

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

TOK COMMUNITY UMBRELLA)
CORPORATION 2,)
Plaintiff,)
vs.)
TOK COMMUNITY UMBRELLA)
CORPORATION 1,)
Defendant.)

Case No. 4FA-15-1930 CI

AFFIDAVIT OF ELIZABETH P. HODES

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT) ss.

ELIZABETH P. HODES, being first duly sworn, on oath deposes and says:

1. I am an attorney with Davis Wright Tremaine LLP, attorneys for Tok Community Umbrella Corporation 1 ("TCUC 1") in the above-captioned proceeding. I am competent to make this affidavit and do so on the basis of personal knowledge and upon a review of the records of Davis Wright Tremaine LLP kept in the ordinary course of business in connection with this matter.

1 2. Attached hereto as Exhibit A are true and correct copies of various
2 documents exchanged by the parties in discovery, including documents Bates Nos.
3 TCUC000040, TCUC000041, TCUC000046, TCUC000047-TCUC000048,
4 TCUC000079-TCUC000080, TCUC000081, and TCUC000083-TCUC000084.

5 3. Attached hereto as Exhibit B is a true and correct copy of excerpts from the
6 transcript prepared by H&M Court Reporting of the Forcible Entry and Detainer Hearing
7 before the Honorable John McConahy, Fourth Judicial District at Fairbanks on June 23,
8 2015, including pp. 67-68, 73-74, 83, 86, 138-142, 181-182.

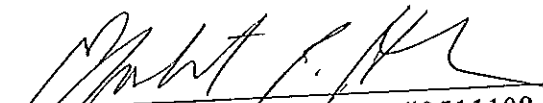
9 4. To the extent the Court is unwilling to deny TCUC 2's Motion for
10 Summary Regarding the Membership's Right to Remove Board Members and the
11 Validity of the July 9, 2015 Election, TCUC 1 has requested, in the alternative, that it be
12 provided additional time under Rule 56(f) to oppose the motion.

13 5. TCUC 1 has not been dilatory during discovery, but has not had adequate
14 time to conduct discovery, including written discovery and depositions.

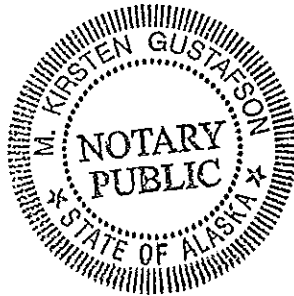
15 6. The Court only recently issued an Order Regarding Pending Motions,
16 requiring the parties to conduct a meaningful planning meeting no later than October 14,
17
18
19
20
21

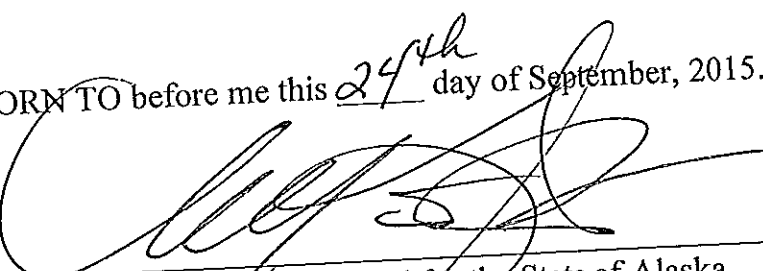
Davis Wright Tremaine LLP
LAW OFFICES
188 West Northern Lights Blvd., Ste. 1100
Anchorage, Alaska 99503-3985
(907) 257-5300 • Fax: (907) 257-5399

2105. See Order Regarding Pending Motions, p. 4. The parties have exchanged initial disclosures, but other discovery deadlines have not yet been established.


Elizabeth P. Hodes, ABA #0511108

SUBSCRIBED AND SWORN TO before me this 24th day of September, 2015.




