

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable G. Thomas Cooper, Jr., Circuit Court Judge

Circuit Court Case No. 2007-CP-40-02187

Protection and Advocacy for the People with Disabilities, Inc.; M.J.B. on behalf of and as next friend of J.B.; C.B.B. on behalf of and as guardian of P.B.; G.C. and L.C. on behalf of and as guardians of F.C.; D.P. on behalf of and as guardian of C.M.D.; K.F. and S.F. on behalf of and as next friend of A.E.; J.H. on behalf of and as next friend of A.J.; G.M. on behalf of and as next friend of E.M.; N.M. on behalf of and as guardian of E.J.M.; R.P. on behalf of and as Guardian of S.P.; R.R. and J.R. on behalf of and as guardians of K.D.R.; and J.K. on behalf of and guardian of S.S. **APPELLANTS**

v.

South Carolina Department of Disabilities and Special Needs; Dr. Beverly Buscemi, in her official capacity as Director of the South Carolina Department of Disabilities and Special Needs; and Nancy Banor, Deborah McPherson, Christine Sharp, Rick Huntress, Fred Lynn, Harvey Shiver and Kelly Hanson Floyd, as Commissioners of the South Carolina Department of Disabilities and Special Needs **RESPONDENTS**

RECORD ON APPEAL

Volume III

[counsel listed on following page]

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RECORD ON APPEAL

Volume III

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PROTECTION AND ADVOCACY FOR THE PEOPLE WITH DISABILITIES, INC.,
ET AL v. S.C. DEPT. OF DISABILITIES AND SPECIAL NEEDS
INDEX TO RECORD ON APPEAL

	<u>PAGE</u>
I. ORDERS/JUDGMENTS	
Order of Judge Cooper, dated September 27, 2013	1
Order of Judge Cooper Denying Plaintiffs' Motion for Reconsideration, dated December 30, 2013	20
Order of Judge Cooper to Allow Individually Named Plaintiffs to Proceed Anonymously, dated April 12, 2007	23
Order of Judge Childs Denying Defendants' Motion to Dismiss and for a More Definite Statement, dated December 14, 2007	25
II. PLEADINGS	
Summons and Complaint, dated April 5, 2007.....	27
Petition to Proceed Anonymously, dated April 12, 2007	51
Defendant's Motion to Dismiss and Motion for a More Definite Statement, dated May 30, 2007.....	55
Defendant's Memorandum In Support of Motion to Dismiss, dated September 18, 2007	60
Plaintiffs' Memorandum In Opposition to Motions to Dismiss and for a More Definite Statement, dated September 18, 2007.....	69
Answer of All Defendants, dated September 21, 2007	82
Defendants' Motion for Summary Judgment, dated June 4, 2008.....	97
Defendants' Memorandum in Support of Defendants' Motion for Summary Judgment, dated October 8, 2008	101
Defendants' Answers to Plaintiffs' Requests for Admission, dated October 29, 2008	112
Defendants' Amended Answers to Plaintiffs' Requests for Admission, dated October 30, 2008	122

Defendants' Responses to Plaintiffs' First Set of Interrogatories, dated December 17, 2008.....	133
Defendants' Answers to Plaintiffs' First Set of Requests for Production of Documents, with documents, dated December 17, 2008	141
Affidavit of Gloria Prevost, dated May 11, 2010.....	163
Affidavit of Larry Hyde, dated October 19, 2010.....	167
Plaintiffs' Memorandum in Opposition to Defendants' Motion for Summary Judgment, with exhibits, dated May 13, 2010.....	174
Defendants' Reply Memorandum in Support of Defendants' Motion for Summary Judgment, including exhibits, dated May 28, 2010.....	224
Plaintiffs' Notice of and Motion for Summary Judgment, dated June 5, 2013	250
Plaintiffs' Memorandum in Support of Motion for Summary Judgment, including exhibits, dated July 31, 2013.....	256
Defendants' Supplemental Memorandum on Summary Judgment, dated August 2, 2013.....	536
Plaintiffs' Notice of and Motion to Alter, Amend or Reconsider Judgment Pursuant to Rule 59(e), SCRCP, including exhibits, dated October 17, 2013	546
Defendants' Memorandum in Opposition to Plaintiffs' Motion to Alter or Amend, Etc., dated November 20, 2013	610
Plaintiffs' Reply in Support of Their Motion to Alter, Amend or Reconsider Judgment Pursuant to Rule 59(e), SCRCP, Rule 59(e), SCRCP, dated December 18, 2013.....	618

III. TRANSCRIPTS

Transcript of Proceedings, dated August 6, 2013	628

Entire Transcript of the Deposition of Kathi M. Lacy, dated July 9, 2009	667
Entire Transcript of the Deposition of John C. Vaughn, dated April 26, 2010	1023
Entire Transcript of the Deposition of Deborah C. McPherson, dated September 23, 2011	1290
IV. CERTIFICATE OF COUNSEL	1440
IV. CERTIFICATE OF SERVICE	1441

1) Medications used in this manner will be accompanied by a formal Behavior Support Plan if the person's problem behavior poses a significant risk to him/herself, others, or the environment (i.e., self-injury, physical aggression or property destruction).

2) For people residing in an ICF/MR a BSP is always required (described on the following page). The overall effort that includes the Behavior Support Plan should lead to a less restrictive way of managing and, if possible, eliminating the behaviors and/or psychiatric symptoms for which the medications are employed.

3) A person and his family cannot elect not to have a behavior support plan when a person is prescribed psychotropic medications for overt maladaptive behavior(s) and/or psychiatric symptoms that pose a risk to the person, peers, or the environment and interfere with the person's daily functioning except as noted in IIIc.

Medication is not to be used for disciplinary purposes, for the convenience of staff, as a substitute for a habilitative training program, or in quantities that interfere with a person's quality of life. Each plan should document the fact that any potential risks of the medications employed have been carefully weighed against the risks of the behavior for which the medications are given.

Psychotropic medications should be used only with appropriate consent pursuant to DDSN policy 535-07-PD: Obtaining Consent. PRN orders for psychotropic medications are specifically prohibited. Each DSN Board or QPL provider should have a written policy and assessment format in regard to tardive dyskinesia and apply Policy 603-01-PD, TD Monitoring and 100-29-PD Medication Error/Event Reporting. (e.g., Dyskinesia Identification System: Condensed User Scale/DISCUS). For persons who attend a day program and reside at home, the primary care physician or psychiatrist who prescribed the medication is responsible for TD monitoring. Information on tardive dyskinesia (TD), including TD scores, must be provided to the Human Rights Committee (HRC) and the person giving consent or their guardian/surrogate at the time for review and approval of psychotropic medications.

Psychotropic medications should be reviewed based on the person's needs as determined by the psychiatrist or physician and at least quarterly in a psychotropic drug review process. Persons involved in this Team process should include, but are not be limited to, the physician, person receiving supports and, if the person is not their own legal guardian the legal guardian, an approved provider of behavioral supports, program supervisor, caregiver who knows the person well, nurse (for people in ICFs/MR), and psychiatrist, if applicable. The psychotropic drug review process should provide for gradually diminishing medication dosages and ultimately discontinuing the drug unless clinical evidence justifies that the medication is helping the individual.

When psychotropic medication is used, the team in conjunction with the psychiatrist or attending physician will specify which behaviors/psychiatric symptoms are targeted for change and should, therefore, be monitored both for desired effects and adverse consequences/reactions.

Approval: The Team, HRC, physician, facility administrator or executive director, and the individual and, if the person is not their own legal guardian the legal guardian.

Monitoring: The program director or program supervisor; Team, approved provider of behavioral supports or psychologist, day program supervisor, if applicable, nurse, executive director, pharmacist, if applicable, psychiatrist, or attending physician.

Monitoring in Day Programs: In a day program, the director (as a member of the team) with the approved provider of behavioral supports or psychologist should have responsibility, and in other community residential programs (i.e. CTH and SLP) the responsibility will be that of the program supervisor and approved provider of behavioral supports or psychologist.

A. ICFs/MR Residential Programs

For persons residing in ICFs/MR, a behavior support plan must be in place when psychotropic medications are prescribed for any challenging behavior(s). This is consistent with the South Carolina Code of Laws Section 44-26-10 and federal regulations W-311 and W-312 which include that "drugs used for control of inappropriate behavior must be used only as an integral part of the client's individual program plan that is directed specifically towards reduction of and eventual elimination of the behaviors for which the drug is employed", and "the interdisciplinary team involvement in this decision-making process is inextricably linked to an obligation to develop and implement effective non-drug interventions that address the targeted behavior."

B. Non-ICF/MR Community Residential and Day Programs

A Behavior Support Plan is not required for those receiving Residential, Day Habilitation, or Prevocational Services and psychotropic medication when the person's record documents that:

- The person does not exhibit physical aggression, self-injury, or property destruction or other behaviors that pose a significant risk of harm to themselves, others or the environment. This would be documented by data collected by direct support staff and summarized by the local agency personnel or consultants.
- The team, including a psychiatrist, has determined via the Psychotropic Drug Review Process that the person has reached the lowest effective dosage of the medication based on data collected symptoms/problem behavior of the person.

This documentation needs to be in the persons' record and reviewed/updated annually for as long as the person receives the medication.

C. People Served by DDSN Who Reside at Home

When people reside at home with family and are prescribed psychotropic medications by a private physician (at the referral and request of the family/guardian), DSN service coordination must make efforts to obtain consent from the family to obtain information/documentation about the prescribed medications and reason for their use.

When medications are prescribed to alleviate psychiatric symptoms and/or behavior problems the person should also be offered behavior support consultation for assessment and development of a behavior support plan. For people who reside at home and have a behavior support plan developed, the author of the behavior support plan is responsible for monitoring the program and training the caregivers to record data and implement the plan. If the individual or the family will not grant consent to obtain information about psychotropic medications prescribed, decline offered behavioral supports, and/or report no behavior problems of the individual which interfere with activities of daily functioning and community living, then this information must be documented in the person's single plan and/or file. Such documentation must always be available in the individual's record

and documentation reviewed/updated annually in the person's plan if she or he is prescribed psychotropic medications.

IV. BEHAVIOR SUPPORT PLAN REVIEW AND APPROVAL

Each DSN Board or QPL provider must adopt and implement written policies and procedures governing the assessment, prevention, and management of inappropriate behavior. These policies and procedures must specify all facility or program-approved procedures used for inappropriate behavior. A primary focus is to be on the prevention of problem behavior by using functional assessment data to identify appropriate alternative behaviors to teach and/or reinforce. When consequence-based procedures are to be used, each DSN Board/QPL provider must designate these procedures on a hierarchy, ranging from most positive or least intrusive, to least positive or most intrusive. These procedures must address the following: the use of restraints; the use of medications to manage inappropriate behavior; and the use of aversive consequences.

The DSN Board/QPL provider must designate and use a Human Rights Committee (HRC) to review, approve, and monitor individual plans designed to manage inappropriate behavior and other plans that, in the opinion of the committee, involve risks to individual protection and rights. Individual plans that involve risk, including but not limited to those procedures designated by the DSN Board/QPL provider as being restrictive, require consent pursuant to DDSN policy 535-07-PD: Obtaining Consent.

A. Nonrestrictive Procedures

Definition: Behavior Support Plans that contain only procedures defined as nonrestrictive by DSN Board/QPL Provider policy because the procedures do not limit freedom or cause loss of personal property or rights. Note: Procedures listed in the examples below are often used in everyday generic training by staff and would not require specific team approval unless made part of a BSP.

Examples: Including but not limited to, differential reinforcement, social disapproval, ignoring, simple correction, re-direction, interrupting behavior with educative prompts, and counseling.

Approval: Individual and, if the person is not their own legal guardian the legal guardian, and Team including a professional that meets DDSN MR/RD waiver qualifications for behavior support.

Monitoring: Program director or program supervisor, day program director (if individual is in a day program) and an approved provider of behavioral supports.

B. Restrictive Procedures Excluding Restraint

Definition: Behavior Support Plans that contain procedures that limit freedom or cause loss of personal property or rights excluding restraint.

Examples: Residence restriction, 1:1 staffing or increased level of supervision/accountability, response cost, overcorrection, extinction where there is a risk of harm to self or others, satiation involving edibles (requires review by health professionals), and separation procedures lasting more than 5 minutes (excluding the use of timeout rooms).

Approval: Individual and if the person is not their own legal guardian the legal guardian, Team including a professional that meets DDSN MR/RD waiver qualification for behavior support, and HRC.

Monitoring: Program director or program supervisor, day program director if in a day program, an approved provider of behavioral supports, and HRC.

C. Restraint Procedures

Note: Restraint procedures are to be used only for the purpose of protecting an individual or staff from harm and are the least restrictive alternatives possible to meet the needs of the person.

1. Planned Restraint (Manual or Mechanical)

Definition: *A procedure that involves holding an individual (i.e., manual restraint) or applying a device (i.e., mechanical restraint) that restricts the free movement of or normal access to a portion or portions of an individual's body.*

Use of the procedure is limited to a maximum of one continuous hour. Release from restraint must occur when the individual is calm and is no longer a danger to self or others. It must be accompanied by an active treatment program (usually a Behavior Support Plan) directed towards reducing the dependency on restraint. A physician's order for restraint is needed but is not required at the time of each use. The order may be included in the routine medical orders which are renewed per state licensure requirements.

Mechanical restraint procedures should be designed and used in a manner that causes no injury and a minimum of discomfort. While in mechanical restraint, the individual will be under continuous observation with documentation of their response to the restraint every 10 minutes not to exceed one hour. This documentation should include the physical condition of the individual (i.e., breathing, circulation).

Note: The use of mechanical devices, such as splints or braces, bed rails to prevent injury, wheelchair harness and lap belts to support a person's proper body positioning are not considered restraint even though they may restrict movement. Such medical necessity for these devices must be documented in the person's record.

Approval: Person and if the person is not their own legal guardian the legal guardian, Team including an approved provider of behavioral supports, HRC, Executive Director.

Monitoring: Program Director or program supervisor, team, a professional that meets DDSN MR/RD waiver qualification for behavior support, day program director if in a day program, and HRC.

2. Use of Mechanical Restraint to Allow Healing of Injury Produced by an Inappropriate Behavior

Definition: Mechanical restraint used for behaviors that do not produce immediate harm but through their chronic/long term nature may result in infrequent harm (e.g., hand mouthing which produces skin breakdown). If a behavior causes an injury requiring the temporary use of restraint to allow healing, the Team must meet and

address the behavior that produced the injury. If the Team develops a Behavior Support Plan to incorporate the restraints, it must include:

- a. A schedule for use which specifies checks of the individual's condition every 30 minutes or more frequently depending on the type of device and well-being of the person. The schedule will provide for release 10 minutes at least every hour for motion, exercise, liquids, and bathroom use.
- b. A plan for supervision while out of restraint and a plan for teaching appropriate replacement behavior must be included.
- c. Restraint should not automatically be reapplied after release unless the problem behavior recurring or a medical condition exists.
- d. When the problem behavior is occurring the program should include provisions for application of less intrusive methods prior to application of restraints.

Approval: Individual and if the person is not their own legal guardian the legal guardian, Team including a professional Program Director or program supervisor, team, an approved provider of behavioral supports, HRC, and Executive Director.

Monitoring: Program Director or program supervisor, day program director if individual is in a day program, an approved provider of behavioral supports, and HRC.

D. Psychotropic Medication

Definition: Medications used for the primary purpose of affecting overt behavior, mood, or thought processes, or alleviating symptoms of a psychiatric condition.

Approval: Individual and, if the person is not their own legal guardian the legal guardian, Team including the physician, HRC, Executive Director. Note: The HRC should review information regarding the assessment of tardive dyskinesia for persons receiving psychotropic medication.

Monitoring: Psychotropic drug review process, program director or program supervisor, nurse and/or physician, psychiatrist, and an approved provider of behavioral supports (unless the criteria are met for not having a Behavior Support Plan), and HRC.

E. Aversive Consequences

Definition: A procedure by which staff apply, contingent on inappropriate behavior, startling, unpleasant, or painful consequences, or consequences that have a potentially noxious effect.

Approval: Individual and, if the person is not their own legal guardian the legal guardian, Team including a physician and an approved provider of behavioral supports, HRC, Executive Director, and the State Director of DDSN or his/her designee.

Monitoring: Program Director or program supervisor, physician, an approved provider of behavioral supports, HRC, and a designee from DDSN central office.

Note: See also S.C. Code of Laws, Chapter 26, Section 44-26-160: Mechanical, Physical, or Chemical Restraint of Clients; and Section 44-26-170: Use of Certain Types of Behavior Modification.

V. PROHIBITIONS

The following are prohibited:

1. Procedures, devices, or medication used for disciplinary purposes, for the convenience of the staff or as a substitute for necessary supports for the person.

Note: Restrictive procedures, devices, and/or medication can be used as part of a comprehensive intervention plan that is part of an individual's single plan. Use of restrictive procedures and devices can also be used if the intent is for supports of safety and positioning supports (e.g. bed rails to prevent injury, wheelchair chest harness and lap belts for support positioning). These types of procedures must be monitored closely and documented in the person's single plan and/or file.

2. Seclusion (defined as the placement of an individual alone in a locked room).
3. Enclosed cribs.
4. Programs that result in a nutritionally inadequate diet or the denial of a regularly scheduled meal.
5. Having DDSN consumer discipline other people with disabilities.
6. Prone (i.e. face down on the floor with arms folded under the chest) basket-hold restraint.
7. Timeout rooms
8. Aversive consequences (defined as the application of startling, unpleasant, or painful consequences) unless specifically approved by the State Director of DDSN or his/her designee.

VI. USE OF RESTRAINT AS A HEALTH RELATED PROTECTION

Definition: Restraint (chemical, physical, or mechanical) used during the conduct of a specific medical/dental or surgical procedure, or only if absolutely necessary for a person's protection during the time that a medical condition exists.

The physician/dentist must specify the scheduled use of restraint and its monitoring. If a restraint is applied to prevent a person from removing post-operative sutures, documentation/release requirements would apply since the primary purpose is to manage this behavior. Note: The use of restraint as a health-related protection does not require the development of a Behavior Support Plan.

Note: ICFs/MR should see also DDSN policy 603-03-DD: Managing Maladaptive Behavior During Dental Procedures.

VII. EMERGENCY PROCEDURES

Definition: Procedures used to provide protection from harm in situations where the person is endangering him/herself or others with severely aggressive or destructive behavior. These behaviors could not reasonably have been anticipated in the current setting and there is no approved behavioral, medical or psychiatric program in effect that provides adequate protection from harm.

Authorized emergency procedures are those defined in 567-02-DD, "Preventing and Responding to Aggression" and the PRA manual (e.g. baskethold, two person transport), and procedures outlined in the MANDT, Crisis Prevention Intervention (CPI), or Professional Crisis Management (PCM) curriculum. Emergency situations involving the use of psychotropic medication or mechanical restraint, such as a posey jacket or four-point restraint, shall be authorized in writing by the Executive Director/Facility Director or their designee (or approved by the physician if involving transport to the emergency room) and a report of that emergency provided to the physician or psychiatrist, Executive Director/Facility Director (if approved by a designee), and an approved provider of behavioral supports within 24 hours.

The Executive Director/Facility Director must be notified whenever a designee authorizes emergency restraint. Orders for emergency restraint must not exceed twelve hours during which the person's condition must be documented at least every ten (10) minutes. This 12-hour period is the timeframe in which emergency restraints are authorized, *not the duration of the restraint*. Each use of emergency restraint and justification for its use, including less restrictive methods that have failed, must be noted in the person's record. Emergency mechanical restraints require opportunities for exercise at least ten minutes every hour. This means that the maximum duration of such restraint is fifty (50) consecutive minutes.

The person's legal guardian must be notified immediately of the use of emergency restraint, unless the Team, in conjunction with the legal guardian, has documented other agreed upon timelines for notification or if the person is their own legal guardian and does not want their family notified.

The HRC must be notified of the use of emergency restraint according to a schedule established by the facility or program. PRN orders for mechanical restraints or psychotropic medication are not permitted (unless prescribed by the Emergency room physician). Once a "pattern" of use emerges (i.e., 3 restraints within a 90-day period of time), the Team must meet and develop a plan/strategy for how to prevent escalation or how the Team will respond when behavior does escalate, other than emergency restraint.

VIII. DOCUMENTATION AND TRAINING

Documentation of Results

Pertinent data collection is a prerequisite to any planned intervention. Once a Behavior Support Plan has been implemented, data should be compiled and reviewed at least monthly by a designated program director, supervisor, or service coordinator and an approved provider of behavioral supports. This must include a graph of the person's performance on target behaviors to increase and decrease. Data should be graphed in a manner which notes changes in BSP procedure, psychotropic medications and significant environmental variables (e.g., moving to a new home). Data should be graphed over a sufficient duration to facilitate detection of trends and patterns. This review should be placed in the person's record. The Human Rights Committee will review Behavior Support Plans containing restrictive

procedures (i.e., IV. B, C, D & E) at least annually. The Team must address injuries occurring as a result of procedures contained in a Behavior Support Plan. The Team must send a report of their action within 72 hours to the Executive Director or designee.

Staff Training

Prior to implementing any behavior support plan, staff expected to implement the plan must receive appropriate training. There must be documentation of that training available. Training responsibility rests with the BSP author, however approved providers of behavioral supports can train someone for a specific BSP (e.g., house manager, service coordinator, etc.) to facilitate the training of others who need to implement the behavior support plan. Approval for a local staff member to train others in a specific BSP needs to be documented in writing with the approval for the current plan only. "Blanket approvals" cannot be granted. It is expected that anyone providing training on a BSP will be able to provide practical information, answer questions and skillfully demonstrate any procedures included in the plan.

Positive approaches to behavior support should be included for all new direct support and supervisory employees as part of their pre-service orientation program (but use of the Carolina Curriculum on Positive Behavior Support/AAIDD Positive Behavior Support Training Curriculum should be only for staff who have at least 30 – 60 days on the job). Positive approaches to behavior support should be reviewed periodically with employees who have direct contact with persons served by DDSN.

IX. USE OF INFORMAL BEHAVIORAL GUIDELINES AND INTERVENTIONS

There may be times when a formal behavior support plan is not needed to address problem behavior. Informal behavioral guidelines may be appropriate instead if the following conditions are met:

- a. The problem behavior does not pose a significant risk to the person, peers, or the environment (excludes behaviors of physical aggression, self-injury, or property destruction).
- b. The person is not on psychotropic medication or has reached a minimum effective dose of psychotropic medications.
- c. The problem behavior(s) being addressed have a definition that allows for observation and measurement.
- d. The guidelines and interventions do not involve any restriction of the person's rights.

The Informal Behavioral Guidelines can be developed by a designated member(s) of the Team and are not billable under the MR/RD Waiver as Behavior Support Services, but would be part of Residential, Habilitation, Day Habilitation and prevocational supports and part of the ICF/MR services. They would be part of the overall plan for the person. The development and implementation of the guidelines needs to include:

- a. Collection of baseline and intervention data to assess the effectiveness of the behavioral guideline plan and intervention(s).
- b. Training and monitoring of staff to appropriately and consistently implement the informal interventions.

Approval: The Team that includes the individual, and if the person is not their own legal guardian, legal guardian, psychiatrist or physician, and Executive Director.

Monitoring: The Residential Coordinator or Vocational Plan Manager will monitor the data on a monthly basis. This information is to be used during psychotropic drug review meetings if the person receives psychotropic medication. The information will also be used during the planning process to assist the team in evaluating the effectiveness of the Informal Behavioral Guidelines.

Informal behavioral guidelines and interventions will primarily focus on changes in the environmental conditions, changes to the person's activities, changes in staff behavior, and having additional reinforcement available. Two (2) examples of informal behavioral guidelines and interventions are included in Attachment B.

