21 June 6th of 2014, where were you working?

22 A The Treasurer's Office.

23 Q And were you still serving as the Director of
24 Indiana Trust?

25 A TrustINDiana.

1 Q TrustINDiana.

2 A A lot of people do that. It's okay.

3 And, yes, I was. Sorry.

4 Q How did you handle the divide between your
5 campaigning and your State employment?

6 A Very carefully.

7 Q How much time did your campaigning take up?

8 A Almost all the time I wasn't working.

9 Q Did you go through ethics training as a State
10 employee?

11 A Yes.

12 Q Can you describe that training for me.

13 A We have yearly training in harassment, as in how
14 not to do it; and just ethics in general, how to
15 behave as a State employee, what's proper, what's
16 not.

17 Q Does that training include information about the
18 political activity rules?

19 A Absolutely.

20 Q What are those political activity rules?

21 A You don't participate in political activity while
22 you are working, you know, during working hours as
23 a State employee.

24 Q That would be unethical?

25 A Yes.

1 Q Did you have any ethical concerns as your campaign
2 took up time that could interfere with your
3 employment with the State?

4 A Yes.

5 Q Did you have to travel for your campaign?

6 A Yes.

7 Q And did you also have to travel for work?

8 A Yes.

9 Q Did that travel ever overlap?

10 A Probably.

11 Q Did you have concerns about that, ethical concerns
12 about that?

13 A Yes. I thought all of it through.

14 Q Did you ever request an advisory opinion about that
15 travel and whether or not it would violate the
16 political activity rule or some other State ethics
17 rule?

18 A No. I approached Jim Holden and asked him if -- as
19 our Ethics Officer for the office how best to
20 handle this.

21 Q And what did he advise you?

22 A He said that as long as I did campaigning in hours
23 that I was not working, that I was fine.

24 Q Did you feel comfortable with that advice?

25 A Yes.

1 Q Did you feel that Mr. Holden was an ethical person?

2 A I believe he was giving me ethical advice.

3 Q At one point did you request a reduced schedule so
4 that you could campaign more?

5 A Yes, or a flexible schedule.

6 Q And who approved that schedule?

7 A Jim Holden.

8 Q I'm going to have the court reporter hand you what
9 will be marked as Exhibit 25.

10 MR. DUTKANYCH: Sorry, I only have one copy.

11 MS. SZYPER: That's okay.

12 (Plaintiff(s) Exhibit No. 25 was marked for
13 identification.)

14 Q Ms. Mitchell, have you seen Exhibit 25 before?

15 A Yes.

16 Q What is Exhibit 25?

17 A It is my resignation letter to the Office of the
18 Treasurer of State.

19 Q And on what date did you resign?

20 A It looks like July 23rd of --

21 Q Do you know what date -- sorry. What date was it
22 going to be effective?

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

24 Q Would you just take a moment and read it.

25 A Oh, there we go. August 1st.

1 Q Thank you. And why did you resign as of July 23rd,
2 2014?

3 A Because as the selected candidate, my time was in
4 much greater demand, and I could not continue to
5 find that balance.

6 MR. DUTKANYCH: Can we take just a short
7 break.

8 THE VIDEOGRAPHER: We are going off the
9 record. The time is 12:50.

10 (A brief recess was taken.)

11 THE VIDEOGRAPHER: We are back on the record.
12 The time is 12:54.

13 BY MR. DUTKANYCH:

14 Q Ms. Mitchell, we just covered your resignation from
15 the Treasurer of State's Office. Did you take
16 other work after that?

17 A I did.

18 Q Okay. Where were you working after that
19 resignation?

20 A I returned to United Consulting. They had
21 shortened their name by then.

22 Q And what position did you hold with them?

23 A Business development.

24 Q How many hours per week did you spend working for
25 United Consulting?

1 A It was about 40 hours a week.

2 Q And you were able to do that while you were
3 campaigning?

4 A Yes.

5 Q But you weren't able to do that while putting in 40
6 hours with the Treasurer of State's Office?

7 A No.

8 Q Why's that?

9 A Difference between working in public government and
10 private business.

11 Q What is that difference?

12 A That it's all right if it overlaps in the private
13 sector, and it's not if it overlaps in the public.

14 Q Did you consider staying on as a consultant to the
15 Treasurer of State's Office?

16 A I don't believe at that time I did. Perhaps
17 earlier I did.

18 Q Did you make a decision that that would not be a
19 feasible thing to do?

20 A I believe so.

21 Q Why not? Why would that not be feasible?

22 A Again, still the overlap.

23 Q It would raise ethical concerns?

24 A Yes.

25 Q Who did you run against in the election?

1 A The general election I had a democrat opponent,
2 Mike Boland, and also a libertarian appointment
3 whose name I don't recall.

4 Q In August 2014, Richard Mourdock resigned as
5 Treasurer. Do you recall that?

6 A I do.

7 Q Do you know why he resigned?

8 A Yes.

9 Q Why did he resign?

10 A He told me that it was due to the changes in
11 benefits for retirement.

12 Q What were the changes in benefits that were going
13 to take place?

14 A He and any other State employee that could retire
15 needed to retire by the end of August in order to
16 continue to get the higher rate on their retirement
17 benefits.

18 Q When did you have that conversation with him?

19 A The morning he resigned.

20 Q Was that an in-person conversation or by phone?

21 A He called me.

22 Q Why did he call you?

23 A To let me know.

24 Q At that point you weren't working with the State
25 anymore; right?

1 A I was not.

2 Q Beyond the reasons for his resignation, did you
3 speak with him on the phone that day about anything
4 else?

5 A Not to my recollection.

6 Q Were you contacted about being appointed Treasurer
7 after his resignation?

8 A Yes.

9 Q Just to be clear, I'm aware that you were appointed
10 in November. I'm not talking about that
11 appointment.

12 A Thank you.

13 Q Speaking of the immediate aftermath of his
14 resignation, were you contacted about being
15 appointed Treasurer?

16 A I was contacted about discussing it. It wasn't
17 necessarily an offer, if that's clear.

18 Q Who contacted you to discuss it?

19 A Many people. If you mean someone in the --
20 official who could actually have an influence on
21 appointing me, Jim Atterholt contacted me.

22 Q Was that by phone, e-mail?

23 A Phone.

24 Q And what did Mr. Atterholt have to say to you?

25 A Just that they needed to appoint a Treasurer, and

1 we talked about it.

2 Q Did he suggest that you would make a good
3 appointment?

4 A I believe I told him I was not interested in being
5 appointed before he suggested that.

6 Q Why were you not interested?

7 A I was six weeks away from Election Day, and to take
8 on running an office before the voters had even had
9 a chance to say whether or not they wanted me just
10 didn't seem like the right thing to do.

11 Q Was it your impression from that conversation that
12 Mr. Atterholt was considering appointing you as
13 Treasurer?

14 A Yeah, that I was on the list of considerees, yes.

15 Q And who was Governor at that time?

16 A Mike Pence.

17 Q What's his political party?

18 A Republican.

19 Q What was Jim Atterholt's position?

20 A I believe Chief of Staff.

21 Q Do you recall anything else from that conversation
22 with Mr. Atterholt?

23 A No.

24 Q In proximity to the announcement of Mr. Mourdock's
25 resignation, about how long after that announcement

1 or you learning of it did this call take place?

2 A I believe the same day.

3 Q When was the next time you spoke with anybody at
4 the State or State officials regarding possible
5 appointment as Treasurer?

6 A I don't remember.

7 Q Other than Mr. Atterholt, who else did you speak
8 with about the possible appointment of being
9 Treasurer?

10 A I'm not sure I spoke with anyone else.

11 Q You testified before you spoke with many people.

12 A Oh, I'm sorry. You said from the Governor's
13 office.

14 Q I didn't intend to say that.

15 A I'm saying my campaign. My Campaign Chair called.
16 You know, basically my Campaign Committee talked to
17 me about pros and cons and things like that
18 regarding that.

19 Q So it sounds like there's a conversation with
20 Mr. Atterholt and there's some internal
21 conversations within your campaign; is that right?

22 A Yes.

23 Q Other than your internal campaign discussions and
24 the one with Mr. Atterholt, do you recall any other
25 discussions about you being appointed in the

1 aftermath of Mr. Mourdock's resignation?

2 A I don't.

3 Q Who was your Campaign Chair?

4 A Melissa Proffitt. It was Melissa Proffitt Reese
5 then.

6 Q And where does Ms. Proffitt work?

7 A Ice Miller.

8 Q How many people were on your Campaign Committee?

9 A I don't remember.

10 Q More than 10?

11 A I don't think so.

12 Q More than five?

13 A Yes.

14 Q Safe to say between five and 10?

15 A Pretty safe.

16 Q Okay. Who do you recall by name -- strike that.

17 You provide the names that you recall of
18 people that participated on your Campaign
19 Committee.

20 A Certainly Melissa did. The -- Whitney Foughty,
21 Megan Umlauf, Amy Stansfield, the ones I mentioned
22 there earlier. We had -- I would say I talked to
23 Tom John, who's also with Ice Miller. I talked
24 with -- I don't know if I would consider them my
25 committee or not. I'd have to refresh my memory by

1 looking at a list to see if they did, but --

2 Q Is there somebody specific that you're thinking of
3 that you spoke with that may or may not have been
4 on your committee?

5 A Well, I'm trying to remember if I -- they were on
6 that call, and I don't think they were, but I know
7 Bob Grand and Brian Burdick talked to me
8 post-convention, but I don't remember if they gave
9 me any advice on that day.

10 Q And what was your campaign's advice about accepting
11 or not accepting the appointment?

12 A They would support whatever I chose, but I believe
13 they thought along with me that there was more of a
14 downside in accepting it than a pro in accepting
15 it.

16 Q I apologize. I think my question implied that you
17 had actually been offered the appointment, and I
18 don't mean to imply that if it's not true.

19 Were you ever actually offered the
20 appointment to consider or was it just a, you know,
21 discussion or consideration your campaign had?

22 A Thinking of details of the conversation with Jim
23 Atterholt, I would say it was more of a
24 conversation between Jim and I than that they ever
25 actually offered.

1 Q Okay. Did they -- strike that.

2 Did anyone ask for your recommendation as to
3 who would be an appointment if you were not willing
4 to be an appointment?

5 A I don't believe so. I'm -- well, maybe they did
6 talk to me, gave me a few names and just asked my
7 thoughts.

8 Q What were those names?

9 A Within the office Mike Frick or Kim Logan, and
10 perhaps Dan's name came up at that time, too; not
11 that he was within the office, to be clear.

12 Q Dan Huge?

13 A Correct.

14 Q When those names came up, who brought those names
15 up?

16 A That would be Jim Atterholt, I believe, in our
17 conversation.

18 Q Was Mr. Holden's name ever raised?

19 A No.

20 Q From your recollection, who was appointed Interim
21 Treasurer following Mourdock's resignation?

22 A Dan Huge.

23 Q And how did you learn of that appointment?

24 A I don't remember.

25 Q At that time were you familiar with Dan Huge?

1 A Yes.

2 Q How did you become familiar with him?

3 A He was the Bond Bank Director during part of my
4 time as TrustINDiana Director, so we worked
5 together.

6 Q Prior to his appointment but after your nomination,
7 did you have any conversations with Dan Huge about
8 the Treasurer's Office?

9 A I can -- will you restate that?

10 Q Sure. I'll try. Prior to his appointment as
11 Treasurer, did you have any conversations with him
12 about the Treasurer's Office?

13 A No.

14 Q Following his appointment as Treasurer, did you
15 have any conversations with him?

16 A Yes.

17 Q So at this point I'm talking about the time period
18 after he was appointed but before you were elected,
19 okay?

20 A Correct.

21 Q You say you did have some conversations with him?

22 A Yes.

23 Q Okay. When was the first time you spoke with
24 Mr. Huge after he was appointed?

25 A I don't know.

1 Q Do you recall what you spoke about?

2 A He called several times on different topics. I
3 don't know what order or even all the topics, what
4 they were.

5 Q Okay. Let's go through the topics that you do
6 recall. What was a topic that he called you about?

7 A He called me about Jennifer Gilson and the fact
8 that she was being written up for activity that
9 she'd done in the office.

10 Q What had she done in the office?

11 A She had made a phone call to another employee, as I
12 understand it, but of a political nature.

13 Q And did that phone call have to do with your
14 campaign?

15 A I didn't ask her.

16 Q You were speaking at that time, though, with Dan
17 Huge. Did he indicate it had to do with your
18 campaign?

19 A I don't remember that he did.

20 Q Do you know who Ms. Gilson made that phone call to?

21 A Tarran Day.

22 Q And Ms. Day and Ms. Gilson were both volunteers on
23 your campaign; correct?

24 A Yes.

25 Q You testified that Mr. Huge told you that

1 Ms. Gilson was going to be written up for some
2 activity in the office. Do you recall anything
3 else he told you during that conversation?