Notary Public in and for the State of Alaska
My commission expires: 3-10-2016

Certificate of Service

On the 24th day of September, 2015, a true and correct copy of the foregoing document was sent by U.S. Mail, postage paid to the following parties:

Zane D. Wilson
Cook Schuhmann & Groseclose, Inc.
(714 Fourth Ave., Ste. 200)
P.O. Box 70810
Fairbanks, AK 99707-0810

Heidi M. Holmes
Burns & Associates, PC
100 Cushman St., Ste. 311
Fairbanks, AK 99701

By: 

M. Kirsten Gustafson

AFFIDAVIT OF ELIZABETH P. HODES
TCUC 2 v. TCUC 1; Case No. 4FA-15-1930 CI
DWT 27947545v4 0104907-000001

TCUC Investigatory Committee

From: Kavik Consulting <kavikconsulting@gmail.com>
To: nbfunmom <nbfunmom@aol.com>
Subject: TCUC Investigatory Committee
Date: Tue, May 26, 2015 10:01 pm
Attachments: Woody 052615.pdf (172K)

Mrs. Woody,

I'm sorry be the sender of this message. My name is Scott MacManus and you may recall we spoke briefly after the last TCUC meeting.

Enclosed please find as an attachment a letter that was mailed to you this evening, signed by all the members of the Investigatory Committee, related to our investigation of the charges made in the Affidavit you received in May from 15 TCUC members.

If you have any questions, or to reply to this, please respond to this email address:

Scott MacManus
kavikconsulting@gmail.com

Re: TCUC Investigatory Committee

From: Nbfunmom <nbfunmom@aol.com>
To: kavikconsulting <kavikconsulting@gmail.com>
Bcc: [Redacted] Nbfunmom <Nbfunmom@aol.com>
Subject: Re: TCUC Investigatory Committee
Date: Wed, May 27, 2015 6:16 pm

Scott,

I received your e-mail and attachment. I will be working on the information you are requesting, however, it will take me several days.

Theresa Woody

-----Original Message-----
From: Kavik Consulting <kavikconsulting@gmail.com>
To: nbfunmom <nbfunmom@aol.com>
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Enclosed please find as an attachment a letter that was mailed to you this evening, signed by all the members of the Investigatory Committee, related to our investigation of the charges made in the Affidavit you received in May from 15 TCUC members.

If you have any questions, or to reply to this, please respond to this email address:

Scott MacManus
kavikconsulting@gmail.com

Investigative Committee Findings

<https://mail.apf.com/webmail-st/en-us/printMessage>

From: Bill Drake <bill@apfaska.net>

To: TokTCUC <TokTCUC@yahoo.com>; Nbfunman <Nbfunman@aol.com>; aktomavonw
<aktomavonw@yahoo.com>; whitefiremin <whitefiremin@yahoo.com>

Cc: 'Diana Evin' <devin@agsd.us>; 'Coryn Bishop' <corynbishop@yahoo.com>; zane <zane@apfaska.net>;
tom <tom@evickwite.com>

Subject: Investigative Committee Findings

Date: Tue, Jun 2, 2015 11:31 am

Attachments: Investigative Committee Findings.doc (91K)

Ms. Woody, Ms. VanZandt, and Ahlin Bates;

Attached is the findings of the Investigative Committee that was formed on May 14th, 2015. Ms. Woody and Ms. VanZandt please note that under Section B your duties on the TCUC Board of Directors is suspended until this matter is disposed.

Signed:

Wm. (Bill) J. Drake

Chair, TCUC Investigative Committee



This email is free from viruses and malware because avast! Antivirus protection is active.

Re: Investigative Committee Findings

From: Nbfunnmom <nbfunnmom@aol.com>
To: blld <blld@aplaska.net>; TokTCUC <TokTCUC@yahoo.com>; aktomorrow <aktomorrow@yahoo.com>;
whitefiremin <whitefiremin@yahoo.com>
Cc: dervin <dervin@sgsd.us>; conni.bishop <conni.bishop@yahoo.com>; zane <zane@alaskalaw.com>; tom
<tom@twickwire.com>
Bcc: Nbfunnmom <Nbfunnmom@aol.com>; bellavixen35 <bellavixen35@aol.com>; [Redacted]
[Redacted]
Subject: Re: Investigative Committee Findings
Date: Wed, Jun 3, 2015 2:17 pm
Attachments: TCUC letter to Investigative Committee June 3, 2015.docx (18K)

June 3, 2015

Bill Drake, Diana Ervin, and Conni Bishop,
Investigative Committee

Regarding the e-mail dated June 2, 2015, there are multiple issues with a trial being set at this point:

First, as I have stated many times over, the Investigative Committee which was chosen on May 14, 2015, was not a valid committee as there was not a Quorum vote electing this committee. Three votes from the board of directors are what validate a quorum and the committee was chosen by only two board members, thus making it not a valid vote.