Kathi K. Lacy, Ph.D.
Associate State Director Policy

Stanley J. Butkus, Ph.D.
State Director

(To view Attachments, go to the "Attachments to Directives" section on the Directives page)

- Attachments:
- A. Components of Meaningful Environments & Specialized Services
 - B. Examples of Informal Behavioral Guidelines and Interventions (2)

Reference Number: 800-01-CP
Title of Document: SCDDSN Ends Policy
Date of Issue: January 18, 2007
Effective Date: January 18, 2007
Last Review Date: January 18, 2007 CREATED
Date of Last Review: January 18, 2007

SCDDSN exists for the success of its consumers by coordinating person-centered services and programs for persons with mental retardation and related disabilities, autism, head injuries and spinal cord injuries. SCDDSN will, accordingly:

1. Support a statewide network of disabilities and special needs boards, regional centers and qualified private providers to, as possible:
 - a. Offer choice of provider to consumers
 - b. Provide services as needed, as near as possible to the consumer's home, in family-like settings
 - c. Achieve respect for and community integration of consumers.
2. Assist local service providers with quality management, licensure, technical assistance and training to achieve compliance with all department policies, directives and regulations, and applicable state and federal laws and regulations.
3. Assess eligibility according to Section 44-20-390 of the South Carolina Code and applied in an individual service plan to develop each consumer's full potential in the least restrictive environment for those who meet residency requirements.
4. The Commission expects SCDDSN to utilize all available federal and state funds, and encourages local leaders to develop additional sources of supplementary support recognizing that:
 - a. Resources may not be adequate for all needs and that funding priority must be based on severity of need and vulnerability
 - b. Funding is a resource to individuals to meet identified needs
 - c. Funding accountability will be maintained and enforced.



5. Support prevention research and public education to reduce the incidence and severity of all disabilities addressed by SCDDSN.
6. Insure that all activities meet or exceed the quality of services and satisfaction achieved by comparable departments in other states.

John C. Vaughn
Vice Chairman
(Originator)

W. Robert Harrell
Chairman
(Approved)

Reference Number: 800-02-CP
Title of Document: SCDDSN Governance Process Policy
Date of Issue: January 18, 2007
Effective Date: January 18, 2007
Last Revision Date: January 18, 2007 **CREATED**
Date of Last Revision: January 18, 2007

The Commission of SCDDSN will govern with an emphasis on (a) outward vision rather than internal preoccupation, (b) strategic leadership more than administrative detail, (c) clear distinction of commission and state director roles, (d) collective rather than individual decisions, (e) future rather than past or present, and (f) proactivity rather than reactivity. The commission will:

1. Deliberate in many voices, but speak in one to the state director by approving policy and by passing motions.
2. Cultivate a sense of group responsibility for excellence in governing, initiating commission policy, not reacting to staff initiatives, utilizing individual commission expertise to enhance commission governance but not substituting individual judgments for commission values.
3. Direct, control and inspire the SCDDSN through broad policies reflecting commission values that focus on long term impacts rather than administrative means of attaining those effects.
4. Enforce upon itself the discipline needed to govern with excellence:
 - a. In matters such as attendance, preparation, and policy governance principles to include commission training
 - b. By allowing no officer, individual, or committee to hinder the fulfillment of its policy governance process
 - c. By monitoring its process and performance at every meeting, comparing commission activity to commission policies.



The Commission is appointed by the Governor with the advice and consent of the Senate and operates under the authority of the South Carolina Mental Retardation, Related Disabilities, Head Injuries, and Spinal Cord Injuries Act of 1993. The commission will:

1. Approve and adopt Bylaws to regulate its rules and procedures.
2. Establish policies that govern all department directives to include:
 - a. An "Ends" policy – what good for which recipients at what cost
 - b. A "Governance Process" policy – how the commission functions
 - c. A "Commission-Staff Linkage/Delegation" policy
 - d. An "Executive Limitation" policy to insure ethics and prudence
 - e. Other global policies required, without redundancy.

John C. Vaughn
Vice Chairman
(Originator)

W. Robert Harrell
Chairman
(Approved)

Reference: Number: 800-03-CP
Title of Document: SCDDSN Executive Limitations Policy
Date of Issue: January 18, 2007
Effective Date: January 18, 2007
Last Review Date: January 18, 2007 **CREATED**
Date of Last Revision: January 18, 2007

The State Director of SCDDSN is selected and appointed by the Commission and serves at its pleasure. The director is responsible for department operation, subject to commission policies and actions, applied through department directives. The state director shall not:

1. Fail to maintain ethics and prudence in the administration of SCDDSN or to conform SCDDSN to all federal, state, and commission requirements, and to protect SCDDSN assets.
2. Fail to prescribe SCDDSN organizational structure, adequate qualified personnel, and effective programs necessary to carry out the legislative mandate and commission policies of SCDDSN.
3. Fail to use resources effectively and efficiently and maintain transparency and accountability with the commission through reports on services, finances, and other monitoring data necessary to the commission's policy governance.
4. Fail to follow the personnel grievance procedures of the Office of Human Resources of the Budget and Control Board.
5. Fail to communicate effectively with the commission, staff and the public, nor allow the commission to be unaware of relevant trends, anticipated adverse media coverage, material change, or assumptions on which commission policy has been established.
6. Present unnecessarily complex information that does not clearly differentiate information necessary for monitoring and/or decisions, and that which is merely incidental, nor burden the commission with reports or agenda items unnecessary to policy deliberations.
7. Fail to inform the commission if, in the director's opinion, the commission is not in compliance with its own policies.



8. Fail to develop directives for the receipt of gifts, establishment of fees, and promote funding and support for SCDDSN and its agents.
9. Fail to enforce directives concerning eligibility of applicants and make final decisions on sequence of admissions.
10. Fail to oversee the Audit Director administratively according to an annual work plan, while not restricting the commission's functional oversight of and access to the Audit Director.
11. Respond officially to individual commissioners, but deal with the commission as a whole except when individuals are specifically authorized to speak for the commission.

John C Vaughn
Vice Chairman
(Originator)

W Robert Harrell
Chairman
(Approved)

Reference: Number: 800-04-CP
Title of Document: SCDDSN Commission Staff Linkage Delegation
Date of Issue: January 18, 2007
Effective Date: January 18, 2007
Last Review Date: January 18, 2007
Date of Las Revision: January 18, 2007

SCDDSN Commission authority delegated to staff is delegated through the State Director so that all authority and accountability of staff—so far as the commission is concerned—is considered to be the authority and accountability of the director. Accordingly:

1. The commission requires the director to achieve certain results for certain recipients at a certain cost through the establishment of "Ends Policy," and limits the latitude the director may exercise in all "means" through the establishment of "Executive Limitations Policy."
2. As long as the director uses any reasonable interpretation of the commission's Ends and Executive Limitations policies, the director is authorized to establish all directives, make all decisions, take all actions, establish all practices, and develop all activities.
3. As long as a particular delegation is in place, it will be respected by the commission. Any unresolved concerns with interpretation of policies will be addressed through clarifying amendment of those policies.
4. Only decisions of the commission acting as a body are binding upon the director. Decisions, instructions or requests of individuals are not binding on the director except as specifically authorized by the commission.
5. The commission, in delegating its authority to promulgate directives that accurately express and apply federal and state laws and regulations, and commission policies, retains its responsibility to govern the department. Of particular concern to the commission are directives regarding:
 - a. Department responsiveness in person-centered services as expressed in a money-follows-the-individual concept/practice and consumer choice of provider



- b. Establishment of family/consumer advisory councils by county DSN boards and private service providers, and regional and local human rights advisory groups
- c. Quality management of administration, finances, program and service delivery functions such as standards, licensing/certification and reviews, independent quality review, consumer/family surveys, annual independent financial audits, periodic compliance audits, special audits, critical incident reporting/tracking, abuse/neglect/exploitation reporting/follow-up
- d. Inclusion in appropriate directives those statements listed in rescinded commission policies 106-03-CP, 107-01-CP, 108-01-CP, 509-01-CP and 400-13-CP but not listed specifically in commission policies adopted to establish Policy Governance on 01-18-07 but determined by the commission to be appropriate "means" to be addressed by department directive.

John C Vaughn
Vice Chairman
(Originator)

W Robert Harrell
Chairman
(Approved)

Reference Number: 800-05-CP
Title of Document: SCDDSN Public Invocation Act

Date of Issue: October 16, 2008 (Created)
Effective Date: October 16, 2008
Last Review Date: October 16, 2008
Date of Last Revision: October 16, 2008

Whereas, the South Carolina General Assembly amended THE CODE OF LAWS OF SOUTH CAROLINA, 1976, by adding Section 6-1-160 so as to enact the "South Carolina Public Invocation Act" to allow a governing body to adopt a policy for an opening invocation before each meeting. The invocation must not promote nor disparage any one faith or belief.

Whereas, the act signifies the General Assembly's belief that deliberate public bodies in the STATE may adopt policies that will permit public invocations in a constitutionally permissible fashion.

Now therefore,

The South Carolina Commission on Disabilities and Special Needs on this date, October 16, 2008 during a regular monthly Commission Meeting adopted the following policy:

- (A) Permitting a public invocation at the beginning of monthly Commission Meetings as defined in Subsection (A) (1) of the South Carolina Public Invocation Act.
- (B) Allowing for an invocation to be offered on a voluntary, rotating basis by a commissioner.



This policy takes effect upon adoption by the SCDSN COMMISSION.

William F. Bishop
Chairman
Ad Hoc Committee
On Public Invocation
(Originator)

W. Robert Harrell
Chairman
(Approved)

Westlaw.

Code 1976 § 44-20-220

Page 1

▷

Code of Laws of South Carolina 1976 Annotated Currentness

Title 44. Health

☞ Chapter 20. South Carolina Mental Retardation, Related Disabilities, Head Injuries, and Spinal Cord Injuries Act

☞ Article 3. Organization and System for Delivery of Services

→ § 44-20-220. Duties of Commission; per diem; appointment of Director of Disabilities and Special Needs; advisory committees.

The commission shall determine the policy and promulgate regulations governing the operation of the department and the employment of professional staff and personnel. The members of the commission shall receive subsistence, mileage, and per diem as may be provided by law for members of state boards, committees, and commissions. The commission shall appoint and in its discretion remove a South Carolina Director of Disabilities and Special Needs who is the chief executive officer of the department. The commission may appoint advisory committees it considers necessary to assist in the effective conduct of its responsibilities. The commission may educate the public and state and local officials as to the need for the funding, development, and coordination of services for persons with mental retardation, related disabilities, head injuries, and spinal cord injuries and promote the best interest of persons with mental retardation, related disabilities, head injuries, and spinal cord injuries. The commission is authorized to promulgate regulations to carry out the provisions of this chapter and other laws related to mental retardation, related disabilities, head injuries, or spinal cord injuries. In promulgating these regulations, the commission must consult with the advisory committee of the division for which the regulations shall apply.

CREDIT(S)

HISTORY: 1990 Act No. 496, § 1; 1993 Act No. 181, § 1078.

CROSS REFERENCES

Service on persons confined and duties of superintendent of state mental health facility in respect to service of process on persons confined, see § 15-9-510 and SCRPC, Rule 4.

Release, discharge and recommitment of mentally ill persons, see §§ 44-17-810 et seq.

Detention, confinement and transfer of confined persons, see §§ 44-23-210 et seq.

Interstate Compact on Mental Health, see §§ 44-25-10 et seq.

Commitment of tuberculosis patients, see §§ 44-31-110 et seq.

Alcohol and Drug Abuse Commitment, see §§ 44-52-5 et seq.

Code 1976 § 44-20-220, SC ST § 44-20-220

Current through End of 2008 Reg. Sess.

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Code 1976 § 44-20-220

Page 2

END OF DOCUMENT

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Protection and Advocacy for the People
with Disabilities, Inc.; et al,

v.

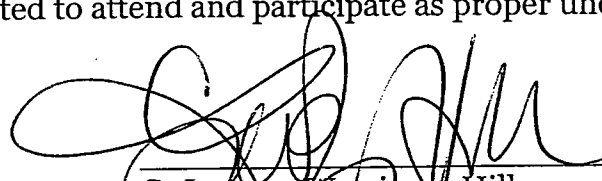
South Carolina Department of
Disabilities and Special Needs; et al.

) IN THE COURT OF COMMON PLEAS

) CIVIL ACTION NO.: 07-CP-40-2187

) NOTICE OF TAKING ORAL
) DEPOSITION OF
) KATHI M. LACY

PLEASE TAKE NOTICE that the oral deposition of Kathi M. Lacy, in the above-captioned action will be taken before a Notary Public for South Carolina, or before some other officer authorized by law to take depositions, on the 25th day of March, 2009, at 10:00 a.m., at the offices of Richardson, Plowden & Robinson, P.A., 1900 Barnwell Street, Columbia, SC 29201, at which time and place you are hereby notified, requested and required to produce the said person for said examination on oral deposition. The examination on oral deposition shall continue from time to time and day to day until conclusion, and this deposition may be adjourned from time to time as necessary. You are further invited to attend and participate as proper under the Rules.


C. Jo Anne Wessinger Hill
RICHARDSON, PLOWDEN & ROBINSON, P.A.
1900 Barnwell Street
PO Drawer 7788
Columbia, SC 29202
(803) 771-4400

Columbia, South Carolina
March 12, 2009

EXHIBIT A

YOU ARE REQUESTED TO PRODUCE all documents (1) referred by the Deponent or anyone assisting Deponent in preparing for his or her testimony; (2) known or reasonably known or reasonably available to you, regardless of whether such document are in your possession, custody, or control or in the possession, custody, or control of employees of the agency, your agents, subordinates, directors, divisions directors, supervisors, investigators, analysts, assistants, and representatives of the agency related to DDSN directives, DDSN standards, DDSN regulations, including notes, memorandums, emails, and; (3) all materials, as well as that maintained by you, your office, DDSN, or DDSN employees related to the same, including but not limited to, DDSN policies for establishing directives, standards or regulations, procedures for establishing directives, standards or regulations, work or advisory committee correspondence or notes, drafts directives, standards or regulations, memorandums related to policies and procedures for establishing directives, standards or regulations or discussing any directives, standards or regulations, correspondence of any type, evaluations of any directive, standard or regulation, analysis of any establishing directive, standard or regulation, letters or correspondence, proposed, amended, or final directives, proposed, amended or final regulations, and proposed, amended or final standards.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Protection and Advocacy for the People
with Disabilities, Inc.; et al,

v.

South Carolina Department of
Disabilities and Special Needs; et al.

) IN THE COURT OF COMMON PLEAS

)

) CIVIL ACTION NO.: 07-CP-40-2187

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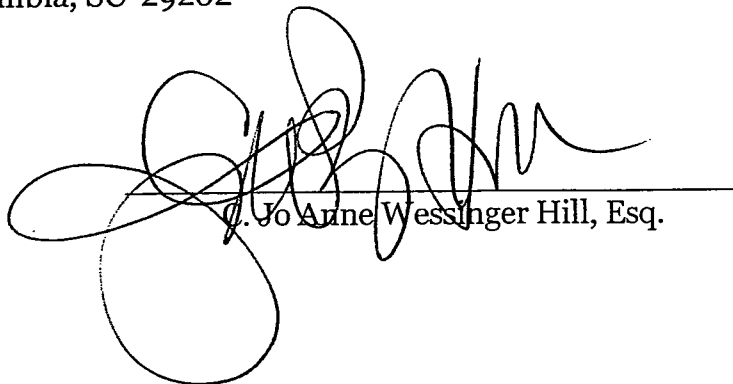
)

)

CERTIFICATE OF SERVICE

I, the undersigned, an attorney with the firm of Richardson, Plowden & Robinson, P.A., attorneys for the Defendant, hereby certify that I have served the foregoing NOTICE OF TAKING ORAL DEPOSITION OF KATHI M. LACY, via hand delivery, to Plaintiff's attorney, as indicated below:

William H. Davidson, II
Kenneth P. Woodington, Esq.
1611 Devonshire Drive, Second Floor
PO Box 8568
Columbia, SC 29202



Jo Anne Wessinger Hill, Esq.

Columbia, South Carolina
March 12, 2009

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF RICHLAND

Protection and Advocacy, et al, , Plaintiff

v.

SUBPOENA IN A CIVIL CASE

SC Dept. of Disabilities, et al, , Defendant

Case Number: 2007-CP-40-2187

Pending in Richland County

TO: Kathi M. Lacy, c/o William H. Davidson, II, Esq., Kenneth P. Woodington, Esq., PO Box 8568, Columbia, SC 29202

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION Richardson, Plowden & Robinson, PA 1900 Barnwell Street, Columbia, SC 29201	DATE AND TIME March 25, 2009, 10:00 AM

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

SEE EXHIBIT A ATTACHED HERETO

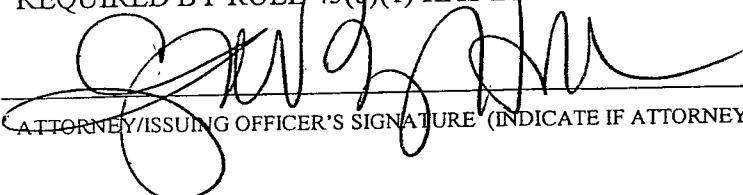
PLACE Richardson, Plowden & Robinson, PA 1900 Barnwell Street, Columbia, SC 29201	DATE AND TIME March 25, 2009, 10:00 AM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

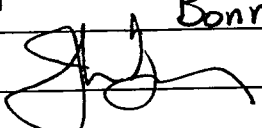
I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.


 ATTORNEY/ISSUING OFFICER'S SIGNATURE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE 3/12/2009

CLERK OF COURT/ISSUING OFFICER SIGNATURE _____ DATE _____ PRINT NAME _____

PROOF OF SERVICE

SERVED	DATE March 12, 2009	FEES AND MILEAGE TENDERED TO WITNESS ☐ YES ☒ NO AMOUNT \$
	PLACE 1611 Devonshire Drive, Columbia, SC	
SERVED ON	Bonnie Garon	MANNER OF SERVICE hand delivery
SERVED BY		TITLE Clerk

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on March 12, 2009

SIGNATURE OF SERVER

1900 Barnwell Street, Columbia, SC 29201

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- i. fails to allow reasonable time for compliance; or
- ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- iv. subjects a person to undue burden.

(B) If a subpoena:

- i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business and label them to correspond with the categories in the demand.

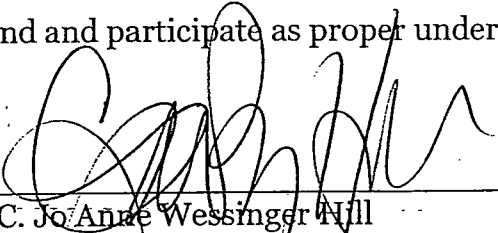
(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced and the reasons why they are withheld.

EXHIBIT A

YOU ARE REQUESTED TO PRODUCE all documents (1) referred by the Deponent or anyone assisting Deponent in preparing for his or her testimony; (2) known or reasonably known or reasonably available to you, regardless of whether such document are in your possession, custody, or control or in the possession, custody, or control of employees of the agency, your agents, subordinates, directors, divisions directors, supervisors, investigators, analysts, assistants, and representatives of the agency related to DDSN directives, DDSN standards, DDSN regulations, including notes, memorandums, emails, and; (3) all materials, as well as that maintained by you, your office, DDSN, or DDSN employees related to the same, including but not limited to, DDSN policies for establishing directives, standards or regulations, procedures for establishing directives, standards or regulations, work or advisory committee correspondence or notes, drafts directives, standards or regulations, memorandums related to policies and procedures for establishing directives, standards or regulations or discussing any directives, standards or regulations, correspondence of any type, evaluations of any directive, standard or regulation, analysis of any establishing directive, standard or regulation, letters or correspondence, proposed, amended, or final directives, proposed, amended or final regulations, and proposed, amended or final standards.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO.: 07-CP-40-2187
	)	
Protection and Advocacy for the People	)	
with Disabilities, Inc.; et al,	)	
	)	
v.	)	AMENDED NOTICE OF TAKING ORAL
	)	DEPOSITION OF KATHI M. LACY AND
South Carolina Department of	)	SUBPOENA DUCES TECUM
<u>Disabilities and Special Needs; et al.</u>	)	

PLEASE TAKE NOTICE that the oral deposition of Kathi M. Lacy, in the above-captioned action will be taken before a Notary Public for South Carolina, or before some other officer authorized by law to take depositions, on the 9th day of July, 2009, at 10:00 a.m., at the offices of Richardson, Plowden & Robinson, P.A., 1900 Barnwell Street, Columbia, SC 29201, at which time and place you are hereby notified, requested and required to produce the said person for said examination on oral deposition. The examination on oral deposition shall continue from time to time and day to day until conclusion, and this deposition may be adjourned from time to time as necessary. You are further invited to attend and participate as proper under the Rules.

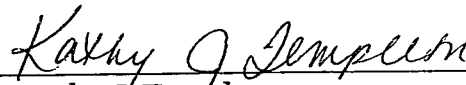

 C. Jo Anne Wessinger Hill
 RICHARDSON, PLOWDEN & ROBINSON, P.A.
 1900 Barnwell Street
 PO Drawer 7788
 Columbia, SC 29202
 (803) 771-4400

Columbia, South Carolina
 May 27, 2009

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO.: 07-CP-40-2187
	)	
Protection and Advocacy for the People	)	
with Disabilities, Inc.; et al,	)	
	)	
v.	)	CERTIFICATE OF SERVICE
	)	
South Carolina Department of	)	
<u>Disabilities and Special Needs; et al.</u>	)	

I, the undersigned, an employee of the firm of Richardson, Plowden & Robinson, P.A., attorneys for the Defendant, hereby certify that I have served the foregoing NOTICE OF TAKING ORAL DEPOSITION OF KATHI M. LACY, via first class mail, postage prepaid, to Plaintiff's attorney, as indicated below:

William H. Davidson, II
Kenneth P. Woodington, Esq.
1611 Devonshire Drive, Second Floor
PO Box 8568
Columbia, SC 29202


Kathy J. Templeton

Columbia, South Carolina
May 27, 2009

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF RICHLAND

Protection and Advocacy, et al, , Plaintiff

v.

SUBPOENA IN A CIVIL CASE

SC Dept. of Disabilities, et al, , Defendant

Case Number: 2007-CP-40-2187

Pending in Richland County

TO: Kathi M. Lacy, c/o William H. Davidson, II, Esq., Kenneth P. Woodington, Esq., PO Box 8568, Columbia, SC 29202

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION Richardson, Plowden & Robinson, PA 1900 Barnwell Street, Columbia, SC 29201	DATE AND TIME July 9, 2009, 10:00 AM

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

SEE EXHIBIT A ATTACHED HERETO

PLACE Richardson, Plowden & Robinson, PA 1900 Barnwell Street, Columbia, SC 29201	DATE AND TIME July 9, 2009, 10:00 AM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

DATE 5/27/2009

ATTORNEY/ISSUING OFFICER'S SIGNATURE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

CLERK OF COURT/ISSUING OFFICER SIGNATURE

DATE

PRINT NAME

PROOF OF SERVICE

SERVED	DATE May 27, 2009	FEES AND MILEAGE TENDERED TO WITNESS
	PLACE 1611 Devonshire Drive, Columbia, SC	☐ YES ☒ NO AMOUNT \$
SERVED ON		MANNER OF SERVICE first class mail
SERVED BY Kathy J. Templeton		TITLE legal assistant

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on May 27, 2009

Kathy J. Templeton
SIGNATURE OF SERVER

1900 Barnwell Street, Columbia, SC 29201
ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- i. fails to allow reasonable time for compliance; or
- ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- iv. subjects a person to undue burden.

(B) If a subpoena:

- i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trade secrets or otherwise, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that the claimant seeks to protect.