4 A No.

5 Q What did you tell him?

6 A That he was Treasurer and he needed to do what he
7 thought was right.

8 Q Did you think it was appropriate for him to be
9 writing up Ms. Gilson?

10 A If he felt that it was, absolutely.

11 Q Why did he call you about it?

12 A He would call me to keep me --

13 MS. PAUTLER: Go ahead. Sorry.

14 THE WITNESS: Okay.

15 A I -- my assumption is the phone calls he made to me
16 were to keep me apprised of what was happening in
17 the office under the assumption that I would become
18 the Treasurer.

19 Q Do you know if he was calling the democratic
20 candidate to keep him in the loop as well?

21 MS. PAUTLER: Objection. Calls for
22 speculation.

23 Answer, if you know.

24 A I have no idea.

25 Q And do you know whether he was contacting the

1 unnamed libertarian candidate to keep him in the
2 loop or her in the loop?

3 MS. PAUTLER: Same objection.

4 A I have no idea.

5 Q What is the next topic that Mr. Huge contacted you
6 about to keep you in the loop?

7 A I, again, don't remember the order --

8 Q That's okay.

9 A -- of these calls, but I remember that he called me
10 to let me know about an issue with Jim Holden.

11 Q That was a phone call?

12 A Yes.

13 Q And what did he tell you about the issue with Jim
14 Holden?

15 A He said that -- and I'm paraphrasing, that Jim had
16 made an attempt to get more vacation days for Pat
17 Hastings.

18 Q And who was Pat Hastings?

19 A He was the Director of the Board For Depositories
20 at the time.

21 Q Did Mr. Huge tell you anything else about that
22 issue?

23 A That he was putting a statement in Jim's file
24 regarding that issue, and that the vacation request
25 was denied.

1 Q Had he expressed to you what he thought was wrong
2 about the vacation request?

3 A Just that it was wrong.

4 Q He didn't tell you why?

5 A He may have. I don't remember.

6 Q Do you recall anything else from that conversation
7 with Mr. Huge?

8 A Not in particular, no.

9 Q During this period were you exchanging e-mails or
10 text messages with Mr. Huge?

11 A I don't believe so.

12 MS. PAUTLER: Andrew, just so we're clear,
13 when you say "during this time," you mean the time
14 of that phone call or just in general?

15 MR. DUTKANYCH: Right. The time frame is
16 still between Mr. Mourdock's resignation and your
17 election in November.

18 MS. PAUTLER: Okay. Thank you.

19 Your answer's still the same?

20 THE WITNESS: Yes.

21 MS. PAUTLER: Okay. Thank you.

22 BY MR. DUTKANYCH:

23 Q What was the --

24 A I'm sorry. If I can clarify a past answer?

25 Q Sure.

1 A I do believe Dan said that it was just that Pat did
2 not qualify for those -- that added benefit, that
3 you couldn't take employment at a university and
4 bring it to the State.

5 Q What was another topic of conversation that you
6 spoke with Mr. Huge about during this time frame?

7 A I believe he called me about the State Police
8 Pension Fund, that there were perhaps some
9 legislators that wanted to move it into INPRS and
10 it would be coming up in session. And I don't
11 remember other specific topics, but I know he would
12 call me on occasion just to let me know what he'd
13 heard about general issues.

14 Q Other than the conversation that you testified to
15 with Mr. Atterholt, did you have any other
16 conversations with the Governor's Office about
17 Mr. Holden during this same time period?

18 A Before I took office?

19 Q Correct. Before you were elected.

20 A Before I was elected, I don't believe so.

21 Q Still in the same time period --

22 A Okay.

23 Q -- did you have conversations with anyone else
24 about Mr. Holden?

25 A Before I was elected, it's possible that I talked

1 to Jillean Battle about him.

2 Q What would you have spoken to Ms. Battle about?

3 MS. PAUTLER: I'm going to go ahead and
4 object on the grounds that it may implicate
5 attorney-client privilege, attorney work product.

6 Ms. Mitchell, if -- you can answer if it's
7 not dealing with some sort of legal issue or that
8 you were seeking legal advice on, then you may
9 answer.

10 THE WITNESS: Okay.

11 Q And I'll just add that the time frame here is still
12 effectively during Dan Huges -- well, strike that.

13 The time period is between Mr. Mourdock's
14 resignation and your election, not after. The
15 question doesn't have to do with after that. So
16 the discussions you had with Ms. Battle about
17 Mr. Holden during that time period.

18 And certainly what your attorney said is
19 correct. If you were seeking legal advice from
20 her, I'm not interested in knowing that.

21 MS. PAUTLER: Thank you.

22 Q But you made have had conversations that have
23 nothing to do with legal advice about him. Those
24 are the ones I'm interested in.

25 A All right. I don't remember specific

1 conversations, but I'm assuming we spoke because I
2 had asked Jillean Battle to be my Chief of Staff
3 should I win the election months before, and so we
4 spent some time -- not that there was a lot of time
5 in the last weeks of the campaign, but we probably
6 spent some time talking about transition.

7 Q Do you recall ever having a conversation with
8 Mr. Holden about his involvement in that
9 transition?

10 A No.

11 Q Do you recall ever getting an e-mail from
12 Mr. Holden talking about how he may be able to
13 assist you in that transition?

14 A Yes.

15 Q Prior to that e-mail, did you have any discussion
16 with him about how he may be able to help you
17 transition, if you were elected, of course?

18 A I may have.

19 Q Did you -- again, in the same time period, did you
20 speak with Ms. Gilson about her being written up?

21 A I don't believe I did. I'm sorry, I don't
22 remember.

23 Q Did she contact you about it?

24 A Again, I'm sorry. I don't remember. She may have.

25 Q Did Ms. Gilson financially contribute to your

1 campaign?

2 A I don't recall.

3 Q Did she make phone calls on behalf of your
4 campaign?

5 A Yes.

6 Q And do you know whether she made those calls during
7 work time?

8 A She did not.

9 Q Although that's what Mr. Huge disciplined her for;
10 correct?

11 MS. PAUTLER: I would object. I think that
12 misstates the evidence.

13 But you can answer, if you choose -- I'm
14 sorry -- answer, if you know.

15 A I don't know the content of the call that she was
16 disciplined for.

17 Q Did you ever ask her the content of that call?

18 A No.

19 Q Did you ask Ms. Day what the content of that call
20 was?

21 A I don't believe so.

22 Q Did you ask Mr. Huge what the content of the call
23 was?

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

25 Q And you were elected Treasurer on November 4th,

1 2014; is that correct?

2 A Yes.

3 Q So now we're going to move to a different time
4 period, so these questions are going to have to do
5 with the time between when you were elected and the
6 time you were appointed Treasurer on November 18th,
7 2014, okay?

8 A Okay.

9 Q And for the record, you were appointed Treasurer on
10 November 18th, 2014; correct?

11 A Yes.

12 Q And you were elected Treasurer on November 4th;
13 correct?

14 A Yes.

15 Q Okay. 2014; right?

16 A Yes.

17 Q Between your election and your appointment, did you
18 have any direct contact with Mr. Holden?

19 A I don't believe so.

20 Q Did he contact you?

21 A Perhaps that's when that e-mail came.

22 Q Okay. Do you recall what that e-mail said?

23 A Just an offer of assistance if needed.

24 Q Did you respond to that e-mail?

25 A I don't think I did.

1 Q Why not?

2 A I guess I didn't think I needed to at that time.

3 Q Was it because you planned to replace him with
4 Ms. Battle?

5 A It's possible. I mean, yes, I did plan for
6 Ms. Battle to be there, but that may or may not be
7 why I didn't respond.

8 Q When did you first communicate to Ms. Battle that
9 if you were elected you were going to make her
10 Chief Deputy?

11 A Before I announced in October of 2014, I asked if
12 she would consider serving as Chief Deputy if I
13 won.

14 Q You said October of 2014? You meant --

15 A '13.

16 Q -- 2013; right?

17 A Yes, I did.

18 Q Okay.

19 A Thank you for noting that.

20 Q Following your election, did you contact Dan Huge
21 regarding Mr. Holden's employment?

22 A I'm sure one of us called each other about several
23 topics.

24 Q Okay. What is the first conversation that you
25 remember following your election with Mr. Huge

1 regarding Mr. Holden?

2 A Regarding Mr. Holden? I remember Dan saying he was
3 going on vacation for two weeks and that he would
4 appreciate me being appointed the week of the 17th,
5 the 18th. I don't recall a specific call about Jim
6 Holden in particular.

7 Q Did you ever contact him to tell him to give
8 Mr. Holden his two weeks notice?

9 A No.

10 Q If he testified to that, would he be lying?

11 A I wouldn't presume to say he's lying. He may be
12 remembering it incorrectly.

13 Q But it's your testimony that you did not contact
14 Dan Huge and ask him to give Mr. Holden his two
15 weeks notice?

16 A I did not. I know Dan discussed doing that, and I
17 said -- as I said with the other matters is "You're
18 Treasurer. You do what you believe is right," and
19 maybe that's what he's referring to.

20 Q This would have been following your election?

21 A Probably, yes.

22 Q But you're not for sure?

23 A I'm not for sure. I'm assuming it's in there, that
24 time frame, although he was gone for vacation for a
25 number of those days in between election and

1 appointment where I did not talk to him.

2 Q You've testified to a conversation with him that
3 you do recall in which he indicated that he would
4 appreciate you being appointed Treasurer but not
5 until after he returned from vacation on the
6 17th --

7 A Yes.

8 Q -- the week of the 17th, I think you said. Did you
9 have any other conversations with Dan Huge between
10 the time of your election and the time that you
11 were appointed?

12 A I don't remember specific ones.

13 Q Do you recall contacting Dan Huge and asking that
14 he fire Mr. Holden?

15 A No.

16 Q So if he testified to that, he was not being
17 truthful?

18 A Again, he may remember it differently.

19 Q What would the "it" be? Was there a conversation
20 that you remember, because you just indicated that
21 there was no other conversation.

22 MS. PAUTLER: I would object. I think that
23 misstates her testimony.

24 A I'm not clear on what you're asking.

25 Q Sure. I'm asking you about conversations that you

1 had with Dan Huge between your election and your
2 appointment in November of 2014. You've testified
3 that you had one conversation with him in which he
4 asked and indicated that he'd appreciate you being
5 appointed but not until the week of the 17th
6 because he was going on vacation. You then
7 testified that you don't remember any other
8 specific conversation with him.

9 Are there other conversations that you recall
10 with Dan Huge about Mr. Holden during that time
11 frame?

12 A Well, the one I mentioned where I said he had -- we
13 had talked about firing Jim Holden, and I told him
14 that he was Treasurer, to do what he saw fit to do.
15 Is that what you're referring to?

16 Q Well, help -- help me understand. Is that the
17 conversation that you testified to occurring prior
18 to your election? Well, let's just do this --

19 A Yeah.

20 Q -- why don't you tell me about that conversation
21 that you had with Dan Huge about firing Mr. Holden.

22 A Well, and I believe that that topic came up more
23 than once, so it may have been before or after my
24 election; but it was never, that I recall, a
25 statement on either of our parts saying do that or

1 you're going -- he's going to do that. It was just
2 a discussion of "Well, I might do this" or, you
3 know, "What do you think?" And I'd say, "You're
4 Treasurer. You do what you need to do," and --

5 Q Well, tell me more specifically what occurred in
6 that conversation. Did Mr. Huge suggest to you
7 that he wanted to fire Mr. Holden?

8 A Yeah.

9 Q And that was after the election or before the
10 election?

11 A I'm not clear on that.

12 Q And why did he want to fire Mr. Holden?

13 MS. PAUTLER: Objection. Lack of foundation.
14 Calls for speculation.

15 She can answer, if she knows.

16 Q If he told you during the phone call why he wanted
17 to fire Mr. Holden, what did he say?

18 A And this is pulling from the memory banks, but I
19 believe it was due to the being written up for the
20 30 days of vacation or whatever he was trying to
21 get Mr. Hastings.

22 Q And your response to his suggestion that
23 Mr. Holden's employment be terminated was that
24 you're the Treasurer, you do what you think is
25 best?

1 A He was running the office at the time.

2 Q Did you share any other opinion about Mr. Holden or
3 his continuing employment during that conversation?

4 A Not to my memory.

5 Q Do you remember any other conversations with
6 Mr. Huge about Mr. Holden's employment?

7 A No.

8 Q Do you recall sending Mr. Huge a text message that
9 requested that he schedule a meeting for Jim Holden
10 and Patrick Hastings at 11:30 a.m. on November 18,
11 2014?

12 A It's possible.

13 Q Did you send that text message from a cell phone, I
14 assume?

15 A I -- yes, I assume.

16 Q Do you have a copy of that text message?

17 A No.

18 Q What is your cell phone number?

19 A 317-432-7669.

20 Q And who is your -- who was your provider in 2014?

21 A Verizon.

22 MS. PAUTLER: If I may just interpose. If we
23 do use that information, I assume that would be
24 information that would be kept confidential. Thank
25 you.

1 MR. DUTKANYCH: Yes. I have no objection to
2 that.

3 MS. PAUTLER: Thank you.

4 Q Is that a personal cell phone?

5 A Yes.

6 Q Did you also have this phone while you were
7 employed with TrustINDiana?

8 A Yes.

9 Q I'm sorry. You were employed by the Treasurer's
10 Office; correct?

11 A Yes.

12 Q Were you given any other cell phone by the State of
13 Indiana?

14 A At what time?

15 Q Yeah. Let me ask a better question there.

16 In addition to your personal cell phone that
17 we've identified, did the State give you a cell
18 phone as well that you had during 2014 prior to you
19 resigning in July of 2014?