I would like to see more TCUC members in good standing on any Investigative committee. For the following reasons: 1) an odd number eliminates any tie votes. 2) I believe in due process, and don't have a problem voting for people to be on an investigating committee, however, I believe it should have been advertised, or at least discussed by the board as to the number on the committee and how they would be chosen. Referring to the Rule of Necessity listed on the TCUC's Conflict of Interest Policy.

I also have a question as to why the affidavit has been changed to list 3 meetings: April 14, 16 and 29/30, when the originally signed affidavit only listed charges regarding the April 14th meeting.

When I received the letter which was not dated, but was postmarked May 27, 2015 from the TCUC Investigative Committee then chair Scott MacManus, no date was set to get the information that was requested in that letter to the committee. Therefore, how can a judgment be made and a trial set without giving me a chance to give you the information?

In your e-mail dated June 2, 2015 your message said " Attached is the findings of the Investigative Committee that was formed on May 14th, 2015. Ms Woody and Ms VanZandt please note that under Section 8 your duties on the TCUC Board of Directors is suspended until this matter is disposed."

Signed: Wm. (Bill) I. Drake Chair - TCUC Investigative Committee
My question to you is: Section 8 of what? And where do you find that our duties are suspended?

I also noticed that on the "Hearing & Trial" Notice I received via e-mail, that now there is added "One Director" to the Plaintiff(s). Again, this is NOT the original Affidavit that was filed.

Also, according to page 4 of your Notice of Hearing & Trial by Membership line # 12 - 14, "The

Re: Investigative Committee Findings

<https://mail.google.com/webmail/ui/en-us/mail/message>

Presiding Officer: "Who do you plan on being the Presiding Officer, if everyone on the TCUC board of directors is either the Plaintiff or the Defendant?"

Your Prompt Reply in addressing my concerns by June 10, 2015 is appreciated.

Theresa Woody,
TCUC President

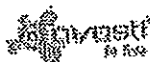
-----Original Message-----

From: Bill Drake <bill@apalaska.net>
To: TokTCUC <toktcuc@yahoo.com>; Nbfunnom <Nbfunnom@aol.com>; aktomnorow <aktomnorow@yahoo.com>; whitefiremin <whitefiremin@yahoo.com>
Cc: Diana Ervin <duvin@agsd.us>; Connal Bishop <connal.bishop@yahoo.com>; zane <zane@alaskalaw.com>; tom <tom@twistwire.com>
Sent: Tue, Jun 2, 2015 11:31 am
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Ms. Woody, Ms. VanZandt, and Alvin Bates;

Attached is the findings of the Investigative Committee that was formed on May 14th, 2015. Ms Woody and Ms VanZandt please note that under Section 8 your duties on the TCUC Board of Directors is suspended until this matter is disposed.

Signed:
Wm. (Bill) L. Drake
Chair - TCUC Investigative Committee



This email is free from viruses and malware because avast! Antivirus protection is active.

TOK COMMUNITY UMBRELLA CORPORATION CONFLICT OF INTEREST POLICY

Adopted at meeting on April 14, 2011

With respect to conflicts of interest by members of the Board of Directors, the Tok Community Umbrella Corporation will whenever possible follow the guidelines of Alaska Statute 38.06.035.

Under those guidelines, effective action to carry out a transaction or pass a motion requires the affirmative vote of a majority of the board members. It is not sufficient to have merely a majority of members present or a majority of members voting; it must be a majority of total board membership. A member may not act upon a matter in which the relationship of the member of the board with any person or corporation creates a conflict of interest.

Where it is not possible to act due to these constraints, the rule of necessity will apply.

What is the rule of necessity?