EXHIBIT A

YOU ARE REQUESTED TO PRODUCE all documents (1) referred by the Deponent or anyone assisting Deponent in preparing for his or her testimony; (2) known or reasonably known or reasonably available to you, regardless of whether such document are in your possession, custody, or control or in the possession, custody, or control of employees of the agency, your agents, subordinates, directors, divisions directors, supervisors, investigators, analysts, assistants, and representatives of the agency related to DDSN directives, DDSN standards, DDSN regulations, including notes, memorandums, emails, and; (3) all materials, as well as that maintained by you, your office, DDSN, or DDSN employees related to the same, including but not limited to, DDSN policies for establishing directives, standards or regulations, procedures for establishing directives, standards or regulations, work or advisory committee correspondence or notes, drafts directives, standards or regulations, memorandums related to policies and procedures for establishing directives, standards or regulations or discussing any directives, standards or regulations, correspondence of any type, evaluations of any directive, standard or regulation, analysis of any establishing directive, standard or regulation, letters or correspondence, proposed, amended, or final directives, proposed, amended or final regulations, and proposed, amended or final standards.

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF RICHLAND CASE NO. 07-CP-40-2187

PROTECTION AND ADVOCACY FOR
PEOPLE WITH DISABILITIES, INC., ET AL.,

Plaintiffs,

vs.

SOUTH CAROLINA DEPARTMENT OF DISABILITIES
AND SPECIAL NEEDS, ET AL.,
Defendant.

DEPOSITION OF: JOHN C. VAUGHN

DATE: April 26, 2010

TIME: 11:06 a.m.

LOCATION: Law Offices of Richardson,
Plowden & Robinson
1900 Barnwell Street
Columbia, SC

TAKEN BY: Counsel for the Plaintiffs
REPORTED BY: Susan M. Valsecchi, RPR, CRR
Certified Realtime Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFF

PROTECTION AND ADVOCACY FOR PEOPLE
3 WITH DISABILITIES, INC., ET AL.:

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10 SOUTH CAROLINA DEPARTMENT OF
DISABILITIES AND SPECIAL NEEDS, ET.
11 AL.:

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15
16 ALSO PRESENT:

17 Sarah G. St. Onge

18
19 (INDEX AT REAR OF TRANSCRIPT)

1 STIPULATION

2 It is stipulated by and among Counsel
3 that this deposition is being taken in accordance
4 with the South Carolina Rules of Civil Procedure,
5 Rule 30; that all objections as to Notice of this
6 deposition are hereby waived; that all objections
7 except as to form are reserved until the time of
8 trial.

9 * * * * *

10 MR. HAMM: For purposes of the
11 deposition, my name is Steve Hamm. With me is Jo
12 Ann Wessinger Hill. And the individual on the far
13 corner is --

14 MS. ST. ONGE: -- Sarah St. Onge.

15 MR. HAMM: I was not worried about the
16 Sarah part. St. Onge.

17 (Off-the-record discussion.)

18 JOHN C. VAUGHN

19 being first duly sworn, testified as follows:

20 EXAMINATION

21 BY MR. HAMM:

22 Q. For purposes of this deposition and so
23 that I am respectful to you, how would you prefer
24 that I refer to you?

25 A. However you're comfortable with is fine

1 with me.

2 Q. Is John all right?

3 A. Sure, yeah.

4 Q. I did not want to be presumptuous.

5 A. No, that's fine.

6 Q. This deposition is being taken because
7 of your previous service on the DDSN commission.
8 And my understanding is that you served from 2005
9 until sometime in 2009.

10 A. Yes.

11 Q. Okay. I know that you've had a your
12 deposition taken before; in fact, I read it. How
13 many other depositions have you had?

14 A. That's the only one.

15 Q. That's the only one. So this is your
16 second opportunity at judicial fame.

17 A. I hope not.

18 Q. As I indicated as we get started, the
19 court reporter will be recording what you say in
20 response to my questions. Number one, I want to
21 ask that you give me a verbal response, because
22 she'll be unable to indicate that you have nodded
23 your head in agreement or disagreement, so I need
24 you to answer verbally.

25 To the extent that I ask a long-winded

1 question and you get lost in the course of that
2 question, you just simply need to say, Steve -- or
3 Mr. Hamm, whatever you're comfortable with -- would
4 you say it again, or, I didn't understand the
5 question; and I will endeavor to be responsive to
6 your request.

7 A. Okay.

8 Q. For purposes of this proceeding, we are
9 taking this deposition in accordance with the Rules
10 of Civil Procedure.

11 MR. HAMM: Where is your client on --
12 do you want him to read and sign or what do you
13 want to do?

14 MR. WOODINGTON: Well, it's your call
15 if you would like to read it and sign it just to
16 correct -- you know, to make sure it's been
17 transcribed correctly or any other mistakes.

18 THE WITNESS: Oh, you mean the
19 transcript for today?

20 MR. HAMM: You don't have to do that.
21 That's your decision.

22 THE WITNESS: I think I did last time.

23 MR. WOODINGTON: You might as well just
24 go ahead and do it. It won't hurt anything.

25 THE WITNESS: Sure. I will read and

1 sign.

2 MR. HAMM: Okay. That would be great.

3 BY MR. HAMM:

4 Q. As you're probably aware, once we start
5 this deposition and we take a break -- and by the
6 way, at any time you want to take a break -- the
7 restrooms are immediately out this door and to the
8 right -- we'll be happy to do that.

9 But once we start the deposition, you
10 cannot have conversations about the deposition with
11 your lawyer. I'm not worried that you would. I'm
12 just reminding you of the way the rules work.

13 A. Okay.

14 Q. And that is intended to make sure that
15 your answers are your answers and are not the
16 answers of someone else.

17 A. Sure.

18 Q. Are you under the influence of any
19 medication or anything else that would affect your
20 ability to either understand my questions or
21 respond to them?

22 A. I'm not under the influence of any kind
23 of medication. I am taking Ibuprofen and I'm
24 uncomfortable physically, but I don't think it will
25 interfere. I'm recovering from surgery and have

1 another surgery scheduled this coming week. But I
2 don't think that will be a problem.

3 Q. Okay. Well, at any time we need to
4 take a break, having been through any number of
5 surgeries, I know exactly what you're talking
6 about, and we will accommodate you in any way that
7 we can.

8 A. Thank you.

9 Q. Is there any reason that the
10 medications or your physical discomfort would
11 affect your ability to answer truthfully?

12 A. No.

13 Q. Okay. This deposition is intended to
14 help the parties sort of better understand the
15 organization that you've previously served as a
16 member of the Commission.

17 Are you familiar with a lawsuit -- and
18 I'm going to hand it to you -- I'm going to read it
19 for the record -- entitled Protection and Advocacy
20 For People With Disabilities on behalf of various
21 individuals against the Department of Disabilities
22 and Special Needs.

23 It then goes on to name Mr. Butkus. It
24 names you because you were a current board member.
25 Let me just hand this to you. Are you familiar

1 with this lawsuit at all?

2 A. I know it exists.

3 Q. Okay. Do you recall when you first
4 realized that it existed?

5 A. I believe there was a briefing by
6 counsel in an executive session at the central
7 office when various legal issues were discussed.

8 Q. Okay.

9 A. And I seem to recall that this was
10 mentioned.

11 Q. Okay. Would you take a look -- look at
12 the first page. You'll see that it's at least
13 stamped in at the courthouse on April the 5th of
14 2007. The executive session to which you refer
15 would have taken place, you think, when?

16 A. After that.

17 Q. Okay. Shortly thereafter that?

18 A. I don't know that.

19 Q. Okay. Let me ask the following
20 question, but let me preface it by this: You are
21 represented by very fine counsel.

22 Questions that I ask you, I am not
23 asking for you to tell me what your counsel has
24 told you. There is a privilege there. We will
25 respect that privilege. So if I ask you about some

1 of these meetings, I am not attempting to find out
2 what Ken might have told you.

3 A. I understand.

4 MR. WOODINGTON: Or Will, for that
5 matter, or the substance of any conversations that
6 took place.

7 BY MR. HAMM:

8 Q. Right. Who was in that briefing? Do
9 you recall?

10 A. That would have been the
11 executive -- well, no, no. It would have been Will
12 Davidson, Tana Vanderbilt, and the commissioners
13 who were present that day. And I can't give you
14 that.

15 Q. That's fine. That's totally -- and
16 Tana at that point was the general counsel who had
17 followed the previous general counsel, right?
18 2007? That would be correct, I think. Mr. Hill, I
19 think, was he counsel?

20 A. It could have been in the transitional
21 time. I do remember there was someone else present
22 and then was replaced by Tans; and so I'm not 100
23 percent sure --

24 Q. That's fine.

25 A. -- which one of them was there.

1 Q. And that's not a problem. I'm just
2 trying to get a perspective. Before we discuss
3 this at all, what is your understanding of this
4 lawsuit --

5 A. This may be somewhat --

6 Q. -- to the extent that you have one?

7 A. This may be somewhat simplistic, but my
8 understanding is that there's a claim that the
9 promulgation of regulations might somehow have
10 brought some relief to certain consumers.

11 Q. One of the things I need to -- I meant
12 to mention. And that is, during the course of this
13 deposition, I may ask you a question to which
14 counsel says he raises an objection. His raising
15 the objection does not relieve you from the
16 obligation of answering. What he is doing, in his
17 best judgment, is protecting the record for
18 something at a later time. But simply because your
19 counsel has objected does not mean that you should
20 not answer the question. I just wanted to make
21 sure we're clear on that.

22 MR. WOODINGTON: And we're reserving
23 all objections except to the form of the question.

24 MR. HAMM: Yes, yes.

25 BY MR. HAMM:

1 Q. Let me go -- before we get into that,
2 let me go ahead now and just sort of do a general
3 background. I know the court reporter -- as you
4 have stated on the record, your name is John C.
5 Vaughn. The C stands for?

6 A. Carroll.

7 Q. Carroll, C-a-r-r-o-l-l.

8 A. Like the governor.

9 Q. Just exactly what I was going to ask
10 you.

11 A. Yes.

12 Q. Have you ever been known by any
13 different name?

14 A. Than that?

15 Q. Yes, sir.

16 A. No. When I was little, my relatives
17 called me by my middle name. When I joined the
18 service, I went by my first name. It was required.
19 But that's my name.

20 Q. And where and when were you born?

21 A. I was born in September of 1948 in
22 Louisville, Kentucky, born and raised in Kentucky.

23 Q. Bluegrass kind of guy.

24 A. Yes.

25 Q. What is your social security number?

1 And the reason I'm asking you this, again, because
2 we do respect privacy. Sometimes issues come up as
3 to whether or not the individual that you're
4 deposing is, in fact, the individual who says that
5 their name is -- I'm not doubting that. But for
6 that purpose, what is your social security number?

7 A.

8 Q. Okay. And where is it that you live
9 now?

10 A. I live in Taylors, South Carolina. Do
11 you need the address?

12 Q. Yes, sir.

13 A.

14 Q. How long have you lived there?

15 A. I have lived there since November of
16 '09.

17 Q. Okay. Is the address that you live at
18 the same address that shows on your driver's
19 license?

20 A. Yes.

21 Q. Is that your own home?

22 A. Yes.

23 Q. Okay. Where did you live before that?

24 A. I lived in the parsonage of Faith
25 Baptist Church. And the address was 117 Front Line

1 Drive, Taylors.

2 Q. Am I right in -- isn't that the church
3 that Mike Fair attends?

4 A. Yes.

5 Q. And that's where you --

6 A. -- were the pastor.

7 Q. Right. And that's where you met Mike,
8 as I understand it.

9 A. Yes.

10 MR. WOODINGTON: Off the record just a
11 second.

12 (A brief recess was held.)

13 BY MR. HAMM:

14 Q. Do you have any relatives in Richland
15 County?

16 A. No.

17 Q. Do you have any relatives in South
18 Carolina?

19 A. Yes.

20 Q. And who would they be?

21 A. Well, of course, the family that lives
22 with me immediately, my wife and our adult
23 daughter, who is disabled, and my son Joe and his
24 family.

25 Q. Where do they live?

1 A. They live in Taylors. He lives at 114
2 Bitter Nut Drive.

3 Q. What does Joe do?

4 A. Joe's a pastor.

5 Q. Oh, my goodness.

6 A. He's a youth pastor at the church I
7 pastor.

8 Q. Very nice.

9 A. And I didn't do that; the people did.

10 Q. Do you come from a line of --

11 A. My father was a methodist pastor.

12 Q. So you all are truly continuing the
13 Lord's work in your family.

14 A. My older daughter's husband is a
15 Presbyterian pastor.

16 Q. Oh, my goodness. That's wonderful. I
17 go to East Minister Presbyterian Church and was
18 baptized there, along with my first born child, so
19 it's very special to me.

20 Talk to me about your education.

21 A. I attended Cumberland College in
22 Williamsburg, Kentucky, for two years where I met
23 my wife. I joined the Air Force in 1968 and served
24 until 1975.

25 Q. What did you do in the service?

1 A. I consumed my body working on jet
2 fighters --

3 Q. Okay.

4 A. -- and did that for seven years, two
5 tours, one in Korea one in Korat, Thailand, and
6 became a Christian while I was in Thailand and was
7 called to preach and got out of the service. I had
8 done a third year of work at the University of
9 South Carolina. And then I moved to the Greenville
10 area and did my undergraduate work, finished up a
11 BA in religion at Bob Jones University, and then I
12 completed a master of ministry, received a
13 doctorate of divinity; and I am finishing a
14 dissertation. I have until May of next year on
15 another doctorate of pastoral theology.

16 Q. Good for you. Now, tell me how you
17 got -- Cumberland -- how did you get ultimately to
18 USC?

19 A. Well, the military. In 1968 -- do you
20 know what was going on?

21 Q. I do, I was finishing up my college and
22 the Vietnam was roaring along.

23 A. Yes, Tet offensive was that year. So I
24 joined up and was moved in various
25 places -- Florida, Texas, Myrtle Beach. And then,

1 of course, Korea.

2 And after I came back from Thailand, I
3 came back to Myrtle Beach, started going to church
4 there. And the pastor there recommended that I
5 come to Bob Jones University. So that's how I came
6 to Greenville. I took that small church after I
7 did my undergrad degree and was planning to move
8 back to Kentucky but ended up pastoring that church
9 for thirty years.

10 Q. I have a friend who told me, he said,
11 Steve -- and he worked for a power company. He
12 said, yeah, I joined the power company until I
13 could get a good job; and that was 42 years ago.

14 A. That's the way it works.

15 Q. When did you -- remind me how it works,
16 in terms of, you went to Bob Jones, you graduated
17 in what year?

18 A. I graduated in '77.

19 Q. And at that point with that degree, do
20 you require additional studies in order -- I'm
21 trying to understand.

22 A. In order to be a minister?

23 Q. Yes, sir.

24 A. If you want to know what you're doing.

25 I was able to start a very small

1 mission church, about 45 people. I continued my
2 seminary work while I was pastoring.

3 Q. I was on a church committee at our
4 church that brought two young -- a husband and wife
5 team that were studying in Richmond at -- it
6 suddenly went right out of my head. So you
7 graduated from Bob Jones in --

8 A. '77.

9 Q. - '77.

10 A. And then I was ordained in '78 and
11 continued my studies, and still doing it.

12 Q. A never-ending opportunity?

13 A. Lifelong opportunity.

14 Q. Never-ending opportunity. Any other
15 degrees or certifications? I mean, obviously
16 you're still working on your -- anything outside
17 the field of religion?

18 A. As far as education is concerned?

19 Q. Yes, sir.

20 A. No, I wouldn't -- no, no degree -- no
21 degreed program.

22 Q. Now, what is your current status?

23 A. I'm the pastor emeritus.

24 Q. Which means?

25 A. It means they like me.

1 Q. So you can hang around?

2 A. Right. I'm the leader of our faith
3 group and the president of the Fundamental Baptist
4 Fellowship. And I publish in magazines and write
5 and do intenerate preaching as I'm able.

6 Q. Is that a paid position?

7 A. Part time. But the church cares for me
8 also.

9 Q. And tell me -- you told me you met your
10 wife at Cumberland?

11 A. Yes.

12 Q. Tell me about her.

13 A. My wife is in failing health.

14 Q. Oh, I'm sorry.

15 A. I'm her primary caregiver, she and our
16 daughter who is disabled. We met at Cumberland.
17 We were both studying music and so...

18 Q. So you're going to break out in song?

19 A. Probably not. Actually, I played an
20 instrument.

21 Q. Okay. And which was?

22 A. Well, I have to tell you the definition
23 of a gentleman first. And that's a man that knows
24 how to play the saxophone that won't, okay? But I
25 played reed instruments and she was a voice major.

1 Q. I want you to know my great gift to my
2 church: I don't sing.

3 MR. WOODINGTON: I thought it was an
4 accordion, myself.

5 MR. HAMM: I would like to see that.

6 MR. WOODINGTON: No, a gentleman is
7 somebody that doesn't play an accordion.

8 THE WITNESS: We often say that in
9 Kentucky. The phrase, praise him on a string
10 instrument, has a whole new meaning.

11 I was, of course, married when we went
12 in the service. And we spent many years together.

13 There was a life-changing event in our
14 home in 1978, just shortly after I became the
15 pastor, we had a house fire which almost took the
16 life of our daughter and my wife. And they were in
17 the hospital for a long, long time.

18 And during the hospitalization, my wife
19 contracted hepatitis C from a blood transfusion and
20 she now has cirrhosis. And she is essentially
21 disabled. And then our daughter, because of her
22 physical injuries, has been disabled since that
23 time. And so one of the main things I do is take
24 care of them.

25 Q. You got married in what year?

1 A. '68.

2 Q. Was she from -- where was your wife
3 from?

4 A. Kentucky.

5 Q. Okay.

6 A. She was from Southeastern Kentucky.

7 Q. You've made reference to your -- to a
8 son and you've made reference to your daughter.
9 Any other children?

10 A. We raised five children. Our oldest
11 daughter lives in New Jersey and she has four
12 children. One of them has special needs.

13 Q. Okay.

14 A. And we have a son who lives in New
15 Hampshire. We have our daughter Becky who lives
16 with us. We lost our fourth son in 2008, September
17 of 2008, in Greenville. He was crossing Wade
18 Hampton and was struck by a car.

19 Q. How old was he?

20 A. 28. He left a wife and eight-year-old
21 son.

22 And then we have a younger son, the one
23 that is the pastor, the youth pastor in our church.
24 So we have four surviving children and eight
25 grandchildren.

1 Q. The Lord has called upon you to be
2 strong.

3 A. He is our strength.

4 Q. And it's pretty clear to me that the
5 woman that you're married to -- I tell my wife that
6 I'm her favorite first husband. And are you still
7 in that status too?

8 A. Yes, yes. Only marriage for both of
9 us.

10 Q. Now, how is it that you got yourself
11 denominated to be emeritus? I've very interested
12 in that. I've been around here a long time and I'm
13 wanting to see if I can't pursue that.

14 A. Well, my wife had a serious crisis in
15 her health in '07 -- actually in '06, Christmas of
16 '06. And we didn't think she was going to survive.
17 Our personal physician and dear friend, Deacon
18 Chairman, had died of cirrhosis in '05. And he had
19 diagnosed her and told her she had probably five to
20 seven years. And that was in 1998. So when the
21 crisis came in '06, we thought that was going to be
22 it. So I knew that I needed to make some changes.
23 And the 30th anniversary seemed like a good time to
24 redirect my interest and focus and
25 responsibilities. So I stepped down and told the

1 folks to form a committee and find another man,
2 which they did.

3 And because of the fact that our
4 daughter had grown up there and because of the fact
5 that the whole church had come together while we
6 were there, we felt like that if they would allow
7 us to stay, it would be the best support that we
8 could receive during this next phase of our lives.
9 And so they were happy to do that.

10 Q. Without getting into any details, am I
11 understanding that the fire, not in addition to
12 injuring your wife, is the cause of the
13 disabilities of your daughter?

14 A. Yes.

15 Q. The fire itself?

16 A. Yes, yes. Her disabilities are
17 physical. She has graduated from college and is
18 now in grad school.

19 Q. Good for her.

20 A. Yeah.

21 Q. Do you have any special involvement in
22 any state religious or political organizations?

23 A. No real involvement other than that I
24 lead an International Fellowship of Pastors. And
25 the home office is in my home. And the office

1 manager, who is my assistant, has a home office
2 also.

3 Q. I am under the impression that there is
4 a John Vaughn Evangelistic Association. Is that
5 yours?

6 A. Yes. I started that -- incorporated
7 that in 2008 to be the umbrella of any future
8 ministry.

9 My wife and I wrote a book some years
10 ago, and that book is managed. And we have some
11 other literature that we have produced and hope to
12 do some more writing. And as I do intenerate work,
13 it allows me to process any offerings or travel
14 expenses and things like that. I have not drawn
15 any income from that association. I do hire an
16 assistant to help me with that association,
17 however.

18 Q. And the income for that association is
19 your book and offerings from individuals or
20 churches in which you come and preach?

21 A. Yes.

22 Q. I'm certainly aware that you, for a
23 period of time, have served on the Commission For
24 DDSN?

25 A. Yes.

1 Q. Before we get into that, any other
2 boards or commissions?

3 A. I've served on some county things. I
4 was the chairman for the Human Relations Commission
5 back in the eighties.

6 For three years I -- I was the chairman
7 for three years. I can't remember how long I
8 served in that.

9 I was appointed to the Greenville
10 County Sex Education Advisory Commission, or that
11 committee, I guess it was, and served on that for
12 two or three years.

13 Q. The human relations, what did
14 that -- what did that address?

15 A. Human Relations Commission was formed
16 during the days of public school segregation and
17 went on to have some extended value even after that
18 segregation was complete, in that it built on the
19 race relations issue in Greenville.

20 Q. The Human Relations Commission was
21 supporting segregation?

22 A. Oh, no, no, no, no.

23 Q. Fighting segregation?

24 A. No, it was helping to develop ways of
25 interaction and improvement of relationships.

1 Q. So it's improving integration, I guess,
2 is an appropriate --

3 A. Yes, and of course all of that had
4 already been accomplished before I came on it. And
5 then it was the establishment of improved
6 communications and finding ways to help people
7 communicate.

8 And shortly after I was appointed to
9 that commission, the executive director moved to
10 another state; and so the primary task that I had
11 was to find another executive director while we
12 were there.

13 Q. And that entity was a subdivision of
14 the county?

15 A. It was a county commission.

16 Q. And what other kinds of background did
17 folks have that you served with?

18 A. Educators, other people that
19 volunteered for various things, but people who were
20 interested in that kind of thing, community
21 leaders.

22 One of the men that served on the
23 commission stepped down to become more active on
24 the Erskine board while I was on that board, that
25 sort of thing.

1 Q. Any other associations or office
2 positions you've held?

3 A. I wouldn't call it an association or
4 office position; but public service, I have served
5 for 23 years as a senior chaplain of the Greenville
6 Police Department.

7 Q. I helped form the South Carolina Law
8 Enforcement Program, and we now have a state
9 chaplain where we respond to needs of law
10 enforcement; so after the deposition, we may talk
11 about that.

12 A. I would like to.

13 Q. I would be pleased to do that.

14 A. Clay Water still with them?

15 Q. No, our chief chaplain now -- well, he
16 might be, but our chief chaplain is a gentleman by
17 the name of Eric Skidmore.

18 In fact, he and his wife are the -- I
19 served on our church committee in 1988 when we
20 called them out of seminary. And I wish I could
21 think of the name.

22 MR. WOODINGTON: Presbyterian School of
23 Theology in Richmond.

24 MR. HAMM: You're good.

25 BY MR. HAMM:

1 Q. I told you you brought a good guy.
2 That's great. We'll have that conversation and
3 I'll make you aware of that. I might get you to
4 talk at one of our meetings.