20 A Yes.

21 Q Do you recall that cell phone number?

22 A No.

23 Q Other than Dan Huge, who else did you speak with
24 regarding Mr. Holden between your election and your
25 appointment as Treasurer?

1 A Treasurer Mourdock.

2 Q When did you speak with Treasurer Mourdock?

3 A I'm sorry. Will you restate the time frame that
4 you're asking between.

5 Q Sure. The time frame is between your election on
6 November 4th, 2014 --

7 A Okay.

8 Q -- and your appointment on November 18th --

9 A Okay.

10 Q -- 2014.

11 A Okay. I spoke with him probably a week before I
12 was appointed.

13 Q And was that by phone or in person?

14 A Phone.

15 Q What did you and Mr. Mourdock speak about?

16 A He asked to meet with me.

17 Q And did you meet with him?

18 A Yes.

19 Q Did he or you exchange any other information during
20 the phone call?

21 A No.

22 Q Was that phone call received on your personal cell
23 phone?

24 A Yes.

25 Q And when did you meet with him?

1 A A couple of days after the call, I believe, so
2 maybe the Thursday before the Tuesday I was sworn
3 in, so the 14th, maybe.

4 Q Where did you meet?

5 A Starbucks downtown.

6 Q Downtown Indianapolis?

7 A Yes, at Ohio and Meridian.

8 Q And what did you two discuss during that meeting?

9 A He talked a lot about his ideas for encouraging
10 retirement savings, probably touched on a few more
11 office-type things. And then at the end of the
12 meeting he said he had something to tell me that
13 troubled him greatly that he'd lost a lot of sleep
14 over and that he felt really badly about, and he
15 gave me an envelope.

16 Q What was in the envelope?

17 A It was a contract written between Jim Holden and
18 Treasurer Mourdock.

19 Q What else did he say to you about that contract?

20 A He said that as bad as he felt about it -- and
21 please understand I'm paraphrasing, not quoting.

22 Q Sure.

23 A He felt like it was the better thing to do and that
24 by agreeing to the contract he was actually keeping
25 me from greater problems, greater harm.

1 Q What types of greater problems was he referring to?

2 A He --

3 MS. PAUTLER: Objection. Calls for
4 speculation. Answer, if you know.

5 A Yes. He said that -- that Jim Holden had been
6 trying very hard to be deployed so that I would
7 have to hold that position open for him and that --
8 and again, I'm paraphrasing from memory, but that
9 he felt like a contract with an end date was a
10 better solution than having to hold the position of
11 Chief of Staff open indefinitely and not to be able
12 to name my own Chief of Staff.

13 Q How did you feel about that?

14 A I was shocked.

15 Q What did you say to Mr. Mourdock during that
16 meeting in response to him disclosing that?

17 A Not a lot. I was surprised. I believe I said
18 something along the lines of "You've stuck me with
19 Jim," something like that. That was at first
20 glance on the contract trying to understand what I
21 was looking at. But then I really didn't -- don't
22 remember saying anything else.

23 Q How did that meeting end?

24 A Shook hands, walked out.

25 Q Were you upset with Mr. Mourdock?

1 A Yes.

2 Q How long was that meeting?

3 A Probably about an hour total.

4 Q Do you recall what time you met?

5 A I don't.

6 Q Do you know whether it was during the day or at
7 night?

8 A Day.

9 MR. DUTKANYCH: Why don't we take a short
10 break.

11 THE VIDEOGRAPHER: We are going off the
12 record. The time is 1:37.

13 (A brief recess was taken.)

14 THE VIDEOGRAPHER: We are back on the record.
15 The time is 1:44.

16 BY MR. DUTKANYCH:

17 Q Ms. Mitchell, after your meeting with Mr. Mourdock,
18 what was the next thing you did with regard to the
19 Holden contract?

20 A I called Jillean Battle.

21 Q To discuss what?

22 A The contract.

23 Q What did you discuss?

24 MS. PAUTLER: I would assert the objection
25 that anything -- any communication between

1 Ms. Battle and Ms. Mitchell during that time is
2 covered by attorney-client privilege and involves
3 attorney work product, and I would instruct my
4 client not to answer.

5 Q Did you call Ms. Battle directly after that meeting
6 with Mr. Mourdock?

7 A Yes.

8 Q And did you contact Ms. Battle seeking legal
9 advice?

10 A Yes.

11 Q Did that call to Ms. Battle happen during the
12 workday?

13 A Yes.

14 Q And was that made from your personal cell phone?

15 A Yes.

16 Q And at that time was Ms. Battle still employed by
17 the INPRS?

18 A I'm not sure.

19 Q Other than Ms. Battle, who did you speak with
20 regarding Mr. Holden's contract before you were
21 appointed Treasurer?

22 A Melissa Proffitt Reese.

23 Q And that was your Campaign Chair?

24 A Yes.

25 Q What did she have to say about it?

1 MS. PAUTLER: I'd make the same objection.
2 Ms. Reese is an attorney at Ice Miller, and the
3 communication between Ms. Mitchell and Ms. Reese is
4 protected by attorney-client privilege, and I would
5 instruct her not to answer.

6 Q Were you receiving legal advice from Ms. Proffitt
7 or campaign advice?

8 A Legal.

9 Q Did you have a written agreement with Ms. Proffitt
10 for her to render legal advice to you?

11 A No.

12 Q How were you paying for her legal advice?

13 A I wasn't at that time.

14 Q What about Ms. Battle's legal advice? Were you
15 paying for that?

16 A No.

17 Q Did you have a written agreement with either
18 Ms. Battle or Ms. Proffitt for the rendering of
19 legal advice?

20 A No.

21 Q When exactly did you retain Ms. Battle to provide
22 you with legal advice?

23 A I would assume when I was sworn in as Treasurer and
24 she became my Deputy.

25 Q That was November 18th, 2014?

1 A Yes.

2 Q At any time before that did you?

3 A No.

4 Q Ms. Proffitt works at Ice Miller; correct?

5 A Yes.

6 Q Who else did you speak with regarding Mr. Holden's
7 contract before you were appointed?

8 A Probably my husband.

9 Q Other than your husband, Ms. Battle and
10 Ms. Proffitt, who else did you speak with about his
11 contract?

12 A I believe I talked to Whitney Foughty the day
13 before I took office; not to tell details, just to
14 say this might end up in the media, and she's my
15 Campaign Manager so I needed her to be aware.

16 Q Anything else you remember telling her?

17 A No.

18 Q So we have Ms. Foughty --

19 A Yes.

20 Q -- Battle, Proffitt and your husband. Anyone else?

21 A No.

22 Q What about Mr. Huge --

23 A And Mr. Mourdock. Sorry. Also, I had talked to
24 Mr. Mourdock, of course.

25 Q And we talked about that conversation?

1 A Yes.

2 Q I appreciate that. Did you have any follow-up
3 conversations with Mr. Mourdock after that meeting
4 and before your appointment?

5 A No.

6 Q Did you have any conversations with Dan Huge
7 regarding the contract after you became aware of
8 it?

9 A I may have, but I don't remember that clearly.

10 Q Have we talked about all of the individuals that
11 you communicated with regarding Mr. Holden's
12 contract before you were appointed?

13 A I believe so.

14 Q I'm going to have the court reporter hand you what
15 will be marked as Exhibit 26.

16 (Plaintiff(s) Exhibit No. 26 was marked for
17 identification.)

18 Q Ms. Mitchell, have you seen Exhibit 26 before?

19 A Yes.

20 Q What is Exhibit 26?

21 A It is from the Office of the Governor appointing me
22 as Treasurer of State pro tem.

23 Q And on what date was that effective?

24 A November 18th, 2014.

25 Q Just to help me understand the process, because I

1 don't understand the process, the last sentence
2 says "Your appointment is effective November 18th,
3 2014, and will continue until such time as you may
4 resign or your successor is elected and qualified."

5 In this situation you were, in fact, your own
6 successor because you were elected and would take
7 office January 1st, I would assume; is that
8 correct?

9 A Yes.

10 Q And at that point there would no longer be a need
11 for a pro tempore appointee; correct?

12 A Yes.

13 Q And then on the morning of November 18th, 2014, you
14 were sworn into office; is that correct?

15 A Yes.

16 Q Who swore you in?

17 A That's a good question. I was sworn in three
18 times, so forgive me if I don't remember exactly,
19 but I believe that one was Julian Riddlin.

20 Q From August 1st, 2014 to November 18th, 2014, you
21 were not employed by the State of Indiana; correct?

22 A Correct.

23 Q On the day you were sworn in, do you know whether
24 it was Legislative Organization Day?

25 A I believe it was.

1 Q What is Legislative Organization Day?

2 A Where they get organized. I believe they elect
3 leadership. I'm not very familiar with what they
4 do on Organization Day.

5 Q Does that bring a lot of people to the State House?

6 A Yes, I assume so.

7 Q Is it an active day at the State House?

8 A Yes.

9 Q How many people attended your swearing in?

10 A I'm guessing probably 25 to 35.

11 Q When you fired Mr. Holden, would he have been
12 walked out of the State House by the police
13 carrying all of this personal belongings?

14 MS. PAUTLER: Objection. Lack of foundation.
15 Calls for speculation.

16 Answer, if you can.

17 A Can you restate the question.

18 Q Sure. When you fired Mr. Holden, would he have
19 been walked out of the State House by the police
20 carrying all of his personal belongings?

21 MS. PAUTLER: Same objection.

22 A Would he have been? I must -- I'm not
23 understanding your question.

24 Q Sure.

25 A It's not an assumption that that would happen.

1 Q It did happen, though; right?

2 A I believe so. I did not see it.

3 Q Did you arrange for the police to walk out
4 Mr. Holden after his termination?

5 A No.

6 Q Who arranged for that?

7 A No one arranged for the police to walk him out
8 unless the police did it themselves.

9 Q Who called the police to the scene?

10 A Jillean Battle arranged for two plainclothes police
11 officers to wait outside. When Mr. Holden would
12 not leave my office after repeated requests, she
13 called them into the office. The plainclothes
14 police are the ones that called further police to
15 arrive, and they're the ones who chose to escort
16 him out.

17 Q As Treasurer, do you have -- excuse me. As
18 Treasurer, do you also have some responsibilities
19 over other Boards?

20 A Yes.

21 Q What other Boards do you sit on as Treasurer?

22 A I think there are a total of 13. The ones that I
23 sit on as Chair, the Indiana Education Savings
24 Authority, the Indiana Bond Bank, and E911.

25 Q What other Boards do you sit on?

1 A I am Secretary Investment Manager for the Board For
2 Depositories, and I'm the Vice-Chair of the Indiana
3 Finance Authority. I am, I believe, the Vice-Chair
4 of the Indiana Housing and Community Development
5 Authority. And then there are still a number of
6 others that I'm on but not in a Chair capacity.

7 Q Okay. And as Treasurer, what is your role with the
8 Board For Depositories?

9 A I am Secretary Investment Manager.

10 Q And what does that mean?

11 A It means I oversee the day-to-day functions of the
12 Board For Depositories.

13 Q And do you have designees for these different
14 Boards?

15 A Not all of them, no.

16 Q Do you have a designee for the Board For
17 Depositories?

18 A I do not.

19 Q At the time you were elected, do you know who was
20 the designee for the Treasurer to the Board For
21 Depositories?

22 A I do not.

23 Q How long after your swearing in did you meet with
24 Mr. Holden to terminate his employment?

25 A Shortly after.

1 Q When did you set up that meeting?

2 A Jillean Battle set that meeting up.

3 Q Did she send Mr. Holden a calendar request, or how
4 was that set up?

5 A I don't know.

6 Q Okay. Where did the meeting take place?

7 A In the Treasurer of State's Office.

8 Q Where within the State Office?

9 A In the Treasurer of State's Office space.

10 Q Ah, I got it. In your office?

11 A Yes.

12 Q How did that meeting start?

13 A I asked Jim to sit down, I believe, and thanked him
14 for his service to the State of Indiana and said
15 that his services were no longer needed and gave
16 him a letter of termination.

17 Q Was that letter in an envelope?

18 A I don't remember. I believe so.

19 Q Do you recall whether Mr. Holden asked to review
20 the letter?

21 A I believe he did.

22 Q Was he allowed an opportunity to review the letter?

23 A I believe he was told that he needed to leave at
24 this time and then he could certainly review the
25 letter on his own time.

1 Q Did Mr. Holden ask to go to his desk to retrieve
2 something for you?

3 A He said he needed to go get something, and he left
4 to get it.

5 Q And did he return with it?

6 A Yes.

7 Q And what was it?

8 A It was either a letter or an envelope. Again, I
9 don't remember which.

10 Q I'll have the court reporter hand you what's going
11 to be marked as Exhibit 27.

12 (Plaintiff(s) Exhibit No. 27 was marked for
13 identification.)