If a member of a town or city board has a conflict of interest, that member will be disqualified from acting on that board matter. In some cases, especially when more than one member is disqualified, a board cannot act because it does not have a quorum or some other number of members required to take a valid affirmative vote. (If the number for a quorum is not set by law, a quorum is generally a majority of the board members.) In these instances, the board can use what is called the rule of necessity to permit the participation of the disqualified members in order to allow the board to act.

The rule of necessity is not a law written and passed by the Legislature. Rather, the rule of necessity was developed because judges applied it in their court decisions.

How does the rule of necessity work?

The rule of necessity works in the following way:

1. It can only be used if a board is unable to act on a matter because it lacks the number of members required to take a valid official vote, solely because members are disqualified by the conflict law from acting. Example: A five member board has a meeting and all members are present. Three of the five members have conflicts. Three members are the quorum necessary

TCUC000079

- for a decision. The two members without conflicts do not make a quorum. The board cannot act. The rule of necessity will permit all members to participate. Example: A five member board has a meeting and four members are present (one member is sick at home). Two of the four present members have conflicts. A quorum is three. The one member who is sick at home does not have a conflict. The Rule of Necessity may not be used because there is a quorum of the board which is able to act. Because one member of the board is absent does not permit use of the Rule of Necessity. Example: A five member board has a meeting and all members are present. One member has a conflict and is disqualified. The vote is a two to two tie. The rule of necessity may not be used to break the tie. In general, a tie vote defeats the issue being voted on. Stated differently, a tie vote will maintain the status quo. Example: All five members of a five member board are present. A quorum is three. However, one agenda item requires four votes, rather than the usual simple majority, for an affirmative decision. Two of the board members have conflicts. Although a quorum is available, the required four votes needed for this particular matter cannot be obtained without the participation of one or both of the members who have conflicts. The rule of necessity may be invoked and all five members may participate.
- The rule of necessity should be invoked by one or more of the otherwise disqualified members, upon advice from town or city counsel or the State Ethics Commission.
 - If it is proper for the rule of necessity to be used, it should be clearly indicated in the minutes of the meeting that the board was unable to obtain a quorum due to disqualification of members and, as a last resort, that all those disqualified may now participate under the authority of the rule of necessity. Each disqualified member who wishes to participate under the rule of necessity must first disclose publicly the facts that created the conflict.
2. Note: Invoking the rule of necessity does not require previously disqualified members to participate; it merely **permits** their participation.
- The rule of necessity may only be used as a last resort. Every effort must be made to find another board capable under the law of acting in place of the board that could not obtain a quorum.

TCUC000080



TCUC
Tok Community Umbrella Corporation
P.O. Box 547
Tok, AK 99780



Goods & Services Procurement Policy
Revised 5/10/12

When administering grants, TCUC will follow the more restrictive of the procurement policy of the granting agency or our own guidelines.

TCUC will maintain two checking accounts: 1) The general account will require two signatures on the checks and expenditures must be approved by Board vote. 2) The equipment account will have a Visa debit card and require only one signature. The board member responsible for managing TCUC equipment is preauthorized to spend up to \$2,000.00 per month for parts and repairs to TCUC equipment without consulting with another, or up to \$5,000.00 for parts and repairs to TCUC equipment if the treasurer concurs. Expenditures over those amounts must be approved by the Board. All receipts and expenses relating to TCUC owned equipment must pass through the equipment account. All other funds will pass through the general account.

Grant money received by or distributed by TCUC may not be used to pay for labor performed by a member of the receiving organization or a relative within the second degree of kindred unless the project was advertised for bid and the person receiving the payment was the lowest bidder. The invitation to bid must have been advertised in at least two consecutive issues of the *Mukluk News* and have been posted in at least three prominent locations in the community, including at the Post Office.

Organizations to which TCUC distributes grant monies (for example, Revenue Sharing grants which are given to other Tok organizations) will also be expected to adhere to this procurement policy.

TCUC000081

TOK COMMUNITY UMBRELLA CORPORATION
REVENUE SHARING and OTHER COMMUNITY GRANTS
POLICY

Adopted at meeting on March 10, 2011

To standardize handling of grants such as the Revenue Sharing and similar grants and ensure that all community organizations receive fair and equal treatment with full public scrutiny, TCUC has adopted the following policy with respect to Revenue Sharing grants.