5 Okay. Let's now talk about this
6 lawsuit and this deposition.

7 A. All right.

8 Q. What did you do to prepare for this
9 deposition before you walked in this room and had
10 an opportunity to meet me and sit in this chair and
11 respond to questions?

12 A. Well, I tried to remember the timeline
13 of my involvement with the development of policies
14 and the review of the statute that mentions
15 promulgation of regulations with regard to the
16 commission. And I did not review the deposition
17 that I gave, I think it was, last year; I didn't
18 have time. But I reviewed --

19 Q. Don't worry; I did.

20 A. All right. Well, I reviewed the things
21 to kind of remind me and tried to get a timeline.

22 Q. Did you review the lawsuit itself?

23 A. It wasn't this big. What I got was a
24 summary or something like that. You know what?
25 Actually, what I read was a summary of the

1 response.

2 Q. And who prepared that document?

3 A. Counsel for DDSN.

4 Q. Is that a privileged document?

5 MR. WOODINGTON: No. I mean, just to
6 make this clear, it was our summary judgment brief,
7 that's all it was.

8 BY MR. HAMM:

9 Q. Oh, okay.

10 A. Yeah, so I read that, but I haven't
11 read this document.

12 Q. Okay. Without asking you anything you
13 said, did you meet with counsel to prepare for this
14 deposition?

15 A. I got directions over here. I met over
16 there and he basically said, here is what's going
17 to happen, and we got in the car and came.

18 Q. Okay. Anybody else that you might have
19 talked to to prepare for this deposition?

20 A. No.

21 Q. Okay. And I already know that you've
22 had your deposition -- it was on June the 10th,
23 just to remind you -- in the Mims versus Babcock
24 Center. I have no involvement in that case, but I
25 did read the deposition. Your counsel made that

1 available to us. Thank you.

2 Have you ever been involved in any
3 lawsuits? Have you brought a lawsuit or has anyone
4 brought a lawsuit against you or your church?

5 A. Not against the church. May I ask a
6 question?

7 Q. Of course.

8 A. All right. When you say bring a
9 lawsuit, if someone has served notice but then
10 settled, would that be considered bringing a
11 lawsuit?

12 Q. It might be; but for purposes of my
13 question, did you initiate the lawsuit or someone
14 else did?

15 A. Someone else.

16 Q. And that lawsuit was ultimately
17 resolved before it got in the middle of the courts?

18 A. Yes.

19 Q. And without getting the details of
20 that, the issue generally was what? What was the
21 dispute?

22 A. There was another child that we were
23 keeping for the weekend when we had our fire and
24 that child --

25 Q. Was injured?

1 A. -- was injured. And my insurance
2 company wouldn't cooperate. And so they had to
3 bring suit against me to motivate my insurance
4 company to produce.

5 Q. And they did, I hope.

6 A. Yes, they did.

7 Q. Good, I'm glad to here that.

8 Any other lawsuits?

9 A. No.

10 Q. Have you ever heard of Protection and
11 Advocacy for People with Disabilities?

12 A. Yes.

13 Q. How have you heard about that?

14 A. They attended meetings. They -- well,
15 I started to say they each made presentations. I
16 can't be sure they made presentations, but I have
17 heard them introduce themselves at DDSN commission
18 meetings and have had conversations about P&A.

19 Q. What is your impression of that
20 organization?

21 A. That they exist to insure the
22 protection of people with disabilities and to
23 advocate for them when needed.

24 Q. Now, based on what you've just told me,
25 talk to me about sort of the attitude you brought

1 when you began your service in 2005 to the
2 commission. Was it a similar attitude? Different
3 attitude?

4 You just described the protection and
5 advocacy group and what they did. Is that a role
6 you undertook as a member of the commission or did
7 you have a different role? Help me understand what
8 you were bringing to the commission.

9 A. My motivation for involvement in the
10 commission was the fruit of many years of that
11 activity, that same protection and advocacy. And
12 the role that I tried to achieve on the commission
13 was one of protection and advocacy, and used to be.

14 Q. When I read your deposition from last
15 June, there's reference that your memory was that
16 you were called by Governor Sanford to possibly
17 serve on that commission?

18 A. I had known Governor Sanford as a state
19 representative and then when he was in congress and
20 then later in his role as governor.

21 MR. WOODINGTON: This is Governor
22 Campbell?

23 THE WITNESS: Sanford.

24 MR. HAMM: No, we're talking about
25 Sanford.

1 MR. WOODINGTON: Oh, okay. I'm sorry.

2 MR. HAMM: Governor Sanford? You know,
3 the Argentina traveler?

4 MR. WOODINGTON: I had forgotten that
5 he was -- he wasn't in the state house.

6 MR. HAMM: No, he was not a member of
7 the state house.

8 BY MR. HAMM:

9 Q. Carol Campbell, did you ever know Carol
10 Campbell?

11 A. Oh, yes.

12 Q. You may be getting --

13 A. I may be, sure enough.

14 But in our -- I was the president of
15 the South Carolina Association of Christian Schools
16 for 17 years. We hosted a legislators breakfast
17 once a year. He attended those meetings. That's
18 how I met him.

19 Q. Okay.

20 A. I don't know in what role he attended.
21 He may have been coming as a U.S. congressman or
22 something, or just in the area, or friends of
23 people who were coming. But after he became
24 governor, as I was the president of the thing, he
25 would often come and sit beside me and we would

1 visit and talk.

2 Q. Was he aware of the unfortunate
3 circumstance of your daughter --

4 A. Yes, yes.

5 Q. -- and your wife?

6 A. Yes. And my role, even in becoming
7 involved in that association, was because of my
8 advocacy for special education. I founded a school
9 for special needs children in 1981, which still
10 exists.

11 Q. Where is that?

12 A. It's associated with our church. It's
13 called the Hidden Treasure Christian School.

14 Q. And because of my role with SCACS,
15 South Carolina Association of Christian Schools, I
16 eventually was elected to the board of the American
17 Association of Christian Schools. And that is
18 probably the role in which I visited Governor
19 Sanford at times.

20 And I often visited the legislators in
21 Washington. And I may have mistakenly thought my
22 visits to him were in that role. So at any rate,
23 somehow I made contact with him.

24 Well, then, he, through an aid or
25 somebody, got word that he was interested in my

1 serving on this commission. And I met him at one
2 of those legislators breakfasts here in Columbia
3 and thought that maybe I could have more impact on
4 special education through that role than I could
5 even through my role as the president of the South
6 Carolina Association of Christian Schools. So I
7 told him I would serve. I stepped down from that
8 role and accepted this role in '05.

9 Q. Did you indicate to him -- did you
10 initiate that you had a desire to serve on the
11 commission or you were responding to the governor
12 identifying you as possibly someone who would
13 serve?

14 A. I did not initiate it. I did not know
15 that this department existed in those days.

16 Q. What is the role of a commissioner, as
17 you understand it?

18 A. As I understand it and as it was
19 explained to me --

20 Q. By?

21 A. -- by my senator and those that
22 confirmed me to the commission --

23 Q. So your senator is referring to Senator
24 Mike Fair?

25 A. Yes, and other friends in elected

1 office.

2 -- that the role of the commission is
3 to govern the agency by policy. And the individual
4 commissioner's role is to become as informed as
5 time allows, and influence policy over the
6 department, and that that policy is to be an
7 application of statute made by the legislature. So
8 the commission is the agent of the legislature in
9 governing the department.

10 Q. Now, when you arrived in 2005,
11 Dr. Butkus was the --

12 A. Yes.

13 Q. Had you known him before in any
14 capacity?

15 A. No, no.

16 Q. So your first exposure to him was?

17 A. When I showed up at the first meeting.

18 Q. In fact, I read and I wasn't exactly
19 clear about it -- and I will ask you now -- when I
20 was reading that other deposition, there was
21 reference that you started attending before you
22 were confirmed. I didn't really understand what
23 that meant.

24 A. There was a training session -- they
25 call it a work session -- that occurred in either

1 January or February -- I'm thinking February; it
2 could have been January -- of '05.

3 And because there was a vacancy and
4 significant training taking place, I was told by
5 the governor's office -- I'm sorry, I don't
6 remember the name. But the lady who talked to me
7 from the governor's office said, you will be
8 confirmed when it gets on the schedule and the
9 senate interviews you and swears you in and all of
10 this sort of thing, but you can serve as the
11 governor's appointee, since you're filling a
12 vacancy, immediately.

13 And so the first meeting I went to was
14 that winter work session. And as I watched other
15 commissioners coming on after me, I realized how
16 typical my introduction was. I had questions about
17 everything, because I didn't have a clue what we
18 were doing. And people came later and did the same
19 thing. So I saw that there was a lot of time
20 consumed in bringing newbies up to speed, as it
21 were.

22 Q. The training that you received, was
23 that a formal process or was that -- I'm just
24 trying to understand, when you use the word
25 training, what does that mean?

1 A. Information about the department, about
2 who was who and who was responsible for what. And
3 the whole -- the whole DDSN culture, we
4 learned -- I was confused by this term consumer.
5 And I thought, who are the consumers? And the
6 consumers, of course, were often referred to, by
7 those outside and inside, as clients, or I even
8 heard the word patient used; but there was a strong
9 attempt to get everybody to use the word consumer
10 out of courtesy for the people.

11 Q. Based on your knowledge and experience,
12 is that the appropriate term, in your mind as a
13 commissioner?

14 A. That's the term that I learned to use
15 and that was commonly used and I see why it was
16 used; but those were the kinds of things we were
17 being taught. And then we were also being taught
18 where to find the statutes. We were given a big
19 thick book of statutes and the bylaws and the
20 then-existing policy and directives.

21 And I don't remember the specific
22 subjects that were talked about in that particular
23 training session because I attended two of them a
24 year thereafter. And those are the kinds of things
25 that were discussed.

1 Q. One of the things that you said that
2 you sort of learned was about the culture. What
3 does that mean?

4 A. The way of communicating, the way
5 information flowed, the time that it took to get
6 things done, things like that. And I don't want to
7 ramble on. If you are heading in a direction, I
8 don't want to, you know, change directions here.
9 But during the first two years of my service, I
10 really was in a learning curve.

11 And I came to see that much of what was
12 taking place in the commission meetings was
13 staff-driven, can I say? The agendas were filled
14 with presentations which were informational or
15 which were related to acknowledgment of
16 achievements and recognition of consumers who had
17 received various kinds of awards.

18 And so there was a lot of time
19 necessarily spent on the motivational components, I
20 can say, of the commission showing appreciation for
21 various people and for various consumers. And all
22 of that is important and it needed to be done, but
23 it sure did take a lot of time.

24 And after a couple of years, I began to
25 appeal for more commission input on those agendas;

1 and the chairman, the new chairman, did too. And
2 it began to happen.

3 Q. The new chairman was?

4 A. Bobby Harrell.

5 Q. That's the brother of representative
6 Harrell, I believe?

7 A. No. And a lot of people think that
8 they are related. I don't think they are.

9 Q. I have always assumed they were, so
10 that's news to me.

11 A. Yeah. Well, most people assume they're
12 one and the same person.

13 Q. Well, I have never assumed that.

14 A. Many people do. But I don't think they
15 are, not that I know of. But Bill Alexander was
16 the chairman when I came on. But after about a
17 year or so, he stepped down and took a position on
18 a hospital board somewhere.

19 Q. I want to sort of go back over some of
20 the things that you said.

21 A. Sure.

22 Q. You talked about presentations. What
23 kind of topics would those presentations address,
24 to the extent you remember?

25 A. Well, for example, there would be

1 somebody who was the head of the brain injury
2 alliance, or someone who would be the leader of an
3 association of providers or others who would
4 regularly attend meetings.

5 And in order for us to have an
6 opportunity to know who they were and what they did
7 and what their connection was to people with
8 disabilities, they would be scheduled to make
9 presentations. And then --

10 I'm sorry?

11 Q. No, go ahead.

12 A. And so that's what I mean by
13 presentations.

14 Q. And they were scheduled because the
15 commission would ask for that or the staff would
16 think, well, maybe we ought to have a presentation?
17 I'm just trying to get a sense.

18 I'm hearing you say that after a couple
19 of years you were trying to adjust the agenda to
20 more issues of -- I'm not trying to put words in
21 your mouth -- of greater interest or concern to the
22 commission.

23 A. I wouldn't say greater interest or
24 concern. Here is what I would say. We were asking
25 for education. We were asking to know what's going

1 on in the state, who is doing what, who are our
2 peers in this business, as it were.

3 And so I think that the scheduling of
4 those kinds of presentations was probably
5 responsive. I'm sure it was responsive to our
6 request for information and input, so we could
7 learn more about it.

8 But when we got into policy -- I don't
9 want to say revision. I guess you could say
10 revision. When we got into policy work, we needed
11 time to work, and we didn't have enough time to
12 work as volunteers.

13 Q. Give me an example of policy work.

14 A. Okay. The second year, '06, a number
15 of us began to observe the cumbersome, redundant,
16 unclear documents that had been collected over
17 several years that were called commission policies.
18 There were whole statements drawn right out of the
19 bylaws and written into the policies. There were
20 statements drawn right out of the statutes and
21 written into the policies.

22 Q. Who wrote those?

23 A. The previous commission members. In
24 other words -- and it was obvious to me -- I can't
25 speak for anybody but myself -- but I produce and

1 edit a magazine and I have done some writing -- and
2 I notice the way things are phrased. I do not know
3 how to communicate in legal language, okay, but I
4 know how to make a sentence make sense, okay?

5 Q. And you were confronting sentences that
6 did not?

7 A. I couldn't understand them. I mean,
8 and as we talked about them, I thought, why is that
9 in there? And I began to believe that some of what
10 was in those existing policies was reaction to an
11 obsolete situation, that something had come up and
12 somebody wanted to make sure that it was dealt with
13 in some visible way and so they wrote it into a
14 policy, when a little more study would have
15 revealed that that situation had already been
16 addressed in policy, either statute or previous
17 policy.

18 So, clearly, there was some reactionary
19 language that seemed to over-emphasize one thing
20 that might have just been referred to in a previous
21 document or something like that.

22 So we then were introduced -- and I had
23 some previous experience with the Carver model of
24 policy governance.

25 Q. Carver?

1 A. Carver. John Carver -- in fact, the
2 word policy governance belongs to John Carver.
3 When we speak of John Carver's model of policy
4 governance, that in itself is a redundancy because
5 John Carver invented a thing called policy
6 governance. And he has written several books on
7 it. I had some familiarity with it through some
8 previous service. A couple of other ministries
9 that I'm involved with --

10 Q. Excuse me for interrupting, but what's
11 the time frame of his writings?

12 A. Over the last ten, maybe 15 years.
13 That's a guess.

14 Q. So relatively recent in the scope of
15 things, writings?

16 A. Yes. But also I would say
17 revolutionary in its adoption into government
18 agencies worldwide and fortune 500 companies. And
19 it has had a significant impact during the time
20 that has been introduced. And Carver has a partner
21 who is with the Cadbury people, and he's one of the
22 Cadburys.

23 Q. The Cadbury chocolate people?

24 A. Yes, in the United Kingdom. And so
25 they work together. Cadbury does the British and

1 European part of it and Carver does the part of it
2 over here, but they both travel worldwide.

3 Briefly stated, the Carver model of
4 policy governance explains how governance is
5 established through policy. And Carver simplifies
6 the relationship between boards and staff.

7 Carver -- the two books that were
8 purchased for the DDSN commission in '06 were
9 Boards That Make a Difference. And the other one,
10 which was something about policy governance, I
11 can't remember the title of that book.

12 But we had a man whose name I can't
13 remember who was a professor at USC and a lecturer
14 and consultant on this model of policy governance
15 who came to our work session in 2006. And he gave
16 us the lecture and the presentation on how to
17 understand this model.

18 And he, I think, may have given us the
19 introduction and then came back later and did
20 training, trained the commission, in understanding
21 this.

22 And at the end of that training
23 session, the commission unanimously voted to
24 implement John Carver's model of policy governance
25 in DDSN.

1 After that, the chairman, who according
2 to our bylaws -- their bylaws I should say,
3 according to the DDSN bylaws -- appoints committee
4 chairmen -- the chairman appointed me to chair a
5 committee to establish the policy governance model.

6 My specific task was to take existing
7 policies and to take their substance and convert it
8 into policy governance format according to Carver's
9 writings.

10 Q. Now, the reference to Carver, is
11 that -- was that concept or proposal, was that
12 originated by you or how did that -- did you bring
13 that concept to the commission or was that
14 something that was already there or --

15 A. It was a consensus among those who were
16 already familiar with it. And then when introduced
17 to the commission, there was support and initially
18 enthusiasm for it. And here is why: I had some
19 familiarity with it prior to it. Stan Butkus had
20 some familiarity with it.

21 In the course of some discussions that
22 we were having in a work session at some point
23 prior to whenever that training took place -- I
24 don't know if that was in the summer or the winter
25 work session of '06, or maybe it would have had to

1 have been somewhere in '06, because I think we
2 actually approved the policies in the winter work
3 session of '07.

4 But there was some working familiarity
5 with it. And as we were looking at how difficult
6 it was to determine our specific duties in those
7 meetings by looking at existing policy, there was
8 an appeal for clarification, an appeal for
9 understanding how all of this was going to work.

10 And I can even speak to this matter of
11 promulgation of regulation when the time is
12 appropriate --

13 Q. We're going to get there.

14 A. -- but I don't want to lose this
15 thought.

16 Okay. I'm trying to answer your
17 question about how did it come about. When we
18 began to look at how cumbersome -- and, in the
19 opinion of some of us, ineffective the commission
20 was in doing its job of governing the agency -- we
21 knew we needed something that was cleaner and more
22 to the point, where the commission could speak with
23 one voice instead of seven and could communicate
24 with one executive instead of his entire staff,
25 which is what Carver argues for.

1 Under the Carver model -- and it's the
2 simple thing that all legislators are supposed to
3 do; they deliberate, they discuss, they decide.
4 And that decision becomes law. And the law talks
5 to everybody who has to obey it.

6 All right. Now, when policy is made or
7 when statute is written by the legislature, one of
8 the things they do is establish a commission. The
9 commission, then, is charged by them to flesh out
10 in policy what the department is supposed to do.

11 And that policy, then, holds the
12 executive responsible for the implementation of
13 that policy; so that if a particular commissioner
14 is disgruntled with the second or third level down
15 in operations, that individual commissioner does
16 not go in and pull rank on a subordinate of a
17 subordinate of the executive, which creates
18 confusion. The commission --

19 Q. Is this similar to the military concept
20 of chain of command?

21 A. Essentially. I would say very much
22 like that. So that the commission speaks with one
23 voice to one individual. And the reason that so
24 many boards of corporations and other governmental
25 agencies have adopted this is it allows the

1 commission to have its deliberations, come up with
2 a decision, and give policy to a director; and then
3 the director, through his directives, implements
4 that policy.

5 Prior to the implementation of Carver,
6 there was considerable confusion and consumption of
7 time with individuals functioning as though they
8 spoke for the commission, when they were speaking
9 for themselves unofficially, to various people on
10 the staff; and the staff was trying to figure out
11 who was talking to whom and who had to obey whom.
12 And there was just a lot of time consumed there.

13 When we saw Carver, we thought, you
14 know what, this is the way to get this done, let's
15 implement this, let's clarify this language, and
16 then let's start implementing it.

17 And we understood, when we put those
18 policies into that format, that our continued work
19 would consist of policy making. Whatever we called
20 it, it would be policy making.

21 But after we implemented Carver, as
22 Carver warns in his book, you don't jump across the
23 chasm in two leaps. If you don't make it,
24 confusion reigns. And when we implemented the
25 policies, there was a firestorm of opposition, I

1 think, because the language of Carver was
2 misinterpreted.

3 And we didn't get much further until I
4 got canned, and some other people did too. Can I
5 rephrase that? No, it's already in there. Until I
6 was asked to step down.

7 MR. WOODINGTON: Could we take a break
8 at this point?

9 MR. HAMM: Absolutely.

10 THE WITNESS: Good idea.

11 MR. HAMM: I'm happy to do that
12 personally.

13 THE WITNESS: I thank you for letting
14 me get that statement out, because I wanted --

15 THE COURT REPORTER: We're off the
16 record?

17 MR. HAMM: Off the record.

18 (A brief recess was held.)

19 BY MR. HAMM:

20 Q. Okay. We're back on the record. Prior
21 to the break, you were talking to me about your
22 earlier years on the commission and you gave me a
23 fairly comprehensive answer dealing with the Carver
24 model of policy governance.

25 Do you remember that?

1 A. I believe I was responding to a
2 question about how we got into the review of
3 previous policies --

4 Q. Right.

5 A. -- and came to adopt Carver. So my
6 specific answer was intended to be that it was
7 somewhat of a consensus.

8 Q. Okay.

9 A. And was adopted unanimously. And then
10 I was assigned to do the editorial work.

11 Q. You used the word firestorm. What were
12 you referring to?

13 Are you talking about the response
14 after the Legislative Audit Council Counselor's
15 Report?

16 A. No. That may have been somewhat
17 unprofessional of me to use that term, but there
18 was -- there was a misunderstanding on the
19 commission of --

20 Q. With regard to policy?

21 A. -- with regard to a specific phrase
22 about the executive's authority.

23 Q. And the phrase was?

24 A. The phrase was shall make all
25 decisions, direct all matters -- I can't quote it.

1 It's in the policy about the executive's authority.

2 And it sounds like, to a person who
3 doesn't really understand the model and how the
4 four policies work together, it sounds like it is
5 giving sweeping overwhelming dictatorial authority
6 to the executive.

7 What it's actually doing is
8 establishing a policy that the director is
9 responsible for everything that happens under him.

10 Q. You made reference to the fact that you
11 have edited a magazine. Was that an unfortunate
12 choice of words on your part?

13 A. No, I do that. I produce a bimonthly
14 magazine named Front Line for our faith group.

15 Q. Right. And I understand that. What
16 I'm trying to go back to, you were talking about
17 the interpretation of a phrase. Were you the
18 author of this sweeping phrase of which there was
19 apparently some disagreement?

20 A. No, I took it right out of Carver.

21 Q. You took it right out of Carver?

22 A. Yes. I was under the impression that
23 when we bought the book, that Carver was trying to
24 get this language to be used in the implementation
25 of his model.

1 And if you will compare our policies to
2 statements from Carver's book, you would see that
3 some of them are taken whole cloth right out of his
4 examples.

5 Q. Now, who was on this committee that you
6 were -- you indicated that under the bylaws --
7 which I'm not sure that -- I'm familiar with the
8 bylaws in the three and a half years I've been
9 involved in this. I need to look at those.

10 But you made reference that the bylaws
11 authorized the chairman to appoint chairmen of
12 subcommittees. And under that process, I
13 understood that you were made the chairman of this
14 ad hoc committee on policy. Do I have it right?

15 A. The Carver implementation. I don't
16 know what the name of the committee was, but it was
17 a -- it was the policy governance committee.

18 Q. But did you understand that you were
19 directed to do it according to Carver? That's what
20 I'm just trying to be clear on.

21 Were you told, yes, we want you to be
22 the chairman of this policy committee, but we want
23 you to do it under the rubric and under the
24 concepts of Carver?

25 A. The commission unanimously voted to

1 implement Carver.

2 Q. Okay.

3 A. And the chairman appointed me --

4 Q. Lucky you.

5 A. -- yes, to the committee. And there
6 were two other commissioners.

7 Q. And who were they?

8 A. That was Mary Katherine -- Miller at
9 the time -- Bagnal -- and Otis Speight.

10 Q. Otis?

11 A. Speight, S-p-e-i-g-h-t.

12 Q. So the three of you.

13 Now, did y'all conduct meetings of that
14 committee, subcommittee? I'm not sure what you
15 call it.

16 A. A few.

17 Q. Okay. And how did you conduct them?

18 A. We tried to attach them to commission
19 meetings. I would call a meeting of the committee
20 prior to a commission meeting, usually a half an
21 hour.