14 MS. PAUTLER: Thank you.

15 THE WITNESS: Thank you.

16 Q Ms. Mitchell, have you seen Exhibit 27 before?

17 A I believe so.

18 Q Is this the letter that Mr. Holden gave you during
19 the termination meeting?

20 A I did not take a letter from him. Jillean Battle
21 did.

22 Q Did Ms. Battle ever give you that letter to review?

23 A Not that day, I don't believe. I believe I saw it
24 the following week or a few days later, but not
25 that day. And I can't remember if it was through

1 her or not.

2 Q What did you think when you reviewed the letter?

3 A At that time he was terminated, so --

4 Q So you didn't think anything?

5 A I don't remember what I thought. It just didn't
6 pertain to an employee of the office at the time.

7 Q What else do you remember being discussed during
8 the termination meeting with Mr. Holden and
9 Ms. Battle?

10 A I remember that Mr. Holden said that he could
11 not -- or that we could not do this. And that's
12 when I said -- he had to go get something that we
13 needed to see, and I don't remember if it's when he
14 was handing the letter back to us or when he went
15 to get it, and I said, "No, we've seen it." My
16 assumption was he was going for the contract, that
17 he didn't know I had already received it from
18 Richard Mourdock, so --

19 Q What do you recall Ms. Battle saying during that
20 meeting?

21 A She just kept asking him to leave and assuring him
22 that he had full rights to review the letter on his
23 time and take whatever action he deemed necessary.

24 Q Do you recall anything else being discussed during
25 that meeting?

1 A Oh, I think he said something about oh, we can't do
2 this because of -- because of military leave, and I
3 believe Jillean Battle said, "We know about that."
4 And what she and I had known about was that he had
5 a one-day deployment coming up or a two-day one in
6 November and December, some short term, but that
7 this one was certainly nothing we knew about it.
8 And I didn't even know during the meeting he was
9 referring to this until later.

10 Q But it turns out that Exhibit 27 was something that
11 he had handed to either you or Ms. Battle during
12 that meeting to --

13 A After his --

14 Q -- make you aware --

15 A I'm sorry. Yes, after his termination.

16 Q It was all the same meeting, though; correct?

17 A Yes, but it happened after his termination.

18 Q Right. I understand you had already said he was
19 terminated --

20 A Yes.

21 Q -- but in the same meeting, he gave this to you,
22 "this" being Exhibit 27?

23 MS. PAUTLER: And again I would object. She
24 never read that letter. That was her testimony.
25 So she doesn't know what he handed her.

1 A He handed it to Ms. Battle.

2 Q And you later learned that Exhibit 27 was what was
3 handed to Ms. Battle?

4 A I believe that's what it was.

5 Q I'm going to have the court reporter hand you what
6 will be marked as Exhibit 28.

7 (Plaintiff(s) Exhibit No. 28 was marked for
8 identification.)

9 Q If you could take a few moments and review Exhibit
10 28.

11 Ms. Mitchell, I think I may have given you my
12 highlighted copy.

13 A I'm thinking that, too. Let's just switch.

14 MR. DUTKANYCH: Yeah, let's go ahead and
15 switch the stickers.

16 (Plaintiff(s) Exhibit No. 28 remarked for
17 identification.)

18 Q Ms. Mitchell, if you could look at the
19 third-from-last page. It is the first numbered 16
20 page. I think there's two of them. It's labeled
21 "Verification."

22 A Yes.

23 Q Is that your signature there?

24 A It is.

25 Q And when did you date that?

1 A June 19th, 2015.

2 Q And did you review this document before you signed
3 that verification?

4 A I did.

5 Q If I could have you look at page -- the bottom of
6 page 4 and the top of page 5. The response here
7 lists several individuals that were consulted in
8 the decision to terminate Mr. Holden's employment.
9 Do you see that?

10 A I do.

11 Q Okay. Did you ever consult directly with
12 Mr. Light?

13 A I did not.

14 Q Did you ever consult directly with Mr. Bramer?

15 A No.

16 Q Did you consult directly with Ms. Erdmann?

17 A No.

18 Q Did you consult directly with Mr. Ahearn?

19 A I may have spoken to him after the termination. I
20 do -- I do remember speaking to him at some point.
21 I'm sorry. I don't remember what the exact time
22 line was.

23 Q And you testified earlier that you spoke directly
24 with Ms. Proffitt; correct?

25 A I did.

1 Q What about Mr. Carr?

2 A No.

3 Q Obviously you spoke with Ms. Battle.

4 A Yes.

5 Q What did you speak with Ms. Logan about?

6 A Prior to his termination? I don't know that I did.

7 Q Okay. What about immediately following his
8 termination? Did you have any specific
9 conversations with Ms. Logan about Mr. Holden?

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

11 Q Do you know who was consulting -- removing
12 Ms. Proffitt and Ms. Battle --

13 A Yes.

14 Q -- and yourself, who was consulting with Mr. Light
15 and Mr. Bramer and Ms. Erdmann, Mr. Ahearn --

16 A Jillean --

17 Q -- regarding Mr. Holden's termination?

18 A Jillean Battle.

19 Q And those interactions would have been before his
20 actual termination; correct?

21 MS. PAUTLER: Objection. Calls for
22 speculation. Lacks foundation.

23 Answer, if you know.

24 A I don't know.

25 Q Okay. The question asks you to identify which

1 individuals were consulted regarding the decision
2 to terminate Mr. Holden. I assume these people
3 would have been consulted before the decision was
4 made; correct?

5 A It would seem like a safe assumption, but I was not
6 part of those conversations.

7 Q Were some of these contacts made prior to you
8 taking office?

9 MS. PAUTLER: Same objection. Answer, if you
10 know.

11 A I would assume so.

12 Q What role did Matthew Light play in the
13 decision-making process?

14 A In my decision-making process, none. I did not
15 talk to him.

16 Q What about Richard Bramer? What role did he play
17 in the decision-making process?

18 A Again, I did not speak with him.

19 Q Did you make the decision or did Ms. Battle make
20 the decision to terminate Mr. Holden's employment?

21 A I made the decision.

22 Q Did you make the decision after receiving advice
23 from Ms. Battle?

24 A We discussed it, yes.

25 Q And did Ms. Battle relay advice that she had

1 received from the Attorney General's Office?

2 MS. PAUTLER: Objection. That would require
3 Ms. Mitchell to disclose information protected by
4 attorney-client privilege, Ms. Battle's attorney
5 work product. I would instruct her not to answer.

6 MR. DUTKANYCH: Well, these individuals from
7 the Attorney General's Office are listed here.

8 MS. PAUTLER: I recognize that. We certainly
9 disclosed them, but we can't discuss the
10 conversations that were had or what information was
11 disclosed from Ms. Battle to Ms. Mitchell.

12 MR. DUTKANYCH: Right. I'm not asking for
13 the information. I'm asking whether --

14 MS. PAUTLER: You did.

15 MR. DUTKANYCH: -- the decision was based on
16 the advice of the Attorney General's Office.

17 MS. PAUTLER: Andrew, you did. You asked
18 what Ms. Battle told Ms. Mitchell.

19 BY MR. DUTKANYCH:

20 Q Did Ms. Battle ask you -- strike that.

21 Did Ms. Battle tell you that she had received
22 advice from the Attorney General's Office?

23 MS. PAUTLER: Again, that conversation is
24 protected by attorney-client privilege, and I would
25 instruct my client not to answer that question.

1 Q Why did you terminate Mr. Holden's employment?

2 A A number of reasons. One is because I had my own
3 Chief of Staff that I wanted to appoint. I would
4 say the time line of it was set by the receiving of
5 the contract and by the knowledge of the written
6 reprimand.

7 Q What do you mean the time line of it?

8 A I had intended to come in the day I was sworn in
9 and sit down with Mr. Holden and talk to him about
10 a transition time to be out no later than the end
11 of the year, but somewhere between a two- and a
12 six-week period was my intention of working with
13 him to help the transition and help him go on to
14 wherever he was moving on to.

15 Q When was that your intent?

16 A I'm sorry?

17 Q When was that your intent?

18 A All -- all along, whenever I considered this and
19 probably more, 'til after I was actually elected
20 and knew that I would be in the office.

21 Q And when did that intent change?

22 A Once I received the contract.

23 Q I'm going to have the court reporter hand you what
24 will be marked as Exhibit 29.

25 (Plaintiff(s) Exhibit No. 29 was marked for

1 identification.)

2 THE WITNESS: Thank you.

3 Q Ms. Mitchell, have you seen Exhibit 29 before?

4 A Yes.

5 Q What is Exhibit 29?

6 A It is an e-mail from Jim Holden to me.

7 Q And what is the nature of Mr. Holden's e-mail to
8 you?

9 A It is a congratulations on my victory and a "feel
10 free to contact me if you wish to set up some
11 transition meetings."

12 Q And did you reply to his e-mail?

13 A I did not.

14 Q Why not?

15 A It didn't seem like the time, I guess. I don't
16 know. I just didn't.

17 Q Okay. But at the same time you were intending to
18 have him for a period of two to six weeks help you
19 transition the office; correct?

20 A Yes.

21 Q But you chose not to reply?

22 A Yes.

23 Q And when did your -- strike that.

24 Your intent with regard to the transition
25 changed when you learned about the contract; is

1 that right?

2 A Yes.

3 Q At that point what was your intent?

4 A To terminate his employment first thing after the
5 swearing-in.

6 Q And it's your testimony that you did not ask Dan
7 Huge to do that for you?

8 A I did not.

9 Q You testified that after you learned about the
10 contract you called Ms. Battle; correct?

11 A Correct.

12 Q Did you have any follow-up meetings with Ms. Battle
13 after that phone call regarding Mr. Holden's
14 contract?

15 A I'm not sure they were meetings, but we had
16 communication.

17 Q Okay. Did you have any face-to-face meetings with
18 her?

19 A I don't remember. I believe I saw her at my next
20 meeting that day. I went from the meeting with
21 Treasurer Mourdock to the Indiana Finance Authority
22 meeting, and Jillean may have been there. Yes,
23 because that's where I gave her the contract. So I
24 did see her.

25 Q Did you -- you discuss the contract when you met

1 that day?

2 A I don't know that we discussed it there. I don't
3 believe we did. We discussed it by phone.

4 Q You gave her the contract at that meeting?

5 A Yes.

6 Q Okay. And what was the meeting you were going to?

7 A Indiana Finance Authority.

8 Q What was your purpose of going to that meeting?

9 A Just to begin to learn the job.

10 Q You were just attending as a member of the public?

11 A Yes.

12 Q And Ms. Battle, in what capacity was she attending
13 that meeting?

14 MS. PAUTLER: Objection. Lack of foundation.
15 Calls for speculation.

16 Answer, if you know.

17 A I don't know. I don't remember.

18 MR. DUTKANYCH: Why don't we go ahead and
19 take a break.

20 MS. PAUTLER: Okay. Thank you.

21 THE VIDEOGRAPHER: We are going off the
22 record. The time is 2:19.

23 (An off-the-record discussion was held.)

24 THE VIDEOGRAPHER: We are back on the record.
25 The time is 2:26.

1 BY MR. DUTKANYCH:

2 Q Ms. Mitchell, I'm going to hand you what has been
3 previously marked as Exhibit 12.

4 To repeat, Ms. Mitchell, I'm going to hand
5 you what's been previously marked as Exhibit 12.
6 Here you go.

7 Ms. Mitchell, have you seen Exhibit 12
8 before?

9 A I have.

10 Q What is Exhibit 12?

11 A It is the letter of termination to Mr. Holden.

12 Q And whose signature appears on that letter?

13 A Mine.

14 Q And what was the date of that letter?

15 A It's November 18th, 2014.

16 Q Who prepared that letter?

17 A Jillean Battle.

18 Q Did you review it before signing and presenting it
19 to Mr. Holden?

20 A I did.

21 Q Did you agree with its contents?

22 A I did.

23 Q Why did you feel that Mr. Holden's contract
24 violated the ethics rules?

25 A I believe that the contract appeared to violate the

1 ethics rules because the only two people that knew
2 about the contract were him and Mr. Mourdock; and
3 it was for a position that did not yet exist and
4 there was no Board knowledge or summary of the need
5 for such a position or knowledge of this contract.

6 Q The second page of this letter, second-to-last
7 paragraph, you indicated that "you," meaning
8 Mr. Holden, "did not observe the provisions
9 outlined in IC 4-2-6-10.5(b)(1)(A)-(D). Do you see
10 that?

11 A I do.

12 Q On what basis did you form that conclusion?

13 A Well, in talking with Treasurer Mourdock who said
14 that the Board did not know about this contract.

15 Q Do you have any other facts to support that
16 Mr. Holden did not observe the provisions outlined
17 in IC 4-2-6-10.5(b)(1)(A)-(D)?

18 A It's possible that there was more inquiry done by
19 Jillean that I'm not remembering at this time.

20 Q What kind of inquiry?

21 A I don't know. It's possible that she talked to the
22 Board members, but I don't know that.

23 Q Did you ask Ms. Battle to do an investigation to
24 see whether Mr. Holden had observed those
25 provisions?

1 A I am sure I asked her to determine the validity of
2 the contract as compared to the bylaws of the
3 Board, the -- what was expected of us as
4 fiduciaries.