1. Organizations wishing to receive a portion of the grant must submit an application containing at the minimum:

- a. Request letter outlining the amount requested and what it will be used for.
- b. List of current board of directors and officers, if applicable.
- c. Minutes of the last two meetings.
- d. Last 2 financial or treasurer's reports.
- e. Current Articles of Incorporation if applicable.
- f. Current By Laws.
- g. Application cover sheet certifying that funds received will be dedicated to a public purpose and that services or facilities provided with the grant funds will be made available to every person in the community regardless of race, religion, color, national origin, age, physical handicap, sex, marital status, changes in marital status, pregnancy, parenthood, or political affiliation.

It is not the responsibility of the TCUC to notify an applicant if its application is incomplete, but TCUC will endeavor to provide a checklist with the application cover sheet so the applicant can more easily check the application for completeness.

2. Incomplete applications will not be considered. Applications must be received by the close of business two days prior to the meeting. A summary list of all applications received will be made available to everyone at the meeting.

3. Grant money will be apportioned to applicants at a public meeting. Notice of the meeting must be posted in at least 3 places in the community, one of which must be the U.S. Post Office, at least 10 days prior to the meeting. If time permits, notice should be posted at least one month prior, so that all organizations have a reasonable amount of time to prepare their requests.

TCUC000083

4. Any organization receiving grant funds must provide receipts showing that the money was spent for the purpose(s) approved at the public meeting. Organizations that do not provide those receipts will not be considered for funding for future grant monies and must return the monies for which they have not submitted receipts.

5. Sometimes an organization changes their mind and would like to use the grant money for some purpose other than that originally approved at the public meeting. When that happens, they can request a change of purposing of the money. To ensure that any changes receive the same public scrutiny and that all organizations are treated fairly and equally, the request will be considered at a new public meeting with the same notifications as that listed in 2 above. All other organizations will be invited to submit competing requests in accordance with the guidelines of 1 above for the money involved.

6. If an organization receives grant money and fails to spend it within a reasonable time (generally within one year, although an extension of time may be requested if there are extenuating circumstances and progress reports document efforts made to comply with time constraints), the grant money must be returned to TCUC for community use. Receipts for grant expenditures or a request for an extension of time for expenditure of funds must be turned in prior to submitting new grant requests.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT
AT FAIRBANKS

TOK COMMUNITY UMBRELLA ,)
CORPORATION)
)
 Plaintiff,)
)
VS)
)
TOK CHAMBER OF COMMERCE,)
)
 Defendant.)

No. 4FA-15-01930 CI

FORCIBLE ENTRY AND DETAINER

PAGES 1 THROUGH 184

BEFORE THE HONORABLE JOHN MCCONNAUGHY
District Court Judge

Fairbanks, Alaska
June 23, 2015
8:38 a.m.

APPEARANCE:

FOR THE PLAINTIFF:	Zane Wilson
Third Party Plaintiff	Cook Schuhmann & Groseclose
Lisa Conrad	714 4th Avenue, Suite 200
	Fairbanks AK 99701
FOR THE DEFENDANT:	Thomas R. Wickwire
Theresa Woody	2775 Hanson Road, Suite 1
	Fairbanks AK 99709

1 11. Could you tell me, what is Exhibit 11?

2 A TCUC Policy on Disciplinary and Board Removal
3 Procedures.

4 Q And what did the community do to, in effect,
5 pursue the removal of board members under this
6 policy?

7 A They actually followed that. I was actually
8 really impr -- really proud of how the community
9 came together and followed it. Followed the
10 rules. They even went to the extent of ordering
11 the 9th Edition of Robert's Rules so they could --
12 you know, they made sure that it was advertised,
13 they did seven hundred and some flyers in the box
14 holders. They just went through the whole
15 process.

16 Q Okay. Let's kinda work through that just a
17 little bit by pieces.

18 A Okay.

19 Q What was the first step, in terms of a
20 committee?

21 A At the meeting, when we -- at our meeting,
22 when we were trying to approve the minutes and
23 things got all messed up, I asked for volunteers.
24 Someone that was not sitting on the TCUC board,
25 not sitting on the Chamber board, to just

1 volunteer. And, so we did. We had several people
2 stand up and we picked five people and then it
3 later got down to three.