22 Q. Using the commission meeting as the
23 device that brought everybody together, and while
24 we're here, let's have a meeting on this other
25 issue.

1 A. Yes, and then we would have our
2 assignments. We were to come back in, report on
3 our assignments and the work that we'd been able to
4 do, so that we could then make a committee report
5 to the commission.

6 Q. All right. Now, who created the
7 assignments?

8 A. I did.

9 Q. And how did you create them? I mean,
10 am I going to be able to find a document where it
11 says that Mary Bagnal, or Otis Speight, we need you
12 to do the following?

13 A. No, you won't find a document in there.
14 No document was generated like that. And I will
15 tell you what I did.

16 Q. Please.

17 A. Okay. I assigned the executive
18 director the responsibility to create a discussion
19 draft for me taking existing policy and showing me
20 what he thought it would look like if it were put
21 into Carver.

22 Q. This is Dr. Butkus.

23 A. Yes.

24 Q. Okay. I'm just trying to make sure I
25 keep names straight.

1 A. And that helped us to accomplish two
2 things. Number one, it helped us to understand how
3 he was thinking. And number two, it helped us
4 understand what staff might produce. Okay? I
5 brought those drafts to our first meeting. And the
6 rest of the meeting consisted of outrage at
7 Dr. Butkus.

8 Q. Hold on just a second, if you would.

9 A. Okay. Maybe I should be a little more
10 careful with you, but I'm trying to be honest with
11 you.

12 Q. I feel like you are. I don't have any
13 complaint or concern about that.

14 A. Okay.

15 Q. I'm reflecting on what you're telling
16 me. I'm writing some notes, but I'm also trying to
17 put this in the context of a time frame.

18 A. Sure, okay. This was in '06.

19 Q. One of the things that you and I will
20 be talking about are an Ends policy, which I think
21 is a reflection of this, what we're discussing --

22 A. Sure.

23 Q. -- governance process policy, executive
24 limitations policy and commission staff linkage
25 delegation.

1 A. Yes.

2 Q. You earlier made reference to four
3 documents. I believe this is what you're referring
4 to.

5 A. Yes.

6 Q. Okay. I just wanted to make sure.

7 A. Those are called, by Carver, the four
8 global policies -- global meaning they encompass
9 all policy.

10 Then there are to be other underlying
11 policies and/or the statute would call them
12 regulations that are within those global policies.
13 The global policies, as Carver describes them, are
14 like the large bowl in a nested set of bowls. And
15 they cover everything. There can be some
16 flexibility in policies and/or regulations within
17 the global policies, but the global policies have
18 to cover everything. And therefore they have to be
19 done first.

20 Q. Okay. And do you have a copy of those
21 original drafts that apparently created some --

22 A. By Butkus? By Dr. Butkus?

23 Q. Yes.

24 A. No. We threw them out and started
25 over.

1 Q. Now --

2 A. Now, I don't know about what I'm
3 supposed to keep and what I'm not, but I know we
4 couldn't use them. They were not at all what we
5 needed and they did not at all accomplish Carver.
6 So we thanked him and I went to work on drafts.

7 Q. Well, then, I will check through your
8 counsel to see if the original drafts exist, but
9 you don't have them.

10 A. No.

11 Q. Okay. That's not an issue between you
12 and me.

13 A. Okay.

14 Q. Tell me, again --

15 A. And we didn't use them.

16 Q. Okay. Help me with the time frame, if
17 you would.

18 A. Sometime in '06.

19 Q. You joined in --

20 A. '05.

21 Q. You joined in '05. Actually you're an
22 appointee -- as I'm remembering, you're attending
23 the meetings actually earlier in '05. You were
24 actually confirmed, I think, late that spring.

25 A. Yes, uh-huh.

1 Q. And then you're formally a member of
2 the commission to use a -- perhaps not totally
3 accurate.

4 Okay. So we now have moved into 2006
5 and there's this discussion of Carver and you get
6 some draft documents for Dr. Butkus? Did you get
7 them first?

8 A. I didn't get them for Dr. Butkus.

9 Q. No, no, from Dr. Butkus.

10 A. Yes.

11 Q. Did you get them first? At this point
12 are you the chairman of the subcommittee? I'm
13 trying to be respectful of what you were the
14 chairman of?

15 A. Yeah, I was the chairman of the
16 subcommittee.

17 Q. Okay.

18 A. And I got some -- I got a couple of
19 efforts from him. I said --

20 Q. Time frame?

21 A. '06. I'm thinking -- I'm thinking
22 summer --

23 Q. Okay.

24 A. -- because I think we had the -- I'm
25 not 100 percent sure of this, but I think we had

1 the training from the man at USC in the summer work
2 session of '06. It might have been in the winter.
3 I don't really remember.

4 Q. But the training came first?

5 A. Yes, but the training -- I do remember
6 that the training occurred after Mary Katherine and
7 Otis --

8 Q. Mary Katherine Bagnal?

9 A. Yes.

10 Q. And Otis Speight?

11 A. Yes, and Audrey Horn, who is deceased.
12 They came on. They replaced three commissioners
13 that were there when I came. And so they three
14 came on after I did. And so I had seniority by how
15 many ever days it was.

16 Q. You were the old guy?

17 A. Yeah. And so that's how come I got the
18 committee. But we went through several of these
19 things and we realized it wasn't going to work.

20 Q. What wasn't going to work?

21 A. That cumbersome language, that it
22 wasn't the policy. It looked more like a
23 directive.

24 Q. I'm not trying to be difficult. I'm
25 just trying to make sure I'm clear for the record.

1 You're referring now to the draft document from
2 Dr. Butkus?

3 A. Which I asked him for.

4 Q. Right. And I understand that. But I'm
5 just saying, when you're referring to that it
6 wasn't accepted, that's what you're talking about.

7 A. Yeah, it wasn't going to implement
8 Carver. It wasn't clear enough.

9 Q. And you communicated that to
10 Dr. Butkus?

11 A. Yeah. I said, you know, thank you for
12 your help, but we're going to go another direction.
13 But I do remember that first meeting that we had
14 was tense, because I had asked Dr. Butkus to help
15 me with it and to give me his thoughts on it. And
16 that's when I began to realize that a lot of our
17 time was going to be consumed with debate over him,
18 rather than our doing our task.

19 Q. And let me be -- I want to be careful
20 in my question. Are we talking about debate over
21 him? Is it personality? What are we talking
22 about? Did he have a fundamentally different
23 approach than Carver or your view of Carver? Is
24 that fair?

25 A. No. And I'm going to respectfully ask

1 not to be asked for names, but we spent the
2 majority of our time over the next two years with a
3 commissioner who seemed to have an agenda other
4 than the official agenda.

5 And when we tried to probe and find out
6 what this commissioner's concerns were, our work
7 was treated with the same -- let me be
8 careful -- our work was considered to be part of a
9 cover-up of something of which we were unaware.

10 Q. And I'm going to respect your request
11 about names, but let me -- let's just -- you have
12 used the term we, which I understood to mean the
13 commission as a whole.

14 A. Uh-huh.

15 Q. And then you used "our," which I
16 assumed to be the work of your subcommittee. Did I
17 hear you correctly when you used those two terms
18 just a moment ago?

19 A. I think -- yes, I think so.

20 Q. So there was concerns on the part of
21 the entire commission -- and I have no interest in
22 getting in the middle of personality issues. There
23 were concerns. And your committee assigned to
24 develop policy statements consistent with the
25 Carter approach were --

1 A. I would say translate existing policy
2 into Carver's structure.

3 Q. Okay.

4 A. We were not to develop policy at that
5 point.

6 Q. All right. Now, let me go back to a
7 document you don't have. I'm going to ask for it
8 through your counsel. But the draft that you
9 received from Dr. Butkus, why was -- give me a
10 fundamental -- why was it so unacceptable to you?

11 A. It wasn't that it was unacceptable.
12 It's that it was insufficient. It didn't clearly
13 communicate Carver's structure. I think what I was
14 looking for was kind of a bullet point list of all
15 the points that needed to be covered. If I may use
16 an illustration from my own profession, when a man
17 is put in --

18 Q. When you bring your life's work to the
19 room, I think you can do that.

20 A. Yes. When a man is structuring a
21 sermon, he has to master the words and the meaning
22 of the words in his text, the illustrations which
23 will truly flesh out the point he's trying to make.
24 And he assembles all of this information in front
25 of him. And then he stares at it and studies it

1 and prays over it long enough to see a structure
2 emerging through which he can communicate the
3 central point that he's going to try to make.

4 And, then, when he comes up with that
5 structure, he takes all of these component parts
6 and he hangs them on the various branches that they
7 belong on.

8 And when he gets all of his information
9 properly assembled, then he goes through and he
10 eliminates all of the non-essentials and all of the
11 repetitions and the redundancies so that when he's
12 finished, he can communicate clearly his point.

13 And that's the approach I took to this
14 project. And I was at the point of trying to
15 assemble all of the necessary information. I had
16 the old policies, but I wanted to make sure that we
17 had all of the necessary information so I could
18 start assembling them within these four global
19 policies and which one belonged here and which one
20 belonged there and which ones were redundant.

21 So basically I was taking the structure
22 of the Carver global policies and looking for a
23 place to put all of the necessary information. And
24 I couldn't discern the four global policies.

25 Q. In the documents you got from

1 Dr. Butkus?

2 A. Right, right.

3 Q. Was that -- and I'm trying to be
4 straight with you. Am I hearing that there was
5 some tension between the members of the commission
6 and Dr. Butkus as a result of this?

7 A. No, there was tension between a
8 commissioner and Dr. Butkus.

9 Q. That commissioner was not you?

10 A. No, no.

11 Q. Okay.

12 A. The same commissioner that had tension
13 with Dr. Butkus ended up having tension with all
14 other commissioners. And I have no -- I am not
15 questioning in the slightest that commissioner's
16 absolute commitment to advocacy for disabled
17 people.

18 Q. You have told me now you've been named
19 the chairman of this subcommittee about policy.

20 Now, what I want to know is, what
21 groups outside of DDSN or the commission did you
22 turn to to say, you know, we're looking at
23 policies; and since policies have an impact on your
24 consumers or patients or whatever, tell me what
25 groups you turn to to say, all right, we're doing

1 this and we want some input? Who did you turn to
2 for that process?

3 A. I turned to Carver. I turned to his
4 resources for that phase of the work. The first
5 step was to convert existing policy documents into
6 Carver-structured documents so that the discussions
7 which you referred to could begin. In other words,
8 if I may use my illustration about a sermon --

9 Q. I'm talking to a preacher.

10 A. Okay. The first thing we want to do is
11 we want to make that shoe fit on that foot.

12 Q. What foot?

13 A. The Carver foot. Okay? We wanted the
14 Carver shoe -- we wanted to put the DDSN foot into
15 the Carver shoe.

16 In other words, we wanted to start
17 using Carver language, we wanted to use the
18 benefits and strengths of the commission speaking
19 with one voice to one individual.

20 We wanted to take those helpful phrases
21 and structures of policy to eliminate redundancies
22 and make it easy and smooth for the commission to
23 know what it was doing.

24 And one of the things that we were
25 trying to do is we were trying to discipline the

1 commission, if you will, to refer to a specific
2 statement of policy when they were making motions
3 and taking action: Because our policy says this,
4 therefore I move the following.

5 And that would have been far more
6 efficient, but we didn't get that far.

7 Q. Again, I'm going to make sure, you were
8 given the assignment -- and if that's the wrong
9 word, please correct me. You were given the
10 assignment to apply Carver principles of policy
11 governance in an effort to sort of reformulate
12 commission policy? I think that's what I've heard.
13 Did I hear correctly?

14 A. I would not phrase it that way.

15 Q. Well, tell me how you would phrase it.

16 A. I would say that I was assigned to take
17 existing policy and state it in the structure of
18 policy governance so that we did not change policy
19 or make policy at that phase.

20 Q. And that's what I want to focus on
21 right now. You're sitting here looking at policy.
22 Are you telling me, whatever the policy was, you
23 just accepted it as the policy and didn't, even in
24 that process, say, well, is this a good policy to
25 begin with? That was not part of this process?

1 A. It would have been part of the process.
2 And the development of policy was the whole purpose
3 of adopting Carver, because Carver teaches
4 governing by policy.

5 But we weren't making policy. And
6 policy, in my opinion, had not been properly made
7 prior to this, because what was called policy was a
8 long list of reactionary statements about outdated
9 problems.

10 Q.. Is another word for that directives?

11 A. No.

12 Q. So all of the directives were totally
13 acceptable? No problem? Not reactionary?

14 A. We never got into the directives in my
15 tenure, because the directives were the statements
16 of the director, in-essence, in his application of
17 policy.

18 But policy, when we found it, when I
19 came to the commission, consisted of a series of
20 documents that were called policy, many of which
21 addressed unrelated items.

22 And it was easy for me to see that what
23 had happened was there had been some kind of a
24 problem or some kind of a concern and somebody had
25 said let's make a policy. And they stuck a

1 sentence about it with another sentence and they
2 came up with a document. Some of them were from
3 previous commissions where there was no one left on
4 the commission that had participated in that. Some
5 of them were by commissioners that were immediately
6 prior to my service. And some of them involved
7 commissioners that were still there when I came.
8 But although those policies were helpful, they were
9 not clear. Does that help explain better?

10 Q. Well, it helps me to formulate the
11 following question: What I'm hearing you talk
12 about is the structure of policies, how they're
13 phrased in a way that are clear. Yes?

14 A. Format of the document is what I'm
15 talking about.

16 Q. Format is a good word.

17 A. Format of the document.

18 Q. You're a new commissioner. There are
19 concerns of various groups, I mean, in terms of,
20 this lawsuit was filed shortly after these policies
21 that you and I are going to talk about, but
22 reflecting frustration and concern about various
23 things that the commission was either doing or not
24 doing.

25 But it sounds, from your answer, that

1 you're telling me, well, Steve, we were looking at
2 the format, but we didn't really go in and look at
3 whether the underlying policy was a good policy or
4 not. We just didn't get that far. Is that what
5 I've heard you say to me?

6 A. Essentially.

7 Q. Under the process and the format that
8 you've been kind enough to describe to me, at what
9 point -- well, let me first -- has the commission
10 ever -- in the four years that you served on the
11 commission, did they ever get to actually look at
12 the policies or that process? Never?

13 A. We outlined our work plan as a
14 committee. And this document should exist
15 somewhere; I don't have it. We outlined our work
16 plan for '07.

17 Q. And, again, just not being rude, just
18 now when we talk about we, we're talking about Mary
19 Bagnal --

20 A. The committee, yes.

21 Q. -- Otis Speight and you?

22 A. Yes.

23 Q. There was only three of you on that
24 particular committee?

25 A. Yes, right.

1 Q. Excuse me. I didn't mean to be rude.

2 A. That's all right.

3 Q. I just wanted to make sure what we were
4 talking about.

5 A. We outlined our work plan. I had
6 produced a work plan for the committee after I was
7 assigned, saying, okay, by this particular date we
8 want to have drafts for discussion; by this
9 particular date we want to have, you know, better
10 drafts. By the winter work session --

11 Q. Winter '06?

12 A. Winter '07. That would be have been in
13 January or February, whatever the approval date on
14 those policies were.

15 Q. Well, these show date of issue of
16 January of '07. So if it's winter, it must have
17 been winter '06.

18 A. No. We wanted to have these documents
19 for presentation to the committee in that meeting
20 for approval.

21 Now, that meant we would have had to
22 send them out ahead of time and the people would
23 have studied them; but our goal was to approve
24 these global policies in January of '07; so prior
25 to that, we were going through the process.

1 And the approval of these four global
2 policies would have been the official adoption of
3 Carver. We had moved and approved to adopt Carver.
4 But in order to do that, we had to develop the four
5 global policies and they had to be approved by the
6 commission.

7 Q. And were they?

8 A. Yes, they were.

9 Q. And that's what happened in January of
10 '07?

11 A. Yes. They were unanimously approved.
12 And that's an important fact and it's a matter of
13 record.

14 Q. Okay. I'm not arguing.

15 A. No, no, I'm just giving it to you.

16 Q. That's fine. But this document, again,
17 going back --

18 A. Assuming we're looking at the same
19 document.

20 Q. We are. And I'm going to show it to
21 you. I'm trying to speed this up.

22 MR. HAMM: It's 20 minutes of 1, so
23 we've got 20 minutes before we send you to your
24 assigned task.

25 BY MR. HAMM:

1 Q. But what I thought I was hearing you
2 say is, well, Steve, we have this, but this is only
3 part of the work.

4 A. Yes.

5 Q. Okay.

6 A. Now, we developed a work plan for '07,
7 which was going to take us into the next level
8 of --

9 Q. Which would have been?

10 A. -- which would have been to make sure
11 that these new structures of existing policy -- no,
12 let me rephrase that. To make sure that the
13 substance of those policies, now restated, was what
14 we really wanted. And then we were going to go
15 into the research and application of the specific
16 things we needed to do.

17 In other words, we had a new format
18 which would facilitate communication. Now we
19 wanted to take a look at the substance.

20 Q. Okay.

21 A. We did direct, in the implementation of
22 these policies, the executive to begin to evaluate
23 all directives and make sure that the directives
24 were an expression of those policies.

25 Q. Thank you. I want to make sure I'm

1 clear. This is, I'll use your word, sort of a
2 format. We're getting them in the right format.
3 Now we need to go on to the substance --

4 A. Yes.

5 Q. , -- and make sure that what this -- so
6 this doesn't represent -- what I'm holding in my
7 hand, just in fairness to you, I'm holding in my
8 hand a document. In fact, let me just put it in
9 the record now in fairness to you.

10 (VAUGHN EXH. 1, Summons and Complaint
11 for Protection and Advocacy for People with
12 Disabilities v. South Carolina Department of
13 Disabilities and Special Needs, was marked for
14 identification.)

15 (VAUGHN EXH. 2, SCDDSN Ends Policy, was
16 marked for identification.)

17 BY MR. HAMM:

18 Q. Confirm for the record, if you would,
19 that you have in front of you, John, DDSN Ends
20 policy. That's one of the four corners of the
21 Carver process?

22 A. Uh-huh.

23 Q. Okay. That's what this is?

24 A. Yes.

25 Q. Does this reflect final adoption of

1 policies referenced in here by the commission?

2 A. Well, it's not signed.

3 Q. Well, I know that. That's why I'm
4 asking.

5 A. I would think the final one would have
6 signatures on it.

7 Q. Well, this is what I have gotten.

8 A. Okay.

9 Q. What I'm trying to understand is --

10 A. It looks like it.

11 Q. Okay.

12 A. If we want to talk about it, this looks
13 like it.

14 Q. Okay. This is a document I have gotten
15 from DDSN. So it's not a trick question. This is
16 what I got. I think that it is. What I'm really
17 going to is another aspect. You talked to me about
18 the procedures and format.

19 For example, for this document -- in
20 this record it is Exhibit Number 2 -- you said --
21 well, I heard you say we didn't get where we
22 actually began to look at the underlying policies
23 that this encompasses.

24 We have now restructured --
25 formatted -- and our next step was to say, all

1 right, should we change a policy or approach or
2 reaction? And I thought I heard you say, well,
3 Steve, we didn't do that.

4 A. We sure tried.

5 Q. But did you do it?

6 A. We didn't get it done while I was on
7 the commission. And I don't know what the status
8 of policy is now.

9 Q. Okay.

10 A. Now, we did get reports from staff
11 about directives being adapted to reflect this
12 language.

13 Q. Okay.

14 A. And we did have a number of discussions
15 with the remnant of the committee.

16 Q. Remnant?

17 A. The person who was opposed to what the
18 commissioner believed was sweeping authority --

19 Q. This is Dr. Butkus's draft?

20 A. No, no, no. This document right here,
21 after being approved, the commissioner resigned
22 from the committee.

23 Q. Dr. Butkus?

24 A. No, no. The commissioner.

25 Q. Oh, the commissioner.

1 A. The commissioner that misunderstood
2 this -- or believed that it gave sweeping authority
3 to Dr. Butkus -- saw these documents as a creation
4 by other commissioners, particularly me, I think,
5 to insulate Dr. Butkus from accountability; and,
6 thereafter, we discussed that kind of thing.

7 Q. All right. Does that individual still
8 serve on the commission?

9 A. No.

10 Q. Take, if you would, Exhibit Number 1
11 which we've now marked into the record.

12 And, again, this was first brought
13 before -- formally, as I'm looking at it, it looks
14 like it was first formally brought before the
15 commission on January the 8th -- 18th of 2007 --

16 A. Let me make sure I understand this.

17 Q. No, I'm talking about your document.

18 THE COURT REPORTER: Exhibit Number 2.

19 THE WITNESS: Oh, my document, yes.

20 No, no, not first. It was presented
21 for review prior to that, but it was voted on on
22 January 18th.

23 BY MR. HAMM:

24 Q. And does the document that you and I
25 are talking about which is Exhibit Number 2 in this

1 record, is it different than the first draft of it,
2 that you've talked about, before you finally
3 approved it on January the 18th of 2007? Or are
4 they one and the same?

5 A. Are you asking me if Dr. Butkus's work
6 bears any resemblance to this?

7 Q. No. I'm just asking -- you said, well,
8 we provided a first draft. Again, since we're
9 talking about January of '07, sometime in the fall
10 or winter of '06 there was discussion about this in
11 commission meetings, or your subcommittee?

12 A. Committee. And reports given to
13 commission meetings.

14 Q. Okay. But was the first presentation
15 of your subcommittee's work you, Mary Bagnal, Otis
16 Speight, you had conversations, but the full
17 commission, is this the only version that they saw?
18 Because your subcommittee had worked out and
19 resolved differences. That's what I'm trying to
20 understand.

21 A. Basically, yes. If this is a faithful
22 and true copy of the approved policy, which I'm
23 assuming it is for purpose of our discussion.

24 Q. And I'm representing to you that I
25 believe that to be true.

1 MR. HAMM: Is there any reason we
2 shouldn't?

3 THE WITNESS: Yes, then I do not
4 believe there were -- I know there were not any
5 significant changes. There may have been
6 punctuation or issues like that that were noticed.
7 But this was presented electronically to the
8 commission for review prior to the meeting.

9 BY MR. HAMM:

10 Q. Does that mean it was sent out by
11 e-mail?

12 A. Yes, yeah, to the commission.

13 Q. Okay.

14 A. Because they needed to see it in order
15 to be able to comment on it. And I think there's a
16 bylaw or even some kind of requirement that they
17 see stuff ahead of time --

18 Q. Okay.

19 A. -- in order to have the meeting. So
20 that was all sent out and then it was approved at
21 this meeting.

22 Q. All right. And then in April, this
23 lawsuit is filed. And you're the chairman -- so
24 you will know what I'm getting at, when I read your
25 prior deposition, it was referenced that you were

1 the chairman of the ad hoc committee on policy. Is
2 that --

3 A. That may have been what it was called,
4 yeah, yeah.

5 Q. That's what I read, but the chairman of
6 the policy.

7 This lawsuit is filed where individuals
8 are expressing concern about what -- at least what
9 they might allege to be either arbitrariness, or
10 simply, you know, we don't know what you're
11 supposed to do. It's not clear. And that's why I
12 was very sensitive when you were talking about
13 clear.

14 Did you as a member of the commission
15 look at this lawsuit -- you've indicated yes --

16 A. What do you mean by look at it?

17 Q. Well, I mean, you're aware that it's
18 filed and you have indicated that at some point you
19 got some sort of legal briefing.

20 A. We were told that -- well, there were a
21 number of legal issues that were going on. And
22 this was one of those times of briefing. In
23 hindsight, it appears to me that this is a reaction
24 to this, but that had not occurred to me until I
25 got invited to be here.