5 Q Okay. But speaking more specifically about the
6 statute that you reference in your letter to
7 Mr. Holden, the IC 4-2-6-10.5(b)(1)(A)-(D), do you
8 have any other facts to suggest that he did not
9 observe those provisions?

10 A I don't have those provisions in front of me. I'm
11 assuming they're referring to the Board -- you have
12 them. Wonderful.

13 Q I'll hand you what's been previously marked as
14 Exhibit 14, which are those provisions.

15 A Thank you.

16 Q Why don't you take a moment to review that section.
17 Does that help refresh your recollection?

18 A It does.

19 Q Okay. And so how did -- how is it that you believe
20 he did not observe those provisions?

21 MS. PAUTLER: I'm going to interpose an
22 objection. Ms. Mitchell's not a lawyer so this
23 question actually lacks some foundation. She also
24 didn't write the letter. I think her testimony was
25 that Ms. Battle wrote the letter.

1 She can answer, if she knows.

2 A I would agree, I'm not a lawyer, but it -- it seems
3 to me, and it seemed to me when I saw the contract,
4 was that as an attorney, as a designee to a Board,
5 to write a contract that only two of you know about
6 that benefits the writer of the contract greatly
7 financially had the appearance of an ethics
8 violation.

9 Q But in your termination letter, you state
10 specifically -- I realize that somebody prepared it
11 for you, but you reviewed it and adopted it as your
12 own by signing it here. You're making a personnel
13 decision based on it. You state specifically
14 "You," meaning Mr. Holden, "did not observe the
15 provisions outlined in" the statute that appears in
16 Exhibit 14.

17 What is it in that statute that Mr. Holden
18 did not observe?

19 MS. PAUTLER: I'll interpose the same
20 objection.

21 She may answer, if she knows.

22 Q You fired him for this.

23 MS. PAUTLER: That misstates her testimony.
24 That was not the only reason he was terminated.

25 She can answer, if she knows.

1 A I think I'm lost on the question. Would you repeat
2 that, please.

3 Q How was it that Mr. Holden did not observe the
4 provisions in the statute that's in Exhibit 14 and
5 specifically referenced in your letter terminating
6 his employment?

7 A I believe I already stated what I can state about
8 that.

9 Q And what was it?

10 A I just said that in writing a contract as a
11 designee, as a potential voting member of the
12 Board, writing a contract for himself that benefits
13 himself greatly financially without any input from
14 the Board, without anyone knowing about it but --
15 but him and Treasurer Mourdock, that appears to me
16 to have an ethics issue.

17 Q Your letter to Mr. Holden on the first page, at the
18 bottom of the second paragraph, states that he did
19 not observe the provisions of IC 35-44-1-3 of the
20 State's criminal conflict of interest statute. Do
21 you see that?

22 A I do.

23 Q Do you know what IC 35-44-1-3 requires Mr. Holden
24 to observe?

25 A Not off the top of my head.

1 Q Do you know whether that article was actually
2 repealed in 2012?

3 A I don't.

4 Q I'm going to hand you what's been previously marked
5 as Exhibit 13. Ms. Mitchell, have you seen Exhibit
6 13 before?

7 A Yes.

8 Q What is Exhibit 13?

9 A It is the contract that was handed to me.

10 Q Handed to you by Mr. Mourdock?

11 A Yes.

12 Q And this is the contract between Mr. Holden and the
13 Board For Depositories?

14 A Yes.

15 Q And if you look at the last page, do you recognize
16 those two signatures?

17 A Yes.

18 Q Whose signatures are those?

19 A Jim Holden and Richard Mourdock.

20 Q Do you have any reason to dispute whether that's
21 Mr. Mourdock's signature?

22 A No.

23 Q And, in fact, during his meeting with you, he
24 affirmed that he had signed this contract; correct?

25 A Yes.

1 Q And as I understand it, it's your position that
2 this contract's not valid because it wasn't created
3 and executed properly under the BFD bylaws; is that
4 right?

5 A Yes, in part I would say. Yes.

6 Q And if a contract is not created and executed
7 properly under the BFD bylaws, what do the bylaws
8 say is the effect of that?

9 A The contract is void.

10 Q Did you ever take Mr. Holden's contract to the
11 Board to have them vote on it?

12 A I did not.

13 Q Do you have any reason to dispute Mr. Mourdock's
14 legal authority to sign this contract?

15 A I believe as Secretary Investment Manager he is
16 allowed to sign contracts on behalf of the Board if
17 they have been duly authorized and approved by the
18 Board.

19 Q Is that authorization and approval accomplished
20 through a vote?

21 A I would assume so.

22 Q You are currently the Secretary Investment Manager;
23 correct?

24 A I am.

25 Q Is that how it works under your leadership?

1 A It does.

2 Q It's accomplished by a vote?

3 A It does, unless it happens during -- well, no.

4 It's a vote.

5 Q Prior to terminating Mr. Holden's employment, did
6 you check to see whether he was the designee for
7 the Board For Depositories?

8 A I believe that -- and I'll have to restate my
9 earlier question because I think you asked me if I
10 knew who the designee was. I believe that Jim
11 Holden was the designee to the Board before I came
12 in. I'm not sure if he still was under Treasurer
13 Huge. I believe he was back earlier in the year
14 when this contract was signed.

15 Q My question to you is whether you checked to see
16 who was the designee at the time that you
17 terminated Mr. Holden's employment?

18 A I don't believe I did personally, no.

19 Q Did you direct one of the -- did you direct
20 somebody else to check?

21 A Not to my recollection.

22 Q Do you know whether Mr. Holden ever appeared at a
23 Board For Depositories meeting as Mourdock's
24 designee and voted on any business?

25 A I believe he did.

1 Q When was that?

2 A I don't know.

3 Q Can you identify any particular meeting where that
4 may have occurred in your presence?

5 A No. I did not normally attend those meetings.

6 Q Have you ever reviewed a document that suggests
7 that he voted on behalf of Mr. Mourdock at a BFD
8 meeting?

9 A Not to my memory.

10 Q So when you say that you believe he did, it's just
11 your own speculation?

12 A I believe so. I'm trying to remember minutes of
13 meetings in my head.

14 Q Did you have Mr. Holden reported to the Ethics
15 Commission?

16 A We submitted a question, that we felt that this
17 agreement indicated or seemed to have the
18 appearance of an ethics violation, so we asked for
19 their opinion.

20 Q I'm going to hand you what's been marked as Exhibit
21 5 -- I'm going to hand you what's been marked as
22 Exhibit 6.

23 Ms. Mitchell, have you seen Exhibit 6 before?

24 A Which part of it?

25 Q Looking at the first page.

1 A No.

2 Q Okay. You had just testified that you had
3 submitted, in your words, a question to the Ethics
4 Commission regarding Mr. Holden's contract?

5 MS. PAUTLER: I would object. I think that
6 misstates her testimony.

7 Q Is this the question you submitted or had
8 submitted?

9 A I believe I said "we submitted."

10 Q Okay.

11 A Yes.

12 Q And by "we" you meant the Treasurer's Office?

13 A Yes.

14 Q By "we" you mean you and Ms. Battle?

15 A Well, Ms. Battle.

16 Q And would this have been that submission?

17 A It appears to be.

18 Q Are you aware of any other contact to the Ethics
19 Commission regarding Mr. Holden's contract?

20 A I've not seen any. It's possible that we followed
21 up.

22 Q Okay. But between the termination on the 18th and
23 the date of this e-mail, which appears to be
24 November 28th, you're not aware of any other
25 contacts to either the Ethics Commission or the

1 Office of Inspector General?

2 A I'm not.

3 Q Who decided to have Mr. Holden -- strike that.

4 Who decided to request a formal investigation
5 into Mr. Holden's contract?

6 A That would have been me.

7 Q Between -- strike that.

8 When did you decide to have a formal
9 investigation done?

10 A I'm assuming sometime in that first week.

11 Q After Mr. Holden's termination from employment, who
12 did you speak with about that termination between
13 the termination date and the submission to the
14 Office of Inspector General on the 28th?

15 A That was a very busy time in the office. You mean,
16 I'm assuming, in relevance to just this --

17 Q Correct.

18 A -- who did I speak with? I'm sure that Jilleen
19 Battle and I spoke probably multiple times. I
20 don't remember specific conversations about this.

21 Q Did you speak with anybody from the Governor's
22 Office about Mr. Holden?

23 A That may have been when I spoke with Mark Ahearn.

24 Q And what did you speak with him about?

25 A Letting him know what had happened.

1 Q When you say "what happened," what are you
2 referring to?

3 A Just that we had terminated Mr. Holden's employment
4 with the office.

5 Q Anybody other than Ms. Battle and Mr. Ahearn?

6 A It's possible. I don't remember.

7 Q No specific recollection?

8 A No.

9 Q What about with Kimberly Logan? Did you speak with
10 her about it?

11 A It's likely.

12 Q Do you recall what you may have spoken with her
13 about following the termination?

14 A No.

15 Q What process do you need to go through to bind the
16 Board For Depositories to a professional services
17 contract?

18 A The process to bind the Board For Depositories to a
19 professional services contract?

20 Q Yes.

21 A I'll tell you what I do or will do. I choose to
22 involve the Board as much as possible. In fact,
23 we've moved from meetings twice a year to four
24 times a year so they feel fully informed on
25 absolutely everything that we're doing as a Board.

1 It would depend on what it's for whether or
2 not we would send out an RFI or an RFP, whether or
3 not we would conduct interviews. I would want the
4 Board to be as comfortable as possible with
5 decisions that are made, so as much as they want to
6 be involved in the process I would involve them in
7 it.

8 Q Does the Board For Depositories need to use the
9 State's competitive process to --

10 A No.

11 Q And that's because the Board For Depositories is a
12 quasi-State government agency; is that correct?

13 A It is a quasi-governmental unit, yes.

14 Q What does that mean?

15 A It means it doesn't have to operate quite like the
16 State does.

17 Q Going to hand you what is going to be marked as
18 Exhibit 30.

19 (Plaintiff(s) Exhibit No. 30 was marked for
20 identification.)

21 THE WITNESS: Thank you.

22 Q Ms. Mitchell, if you could take a moment to review
23 Exhibit 30 for me. Just let me know when you've
24 read it.

25 Ms. Mitchell, have you ever seen Exhibit 30

1 before?

2 A I have not.

3 Q Exhibit 30 purports to be a letter from Mr. Holden
4 to Cyndi Carrasco of the Office of Inspector
5 General. Do you see that?

6 A I do.

7 Q What is the date of this letter?

8 A July 14th, 2014.

9 Q And having read it, what is this letter
10 communicating to Ms. Carrasco?

11 MS. PAUTLER: Other than having just read it
12 right now, I would object as to lack of foundation.
13 Calls for speculation, as to what it's about.

14 A I would agree. It's referring to a prior e-mail
15 correspondence I don't know about.

16 Q Okay. At the time that you let Mr. Holden go, were
17 you aware of this letter that he had sent to
18 Ms. Carrasco?

19 A No.

20 Q Prior to letting Mr. Holden go, did you contact the
21 Office of Inspector General or the State Ethics
22 Commission?

23 A Prior to?

24 Q Prior to.

25 A No.

1 Q Have you take a look at what will we marked as
2 Exhibit 31.

3 (Plaintiff(s) Exhibit No. 31 was marked for
4 identification.)

5 MS. PAUTLER: Thank you.

6 Q Ms. Mitchell, have you seen Exhibit 31 before?

7 A I have not.

8 Q It appears to be a Uniform Conflict of Interest
9 Ethics Disclosure Statement that was filed on July
10 21st, 2014. Do you see that at the top?

11 A I do.

12 Q And do you see who this was filed by?

13 A I do.

14 Q Who was it filed by?

15 A Jim Holden.

16 Q And what is attached to his disclosure?

17 A The employment agreement.

18 Q That same employment agreement between him and the
19 Board For Depositories?

20 A Yes.

21 Q And on what date did Mr. Holden sign this
22 disclosure statement?

23 A June 2nd of 2014.

24 Q Do you have any facts to suggest that this
25 disclosure statement was not filed with the State

1 Ethics Commission?

2 A No.

3 Q Going back to Exhibit 30, which was the July 14th,
4 2014 letter to Ms. Carrasco, do you have any facts
5 to suggest that this letter was not sent to
6 Ms. Carrasco?

7 A No.

8 Q Why didn't you check to see whether he had made his
9 disclosure before terminating his employment?

10 A Probably a couple of reasons. One is this was not
11 the only reason he was being terminated. The other
12 is that we knew that it was only known between him
13 and Richard that this contract was made without the
14 Board having any input in creating a new position,
15 funding a new position. It had the appearance to
16 me of an ethics issue.

17 Q But you didn't check with the Ethics Commission
18 before terminating him --

19 MS. PAUTLER: Objection.

20 Q -- right?

21 MS. PAUTLER: Asked and answered. She can
22 answer, if she knows.

23 A I answered.

24 Q You didn't; correct?

25 MS. PAUTLER: Asked and answered.

1 A Correct.

2 Q Prior to terminating Mr. Holden's employment, name
3 for me each Board member for the Board For
4 Depositories that you spoke with about the
5 contract.