4 Q And you say "we picked." Who is "we"?

5 A The community. The membership. I mean, I
6 directed it, but the membership picked it, and
7 that's who we represent is, our members.

8 Q And did the committee meet, and, in essence,
9 try to go through these procedures?

10 A Yes.

11 MR. WICKWIRE: Your Honor, I object to this
12 as irrelevant. This is -- t his concerns a process
13 that is not in the pleadings. It is not one of the
14 challenges to the board's authority and it concerns a
15 process that happened, for the most part, after Ms.
16 Conrad moved it was granted permission to intervene.
17 Most of it happened last week.

18 THE COURT: Mr. Wilson?

19 MR. WILSON: Your Honor, the essence of our
20 complaint is that these folks don't represent the board
21 and that they should be removed from it. Things had
22 been going on, obviously, and this took place -- I
23 think it directly relates to the core of what we
24 brought. It's a repeated effort that was initiated
25 initially by Mr. Wickwire, as a suggestion, so we think

1 THE COURT: Let me clarify something. Does
2 executive session include everybody in the community?

3 MR. WILSON: That's what I was trying to get
4 to, Your Honor.

5 A Yes.

6 THE COURT: Just not the board?

7 A Just the membership.

8 THE COURT: Okay.

9 A Eighteen or older.

10 THE COURT: All right. Fair enough. Go
11 ahead.

12 MR. WILSON: And that's why I'm asking.
13 That's not the common -- I had the same question when I
14 looked at this.

15 Q So, was there any member of the community who
16 was 18 years or older, who was excluded from
17 participating in this executive session?

18 A No.

19 Q So then the -- basically, these charges went
20 forward within this executive session context...

21 A Uh-huh (affirmative).

22 Q ...as you described it?

23 A Uh-huh (affirmative).

24 Q And, ultimately, what was the vote of the
25 community, in terms of the charges that had been

1 brought against these individuals reflected in
2 these minutes?

3 A You mean, in executive session, or when we
4 came out and they did the reading of the minutes?
5 Because what's...

6 Q Why don't you tell me what the vote was?
7 Wherever the vote was held?

8 A You mean the vote that was held in executive
9 session?

10 Q Yes.

11 A And then he came out of executive session and
12 read it?

13 Q There...

14 A Because what happened in exec...

15 Q There was more than one vote? You tell me --
16 but, just go ahead -- that there was a vote that
17 was taken to remove these members reflected in
18 these minutes?

19 A Yes, there was.

20 Q And did the vote -- did it pass?

21 A Yeah. Yes, definitely.

22 Q Give us some sense of the vote. You don't
23 need to tell us the exact number, but was there
24 much dissension on this, or was it pretty
25 unanimous?

1 e-mail meetings?

2 A No. I mean, I've only been on the board two
3 months, so, I don't know.

4 Q You've been in the community for 45 years,
5 right?

6 A Absolutely. None that I'm aware of.

7 Q Can you recall any history of actual efforts
8 to remove board members under either the articles,
9 bylaws or the policies?

10 A Not until this board.

11 MR. WILSON: That's all the questions I have,
12 Your Honor. Thank you.

13 THE COURT: And this is your last witness?

14 MR. WILSON: I want to talk to my client real
15 briefly, but I believe it will be.

16 THE COURT: Okay. We need to get moving.

17 Mr. Wickwire, go ahead.

18 CROSS EXAMINATION

19 BY MR. WICKWIRE:

20 Q Do you have Exhibit 7 in front of you?

21 A Uh-huh (affirmative).

22 Q Okay. That is the letter from Ms. Woody, Ms.
23 VanZant and Ms. Tito, all board members...

24 A Uh-huh (affirmative).

25 Q ...to Bill Drake, on -- let's see, three days

1 Q Same day.

2 A Uh-huh (affirmative).

3 Q And they were found guilty of grounds for
4 removal at that trial?

5 A Right.

6 Q Are there minutes showing the investigative
7 committee considered these points raised by these
8 three board members in that letter?