1 Q. And I'm not certain if that's in fact
2 accurate but --

3 A. That may be inaccurate. I'm saying --

4 Q. Having had some involvement in this.

5 But regardless of that, what I'm
6 now -- you're here. One of the reasons that I
7 wanted to have this conversation with you was you
8 accepted some responsibility in the area of policy.

9 Do you view this lawsuit as raising
10 significant questions about policy?

11 MR. WOODINGTON: Object to the form of
12 the question.

13 BY MR. HAMM:

14 Q. You can go ahead and answer.

15 A. I have not studied this whole document;
16 but my understanding of the suit is that it focuses
17 on the promulgation of regulations as a
18 clarification of policy that -- now, it may
19 complain about policy, but I think the chief
20 complaint is about the promulgation of regulations.

21 Q. Again, for purposes of the record, as
22 you will appreciate, you're referring to Exhibit
23 Number 1, which is the lawsuit?

24 A. Yes, thank you. Thank you.

25 Q. So when you read this later on, you'll

1 go, well, what were we talking about.

2 A. Yes. The lawsuit, I think -- and I
3 could be wrong, because I haven't studied it -- I
4 think it focuses on promulgation of regulations.

5 Q. But isn't the issue -- what do you
6 understand a regulation to be?

7 A. Do you want to talk about that after
8 lunch? Because that's going to be lengthy.

9 Q. Well, go ahead and take a shot at it,
10 because I think it's a fundamental question I want
11 to get clear.

12 Before you get -- where does the issue
13 of a regulation come from? Let's at least do the
14 baby steps right now.

15 A. As far as DDSN and what our concerns
16 are?

17 Q. Yes.

18 A. It's stated in Paragraph 220 and
19 following that -- I mean the phrase promulgation of
20 regulations is mentioned at least twice in that
21 paragraph. And therefore based on that paragraph,
22 I would see a possible distinction between policy
23 and regulation and that a regulation would be
24 something that regulates policy.

25 Q. Could a regulation clearly announce

1 policies so that everybody knows, if you do this,
2 you're within the policy of the commission under
3 the regulation?

4 A. I think that would be a matter for
5 interpretation by people who understood the legal
6 implications of those words, for which I'm not
7 qualified.

8 Q. But as you sit here today, are you
9 conceptually or personally opposed to
10 regulations --

11 A. Personally?

12 Q. -- under the Administrative Procedures
13 Act?

14 A. I'm not opposed to regulation. I'm
15 opposed to obfuscation in policy, which is what I
16 was trying to clear up.

17 Q. And doesn't the lawsuit raise exactly
18 those same kinds of questions about lack of clarity
19 of what individuals are supposed to do to vindicate
20 their rights?

21 A. I can't speak to the details of the
22 lawsuit.

23 Q. Okay. Well, can you appreciate -- I'm
24 talking to a very respected member of the
25 commission. I am mindful and very respectful of

1 your background and training and calling.

2 You talk about policy. And I am
3 somewhat surprised to hear that apparently this
4 lawsuit doesn't enter your thinking as, well, you
5 know, maybe our policies are not as clear as they
6 ought to be.

7 And I'm hearing you say, no, Steve, I
8 didn't view it that way, or it didn't occur to me
9 to look at it that way.

10 A. We used every available -- no, let me
11 speak for myself. I used every available
12 opportunity to clarify policy --

13 Q. Okay.

14 A. -- and longed for the opportunity to
15 enter into full disclosure of the intent and
16 meaning of these global policies so that they could
17 be reflected in any and every document necessary to
18 truly provide protection and advocacy for every
19 consumer.

20 Q. Did you ask any member of the D.D.S.
21 staff to examine the lawsuit and advise you as to
22 whether or not it implicated or was critical of
23 policies or conduct of DDSN?

24 A. I did not ask for the lawsuit, no.

25 Q. Let me make sure -- I know that you

1 didn't ask for the lawsuit. I'm not trying to play
2 games with you. I'm just trying to be --

3 A. And I'm trying to be clear too, and I
4 think I know what you're asking me.

5 Q. I know that you didn't ask for the
6 lawsuit to be filed. What I'm asking for -- I
7 think what you just told me is that, no, Steve, I
8 didn't ask anybody to look at the lawsuit as part
9 of my policy work. And if I have misstated, then
10 obviously I want you to clarify that.

11 A. There is a distinction between the
12 policy work of any commissioner and the assignment
13 that I received as chairman of the ad hoc
14 commission -- committee -- I'm sorry -- to develop
15 this Carver structure.

16 Every commissioner was appointed to the
17 commission for the purpose of governing this agency
18 through policy. My understanding is that you can't
19 do that unless you speak clearly and apply the
20 statute to the agency. And that is a long and
21 time-consuming process. This took a long time.
22 The next steps would have taken a long time and
23 were going to require a lot of work; but we then,
24 after these policies were adopted, ran into --

25 Q. We being the commission.

1 A. The commission.

2 -- ran into time-consuming opposition
3 that kept us from making significant progress
4 thereafter.

5 Q. And we're about near the time that I'm
6 going to meet my commitment to your counsel, and to
7 you, for that matter.

8 Again, I'm trying to be very careful
9 that I'm not putting words in your mouth.

10 A. No, I appreciate it.

11 Q. But I think I'm hearing -- when we
12 return, we'll talk about this -- in many ways this
13 represents the first step of unfinished work. Is
14 that what I'm hearing?

15 A. Yeah, it was.

16 MR. HAMM: Well, why don't we break at
17 this point. We'll allow Ken to go take care of
18 those matters.

19 (The lunch recess was held.)

20 BY MR. HAMM:

21 Q. Okay. Let's go back on the record.
22 Mr. Vaughn, I hope that you had a pleasant lunch.

23 A. I did, indeed, thank you.

24 Q. Good, good. Glad to hear it. Glad to
25 hear it.

1 What I would like to start this
2 afternoon with is to have you advise me -- I want
3 you to define policy as you understood it as a
4 member of the commission.

5 A. Well, under these circumstances, I'm
6 striving for a good legal definition here, which I
7 don't think I can give you.

8 Q. I'm asking you --

9 A. Yeah, I would have to say that in the
10 process of my involvement with the
11 commission -- no, during the time of my involvement
12 with the commission -- I came to understand policy
13 in terms of John Carver's definition in his book on
14 policy governance.

15 And although I can't give you John
16 Carver's specific definition either, I think it
17 would be very helpful and constructive, as you
18 continue to investigate this, to get his book and
19 see the clarity that he presents.

20 It's the guideline, the parameter, the
21 do's and don'ts, what we expect and what we are
22 unwilling to accept in the application of state and
23 federal laws for the caring for people who qualify
24 for DDSN services.

25 Q. Okay. Anything else?

1 A. No.

2 Q. Do you have policies in your church?

3 A. We have had policies. We had a policy
4 manual for sometime.

5 Q. What kind of thing would that policy
6 manual address?

7 A. It would talk about personnel,
8 standards for behavior and performance, handling
9 complaints, and all of the other human resources
10 issues, vacations and stuff like that.

11 But the primary focus in our situation
12 had to do with structure, organization. Because we
13 were a church, we didn't have a lengthy detailed
14 doctrinal statement. One of the things I do now is
15 consult with churches to try to help them get
16 themselves organized in that way.

17 Most churches will have a very lengthy
18 doctrinal statement and absolutely nothing about
19 what they're going to do with the property if they
20 disband. And if they're a corporation, that's
21 required, as I understand.

22 And so we try to focus on the
23 requirements for functioning as a legal entity and
24 the documents that we produce at church.

25 Q. Anything else on defining policy from

1 your perspective?

2 A. No. I mean, as we continue to discuss,
3 as you indicated we would, on these particular
4 policies --

5 Q. We will.

6 A. -- there's no doubt there will be more
7 elaboration on that.

8 Q. Okay. What is your understanding of
9 what a directive was at DDSN?

10 A. A directive is -- in my understanding,
11 it is an instruction from the director about the
12 implementation of statute and policy, of law. I
13 should say law. Because that would include federal
14 and state. The implementation of -- and that is
15 stated in the policies that we're going to talk
16 about.

17 Q. Instructions from the director -- I'm
18 trying to remember the rest of what you just said.

19 A. Instructions or limitations, whatever
20 you want to call them, from the director on the
21 application or implementation of law and policy, of
22 federal/state law and commission policy.

23 Q. Can the director change commission
24 policy?

25 A. No.

1 Q. Did you determine whether or not the
2 director had at any point done that?

3 A. After we implemented these policies?

4 Q. Yes.

5 A. When you say can he change it, are you
6 saying rewrite it or can he misapply it?

7 Q. Well, let's first start with can he
8 rewrite it?

9 A. Absolutely not. I say absolutely. No,
10 okay.

11 Q. And I'm asking your opinion.

12 A. Right.

13 Q. I'm not asking you to speak for the
14 commission. So I'm not putting you in that
15 position.

16 A. Only the commission can make the
17 policy.

18 Q. Did you determine whether he misapplied
19 commission policy?

20 A. The next assignment that we had and
21 what was in the work plan was to develop some sort
22 of instruments for evaluation, how are we going to
23 determine what information we need.

24 Our objective for 2007 was to try to
25 determine what kind of information we wanted from

1 staff so that we could determine if policy was
2 being applied. That was our stated goal.

3 Q. Did you accomplish that?

4 A. No, we did not.

5 Q. Did you develop any preliminary
6 thinking or conclusions that, in fact, there had
7 been a misapplication of commission policy?

8 A. There were many accusations.

9 Q. From?

10 A. From a limited number of individuals
11 who asked for a lot of information that we had
12 trouble -- that the rest of us had trouble
13 understanding or realizing why it was being asked
14 for.

15 Q. All right. Now, help me. Like who are
16 we talking about is asking for this?

17 A. We're talking about a commissioner in
18 particular, or others. For example, when I was
19 trying to make -- I will give you an illustration.

20 When I was trying to make a clarifying
21 presentation, I had made it to the commission, that
22 I was making that same clarifying presentation to
23 everyone who had attended the meeting that day.

24 Q. Again, clarifying presentation of what
25 was discussed on January the 8th of 2007?

1 A. I was making a clarifying presentation
2 of what the Carver model of policy governance was.

3 Q. This is after the commission's approved
4 it --

5 A. Yes.

6 Q. -- and you're now talking to staff or
7 whatever?

8 A. No, we're trying to explain it to the
9 public.

10 Q. Oh, okay. And who was your audience?
11 When you say the public, who are we talking about?

12 A. We're talking about people who attended
13 the meeting.

14 Q. The commission meeting?

15 A. Yes, the public. The media was there
16 that day. There were a number of consumers who
17 were there that day.

18 Q. And when you use the word consumer, do
19 you use that word in the sense that they were a
20 consumer of services of DDSN?

21 A. Yes, or their representatives.

22 Q. And who else might have been there?
23 I'm just trying to get a flavor for the audience.

24 A. I think P&A was there, somebody.

25 Q. Who else?

1 A. Various people from service providers,
2 service providers' associations. And to a degree,
3 anybody who watches television.

4 Q. Okay. Did you entertain questions?

5 A. I did.

6 Q. And did you provide answers?

7 A. I tried.

8 Q. Okay. What kind of questions did you
9 get? Do you recall?

10 A. Are you going to present us with a
11 written transcript of your presentation today.

12 Q. And the answer was?

13 A. No.

14 Q. Okay. What other questions?

15 A. My presentation was cut short by
16 demands for the hearing to begin. Many of the
17 people who were there were told that that meeting
18 was to be a hearing on their individual case.

19 Q. There was a misunderstanding --

20 A. -- on the part of many who came --

21 Q. Okay. I'm just --

22 A. -- that the meeting was to be a hearing
23 on their cases.

24 Q. Forgive me for being slow, dense or
25 both. But when you refer to the meeting, are you

1 talking about the commission meeting?

2 A. I'm talking about the publicly
3 announced, called, and duly called-to-order
4 commission meeting.

5 Q. Okay. We have the commission meeting.
6 You have indicated -- and we'll get to them pretty
7 quickly, but you go through these documents, one of
8 which has been marked Exhibit Number 2. The
9 commission adopts them, as I understand your
10 testimony. And it's after that that the agenda
11 provided for you or your committee to make some
12 sort of presentation?

13 A. Yes.

14 Q. So the commission has voted on what is
15 one of these policy matters, which is Exhibit
16 Number 2. The meeting comes -- I guess the
17 business meeting of the commission comes to an end
18 and the agenda then indicates that John Vaughn is
19 going to make a presentation on sort of the meaning
20 of all of this?

21 A. This was a future meeting. It was not
22 the same meeting.

23 Q. Oh, this is not the same meeting.

24 A. These were approved publicly in the
25 winter work session. There were people present.

1 But, then, later as we were moving forward and
2 trying to explain to the public how we hoped to be
3 able to communicate and respond to questions and go
4 ahead and make further applications of policy, we
5 were making the presentation.

6 Q. But right now I'm trying to -- you've
7 given me clarity except for I am not clear on when
8 is it that you're making your presentation. Is it
9 the same day that they formally adopted it?

10 A. No.

11 Q. This is a subsequent period of time?

12 A. Yes.

13 Q. And in what ball-park are we talking
14 about?

15 A. Within a few months.

16 Q. And that is after a regularly scheduled
17 commission meeting?

18 A. It was in a regularly scheduled
19 commission meeting.

20 Q. And the agenda, if I were to look at
21 it, would I see your name as someone who is going
22 to make a presentation on these policy things?

23 A. Yes, on policy governance.

24 Q. And you get up and make an initial
25 presentation. You entertain some questions. And

1 then I think you told me just a moment ago that it
2 came to an end. Help me understand what happened
3 as best you understand what happened.

4 A. Let me think about how I can wisely
5 state this. The meeting got out of hand.

6 Q. Out of hand, as in out of control?

7 A. Essentially.

8 Q. And an example of something being out
9 of control or out of hand would be what?

10 A. Several people yelling at once.

11 Q. At you?

12 A. Yes. Well, at the commission and me.

13 Q. And what did you understand to be
14 the -- what message were they attempting to send to
15 you and the commission?

16 A. That the consumers that were present
17 had been wronged and were outraged.

18 Q. And they had been wronged in what
19 respect?

20 A. They wanted services that they were not
21 receiving and they had been told they were there to
22 have a hearing and get satisfaction.

23 Q. Okay. Where did they get -- they had
24 been told. Who told them this?

25 A. I don't really know for sure.

1 Q. Okay. Staff of DDSN?

2 A. No. Advocates, I think. I am not
3 saying P&A, but people who were trying to advocate
4 for their complaints.

5 Q. So for whatever reason, somebody
6 developed an expectation that during the period of
7 time you were going to make a presentation --

8 A. During this commission meeting.

9 Q. -- various individuals were going to be
10 given the opportunity to express concerns or we
11 wish you would do this or you would change how you
12 do that? Is that what I'm hearing you tell me?

13 A. I think their expectation was greater
14 than that.

15 Q. And I'm just trying to flush out what
16 this means.

17 A. One father, who was in apparent agony
18 over the suffering of his daughter, shouted, when
19 am I going to get to present my case? Or something
20 like that. I don't remember exactly what he said.
21 When are we going to get to talk about my
22 daughter's case?

23 Q. Okay. Did the commission have a policy
24 of not allowing people to express their concerns to
25 the commission?

1 A. The purpose of the commission meeting
2 is not to provide a forum for those kinds of
3 things. And it would have been a simple matter to
4 have sent a request to put it on the agenda, I
5 would think. They may have made that attempt; I
6 don't know. But none of us had any idea that that
7 group had come with that expectation. We knew the
8 media was there. We knew that certain other folks
9 were there. We knew that there was going to be
10 something going on. But it wasn't what any of us
11 were prepared for. And the chairman struggled to
12 get the meeting back under control.

13 Q. Okay. Let me go back, though.

14 Did I hear you tell me that the
15 commission had a policy of not allowing people to
16 directly express their concerns about the services
17 they were receiving or not receiving at any time
18 during a commission meeting?

19 A. I may have missed that in the double
20 negative. The commission never made a policy not
21 to hear grievances. There were structures in place
22 for people to bring their grievances, okay.

23 Q. But did that structure in place include
24 going to the policymakers, such as the commission?

25 A. There were lots of opportunities for

1 those. We set up a series of listening forums
2 around the state that the commissioners went to and
3 people could come and say whatever they wanted to
4 say.

5 Q. Were those forums considered to be a
6 meeting of the commission?

7 A. Yes, I think so. There were staff and
8 there were commissioners present in all of those.

9 Q. Okay. So the commission -- if I were
10 to go look, I would see -- well, Steve, if you will
11 look at X, Y or Z, you will see we have a policy of
12 allowing those that we provide services to to
13 express their concerns directly to the
14 policymakers, the commission. Is that what you're
15 telling me, that such a document or policy exists?

16 A. Well, when you refer to a policy which
17 you are calling a document, I would think that
18 would be in a directive. There are principles
19 articulated here in these policies that provide for
20 that. But we did not have a spelled-out
21 regulation, as you're suggesting in the suit here,
22 for that kind of thing. That would be more in the
23 view of operations. There's certainly
24 opportunities for people to contact individuals and
25 things like that. But what I'm describing here is

1 a good-faith effort on our part to move into a more
2 satisfying interaction between the commission and
3 the consumers, which was, if I may say so,
4 prevented.

5 Q. Now, you talked about a directive.
6 Now, you have helped me to understand that a
7 directive is a directive issued by the director.

8 A. That's my understanding of it. That's
9 why it's called a directive.

10 Q. So to the extent that the director
11 hasn't created a directive about communicating with
12 the commission, without that the commission
13 wouldn't -- does it take a directive for the
14 commission to determine that, in fact, it will
15 allow consumers to be heard during the course of a
16 regular commission meeting?

17 A. I'm not sure I can answer that
18 accurately. I do know that -- as I say, the next
19 thing we wanted to accomplish as a commission was
20 to clarify and write down whatever we needed to to
21 have the measuring instruments in place to verify
22 compliance with the policies we've established.

23 What I mean by that is when we would go
24 into a commission meeting, there would be a mound
25 of paper coming at us and we didn't know what to

1 make of it. When we would look at financial
2 reports, is this the summary of all of the
3 financial reports? Is this one selected document?
4 What is this? Where does this fit in? How are we
5 going to find the bottom-line information that we
6 need? That was what we wanted to find out.

7 Because when questions would be
8 asked -- if you give somebody who has a two,
9 three-hour meeting a month and several more hours a
10 month to give to a voluntary position and you give
11 them several hundred pages of documents, at best,
12 they're going to have a basic idea of what they're
13 about.

14 But one of the first things you have to
15 determine is what documents should we be getting,
16 when you have a whole building full of file
17 cabinets.

18 It would be like me going into your
19 warehouse where all of your file cabinets are and
20 selecting a document at random and then writing
21 down what we're going to do about it. I mean,
22 that's the task that was put before us. So we had
23 to devise some kind of a way to determine what kind
24 of documents did we want and how are we going to
25 get them.

1 With what we ran into after this
2 tension began, which is right after we passed these
3 policies, what we ran into, whenever any subject
4 was brought up, there was an immediate request for
5 those documents.

6 Q. Those documents meaning?

7 A. Whatever we were talking about. I want
8 to see that in writing. Can I get the full support
9 on that? I mean, whether we were talking about a
10 sprinkler system in an outbuilding of whatever
11 facility, I want to see the documents on that. It
12 seemed to me to be a way of giving the impression
13 that I'm requiring due diligence of these people
14 and I-want-that-in-writing kind of a thing.

15 Now, I mean, that sounds like
16 leadership and it sounds like accountability, but
17 real accountability gets real information about
18 real situations and makes real decisions that
19 affect real people.

20 And what we were trying to get to was
21 not just getting things done right, but getting the
22 right things done right, if I can borrow from
23 another author that wrote that.

24 We were struggling to determine what is
25 it we really need. Now, if we would ask staff what

1 do we need, they would give us documents, and then
2 we would have to have them explain them to us. And
3 every time we had a new commissioner -- Audrey Horn
4 had a great command of this stuff from day one.

5 Q. That's one of the commissioners?

6 A. Yes, she knew exactly what she was
7 talking about. But every time -- Audrey passed
8 away and then some other commissioners were
9 replaced. And every time you get a new
10 commissioner, now you have to learn the language.
11 DDSN is filled with -- I mean, its communications
12 are filled with the use of acronyms. And you can
13 sit there from six months to a year having to ask
14 people, now, what does a CTH do? What is that
15 again? And how does that differ again?

16 So a lot of the time was consumed
17 trying to teach people the language. It's like
18 moving to another country and trying to conduct
19 important business without having much of an
20 opportunity to learn the language. So we were
21 continuously in that phase. And that's just one of
22 the realities of a volunteer commission.

23 Q. You talked about this subsequent
24 meeting. This would be after January the 18th of
25 2007.

1 A. Yes, it was a regularly scheduled
2 meeting.

3 Q. At a regularly scheduled meeting you
4 were shown on the agenda to make a presentation
5 about the --

6 A. About policy governance.

7 Q. About policy governance.

8 A. I had been making regular committee
9 reports. And I was going to try to explain to the
10 public what we were doing to answer their concerns,
11 of which we were aware.

12 Q. And what did you understand their
13 concerns to be?

14 A. They were frustrated that they weren't
15 getting through to the administration, or that the
16 administration was not responsive to their
17 concerns. Some were.

18 Q. But isn't that essentially a policy
19 question that you would want to know about? What's
20 the use of having an administration if the people
21 served do not feel like they've got good lines of
22 communications, or whatever? Isn't that
23 essentially policy that someone with your
24 background and training would want to address?

25 A. Are you using policy in the terms of

1 writing a document or are you using it in terms of
2 setting up good practice?

3 Q. Well, you tell me. You sit before me.
4 And I say this respectfully. You're the policy
5 guy.

6 A. Yeah.

7 Q. And this whole issue is about policy.
8 And we've been told, oh, we don't have a policy, we
9 don't have to do regulation. And we keep hearing
10 it's because of you commissioners. So I've now got
11 the policy guy here and I want to hear the rest of
12 the story.

13 A. I'm no longer a commissioner.

14 Q. But you were.

15 A. But if I was a commissioner, I would
16 say it is possible to establish best practices
17 without creating a document, but lawyers always
18 want a document, whether we get good practice or
19 not.

20 What we wanted was best practices. And
21 that's accomplished by hiring the right people, by
22 making sure they do what you expect of them, by
23 communicating cordially and not trying to do
24 business with personal attacks; and that's what we
25 got into.

1 Q. Would you agree that you and I both
2 rely on the Bible, and return to it again and
3 again, because it is a constant source of guidance.
4 Are we together on that?

5 A. Yes, because it had a perfect author.

6 Q. And I certainly agree with that. We're
7 totally together.

8 But one of the benefits is I can hand
9 that Bible to my good friend, I can hand it to my
10 other good friend, a distinguished lawyer, and we
11 together can look at the Word; and, therefore, a
12 regulation in writing at least is a common form of
13 communication that we can share to make sure we
14 have a good policy.

15 Would you agree that that's one of the
16 things having something in writing does?

17 A. I think that is a well-expressed
18 principle of communication, yes.

19 Q. Okay. Now, oh, policy guru...

20 A. Give me 1500 years and 66 authors and I
21 will work it out.

22 Q. And I will be happy to share those
23 years and those authors with you, but you've been
24 studying all of them, so I want to be -- I'm trying
25 to listen to you very carefully. I hope it appears

1 that I am.

2 A. And I'm really trying to be
3 transparent.

4 Q. And you're doing fine.

5 You make a presentation at this
6 subsequent commission meeting. It sounds
7 like -- and I'm going to use a word that you didn't
8 use. It sounds like there was a disturbance, or
9 something was going on, the tone or whatever.