6 A Repeat the question, please.

7 Q Uh-huh. Prior to terminating Mr. Holden's
8 employment, identify for me each Board member for
9 the Board For Depositories that you spoke with
10 about the contract.

11 A I did not speak with a Board member prior to that
12 Tuesday morning. Other than -- forgive me --
13 Richard Mourdock, of course, who had been a Board
14 member at the time that this was written.

15 Q I'm going to hand you what will be marked as
16 Exhibit 32.

17 (Plaintiff(s) Exhibit No. 32 was marked for
18 identification.)

19 THE WITNESS: Thank you.

20 Q Take a moment and review that exhibit, please.

21 Ms. Mitchell, have you ever seen Exhibit 32
22 before?

23 A No.

24 Q Appears to be a request for information seeking
25 proposals for legal services issued by the Board

1 For Depositories. Do you see that?

2 A I do.

3 Q Okay. At the bottom it indicates that responses to
4 this RFI and other inquiries must be received by
5 June 2nd, 2014. Do you see that?

6 A I do.

7 Q Is this related to -- as far as you know, is this
8 related to the position that Mr. Holden was going
9 to be filling?

10 MS. PAUTLER: Objection. Lacks foundation.
11 Calls for speculation.

12 Answer, if you know.

13 A I would assume it might, but I've never seen it
14 before.

15 Q The two pages that follow that are photographs of
16 the posting of this request for information. Are
17 you familiar with the bulletin board that's
18 depicted on the third page?

19 A Yes.

20 Q Okay. What is that bulletin Board?

21 A It's outside our office door.

22 Q The Treasurer's Office?

23 A Yes.

24 (Ms. Battle left the deposition.)

25 Q Is that board used to post public notices?

1 A Yes.

2 Q Do you have any facts or evidence to support that
3 this request for information was not posted
4 publicly?

5 A No. I don't know when it was or for how long it
6 was or any of that, but it's -- looks like it was
7 up and a picture was taken of it.

8 Q Okay. I need you to go back to Exhibit 30, which
9 is the July 14th, 2014 letter. I have just one
10 more question about it.

11 You see the parenthetical in the middle of
12 the -- middle paragraph?

13 A Yes.

14 Q Okay. It says "The contract will not be performed
15 until my employment in my current position has
16 ended."

17 A Uh-huh.

18 Q Does that suggest to you that Mr. Holden intended
19 to resign his employment?

20 MS. PAUTLER: Objection. Calls for
21 speculation.

22 A I'm -- yeah. I'm assuming he believed it wouldn't
23 start until he was -- had left that position.

24 Q Okay. And you had intended to replace him with
25 Jillean Battle; correct?

1 A Yes.

2 Q As of November 18th, 2014, what was Ms. Battle's
3 title?

4 A It was Chief of Staff and General Counsel.

5 Q When did she become Chief Deputy?

6 A She became Chief Deputy sometime later, but I don't
7 remember the date.

8 Q Who was Chief Deputy as of November 18th?

9 A We had two Deputies, and not a Chief Deputy.

10 Q What was -- why was there a delay in appointing her
11 as Chief Deputy?

12 A I believe it was her request to get used to the job
13 first, the other two titles.

14 Q Is there a material difference between Chief of
15 Staff and Chief Deputy?

16 A I'm not sure what exactly it is or if it's a
17 material difference.

18 Q Did you create the position Chief of Staff for her?

19 A There's always been a Chief of Staff position, so I
20 did not create it.

21 Q When you worked at the Treasurer's Office --

22 A Yes.

23 Q -- before you resigned in July of 2014, who was
24 Chief of Staff?

25 A I believe it was Mike -- nope. Sorry. Will you

1 repeat the question?

2 Q Uh-huh. While you were employed at the Treasurer's
3 Office --

4 A Yes.

5 Q -- before you resigned in July of 2014, who was
6 Chief of Staff?

7 A Jim Holden.

8 Q Was he Chief of Staff or Chief Deputy?

9 A He may have been both.

10 Q What's the difference?

11 A I'm not entirely sure.

12 Q I'm going to have you look at Exhibit 2.

13 (Ms. Battle returned to the deposition.)

14 Q Have you seen Exhibit 2 before?

15 A I believe so, yes.

16 Q What is Exhibit 2?

17 A It's the add, rehire, transfer, change form of
18 employment for the State of Indiana.

19 Q And whose employment is being changed in this
20 document?

21 A James Holden.

22 Q On the first page it indicates that he's being
23 terminated; correct? Where it says status, there's
24 a T --

25 A Yes.

1 Q -- for terminated? Then it says to pay out his
2 vacation. Why was his vacation paid out to him?

3 A I'm assuming because he'd accrued vacation days.

4 Q Is it normal State policy to pay out vacation to
5 employees who are terminated?

6 MS. PAUTLER: Objection. Calls for
7 speculation.

8 Answer, if you know.

9 A I don't know. I'm assuming it is.

10 Q As Secretary Investment Manager, can you make
11 personnel decisions at the BFD without Board
12 approval?

13 A Yes, I believe so.

14 Q So you can hire somebody for a position at the BFD
15 without the Board approving it?

16 A Yes.

17 Q And you could fire them as well?

18 A Yes.

19 Q Take a look at the second page of this exhibit,
20 Exhibit 2. Have you ever seen this document
21 before?

22 A It's not -- not ringing a bell.

23 Q Okay. Go ahead and look at the third page.

24 A Okay.

25 Q Okay. Would you agree that this is the payroll

1 action form for Mr. Holden?

2 A Yes.

3 Q And the effective date of the action is November
4 18th, 2014?

5 A Yes.

6 Q And this document indicates that -- under action
7 code it says "TER," do you see that?

8 A I do.

9 Q Do you know what TER stands for?

10 A Terminated, I'm assuming.

11 Q And next to that there's a reason code. It says
12 "DCN." Do you see that?

13 A Yes.

14 Q What does that stand for?

15 A I'll flip back to the second page.

16 Q Sure.

17 A And "Used when an agency dismissed an employee as a
18 disciplinary action for misconduct or poor
19 performance and the employee is not eligible for
20 rehire."

21 Q Whose decision was it to code Mr. Holden as DCN?

22 A Mine.

23 Q And you communicated that decision to Ms. Logan?

24 A I did.

25 Q Who then completed this form?

1 A Yes.

2 Q And who was this form submitted to?

3 A I'm assuming the Auditor. I don't know where the
4 process goes.

5 Q If you are coded TER/DCN, do you know whether
6 you're eligible for rehire?

7 A No. That would -- well, you might be eligible, but
8 it says here you're not eligible for rehire, so --

9 Q So with that coding, Mr. Holden is not eligible for
10 rehire within the State?

11 A Yes.

12 Q Would that inhibit his ability to find other work
13 within the State?

14 A It would seem so, within the State Government.

15 Q Did you notify Mr. Holden that he was going to be
16 designated as not eligible for rehire?

17 A I don't believe so.

18 Q Do you know whether anybody notified him of that?

19 A I don't know.

20 Q Do you know if he had any way to appeal that
21 coding?

22 A I don't know.

23 Q I'm going to have you look back to the letter of
24 termination that you gave to Mr. Holden that's in
25 front of you.

1 MS. PAUTLER: Do you have a number on that,
2 Andrew?

3 MR. DUTKANYCH: What's that?

4 MS. PAUTLER: What number?

5 MR. DUTKANYCH: I think it's Exhibit 12.

6 MS. PAUTLER: Thank you.

7 Q Ms. Mitchell, is that Exhibit 12 in front of you?

8 A It is.

9 MS. PAUTLER: Thank you.

10 MR. DUTKANYCH: Great.

11 Q Sitting here today, is there anything that's
12 inaccurate, in your opinion, in that letter?

13 A No.

14 Q Who does the Executive Director report to? I'm
15 sorry. Who does the Executive Director of the BFD
16 report to?

17 A To the Secretary Investment Manager of the Board,
18 which would be the State Treasurer.

19 Q And when I say "BFD," you know I'm referring to the
20 Board For Depositories?

21 A I do.

22 Q Good. Other than the Office of Inspector General,
23 who else have you shared this letter with?

24 A I have not shared it with anyone to my memory,
25 except my attorneys, I'm assuming.

1 Q Okay. When you say "your attorneys" --

2 A The Attorney General's Office.

3 Q Okay. Do you know whether Ms. Battle has shared
4 this letter with anyone else other than the
5 attorneys with the Attorney General's Office?

6 A I believe with the -- sorry. I can't think of the
7 name. Unemployment.

8 Q Did you share this letter with the Board for the
9 Board For Depositories?

10 A I don't remember. It's possible.

11 Q I want to go back to Exhibit 5, which was
12 Ms. Battle's e-mail to the Office of Inspector
13 General.

14 MS. PAUTLER: No. This is --

15 MR. DUTKANYCH: I'm sorry.

16 MS. PAUTLER: You said 5.

17 MR. DUTKANYCH: It's still 6. I got it wrong
18 the first time. I got it wrong again. Thank you.

19 A You said 6?

20 Q Yes.

21 A Okay.

22 Q After that submission to the Office of Inspector
23 General, do you recall any further contact with
24 them regarding Mr. Holden's contract?

25 A I did not have any further contact with them.

1 Q Any additional contact would have been through
2 Ms. Battle?

3 A Yes.

4 Q Did you attend a meeting in March 2015 with the
5 Office of Inspector General?

6 A Regarding this?

7 Q Yes.

8 A Not to my memory.

9 Q Did you direct Ms. Battle to set up a meeting with
10 the Office of Inspector General?

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

12 Q Did you ever ask Ms. Battle to follow up with the
13 Office of Inspector General to see how that
14 investigation was going?

15 A Yes, I'm sure I did.

16 Q Did she report back to you the status of that
17 investigation?

18 A Yes.

19 Q What is the status of that investigation?

20 A Ongoing.

21 Q When was the last time you got a status report on
22 that investigation?

23 A Probably in the last month or so. And by "status
24 report," meaning I just ask if anything's been
25 resolved or heard, and -- and no was the answer.

1 Q You asked Ms. Battle that?

2 A Correct.

3 Q And she relayed that to you?

4 A Correct.

5 Q What was your first Board meeting with the BFD
6 following your appointment as Treasurer?

7 A What was it?

8 Q When was it?

9 A December of that year. I don't remember the exact
10 date.

11 Q Did you discuss Mr. Holden's contract at that Board
12 meeting?

13 A We discussed it in executive session.

14 Q What was discussed?

15 MS. PAUTLER: I'm just going to -- it's not
16 necessarily an objection; however, any discussions
17 made during executive session are considered
18 confidential. So I guess I would ask that any
19 testimony relating to executive session
20 communications be placed under seal, some sort of
21 confidentiality provision be made at that time --

22 MR. DUTKANYCH: That's fine. I think --

23 MS. PAUTLER: -- with the Court.

24 MR. DUTKANYCH: -- we could put it under the
25 current protective order.

1 MS. PAUTLER: Correct.

2 MR. DUTKANYCH: Okay.

3 MS. PAUTLER: I think that would be fine. As
4 long as we designate it as confidential per the
5 protective order.

6 MR. DUTKANYCH: That's fine.

7 MS. PAUTLER: Okay. Thank you.

8 You can answer.

9 THE WITNESS: Oh, what was the question?

10 MS. PAUTLER: I know. I apologize.

11 THE WITNESS: No, it's okay.

12 BY MR. DUTKANYCH:

13 Q What was discussed about Mr. Holden's contract in
14 executive session?

15 A That it existed, which none of them knew about.
16 They were very surprised and upset. And that I did
17 not intend to honor the contract as it appeared at
18 the time it was -- had the appearance, as I said,
19 of an ethics issue.

20 Q Do you still feel it was unethical?

21 A I do feel it has the appearance of it, yes.

22 Q But you don't know specifically whether it is or is
23 not; correct?

24 A I'm not a lawyer.

25 Q Who -- who ultimately determines whether or not the

1 contract meets the standards of ethics within the
2 State?

3 A Within State Government?

4 Q Yes.

5 A Well, they're handled through, I believe, IDOA and
6 the Attorney General's Office and whatever agency
7 wants to create that contract. I don't know the
8 process A to Z, but I know it's a detailed one.

9 Q Do you recall anything else that was discussed
10 about Mr. Holden's contract or Mr. Holden during
11 that executive session?

12 A Only that the Board felt that the right action to
13 take was not to honor that contract.

14 Q Did the Board take a vote to do that?

15 A No. You can't take votes in executive session.

16 Q When the Board came out of executive session, did
17 they take a vote --

18 A No.

19 Q -- regarding the contract?

20 A Sorry. No, they did not.

21 Q Were any other personnel matters discussed during
22 executive session?

23 A Oh, yes. Pat Hastings was no longer then the Board
24 Director -- or the Executive Director, and Chris
25 Conner was. And I introduced Chris to the Board

1 and -- just as an interim until we could find a
2 replacement for Pat Hastings.