9 A Yes.

10 Q Where are they?

11 A Well, first off, we don't have a TCUC
12 secretary. The investigation committee, just
13 before they went into their meeting, they cleaned
14 up a couple things that needed to be addressed at
15 the meeting. So, it all transpired right there.

16 Q But, my question was, are there notes of the
17 meeting whereby the investigative committee
18 addresses each of these objections from these
19 board members, and then considers them and makes a
20 decision on them?

21 A Well, some of them they do. I mean, to tell
22 you the truth, it's -- number one, we don't have a
23 secretary.

24 Q Excuse me, Ms....

25 A The investigation, they...

1 19th meeting.

2 Q Okay. And...

3 A Or, June -- excuse me -- June 19th, 2015
4 meeting.

5 Q Will you explain what your objections were to
6 that -- the charges, the investigation and the
7 trial?

8 A Yeah. The charges -- it says in the -- this
9 was all according to the policy. The charges were
10 never filed with the TCUC secretary. The
11 investigation -- I was not -- the investigative
12 committee did not follow the strictest confidence.
13 There were things on public Facebook sites about
14 the committee and their findings, and such.

15 And then the affi -- the original affidavit
16 that was signed on April 13th listed 15 community
17 members. And on the notice of hearing and trial
18 that I received from the investigative committee,
19 there were 15 members and -- and a, now, one
20 director. So, it was -- it was altered from the
21 original. And, also, the original affidavit had
22 just the charging of an April 8th -- April 14th
23 appointment of Ms. Tito. And, the hearing notice
24 I received had three charges on that -- it was
25 added. So, it was -- it was altered from the

1 original affidavit.

2 And then the other issue I had was, according
3 to the policy, I could have representation by an
4 attorney. And, on page 4, it said the accused may
5 be represented by another member of TCUC, who must
6 be a member of good standing. And I felt that my
7 right was not -- I was not getting due process,
8 nor my right, according to the policy.

9 Q Are there any members of TCUC who are
10 lawyers?

11 A Not practicing, to my knowledge.

12 Q So, were you -- did you take that instruction
13 to mean that you're not -- really not entitled to
14 a lawyer to represent you?

15 A Correct. That's exactly how I took it.

16 MR. WILSON: Your Honor, I'm going to object
17 to leading, at least on critical points. I know the
18 court is trying to get through this, but...

19 MR. WICKWIRE: All right. I withdraw the
20 question.

21 THE COURT: Okay. It's sustained, then. Go
22 ahead.

23 Q What was your understanding as to whether you
24 were entitled to be represented by a lawyer in
25 that process?

1 A In the -- in the policy it stated that I was
2 -- in the policy, under notification, which is
3 number 3 -- to present a defense, to be
4 represented by an attorney, and to receive a copy
5 of the transcript.

6 And then on page 4, it said, "The accused may
7 be represented by another member of the TCUC, who
8 must be a member in good standing."

9 And the way -- and, under the special meeting
10 notice that I received, it said that only -- the
11 trial will be held -- membership and open to the
12 public -- only members in good standing may
13 attend.

14 So, there was two reasons there why I didn't
15 feel that I could have an attorney there, because
16 they -- it was stated that I had to have a member
17 of the TCUC. And I did not have an attorney who
18 qualified as a member of the TCUC, who could
19 represent me.

20 Q Was there an investigation that asked you for
21 input and what you know about these charges?

22 A I did receive an e-mail from -- I believe it
23 was May 26th, from, then, committee chair, Scott
24 McManus, and asking me for -- for some
25 information. Minutes from the '90s and things

1 that would really require some digging.

2 I acknowledged that e-mail and said it would
3 take me a little bit to get it. No information or
4 a time line was given to me, and that was before
5 our June 2nd court date.

6 We also had -- so, this was, like, 11:00 p.m.
7 -- late on the 26th, I received the letter by mail
8 on the 27th. But the e-mail came in late on the
9 26th, I believe.

10 We had a public special meeting for the TCUC
11 on the 28th, and, shortly thereafter, I believe it
12 was that evening, I received another e-mail from
13 Mr. McManus, stating that he was stepping down
14 from the investigative committee as chair. Did
15 not give me any instruction as to who was taking
16 over, who to give those documents to, or anything.
17 So, I thought that would be -- somebody would let
18 me know what to do with this information that had
19 been asked.