10 A. Emotions boiled over.

11 Q. Okay. And that happens. I've been to
12 meetings where that's happened. People calm down
13 and the meeting keeps going. Is that what happened
14 in your meeting?

15 A. It didn't end well.

16 Q. Okay. So did you finish your
17 presentation?

18 A. I quit.

19 Q. Did you finish your presentation?

20 A. I tried to make personal contact after
21 the meeting was over.

22 Q. Did you -- in the course of the
23 presentation encompassed by the agenda, were you
24 able to make all of the remarks and points that you
25 originally intended to do?

1 A. No, no.

2 Q. So you were -- again, not putting words
3 if your mouth -- but for reasons I'm going to
4 better understand as you and I talk -- you were
5 unable -- you did not complete that presentation.

6 A. No.

7 Q. Now, you used the word, you quit.

8 A. Well, I stopped talking, is what I
9 meant.

10 Q. And that's fine. Help me understand.
11 You're having a presentation. You're the policy
12 guy on the commission. You've clearly got people
13 in the room. Even if they're upset about it, it's
14 clear that they're paying attention to you or
15 they're concerned about it. Tell me why you quit
16 or stopped.

17 A. We needed to let everybody take a
18 breath. I finished my presentation. I sat down
19 and recommended to the chairman that before we move
20 on, we take a couple of minutes break.

21 Q. Did that happen?

22 A. Yes.

23 Q. And then what?

24 A. We took a break. And I may be having
25 some of my sequence out of order here. There may

1 have been somewhat of an eruption prior to the
2 break and then more of it afterwards. But we got
3 through the business somehow. And then I went over
4 and tried personally, because of who I am and what
5 I do, to comfort that father. And he was really,
6 really hurting bad.

7 Q. Well, who did you -- and I appreciate
8 that. And with your background, I would have
9 expected that you would have done that.

10 So if he's hurting and whatever, it
11 seems, as the policy guy, you would say, well, now,
12 something is going on here; we can't serve
13 everybody perfectly or whatever, but obviously our
14 lines of communication -- so as a matter of policy,
15 we should be doing something.

16 What did you conclude needed to be
17 done? Did you just conclude, well, our policy is
18 you've got to talk to staff, and the commission
19 doesn't get involved in that?

20 A. No, no. I tried to listen to him and I
21 tried to encourage him that I wanted to hear him.
22 And he was in such emotional pain and so upset and
23 felt that he had been totally disregarded and had
24 come for one reason and didn't get that fulfilled,
25 that he walked out.

1 And I tried to talk to another person.

2 And then I've got microphones coming my way and was
3 being asked direct questions by the media, and I
4 tried to answer them as wisely and discreetly as I
5 could and --

6 Q. What is the commission policy if Steve
7 Hamm were to have attended this particular meeting?
8 Would I have signed in?

9 A. Yes.

10 Q. So you have in written form who was in
11 the meeting.

12 A. Yes.

13 Q. What did you do when this very
14 distraught father left? Tell me what you did as a
15 matter of policy when he left because he was so
16 distraught?

17 A. We questioned staff to find out what
18 was going on with this case.

19 Q. All right. And then what did you find
20 out?

21 A. We found out that his daughter was
22 receiving significant services that were permitted
23 on the analysis of her case, but that more services
24 were being requested for which she was not
25 qualified.

1 Q. All right. Now, let's go. We're now
2 getting to the essence of this. Who decided they
3 weren't qualified?

4 A. Medicaid.

5 Q. Okay. But who decided -- I mean,
6 Medicaid and regulations, that stuff is in
7 writing --

8 A. Yes.

9 Q. -- some of this, you will agree, is in
10 matters of interpretation?

11 A. I don't know how Medicaid interprets
12 what they pay for and what they won't.

13 Q. And I'm not asking you to have that
14 piece of information. What I'm trying to
15 understand is, what is the policy when someone has
16 been told -- well, number one, what did you learn
17 about how this distraught father -- what was he
18 told regarding the decisions of his daughter?

19 A. By DDSN?

20 Q. Yes.

21 A. I don't know everything that he was
22 told.

23 Q. Okay.

24 A. I don't know.

25 MR. WOODINGTON: Steve, I don't mean to

1 put words in his mouth and interrupt him when he's
2 trying to speak. And he's eloquent. The
3 commission does not have a role as an appeal panel
4 on eligibility of such decisions.

5 MR. HAMM: I know that. I'm just
6 trying to understand what he -- that's not an issue
7 that I'm raising.

8 MR. WOODINGTON: Okay.

9 BY MR. HAMM:

10 Q. But you're Mr. Policy, and you have
11 now, through personal experience, as a commissioner
12 who has accepted some responsibility in policy
13 areas, you talked with that individual at that
14 meeting, as I certainly expected you would have.
15 The individual left.

16 And recognizing you're a commissioner,
17 you're not a staff person, but I am struggling to
18 understand -- and have been for a number of
19 years -- about the policy of the commission to make
20 sure what the staff is doing is, number one,
21 consistent with the policies, and, number 2,
22 conforms with the law and how do you determine that
23 when, as you have very gracefully told me, well,
24 some of this is not in writing.

25 So as far as you were concerned, you

1 had reached the limits of your commission's policy
2 by talking to him; and when he walked out the door,
3 that was outside of your purview as a member of the
4 commission?

5 A. The next thing I did was I approached
6 that individual's advocate and said, would you
7 please help us? I didn't say it that politely.

8 Q. You were not polite? I find that hard
9 to believe.

10 A. No, I was offensive.

11 Q. I'm honestly surprised. I'm not trying
12 to be judgmental.

13 A. It was an emotional day. I was wrong.
14 I was wrong. I said, why don't you help us instead
15 of -- and then I made a comment on what was
16 actually happening.

17 Q. Or at least what you thought was
18 happening.

19 A. Yes.

20 Q. Okay. And did that facilitate making
21 the situation better?

22 A. "The soft answer turneth away wrath,
23 but grievous words stir up anger."

24 And that was proven that day.

25 Q. I've been there.

1 A. So my response did not ultimately help.

2 Q. All children of the Lord may run
3 astray, but they ultimately return to the Lord.
4 And what I'm trying to understand from you is you
5 had a human moment, other people in the room had a
6 human moment --

7 A. I then had a conversation with a
8 commissioner. This was in executive session. I
9 don't know if it was in that meeting or if it was
10 in another meeting at another time, but I had a --
11 in front of everybody -- in front of all of the
12 commissioners, I appealed to --

13 MR. WOODINGTON: Excuse me just a
14 second. That's executive session. I would ask you
15 not to testify to anything that occurred in
16 executive session.

17 THE WITNESS: Okay.

18 MR. HAMM: Let me explore this a little
19 bit without getting a specific answer, just so I'm
20 clear on the record.

21 MR. WOODINGTON: Okay.

22 BY MR. HAMM:

23 Q. The conversation that you were
24 recounting, was it the specific matter addressed by
25 the executive session or was it more of a side

1 conversation?

2 A. Side. And it may help to understand
3 the delays. So I appealed to the commissioner --

4 MR. WOODINGTON: No, I'm sorry, I just
5 can't sit here on behalf of DDSN and allow him to
6 testify to what happened in executive session.

7 MR. HAMM: And I have just gotten him
8 to state on the record that it was not the matter
9 for which they were in executive session.

10 In executive session, the protected
11 communications are those matters stated on the
12 record prior to a motion being adopted that you go
13 into executive session, you're in executive session
14 under the Administrative Procedures Act and related
15 statutes.

16 The only item that you can speak on in
17 private is the matter duly noted on the record.
18 And he's already stated, very kindly, that this
19 conversation was basically a side conversation and
20 was not a matter related to executive session, and
21 I think he can therefore answer it.

22 MR. WOODINGTON: Could we just explore
23 one more question by way of voir dire, if nothing
24 else?

25 MR. HAMM: Go ahead.

1 VOIR DIRE EXAMINATION

2 BY MR. WOODINGTON:

3 Q. Do you remember what the purpose of the
4 executive session was on that day?

5 A. No, I don't.

6 Q. But you do remember clearly that
7 dealing with this fellow, this aggrieved parent,
8 was not part of the agenda for the executive
9 session?

10 A. Yes.

11 Q. So you happen to be behind closed doors
12 but you were not dealing with the executive session
13 business?

14 A. Right.

15 MR. WOODINGTON: And I would just ask
16 you, if it comes up -- and I guess it won't,
17 because you don't remember it -- don't go into the
18 executive session.

19 MR. HAMM: And I'm not asking you to do
20 that. I'm well aware of those protections and I'm
21 not asking you to infringe on them.

22 THE WITNESS: It was an appeal to work
23 together, could we not get so personal and could we
24 do our job for the good of those we were trying to
25 help.

1 EXAMINATION

2 BY MR. HAMM:

3 Q. And the response?

4 A. The response -- I can't quote it -- but
5 I think I closed my statement that the impression
6 we're getting is that we're all in some kind of
7 conspiracy to harm. And that's not why we're here.
8 Could we please work together?

9 And the response was a matter of
10 business, okay, that later came up. In other
11 words, it was another got-ya moment, to put it --

12 Q. So the response that you received was
13 not a receptive welcome of your request for working
14 together?

15 A. It was evident that there would be no
16 working together.

17 Q. All right. Now, we've talked about
18 policy. And you have framed it in this deposition
19 as being within the four corners of the principle
20 of John Carver's book.

21 We have talked about directives. And
22 you have said, well, the directives come from the
23 director. I asked you whether a directive had ever
24 misapplied a commission policy. I think you
25 indicated you thought that had happened.

1 A. No, no. I said that we were never able
2 to formalize the kind of information that we
3 wanted -- that we needed or wanted -- to make that
4 determination. Our chairman was much more involved
5 in that.

6 Q. That's Mr. Alexander?

7 A. No, no. By that time Mr. Alexander had
8 gone and Bobby Harrell had been elected chairman.
9 Bobby Harrell was the chairman when we voted to
10 implement Carver, when we implemented Carver, and
11 was the chairman when I stepped down from the
12 commission.

13 Q. Is he the chairman now?

14 A. I don't think so.

15 Q. If you don't know, that's fine.

16 MR. WOODINGTON: Is he the guy from
17 Newberry?

18 THE WITNESS: Yemassee.

19 MR. WOODINGTON: Walterboro, I'm sorry.

20 THE WITNESS: We were trying to
21 establish a move in this direction, but then a lot
22 of our time was spent in trying to know how to
23 respond or trying to understand and respond to
24 opposition to our being on the commission. I mean,
25 that's the only way I can put it.

1 BY MR. HAMM:

2 Q. Well, now, let me tie in. Turn to Page
3 4 of Exhibit 1. Exhibit 1, for the record, is the
4 lawsuit filed by our client. Turn to where it says
5 background facts.

6 A. Yes.

7 Q. And look at Paragraph Number 13. Just
8 read it to yourself. And let me know when you have
9 completed reading it. And if you need to read it
10 several times, that would be fine.

11 A. Okay.

12 Q. Can you understand why either an
13 individual or an organization would be frustrated
14 when they believe there is no clear policy? Let's
15 start there.

16 Would you agree that if parties don't
17 understand the so-called policy, especially if
18 they're not in writing, that can create problems,
19 confusion and difficulty?

20 A. Are we speaking hypothetically, if
21 people believe --

22 Q. Yes.

23 A. -- that they are beings harmed?

24 Q. Yeah. Well, for example, Paragraph 13
25 is an expression of what my clients believe. I'm

1 not asking you to determine the right or wrongness
2 of that.

3 Can you understand, well, if they
4 believe that, what do we need to do to alleviate
5 that problem?

6 A. I can't determine from this statement
7 what they believe.

8 Q. Well, for example, if someone is told
9 they are not eligible for services and there's
10 nothing specifically in writing in the form of a
11 regulation, then how are they to know whether the
12 determination that they were not eligible was
13 accurate?

14 A. If they want something in writing, they
15 have state statutes, they have federal law, they
16 have the regulations written by those who will
17 approve and pay for their services through
18 Medicaid. They have plenty of things in writing.

19 Q. What about -- again, right now we're
20 talking about --

21 MR. WOODINGTON: I'm sorry, have you
22 finished your answer?

23 THE WITNESS: Yes.

24 BY MR. HAMM:

25 Q. I wasn't trying to cut you off. I'm

1 sorry.

2 A. No, that's all right.

3 Q. Do you think it's a bad idea for the
4 commission, as a matter of policy, to enact
5 regulations that would eliminate this controversy
6 about eligibility standards referenced in state
7 law?

8 MR. WOODINGTON: Object to the form of
9 the question.

10 BY MR. HAMM:

11 Q. Go ahead and answer.

12 A. I think you're describing a utopian
13 concept that is not verified in reality.
14 Regulations are almost universally despised by the
15 general public. And regulatory behavior is usually
16 used as the reason government can't work; so let me
17 elaborate on that.

18 Q. Go ahead.

19 A. I don't believe that it's a realistic
20 everyday response outside -- pardon me -- the legal
21 community -- to suggest that these proposed
22 regulations would eliminate the pain of these
23 suffering people.

24 Q. If they eliminated even part of it,
25 would that be a good thing?

1 A. I would have to know that those
2 regulations would provide for them a better service
3 than they are receiving under all the regulations
4 and statutes and laws that are already in existence
5 and clear.

6 Q. Did the commission ever adopt a policy
7 saying we are not going to adopt a regulation
8 referenced in a statute as a matter of policy?

9 A. Did we ever pass a policy that we
10 weren't going to pass a policy?

11 Q. Did you ever adopt a policy that you
12 were not going to create a regulation --

13 A. No.

14 Q. -- specifically referenced in a
15 statute?

16 A. No.

17 Q. So the fact that there is no regulation
18 is not the result of a commission policy.

19 A. No.

20 Q. So why doesn't that regulation exist?

21 A. Okay. Let's talk about that one.

22 Okay. Do you have a copy of the
23 statute?

24 Q. Yes.

25 A. Okay. I would like to reference it.

1 MR. HAMM: Can somebody bring me that
2 title?

3 (Off-the-record discussion.)

4 BY MR. HAMM:

5 Q. While she's looking, can I come back to
6 you?

7 A. Sure.

8 Q. What I'm trying to understand is I have
9 been told, well, the commission doesn't have a
10 policy of adopting regulations, which makes it
11 sound like, well, y'all decided, no, we're not
12 adopting regulations.

13 A. No, I don't think that, just because
14 you don't do something, it means you decided not
15 to.

16 Q. But policies -- again, going to the
17 Carver principles and everything else, policies are
18 designed to create the foundation of understanding
19 how you make reasonable and justifiable decisions
20 that would withstand somebody's looking at what you
21 did or didn't do, right?

22 MS. WESSINGER HILL: Chapter 44-20-220.

23 THE WITNESS: Yes.

24 THE COURT REPORTER: You just said yes.

25 Were you speaking to Ms. Hill or to Mr. Hamm?

1 THE WITNESS: I don't know.

2 MR. HAMM: Fair enough to him, can you
3 repeat the question?

4 THE COURT REPORTER: "Again, going to
5 the Carver principles and everything else, policies
6 are designed to create the foundation of
7 understanding how you make reasonable and
8 justifiable decisions that would withstand
9 somebody's looking at what you did or didn't do,
10 right?"

11 BY MR. HAMM:

12 Q. And I thought you answered yes to that.

13 A. I don't know if I did. I think I may
14 have been saying, yes, that's what I was looking
15 for, when she handed me this.

16 Thank you for asking. Can you restate
17 that question?

18 Q. Well, what I would like her to do is to
19 read it to you one more time so that in fairness to
20 you, you're getting the same question.

21 A. Okay.

22 THE COURT REPORTER: Question, "Again,
23 going to the Carver principles and everything else,
24 policies are designed to create the foundation of
25 understanding how you make reasonable and

1 justifiable decisions that would withstand
2 somebody's looking at what you did or didn't do,
3 right?"

4 THE WITNESS: Now, is your question did
5 I say yes to that or do you want me to answer that?

6 BY MR. HAMM:

7 Q. You can say yes or no and then explain
8 it, but I thought you -- I was giving you a
9 question I thought was consistent with what you've
10 told me.

11 A. Well, I was making a statement of
12 agreement that I think we're moving in a right
13 direction by having this in my hand so I can answer
14 that.

15 In order for me to answer your
16 question, I would have to ask you again, are you
17 referring to best practices or are you referring to
18 documentation?

19 Q. I'm referring to both.

20 A. Okay. I've maintained that it is
21 possible to have best practices without necessarily
22 having documents.

23 Q. So it is, again -- and so that I follow
24 up on that -- do I have John Vaughn, respected
25 member of the commission, telling me that even if

1 there is controversy about our policies, that would
2 not necessarily cause me to want to put it in
3 writing?

4 A. I think you're begging the question
5 when you ask me if there are controversies about
6 our policies, when what I really think we're having
7 is controversies about our services and we're
8 seeking to improve those services by demanding
9 regulations.

10 Q. Do you understand that some of those
11 disagreements are a frustration that you all don't
12 have a policy and that you leave these consumers
13 sort of at the mercy of whatever the latest staff
14 member either says or doesn't say?

15 Do you understand that's the policy
16 controversy floating around here, that y'all do not
17 make sure they get protected.

18 MR. WOODINGTON: Object to the form of
19 the question.

20 BY MR. HAMM:

21 Q. You can go ahead and answer.

22 A. I think that description lends itself
23 well to litigation but does not describe reality.

24 Q. So there is no belief and there's no
25 basis for people served by DSN to feel like they

1 are at the whim of staff; and when they're
2 challenged, there's nothing in writing that backs
3 it up and they say, oh, that's our policy?

4 MR. WOODINGTON: Object to the form of
5 the question.

6 THE WITNESS: As commissioners we have
7 to make -- we had, when I was a commissioner -- to
8 make our decision between doing what would actually
9 produce proper care for our consumers on the one
10 hand, while at the same time trying to make
11 our -- trying to protect ourselves from litigation
12 on technicalities which we are not trained even to
13 understand or to address properly.

14 Our focus was on the consumers and
15 properly fulfilling our responsibility to the
16 governor and the legislature who put us in that
17 position.

18 The discussion that we're having now is
19 something that a judge will have to decide, because
20 he understands these terms and this language
21 differently than a layman would.

22 I'm a layman. The problem with putting
23 a layman, who doesn't think and talk like a lawyer,
24 in a position where he has to create legal
25 documents for which he and others will be held

1 accountable, is that we have to have counsel and
2 encouragement from others. And that's a very
3 time-consuming process.

4 BY MR. HAMM:

5 Q. Is that bad?

6 A. No, that's not bad. But when that's
7 presented to vulnerable consumers in pain as though
8 we somehow intended to harm them -- I mean, I
9 understand what that looks like.

10 In other words, I spoke of a lawsuit
11 earlier in the deposition. When I got the
12 document, in emotional distress myself, and started
13 reading words like willful, wanton and malicious, I
14 thought, how can this language be? What is this?

15 Well, it's my first introduction to the
16 fact that certain legal requirements have to be met
17 in order for results to turn out a certain way.

18 But to say that the person who filed
19 that believed that I was therefore willful, wanton
20 and malicious is another matter entirely. That's a
21 legal discussion. And it's very difficult,
22 sometimes, to keep the legal aspects separated from
23 the reality.

24 Let me show you a problem I ran into
25 after we had finished this work while we were

1 trying to determine what documents to ask for.

2 Now, first off, let me make sure this
3 is the same generation of this statute that I have
4 that I was working from, okay? Give me just a
5 moment.

6 Q. Oh, absolutely, please.

7 And when you make that determination,
8 simply state for the record what you're looking at,
9 because I don't have that in front of me. And I
10 don't think I need to. So go ahead.

11 A. There are some evident grammatical
12 problems in Section 44-20-220. It would be helpful
13 if you had it in front of you too. And I think
14 I've got your copy. I'm speaking now to Sarah.
15 And I have your copy. Do you have another copy?

16 MS. ST. ONGE: You do, but I have that
17 statute.

18 THE WITNESS: Do you have a copy of it?

19 MR. HAMM: I don't think I have it with
20 me at the moment. Jo Ann, will you arrange...

21 BY MR. HAMM:

22 Q. Hand it to me and then I will hand it
23 back to you.

24 A. Can I take a two-minute break?

25 Q. You can take a ten-minute break.

1 (A brief recess was held.)

2 BY MR. HAMM:

3 Q. Okay, Mr. Vaughn.

4 A. We are looking at Section 44-20-220,
5 duties of commission, per diem, appointment of
6 director of disabilities and special needs,
7 advisory committees.

8 That title, to be distinguished from
9 the next Section 44-20-225, which is about consumer
10 advisory boards membership, per diem and terms of
11 office --

12 The second sentence of Paragraph -- or
13 Section 220 -- says, the members of the commission
14 shall receive subsistence, mileage and per diem as
15 may be provided by law for members of state boards,
16 committees and commissions.

17 Look at Section 225, the first sentence
18 on the next page.

19 Q. All right.

20 A. That sentence says, the members of the
21 commission shall receive subsistence, mileage and
22 per diem as may be provided by law for members of
23 state boards, committees and commissions.

24 Now, I have several other things I want
25 to point out, but let me ask you something. What

1 obviously happened there?

2 Q. You tell me.

3 A. Well, those sentences are identical.
4 The first paragraph is talking about commissions,
5 duties of commission. The second one is talking
6 about consumer advisory boards, membership, per
7 diem. But the sentence that appears in Paragraph
8 225 was obviously cut and pasted or interpolated
9 from the previous paragraph and not correctly
10 edited before it was put into law.

11 Q. And has the commission directed the
12 staff to bring these kinds of issues to the
13 attention of the general assembly?

14 A. And I brought it to the attention of
15 the general assembly myself.

16 Q. And?

17 A. There it is.

18 Q. It may be there right now, just since
19 the general assembly does nothing quickly, at least
20 in my life experience.

21 A. Well, there you go.

22 All right. Now, my point is there's at
23 least one obvious -- there's a grammatical term for
24 what you do when you take a sentence from here and
25 you put it somewhere else because you kind of got

1 messed up when you were copying it or whatever. I
2 can't remember what that word is.

3 But that statement probably was
4 intended to be edited where it said the members of
5 the advisory board shall receive subsistence,
6 because this paragraph is about advisory boards,
7 but it says commissions because that's the same
8 statement that it makes above.

9 Now, in light of that issue, we keep
10 looking. And, yes, we see, the commission shall
11 determine the policy and promulgate regulations
12 governing the operation of the department. And
13 that, of course, is one of the salient statements
14 for our discussion today.

15 But when you come down later into that
16 same paragraph, it says, the commission shall
17 appoint and in its -- now it's talking about the
18 director. I'm sorry. Nothing wrong with that.

19 Next sentence. The commission may
20 appoint advisory committees it considers necessary
21 to assist in the effective conduct of its
22 responsibilities.

23 So it's giving permission to appoint
24 advisory committees. And we know this paragraph
25 addresses advisory committees. It talks about

1 educating the public and so on.

2 It says, then the commission is
3 authorized to promulgate regulations to carry out
4 the provisions of this chapter and other laws
5 related to mental retardation, related
6 disabilities, head injuries and spinal cord
7 injuries. In promulgating these regulations, the
8 commission must consult with the advisory committee
9 of the division for which the regulation shall
10 apply.

11 So as a commission, we look at this and
12 think, all right, there are two types of
13 regulations that are mentioned here. There's a
14 promulgation of regulations governing the operation
15 of the department and employment of professional
16 staff and personnel. We covered those things in
17 these policies.

18 Now we come down here and it says, if
19 we're going to promulgate regulations about the
20 kinds of concerns that you have asked me about
21 today, then in order to promulgate those
22 regulations, we must consult with advisory
23 committees.

24 Q. Did you do so?

25 A. We're trying to determine who these

1 advisory committees are and are they the ones that
2 are being discussed in the next paragraph.