3 Q And when did you terminate Mr. Hastings'
4 employment?

5 A The same morning that I took office.

6 Q November 18th, 2014?

7 A Yes.

8 Q Why did you terminate Mr. Hastings' employment?

9 A Because I felt that he knew about the contract.

10 And backing up, I had attended the June
11 meeting 2014 of the Board For Depositories, as
12 Richard Mourdock had asked me to regarding
13 TrustINDiana issues. And I remember one of the
14 Board members asking Mr. Hastings specifically why
15 salaries had been bumped up when there was no -- or
16 why -- it was a budget question, and it had to do
17 with why salaries had been bumped up. This was
18 four days, I believe, after the signing of this
19 contract. Mr. Hastings did not reply. He said,
20 "Oh, gosh. I don't know. I'll have to put pencil
21 to paper and get back to you on why that number
22 changed."

23 And in looking at further minutes from later
24 meetings in the year, there was no follow-up and no
25 answer to that Board member.

1 Q Help me understand a little bit better.

2 Mr. Hastings, did he propose some kind of budget
3 that showed these increases in salary?

4 A Yes. As part of his job he would have presented
5 the budget to the Board.

6 Q And your belief was that this budget included
7 Mr. Holden's contract?

8 A Yes.

9 Q And Mr. Hastings submitted that budget to the Board
10 in the June 2014 Board meeting?

11 A Yes.

12 Q And who prepared that budget?

13 MS. PAUTLER: Objection. Lack of foundation.
14 Calls for speculation.

15 Answer, if you know.

16 A Speculating that it was Mr. Hastings.

17 Q Whose job is it to create that budget?

18 A It would have been his.

19 Q That is the Executive Director?

20 A Yes.

21 Q So you felt that Mr. Hastings knew about the
22 contract; correct?

23 A I did.

24 Q And when you took office as Treasurer, you
25 simultaneously became Secretary Investment Manager

1 over the BFD, and Mr. Hastings reported directly to
2 you; correct?

3 A Yes.

4 Q And you decided to terminate his employment?

5 A I did.

6 Q Because you believe that he knew about this
7 contract?

8 A Yes.

9 MS. PAUTLER: Andrew, I don't mean to
10 interrupt your flow. I just want to give you --
11 it's 3:20. She does need to leave at 4 so you've
12 got about 40 minutes. I just want to give you a
13 heads up.

14 MR. DUTKANYCH: Okay. Let's go off the
15 record for a second.

16 MS. PAUTLER: Sure.

17 THE VIDEOGRAPHER: We are going off the
18 record. The time is 3:20.

19 (A brief recess was taken.)

20 THE VIDEOGRAPHER: We are back on the record.
21 The time is 3:29.

22 BY MR. DUTKANYCH:

23 Q Ms. Mitchell, I'm going to have you dig out the
24 exhibit with the request for information. It looks
25 like it's right in front of you, 32.

1 If you could look again at the third page
2 that has the three documents on the bulletin board.

3 A Yes.

4 Q In the upper left-hand corner, what is -- what is
5 that document giving public notice of?

6 A A meeting of the TrustINDiana Advisory Board.

7 Q And would that be something that you posted?

8 A It depends on the date. If -- yes, most likely.
9 Or at that time --

10 Q If it was --

11 A -- our scheduler posted or somebody. I don't know
12 that I myself hung that up there.

13 Q Okay. Going to hand you what will be marked as
14 Exhibit 34 -- 33.

15 (Plaintiff(s) Exhibit No. 33 was marked for
16 identification.)

17 Q Ms. Mitchell, have you seen Exhibit 33 before?

18 A Yes, I believe so.

19 Q What is Exhibit 33?

20 A They are minutes of the Indiana Board For
21 Depositories meeting from December 15th, 2014.

22 Q And a review of these minutes indicates that there
23 was no vote taken on Mr. Holden's contract. Do you
24 agree with that?

25 A I do.

1 Q I'm going to have you take a look at Exhibit 34.

2 (Plaintiff(s) Exhibit No. 34 was marked for
3 identification.)

4 THE WITNESS: Thank you.

5 Q Ms. Mitchell, have you seen Exhibit 34 before?

6 A Most likely. I'll say that.

7 Q If you look at the third page of the exhibit.

8 A Then, yes, I have.

9 Q Is that your signature there?

10 A It is.

11 Q And on what date did you sign?

12 A The 8th of December, 2014.

13 Q This appears to be a two-page employment agreement.

14 Do you agree with that?

15 A Yes.

16 Q Who were you employing in this contract?

17 A Bingham Greenbaum Doll as counsel for the Board For
18 Depositories.

19 Q And then there's a cover letter attached to that
20 contract dated November 26, 2014; is that correct?

21 A Yes.

22 Q Did you get Board approval prior to entering into
23 this contract?

24 A We did not meet prior to this contract --

25 Q And if you look back at the --

1 A -- I don't believe.

2 Q -- minutes of the next Board meeting, which was
3 December 15th, 2014, is there anything reflected in
4 these minutes that this contract was presented to
5 them for approval and voted upon?

6 A No. It may have been in executive session, but I
7 don't know.

8 Q The Board can't vote in executive session, though;
9 right?

10 A They can't, no.

11 Q So do these minutes reflect that this contract was
12 approved by the Board?

13 A I don't believe so.

14 Q It was not voted on; is that correct?

15 A Yes.

16 Q So you did not have Board approval to enter into
17 this contract on the 8th of December, 2014?

18 A We didn't get their vote. It doesn't mean I didn't
19 talk to them before. I don't remember if I did.
20 It was a renewal of an existing agreement. She'd
21 been -- Sue Beesley had been the attorney for the
22 Board for a long time.

23 Q Ms. Mitchell, how did it come about that the Office
24 of Attorney General is representing the Board For
25 Depositories in this lawsuit?

1 A I -- I don't know the process for that.

2 Q Did you authorize it?

3 A I don't know if I had to take official action for
4 it or not.

5 Q Was it presented to the Board for a vote?

6 A No. We would have discussed this in executive
7 session.

8 Q But the Board can't vote in executive session;
9 correct?

10 A Correct.

11 Q So did the Board vote to have the Office of
12 Attorney General represent it in this lawsuit?

13 A I don't think we've ever discussed the lawsuit in a
14 public meeting.

15 Q So the Board's never taken any official action for
16 the Attorney General's Office to represent it in
17 this lawsuit?

18 A I don't know. I would say no official action, but
19 there was nothing we signed.

20 Q There's no written agreement to have the Attorney
21 General's Office represent the Board For
22 Depositories?

23 A Not that I've seen.

24 Q Who made the decision for the Office of Attorney
25 General to represent the Board For Depositories in

1 this lawsuit?

2 A The Board discussed it in executive session. And I
3 suppose it would be me; but, again, we didn't sign
4 anything.

5 Q And there was no vote; correct?

6 A There was no vote.

7 Q Going to hand you what will be marked as Exhibit
8 35.

9 MS. PAUTLER: Thank you.

10 (Plaintiff(s) Exhibit No. 35 was marked for
11 identification.)

12 THE WITNESS: Thank you.

13 Q Ms. Mitchell, have you seen Exhibit 35 before?

14 A Yes, I have.

15 Q What is Exhibit 35?

16 A It is a letter from Jim Holden to the Board For
17 Depositories, Active Duty Absence Notification
18 Letter.

19 Q And did you receive this letter?

20 A Yes.

21 Q Okay. When did you receive it?

22 A I'm assuming shortly after it was sent. I don't
23 remember the day.

24 Q Did you review this letter upon receipt?

25 A Yes.

1 Q How did it make you feel?

2 A Well, I'm a little confused. The dates in there
3 don't seem to work.

4 But he wasn't an employee, so it -- there was
5 nothing that -- no action we needed to take.

6 Q When you say "he wasn't an employee," who are you
7 referring to?

8 A Jim Holden.

9 Q And who was his employer?

10 A At that time, I don't know.

11 Q Not the Treasurer of State; right?

12 A No.

13 Q So when you -- I'm just trying --

14 A No, I'm sorry. I'm reading that the service begins
15 on December 12th, 2014 and ends September 30th,
16 2014, and that's really not making sense.

17 Q Right. Maybe he has a DeLorean.

18 The -- assuming that it intended to say
19 September 30th, 2015, my question, though, to you
20 is based on your answer, you said he was not
21 employed at the time. He was not employed by whom?

22 A He was not an employee of the Treasurer of State's
23 Office or the Board For Depositories.

24 Q But at the time he had an agreement that said that
25 he would be employed by the Board For Depositories

1 as of December 31st; correct?

2 A He had that contract.

3 Q How did you respond to this letter?

4 A I believe we sent a letter back.

5 Q When you say "we," who is we?

6 A Meaning that Jillean Battle drafted a letter on our
7 behalf, and I'm -- I can't remember if I signed it
8 or she did. I'm sure you have it in front of you.
9 You can tell me.

10 Q Why did Ms. Battle draft the letter?

11 A She's General Counsel to the Office and my Chief of
12 Staff.

13 Q The letter was sent to you as the Secretary
14 Investment Manager of the Board For Depositories.
15 What's Ms. Battle's role with the Board For
16 Depositories?

17 A She is my General Counsel, and so as Treasurer of
18 State I serve as Secretary Investment Manager for
19 the Board For Depositories.

20 Q And what is Ms. Battle's role with the Board For
21 Depositories?

22 MS. PAUTLER: I think she already answered
23 that question.

24 MR. DUTKANYCH: I don't think she did.

25 A That's the answer I have.

1 Q Please tell me what Ms. Battle's role is with the
2 Board For Depositories.

3 MS. PAUTLER: Objection. Asked and answered.

4 A I can't state it any different than I did.

5 Q Well, I'd ask you to restate it.

6 A Jillean Battle is Chief of Counsel -- or sorry --
7 General Counsel to the Treasurer of State, who is
8 the Secretary Investment Manager to the Board For
9 Depositories by virtue of my office.

10 Q And Ms. Battle was not a designee for you; correct?

11 A No.

12 Q Not to the Board For Depositories?

13 A Exactly.

14 Q I'm going to show you what will be Exhibit 36.

15 (Defendant(s) Exhibit No. 36 was marked for
16 identification.)

17 MS. PAUTLER: Thank you.

18 THE WITNESS: Thank you.

19 Q Do you recognize Exhibit 36, Ms. Mitchell?

20 A I do.

21 Q What is it?

22 A It is a letter from my office from me to
23 Mr. Holden.

24 Q Is this the letter that Ms. Battle drafted for you?

25 A Yes.

1 Q And you reviewed it and adopted it as your own and
2 signed it?

3 A I did.

4 Q Between the time you received Mr. Holden's December
5 17th letter and December 29th when you sent him
6 this response, other than conversations with
7 Ms. Battle, did you speak with anybody else
8 regarding Mr. Holden?

9 A It's possible.

10 Q Do you have any specific recollection of any of
11 those conversations?

12 A I do not.

13 Q Did you speak with anybody at the Attorney
14 General's Office?

15 A I don't believe I did.

16 Q In your December 29th, 2014 letter, in the
17 second-to-last paragraph it says "The Treasurer's
18 Office contacted the National Committee For
19 Employer Support of the Guard Reserve."

20 What did they have to say about the
21 situation?

22 A I -- I'm sorry.

23 MS. PAUTLER: Nope. That's okay. Objection.
24 It just says "The Treasurer's Office contacted," so
25 I guess it would call for speculation. It lacks

1 foundation.

2 A I was not on that call or that e-mail.

3 Q Who did you have contact them?

4 A Jillean Battle.

5 Q You state that you're confident that your decision
6 to terminate "your employment" and not rehire him,
7 Mr. Holden, with any agency affiliated with the
8 Office of the Treasurer are compliant with USERRA.
9 Was that based on the advice of the National
10 Committee of Employer Support for the Guard
11 Reserve?

12 MS. PAUTLER: Objection. Calls for
13 speculation.

14 Answer, if you know.

15 MR. DUTKANYCH: It's a statement that she
16 made.

17 A I believe so.

18 Q Is that why you felt confident?

19 A Yes.

20 Q Is there anything else that made you feel confident
21 about it?

22 A Only the knowledge that I had no knowledge of his
23 active duty before I terminated him, or the fact
24 that he was going on deployment or whatever. It
25 weighed not at all in my decision.

1 Q That was something that you and Mr. Mourdock
2 discussed, isn't it?

3 A What was something?

4 Q Mr. Holden's potential active duty.

5 A No.

6 Q I'm going to have you take a look at what will be
7 marked as Exhibit 37.

8 MS. PAUTLER: Yeah.

9 (Plaintiff(s) Exhibit No. 37 was marked for
10 identification.)

11 THE WITNESS: Thank you.

12 Q Ms. Mitchell, have you seen Exhibit 20 -- Exhibit
13 37 before?

14 A One moment.

15 Q Sure.

16 A Yes.

17 Q Have you seen Exhibit 37 before?

18 A Yes.

19 Q What is Exhibit 37?

20 A It is the letter of engagement of Ice Miller for
21 public affairs services.

22 Q This is a contract that you signed for the
23 Treasurer's Office?

24 A Yes.

25 Q Do you know who performed public affairs services

1 prior to Ice Miller for the Treasurer's Office?