20 The next communication I got was on June 2nd,
21 when I was here in Fairbanks in court. I got an
22 e-mail when I returned home, from the
23 investigative committee, with their -- with their
24 hearing -- with their findings. And I had never
25 gotten a chance to -- I -- that's when I found out

1 who the new chair was, and, already, the -- their
2 findings, before I could even give them the
3 information they had requested.

4 Q All right. For those reasons, do you believe
5 that this investigative committee, in concluding
6 that they were removing you, Ms. VanZant and Ms.
7 Tito, has any validity?

8 A Can you repeat the question? I want to know
9 how you stated it.

10 Q Because of your objections,...

11 A Uh-huh (affirmative).

12 Q ...that you've explained, do you believe that
13 this investigative committee's conclusion that
14 they would remove you and Ms. VanZant and Ms.
15 Tito, has any validity?

16 A No, it doesn't have any validity. They did
17 not follow the procedure correctly. They changed
18 it. They changed the original affidavit and they
19 didn't follow the procedure, nor give me my right
20 to representation.

21 Q Do the board members of TCUC have staggered
22 terms?

23 A Yes, sir.

24 Q And are those labeled as -- with letters?

25 A Yes.

1 should be implemented.

2 I have not ruled on whether the e-mail
3 appointment of Ms. Tito, on its merits, has been --
4 whether I will find that at the end of the hearing as
5 final.

6 So, those issues still remain to be resolved
7 on the merits. What I do find is that at this stage of
8 the proceeding there is sufficient information to
9 conclude that they have a likelihood of prevailing on
10 those issues, so that's why I'm implementing Ms. Conrad
11 -- yes, Ms. Conrad -- as the -- as the trustee.

12 MR. WICKWIRE: So, is this correct: The
13 court has not found that the Woody and VanZant
14 positions on the board were invalid? Or, that Ms.
15 Tito's appointment was invalid? Or, that the -- the
16 investigative hearing last week that purported to
17 remove them -- either of those are alternative grounds
18 for them. And, has the court picked one and said,
19 what's invalid?

20 THE COURT: No. I have found that they have
21 shown that they would likely prevail on all three of
22 those issues. But, I recognize that we have done this
23 in an abbreviated accelerated procedure that really
24 doesn't have the benefit of the discovery that you
25 mentioned earlier. So, I'm reserving ruling on those

1 on the merits. It could be -- after we have a hearing
2 on the merits, there could be some other result. But,
3 for right now, I find that they have met -- that they
4 likely would proceed on that, but I'm not making that
5 finding to preclude you from litigating it additionally
6 on the merits. All right.

7 MR. WICKWIRE: I understand now. Thank you.

8 THE COURT: Thank you for driving in, folks.
9 There is a lot of smoke out there today. Drive
10 careful. Everybody can be excused. Submit an order
11 that is necessary to do business, Mr. Wilson.

12 MR. WILSON: It is necessary. We will do
13 that, Your Honor.

14 THE COURT: Okay. Everybody can be excused.

15 MR. WICKWIRE: Your Honor, I'm sorry. Just
16 one more issue we need to take up. There is a finding
17 by this investigative committee last week that removes
18 -- it says that they are disqualified from acting for
19 the next five years. That means they wouldn't be able
20 to run for the office, if that's valid.

21 THE COURT: Yeah. And, again, I'm making no
22 finding on that. I guess I'm going to let the
23 community process play out on that, but I'm not making
24 a finding on that. She certainly is free to say that
25 she should be elected and make her bid for that. And

CERTIFICATE

THIRD DISTRICT

STATE OF ALASKA

I, Georgi Ann Haynes, Certified Professional Court Reporter for the Third Judicial District, State of Alaska, hereby certify:

That this transcript was prepared to the best of my knowledge and ability from a recording, recorded by someone other than H&M Court Reporting, therefore "indiscernible" portions appear in the transcript.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 8th day of July, 2015.

Georgi Ann Haynes
Notary Public in and for Alaska
My commission expires: 10/05/2015