2 A No.

3 Q Was this contract sent to the Department of
4 Administration for approval?

5 A I don't know.

6 Q If you look through the exhibit, do you see where
7 it's been signed by the Department of
8 Administration as being approved?

9 A I don't see that.

10 Q Do you see anywhere where it was approved as to
11 form and legality by the Office of Attorney
12 General?

13 A No.

14 Q Do you see where it was approved by the State
15 Budget Agency?

16 A No.

17 Q Did the Treasurer's Office go through the State's
18 procurement process to secure this contract?

19 A I don't believe so.

20 Q And this is the same Ice Miller who employed your
21 Campaign Chair, Ms. Proffitt; correct?

22 A Yes.

23 Q And held fundraisers before your were nominated on
24 your behalf; correct?

25 A I believe they were before I was.

1 Q Since taking office at the Treasurer of State,
2 other than Mr. Hastings and Mr. Holden, have you
3 terminated the employment of any other individual?

4 A No.

5 Q Have you hired anybody?

6 A I have.

7 Q Who have you hired?

8 A Diana Moers Davis, Caitlin Larson, Duane Jasheway,
9 J-a-s-h-e-w-a-y, Aaron Bacon; and through the Bond
10 Bank, Matt Zimmerman and Aaron Barnett. Oh, and
11 Troy Montigney, M-o-n-t-i-g-n-e-y. I think that's
12 everybody.

13 Q Are you aware whether any of those individuals are
14 in the military?

15 A I'm not aware. Oh, I'm sorry. No. Aaron Bacon is
16 a veteran, but out of the active service.

17 Q What did you hire Duane Jasheway to do?

18 A He is the Assistant Portfolio Manager.

19 Q At the Treasurer's Office?

20 A Yes.

21 Q Who's the Portfolio Manager?

22 A Mike Frick.

23 Q Did you get Board approval to hire any of these
24 individuals that you just -- I'm sorry. Strike
25 that.

1 Any of the individuals you just listed, do
2 any of them work for the Board For Depositories?

3 A Diana Moers Davis does.

4 Q Did you get the Board's approval to hire her?

5 A Yes.

6 Q And what position does she hold?

7 A Executive Director.

8 Q And who does she report to?

9 A She reports to the Board and to me.

10 Q Ms. Mitchell, you're aware that Mr. Holden is in
11 the military; correct?

12 A Yes.

13 Q And you were aware of that at the time you took
14 office on November 18th?

15 A Yes.

16 Q And you were aware of that long before as well?

17 A Absolutely.

18 Q I'm going to hand you what will be marked as
19 Exhibit 38.

20 (Plaintiff(s) Exhibit No. 38 was marked for
21 identification.)

22 MS. PAUTLER: Thank you.

23 THE WITNESS: Thanks.

24 Q Ms. Mitchell, have you seen Exhibit 38 before?

25 A No.

1 Q This appears to be a payroll action form for
2 Ms. Gilson that your counsel produced to us. If
3 you take a second to review it, it appears to
4 suggest that Ms. Gilson has been transferred to the
5 Board For Depositories.

6 A Yes.

7 Q What position does she hold with the Board For
8 Depositories?

9 A She works for both the Board For Depositories and
10 Indiana Education Savings Authority as Office
11 Manager.

12 Q Who did she replace?

13 A Tarran Day.

14 Q Is Ms. Day still working with the office?

15 A No.

16 Q Where is she working now?

17 A I believe an attorney's firm.

18 Q Private attorney?

19 A I believe so.

20 Q What was Ms. Gilson's position before she became
21 Office Manager?

22 A She was scheduler/receptionist in the Treasurer's
23 Office.

24 Q Is Office Manager a step up?

25 A It could perhaps be considered so. It was the same

1 pay, so I'm not sure that she would consider it
2 that, but -- but perhaps.

3 Q I'll have the court reporter hand you what will be
4 marked as Exhibit 40 -- 39.

5 MS. PAUTLER: 39.

6 (Plaintiff(s) Exhibit No. 39 was marked for
7 identification.)

8 Q Ms. Mitchell, have you seen Exhibit 39 before?

9 A Yes.

10 Q What is this exhibit?

11 A It is an e-mail from Mike Frick to Kim Logan
12 informing her of a raise for Jennifer Gilson.

13 Q Looks like it says to give her a \$6,000 raise;
14 correct?

15 A Yes.

16 Q And what date was she given this raise?

17 A Beginning with December 21st of '14 and ending --
18 so the first -- that pay period beginning 12-21-14.

19 Q And this is the same Jennifer Gilson who worked on
20 your campaign; correct?

21 A Yes.

22 Q This is the same Jennifer Gilson who was
23 disciplined for making political calls in October
24 of 2014 right before you were elected; correct?

25 A I was aware she made one call. I don't know that

1 it was plural.

2 Q Okay. She made at least -- she made at least one
3 call of a political nature during work time?

4 A Apparently.

5 Q Following the December 15th, 2014 Board For
6 Depositories meeting, have you discussed
7 Mr. Holden's situation with the Board since then?

8 A Since which one? I'm sorry.

9 Q Since the December 2014 Board meeting.

10 A In executive session we'll give legal updates just
11 saying where we're at in the process.

12 MR. DUTKANYCH: Okay. Let's take a quick
13 break.

14 THE WITNESS: Okay.

15 THE VIDEOGRAPHER: We are going off the
16 record. The time is 3:55.

17 (A brief recess was taken.)

18 THE VIDEOGRAPHER: We are back on the record.
19 The time is 4:04.

20 BY MR. DUTKANYCH:

21 Q Ms. Mitchell, can you restate the name of your
22 current Executive Director at the Board For
23 Depositories?

24 A Diana Moers Davis.

25 Q Okay. I just didn't want to mispronounce it.

1 At which Board meeting was she approved?

2 A I don't remember.

3 Q Do you recall when she was hired?

4 A She would have come on early in the year. Maybe
5 February.

6 Q 2015?

7 A Yes.

8 Q And you said that you have more Board meetings now
9 than they used to. You said four per year; is that
10 right?

11 A That's our starting point; and then if we have
12 special meetings, we'll do that as well.

13 Q You had one just a couple of days ago; right?

14 A We had a Board meeting, yes.

15 Q How many Board meetings were there in 2015?

16 A Off the top of my head, I don't remember.

17 Q Is there a present schedule for how often those
18 Board meetings will occur at the Board For
19 Depositories?

20 A Yes, quarterly.

21 MR. DUTKANYCH: Okay. Those are all the
22 questions that I have. Thank you.

23 MS. PAUTLER: I actually just have one
24 question.

25 CROSS-EXAMINATION,

1 QUESTIONS BY KELLY J. PAUTLER:

2 Q Ms. Mitchell, between your election on November
3 4th, 2014 and the date of your swearing-in on
4 11-18, I believe your -- you had conversations with
5 Jillean Battle. And at the time that you had those
6 conversations, did you believe you were talking to
7 your lawyer such that that information would be
8 kept in confidence?

9 MR. DUTKANYCH: I would object that that's a
10 leading question.

11 MS. PAUTLER: She can still answer.

12 A Yes.

13 MS. PAUTLER: No other questions.

14 MR. DUTKANYCH: Oh, I have no further
15 questions.

16 MS. PAUTLER: Thank you.

17 THE VIDEOGRAPHER: This concludes the video
18 deposition. We are going off the record. The time
19 is 4:06.

20 (At which time the videotaped portion of the
21 deposition concluded.)

22 THE REPORTER: Would you like signature?

23 MS. PAUTLER: Yes.
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AND FURTHER THE DEPONENT SAITH NOT.

KELLY M.T. MITCHELL

1 STATE OF INDIANA)
)SS:
 2 COUNTY OF MARION)
 3

4 I, Marlana M. Haig, RPR, CRI, a Notary Public
 5 in and for the County of Marion, State of Indiana
 6 at large, do hereby certify that KELLY M.T.
 7 MITCHELL, the deponent herein, was by me first duly
 8 sworn to tell the truth, the whole truth, and
 9 nothing but the truth in the above-captioned cause.

10 That the foregoing videotaped deposition was
 11 taken on behalf of the Plaintiff at the offices of
 12 Circle City Reporting, 135 North Pennsylvania
 13 Street, Suite 1720, Indianapolis, Indiana on the
 14 26th day of February, 2016, pursuant to the
 15 Applicable Rules.

16 That said videotaped deposition was taken
 17 down in stenographic notes and afterwards reduced
 18 to typewriting under my direction, and that the
 19 typewritten transcript is a true record of the
 20 testimony given by said deponent; and thereafter
 21 presented to said deponent for his/her signature.

22 That the parties were represented by their
 23 aforementioned counsel.

24 I do further certify that I am a
 25 disinterested person in this cause of action; that

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I am not a relative or attorney of either party, or otherwise interested in the event of this action, and am not in the employ of the attorneys for either party.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this _____ day of _____, 2016.

Marlana M. Haig, RPR, CRI

My Commission Expires:
September 13, 2018

County of Residence:
Marion

1 (Originating Party)
 Andrew Dutkanych, III
 2 BIESECKER DUTKANYCH & MACER
 8888 Keystone Crossing
 3 Suite 1300
 Indianapolis, IN 46240

4 NOTICE OF DEPOSITION FILING

5 IN THE SUPERIOR COURT OF MARION COUNTY
 6 CAUSE NO. 49D10-1503-CT-007090

7 JAMES R. HOLDEN,)
 8)
 Plaintiff,)
 9)
 -vs-)
 10)
 STATE OF INDIANA OFFICE)
 11 OF THE TREASURER, INDIANA)
 BOARD FOR DEPOSITORIES,)
 12 and KELLY MITCHELL, in)
 her individual capacity,)
 13)
 Defendants.)

14
 15 In compliance with the Indiana Rules of
 16 Procedure, Federal Rules of Civil Procedures and/or the
 17 rules of the Industrial Board, you are notified that
 18 the signed original deposition of KELLY M.T. MITCHELL,
 taken on the 26th day of February, 2016, has been
 19 sealed and submitted to the originating party, along
 with the attached Errata Sheet(s), if applicable.
 20

21 (Date received by Circle City Reporting)

22
 23 CIRCLE CITY REPORTING
 135 North Pennsylvania
 24 Suite 1720
 Indianapolis, IN 46204
 25 (317) 635-7857

	23:24;24:2;32:9; 10:40;8,19,23;55:9; 56:6,7,10,12,14,19, 22:70;22,25;71:16, 22:118:9	63:22;82:16 Almost (1) 22:8 along (4) 32:13;53:18;72:18; 131:18	30:25;33:20;34:18, 24;43:6,9;45:4;46:4, 11;47:5;51:12;55:21; 57:7;58:12 appointee (1) 59:11 appointing (4) 28:21;29:12;58:21; 95:10 appointment (22) 27:2;28:11;29:3; 30:5,8;32:11,17,20; 33:3,4,23;34:6,10,14; 43:17;46:1;47:2; 50:25;51:8;58:4; 59:2;103:6 appreciate (5) 6:4;45:4;46:4; 47:4;58:2 apprised (1) 36:16 approached (2) 15:16;23:18 appropriate (1) 36:8 approval (8) 82:19;97:12; 110:22;111:5,16; 120:4;121:23;122:4 approved (7) 24:6;82:17;111:12; 120:8,10,14;126:1 approving (1) 97:15 Architects (2) 13:22,24 arrange (1) 61:3 arranged (3) 61:6,7,10 arrive (1) 61:15 article (1) 81:1 arts (1) 9:14 assert (1) 54:24 assist (2) 18:7;41:13 assistance (2) 18:23;43:23 Assistant (1) 121:18 assisted (4) 17:19;18:2,4,21 assisting (2) 17:10,16 assume (11) 6:18;49:14,15,23; 56:23;59:7;60:6; 70:2,11;82:21;93:13 assuming (15)	15:23;16:21;41:1; 45:23;78:11;86:10, 16;94:22;97:3,9; 98:10;99:3;100:25; 113:22;114:18 assumption (5) 36:15,17;60:25; 65:16;70:5 assuring (1) 65:21 attached (3) 90:16;110:19; 131:18.5 attempt (1) 37:16 attend (2) 84:5;102:4 attendance (2) 18:16,17 attended (2) 60:9;106:10 attending (2) 75:10,12 Atterholt (10) 28:21,24;29:12,22; 30:7,20,24;32:23; 33:16;39:15 Atterholt's (1) 29:19 Attorney (26) 4:13,18;5:2;40:5, 18;55:3;56:2;71:1,4, 7,16,22;79:4;101:2,5; 105:6;111:21,24; 112:12,16,20,24; 117:13;120:11; 123:18;130:1 attorney-client (5) 40:5;55:2;56:4; 71:4,24 attorneys (7) 7:3,7,9;100:25; 101:1,5;130:3 attorney's (1) 123:17 Auditor (1) 99:3 August (4) 24:25;27:4,15; 59:20 Authority (8) 19:17;61:24;62:3, 5;74:21;75:7;82:14; 123:10 authorization (1) 82:19 authorize (1) 112:2 authorized (1) 82:17 aware (13) 28:9;57:15;58:7; 66:14;85:18,24;
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