3 Q. Is that a matter of which the
4 commission has asked for a legal opinion from the
5 attorney general or anyone else so that you'll know
6 what that construction is?

7 A. We asked for clarification on it.

8 Q. You asked for clarification from whom?

9 A. We asked the staff to find
10 clarification. I talked to my senator and said, we
11 need some help on this, and I think that the
12 statute is going to have to be looked at.

13 Q. Let me -- let's go back to the very
14 first sentence.

15 A. Well, okay, but there's one more factor
16 I want to point out.

17 Q. Go ahead.

18 A. In Paragraph 225, the governor shall
19 appoint a seven-member consumer advisory board with
20 the advice and consent of the senate for each of
21 those same divisions that were mentioned above.

22 Now we're thinking, okay, we've got 220
23 and then we've got 225. Is there a 221, 23, 24? I
24 mean, maybe not. We're not lawyers here. All we
25 have is what we have in front of us. Was something

1 left out? Are these advisory boards that are
2 appointed by the governor the same as these
3 advisory committees here in 220? And if we must
4 consult with them, do they have to be appointed by
5 the governor? Wait a minute. It says commission.
6 No, that's not right. So this thing needs to be
7 cleaned up. So we're talking -- I just want to get
8 this one thought out.

9 Q. Go ahead.

10 A. We're talking about these policies and
11 we're talking about regulations. And everybody
12 that I mentioned it to -- and I don't remember
13 everybody that I mentioned it to and I don't
14 remember the circumstances under which I mentioned
15 it, but my next thing was to look into the next
16 layer of this thing.

17 And the answers that I got were like
18 this, and these are not quotations: Well, there's
19 a lot of talk about restructuring; I'm sure they're
20 going to look at all of that. There's a lot of
21 talk about whether or not this department is going
22 under the governor anyway and are all of these
23 things going to be moot. Well, we can't consult
24 with committees unless the governor appoints them.

25 And I'm thinking, wait a minute. Now

1 I've got to get a legal interpretation of the law.
2 And the various interpretations I'm getting are not
3 in harmony and I --

4 Q. Do you have written interpretations
5 that are not in harmony?

6 A. No, everything is verbal. We're moving
7 quick and in various meetings. And we came -- I
8 say we, probably -- I don't know who else, maybe
9 somebody on the committee -- came to the
10 conclusion, all right, we have policy. We know how
11 we're going to govern. We're going to go with
12 Carver policy governance. And we have the
13 operational guidelines written into these policies.
14 We do not need any regulations right now about how
15 to hire and fire the executive. We've got that.
16 Okay?

17 Now, we also have this business of
18 these advisory boards. And that's up to the
19 governor. And these other promulgations of
20 regulations down here. If all of that is covered
21 under state statute and federal statute and
22 Medicaid -- I guess that would be federal. No,
23 Medicaid is state.

24 Q. Medicare.

25 A. Yeah, Medicare. If all of this stuff

1 is in place, then let's us focus on finding out how
2 we can really know if our policies are being
3 followed.

4 Okay. Now, there was not a refusal to
5 not promulgate regulations. There was not a policy
6 against promulgating regulations.

7 Making sure we had the right policy and
8 that we had some kind of measurements in place to
9 know what documents to ask for was what we were
10 focused on.

11 Q. And that's the process that you said
12 never got completed?

13 A. Right. Not while I was there.

14 Q. Okay. Now, let me go back.

15 A. Did I say all of that clearly?

16 Q. Yes, sir. I understood what you're
17 saying and I thank you. But I would note that the
18 statute that was adopted in 1990, why is it that
19 DDSN -- if there is all of these questions, why is
20 it we've got a decade, 17 years gone by, and
21 suddenly we're hearing, oh, we're not sure who was
22 supposed to be doing this? Doesn't that strike you
23 as -- I hope that strikes you as somewhat troubling
24 as we sit here in 2010 discussing a statute adopted
25 in 1990.

1 And I believe you, absolutely. So you
2 hear me say this: I don't doubt what you're saying
3 for a moment. But it certainly troubles me that a
4 commission doesn't know what its own statute is 17
5 years later, when my clients feel like the only way
6 we're going to get these people to pay any
7 attention to us is file a lawsuit.

8 MR. WOODINGTON: I didn't hear a
9 question there. I'm sorry.

10 THE WITNESS: Does it trouble me? Was
11 that the question?

12 MR. HAMM: Yes.

13 MR. WOODINGTON: Okay.

14 MR. HAMM: There was a question and he
15 heard it.

16 MR. WOODINGTON: Well, I object to the
17 form of it.

18 THE WITNESS: It troubles me that when
19 somebody --

20 MR. HAMM: Good, I'm glad it does --

21 MR. WOODINGTON: Wait a minute. Let
22 him finish his answer.

23 THE WITNESS: It troubles me that when
24 somebody who can figure out what the problem is
25 comes on to the commission and tries to do

1 something about it, he can't survive his term.

2 That's what troubles me.

3 BY MR. HAMM:

4 Q. It troubles me too. It troubles me
5 too. But as you can appreciate, I have heard what
6 you've just said. And I will, for purposes of
7 courtesy and respect to you, I am handing you --
8 out of the books, you will see where I came up with
9 the 1990.

10 A. Yeah. Can I see if that mistake is in
11 this book, while you've got it open?

12 Q. It is, it is. You're welcome to look
13 at it, but it's there.

14 A. Here is my question. Can I ask a
15 question?

16 Q. No, no.

17 A. Okay.

18 Q. That's the wonderful thing about this
19 process. No, you can't.

20 A. Can I make a comment?

21 Q. Let me ask a question. I don't have
22 any doubt you'll work in your comment; how about
23 that?

24 A. It would be part of an answer to what
25 you asked just a moment ago.

1 Q. I don't doubt that you would think
2 that; and I say that very respectfully.

3 Is it appropriate for you to conclude
4 that how DDSN establishes the rights of consumers
5 to raise issues regarding their eligibility, is
6 there anything in your mind that says that's not
7 governing the operation of the department, if the
8 department has taken a position or not taken a
9 position?

10 A. Can you ask that a little more
11 succinctly?

12 Q. Yes, let me think. Let me ponder.

13 Let's lay a couple predicates and then
14 we'll be together, hopefully.

15 A. Okay.

16 Q. Are there times when consumers are, in
17 fact, correct that DDSN did not make an appropriate
18 decision, as found by courts and whatever?

19 A. Are you asking me if I agree with the
20 complaints?

21 Q. Are you aware that the state
22 government, run by humans, that courts and others
23 have determined that DDSN, maybe in good faith or
24 whatever, made an error?

25 A. I certainly respect the court system.

1 Q. I never doubted that for a moment.

2 A. Okay.

3 Q. All right. And do you agree that a
4 consumer should have the right to know what they
5 need to do when they believe DDSN made the wrong
6 decision? That doesn't mean they're right. But if
7 they believe that, do you believe they ought to
8 have the right to raise that issue and get somebody
9 to decide whether or not a mistake was made?

10 A. Are you asking me if the Plaintiff has
11 a right to file his lawsuit?

12 Q. I'm not asking this in the context of
13 this lawsuit.

14 A. Okay.

15 Q. I'm asking you do you believe that a
16 consumer has the right, when they're turned down
17 from services, do you believe as a matter of policy
18 they ought to have the right to at least have the
19 ability to challenge that and see if, in fact, it
20 was the correct decision?

21 A. They don't have a right to get the
22 answer they want.

23 Q. That's not what I asked.

24 A. But should they be able to get
25 clarification?

1 Q. Yep.

2 A. I would have to say yes, but --

3 Q. And to the extent that DDSN is making
4 decisions --

5 A. Commission? The commission?

6 Q. No, no, DDSN.

7 A. Okay.

8 Q. They've got the -- DDSN has to make
9 decisions consistent with the policies of the
10 commission, yes?

11 A. Yes.

12 Q. Okay. And the operations of the
13 department, Carver principles, now that I'm exposed
14 to this, you want decisions made on a sound basis,
15 and you, yourself, attempted to develop the
16 framework for appropriate decisions. Yes?

17 A. When you say decisions, I would suppose
18 that if we are both saying we want management to
19 conform to commission policy --

20 Q. Yes.

21 A. -- then I would agree.

22 Q. Okay. And the operation of the
23 department necessarily starts with the proposition
24 that management will consistently apply commission
25 policy?

1 A. Yes.

2 Q. And if the management has not provided
3 consumers with a clear basis of how they challenge
4 management decisions, don't you think that goes to
5 the operation of the department?

6 MR. WOODINGTON: Object to the form of
7 the question.

8 THE WITNESS: The operative word is if.
9 And the challenge that the commission has is to
10 determine whether.

11 BY MR. HAMM:

12 Q. Does management have the right to make
13 arbitrary and capricious decisions on its own?

14 A. No. Now, wait a minute. You had
15 several elements there, arbitrary and capricious.

16 Q. Let's just use arbitrary. Let's just
17 start there.

18 A. Well, if you have arbitrary, then you
19 don't need capricious and you don't need on its
20 own. But when you pile those three things
21 together, it sounds like some sort of conspiracy or
22 something. I know, I know.

23 Q. Well, it's a phrase that comes out of
24 the statute.

25 A. I understand.

1 Q. So I didn't raise those in a pejorative
2 manner.

3 A. I know.

4 Q. You and I, I think, have had a good
5 discussion today, but I don't want anything to be
6 taken as that I'm saying is personal to you or --

7 A. And I'm not taking it in that way at
8 all.

9 Q. But, again, I am going back to the fact
10 that the operation of the department would, in
11 fact, include decisions by the department of how
12 citizens either get or don't get services. I mean,
13 that's a fundamental part of the operation of the
14 department, right?

15 MR. WOODINGTON: Object to the form of
16 the question.

17 THE WITNESS: I'm not sure -- I don't
18 mean to be unresponsive. But from the time I
19 served on the commission, from my experience as a
20 commissioner, I can confidently say that it is my
21 belief that there exists a clear way for aggrieved
22 parties to make their case.

23 And I would appeal for all professional
24 advocates of those aggrieved parties to conduct
25 themselves with the same decorum that they expect

1 from the commission and the same level of clarity,
2 and that they can harm those for whom they advocate
3 when they don't do that.

4 Because it does take time. If it took
5 17 years for a commissioner to find these
6 grammatical issues, we should be able to allow more
7 than 60 days to react to other poorly understood
8 documents.

9 There. I worked in my statement.

10 BY MR. HAMM:

11 Q. I don't understand what the reference
12 to the 60 days is.

13 A. Well, this was February and this is
14 April.

15 Q. Right.

16 A. I'm sorry. The policy is February of
17 '07 and the suit is April '07, I believe.

18 Q. And you realize that the suit had
19 nothing to do with the policies. It sounds like
20 you're assuming that it did.

21 A. I'm thinking today that we are
22 discussing that there are no promulgation of
23 regulations because we have these policies.

24 Q. We are. Well -- I know we don't have
25 promulgation of -- let me rephrase it so you answer

1 the question.

2 Have you promulgated regulations that
3 make clear a process that a consumer has to take to
4 vindicate their legal rights or to challenge a
5 decision that consumer believes is wrong?

6 A. Have we promulgated regulations?

7 Q. Have you promulgated regulations to do
8 that?

9 A. If we can talk about the details of
10 these policies, I can show you where the policies
11 cover those issues.

12 Q. I want to know whether you have
13 promulgated regulations regarding the operation of
14 the department dealing with the operation of how
15 the department's staff either makes decisions on
16 eligibility or determines that they are not. Is
17 there a regulation or not, is what I'm asking.

18 MR. WOODINGTON: Object to the form of
19 the question.

20 BY MR. HAMM:

21 Q. Go ahead.

22 A. The commission did not write another
23 layer of documents. The commission strived -- is
24 it strived or strove?

25 Q. Strove.

1 A. -- strove to define and clarify what it
2 intended by this, while it was being interpreted
3 differently by those who objected to what they
4 thought it said.

5 Q. Okay. Again, we...

6 A. No is the answer.

7 Q. But the fact is, the statute was
8 enacted in 1990. You joined the commission in
9 2005. Are you aware of any regulation issued by
10 the department --

11 A. The commission?

12 Q. No, the department.

13 A. The staff.

14 Q. Right.

15 A. By the director and his staff.

16 Q. Right.

17 A. I'm not personally aware of it, but
18 that doesn't mean it doesn't exist.

19 Q. So would it surprise you if I told you
20 that, no, they have never enacted a regulation
21 dealing with eligibility or appeal standards for
22 consumers --

23 A. It wouldn't surprise me because the
24 director and the staff do not promulgate
25 regulations. They write directives. And there are

1 directives.

2 Q. But Section 44-20-220, the operation of
3 the department includes how you make decisions
4 regarding eligibility; does it not?

5 MR. WOODINGTON: Object to the form of
6 the question.

7 THE WITNESS: No.

8 BY MR. HAMM:

9 Q. Oh, it doesn't?

10 MR. WOODINGTON: Object to the form of
11 the question also.

12 BY MR. HAMM:

13 Q. So the staff has total ability to do
14 what they want and they don't have to define in
15 writing anywhere under the terms of the
16 Administrative Procedures Act?

17 MR. WOODINGTON: Object to the form of
18 the question.

19 THE WITNESS: I can't speak to the
20 Administrative Procedures Act. I do know that
21 there is written policy that the executive director
22 must employ competent staff and make sure that they
23 accomplish the goals and the ends that are in this
24 policy and that they have to be professional staff
25 and personnel capable of doing their jobs.

1 Now, with respect to those things that
2 you asked me about, I believe that these permitted
3 regulations are the ones that you're asking for.

4 BY MR. HAMM:

5 Q. Okay. Look at 44-20-230. Read the
6 first sentence of that, please.

7 A. Right. I have no problem with that.

8 Q. All right. During your service, in
9 fairness to you, you can't be responsible for
10 anything that did or didn't happen before you got
11 there.

12 A. Uh-huh.

13 Q. Did you ever have a conversation
14 discussing what a regulation might or might not
15 entail in order to make a decision, no, we don't
16 need a regulation?

17 A. Did I have a conversation?

18 Q. Yes.

19 A. Yes.

20 Q. With who?

21 A. Hmmm. I can't ask him.

22 MR. WOODINGTON: If it's with a lawyer,
23 he can state that it's with a lawyer and that's --

24 MR. HAMM: Well, if that's his answer.
25 Let me wait. I have no idea what he's liable to

1 say, Ken.

2 THE WITNESS: I honestly don't remember
3 who I talked to, but I do know what answer I was
4 given. And I know every time I asked about
5 regulations -- and my questions about regulations
6 always followed public statements demanding
7 regulations by someone who was in the media, not a
8 commissioner, but there would be an attorney or
9 someone else there who would come on --

10 MR. WOODINGTON: Excuse me. You may be
11 talking about some other attorney, but I don't want
12 you to say anything that a DDSN attorney or Will
13 Davidson said to you.

14 THE WITNESS: No, no, no. It wouldn't
15 be. No, it wasn't them.

16 BY MR. HAMM:

17 Q. Or anything that's said in an open
18 meeting is not --

19 A. Somebody would say in an open meeting,
20 why doesn't DDSN have any regulations? Okay? And
21 then there would be a discussion and the
22 explanation would be given that all of these issues
23 are covered by statute, or something like that.

24 And then there would be some
25 interaction, you know, among commissions or staff

1 or somebody later about, what's the deal on this
2 thing with regulations? And the answer would be
3 given, there's nothing that's not covered already.

4 Q. Well, in looking at the minutes, I
5 never saw anything where the commission actually
6 addressed the exact question that we have decided,
7 as a matter of policy, that we're not going to use
8 regulations implementing our statutes. I didn't
9 find that. Do you know something I don't know?

10 A. So you're saying that there's nothing
11 in the minutes where we decided we were not going
12 to have regulations?

13 Q. Yes.

14 A. Well, that would be correct, but we
15 wouldn't write down every statement that was made
16 by somebody who was attending a meeting as a part
17 of the public.

18 Q. Did you ever -- were you ever told by
19 staff that the appeal or eligibility process was
20 not part of the governing the operation of the
21 department?

22 MR. WOODINGTON: Object to the form of
23 the question.

24 THE WITNESS: Staff --

25 MR. WOODINGTON: You're talking about

1 non-lawyer staff, right?

2 BY MR. HAMM:

3 Q. Yeah.

4 A. Did staff tell me that eligibility --

5 Q. -- and appeals --

6 A. -- and appeals --

7 Q. -- were not part of the operation of
8 the department?

9 MR. WOODINGTON: And, again, object to
10 the form.

11 THE WITNESS: They were part of the
12 operation.

13 BY MR. HAMM:

14 Q. All right, okay.

15 A. But, however, we often used the word
16 operations as distinct from policy.

17 In other words, when we were talking
18 about Carver -- and it may even state this in
19 Carver's Policy of Governance.

20 Now, I see the statute and I understand
21 why you're asking me about the term operation. But
22 we made the distinction between management and
23 staff, between -- I'm sorry -- management would be
24 the executive director and then his staff -- but
25 between governing and administration, or between

1 policy and operations.

2 And often I would hear the term by a
3 commissioner or by one of our chairman that would
4 say, that's a matter of operations, meaning that's
5 something for the director or the staff to take
6 care of. And they weren't trying to distinguish
7 that or redefine this term. They were just
8 identifying staff work. Day-to-day operations was
9 often the way it was expressed.

10 Q. But you were kind enough to acknowledge
11 to me that eligibility and appeals is a fundamental
12 part of the operations of the department; and I
13 don't think you and I are disagreeing on that.

14 What I'm understanding you to say is,
15 without ever voting on it, there was just some
16 understanding that when in doubt we were not going
17 to use a regulation. Is that a fair -- I'm trying
18 to openly in my mind characterize what I'm hearing
19 you tell me.

20 I'm hearing a tone of we're going to
21 stay away from all of the regulation, as far as we
22 can.

23 A. Are you hearing that from me?

24 Q. I'm asking. That's what I think I'm --
25 well, I know as a matter of fact, even though the

1 statute was adopted in 1990, it didn't happen on
2 appeals or eligibility, although it's a fundamental
3 part of operations.

4 You, thankfully, get on the commission,
5 have an interest and a background in policy, and
6 your involvement did not cause you to think,
7 perhaps we need to adopt a regulation; fair?

8 A. No.

9 Q. That's not fair?

10 A. No. I mean, it's not unfair, but it's
11 not accurate.

12 MR. WOODINGTON: I object to the form
13 of it, too.

14 THE WITNESS: Look what I got done in
15 two years. Okay?

16 BY MR. HAMM:

17 Q. You're going to get credit for that.

18 A. Here is my point: I would not have
19 recommended or proposed a regulation until --

20 Q. Because --

21 A. -- I was satisfied that there was
22 foundational policy clearly in place to support
23 that regulation.

24 Q. And you've already told me that you
25 didn't -- and unfortunately you were unable to get

1 to that point.

2 A. But if we had gotten the policy where
3 it needed to be where it was clearly understood by
4 the public and the staff and the commissioners, if
5 the next appropriate step would have been to
6 promulgate a regulation, I would have written it.

7 Q. You have truly answered my question.
8 Thank you.

9 A. All right.

10 Q. And, again, following up, though, what
11 you said is, Steve, just remember, I didn't get
12 through this entire process like I hoped and
13 intended.

14 A. And if I could explain that just a
15 little bit more, we passed this in '07. In the
16 middle of '07; peace broke out -- at least on the
17 commission -- because the individual that didn't
18 trust this process, or us, was no longer on the
19 commission.

20 We brought in some -- the governor
21 appointed some new people who were very competent,
22 very good at communicating ideas. And we spent
23 most of '07 and into '08 getting them up to speed,
24 evaluating things, talking and dreaming about
25 the --

1 Q. Better days?

2 A. -- utopian future.

3 And then the LAC showed up. And I
4 spent my last several months chairing another
5 committee.

6 Q. Question. Does the LAC report stand as
7 an example that somebody wasn't following policies?

8 A. Personally? No, I don't think so.

9 Q. What does LAC report stand for?
10 Wonderful management?

11 A. No, LAC provided -- it's never been
12 presented this way publicly to my knowledge. It
13 certainly wasn't in the newspapers.

14 But the LAC provided for us a
15 comprehensive objective evaluation of what we
16 really needed to work on. And we immediately went
17 to work on it. I was then appointed to chair the
18 LAC response committee.

19 We took every single one of those
20 items, set up an Excel spreadsheet, identified what
21 the comment was, what the recommendation was, who
22 would be responsible to act, what they would do and
23 when they would be done. And that's what I did in
24 the spring of '09.

25 Q. Would appropriate policies and

1 procedures overseen by the commission consistently
2 over time have avoided the kinds of criticisms
3 contained in the Legislative Audit report?

4 A. I don't know that there would ever
5 be -- and we're back to that utopian question. I
6 don't know that there would ever be a situation
7 which there was not going to be a decision in
8 management made on a daily basis; therefore there
9 would be problems that would have to be corrected.
10 There's always correction. However, when we talk
11 about the LAC audit, we have to distinguish between
12 what it actually said versus what everybody thinks
13 it said.

14 Now, I asked the people on the LAC
15 committee, are you as alarmed about the things
16 you've reported, as others who haven't read it who
17 have only heard about it? Do you find anything
18 here disturbing or alarming? And they told me no.

19 Q. What I'm trying to understand, though,
20 in terms of management and policy, am I hearing you
21 that even good management and good policy would not
22 have eliminated at least some of the criticisms in
23 the LAC report?

24 A. I'm sure that there would have been
25 fewer incidents to comment on; but the fact that

1 the LAC audit on its face was far more reasonable
2 than any public report about it, indicates that no
3 amount of policy is ever going to bring praise from
4 people that are in pain. Now, that's probably not
5 responsive either.

6 Q. No, that's fine. That's fine. I'm
7 just trying to see if you, in fact, believe in the
8 power of good policy and procedure finding its way
9 into management, and thus those policies and
10 procedures would, in fact -- I mean, some of the
11 criticisms in the Legislative Audit report were
12 things that weren't rocket science; people just let
13 stuff slip for a time. Good policy would have
14 avoided that.

15 I'm just trying to see, in your mind,
16 is there a correlation between the quality of
17 operation and results tied to good policy or they
18 have no connection at all?

19 A. Well, they obviously have a connection.
20 But policy is never going to make a smoke alarm
21 battery not die. Somebody is going to have to find
22 it and change it. There's a human factor. And
23 there will be mistakes.

24 I maintain that the policies -- and I
25 don't know what policies are in effect now, but I

1 maintain that these global policies are far
2 superior to the ones that they replaced, and
3 properly understood, would have changed DDSN -- and
4 may yet.

5 Q. Properly understood by whom?

6 A. By anybody that reads them or applies
7 them.

8 Q. Well, who is it most important that
9 they understand it?

10 A. The executive director.

11 Q. Can I conclude that you determined that
12 the executive director at that point was not
13 applying good policies and procedures?

14 A. No, I wouldn't say that, no.

15 Q. So the executive director that was
16 there during your service, everything he was doing
17 was --

18 A. No, I didn't say that. I interrupted
19 you.

20 Q. No, that's fine. I was actually trying
21 to be careful and not putting words in your mouth.

22 A. Okay.

23 Q. Did you believe the executive director
24 was in fact operating appropriately and making
25 appropriate policy decisions?

1 A. Yes.

2 Q. So regardless of the documents that you
3 worked on, you concluded he was doing a good job
4 regardless.

5 A. I wouldn't say regardless. I would say
6 that we gave him a better tool and that, you know,
7 he needed a certain amount of time to make sure
8 that everything was running smoothly and that
9 everybody was making the application of these
10 things. But that was going to be a process over
11 time.

12 Q. And did that happen?

13 A. It was short-circuited.

14 Q. And remind me again why it was
15 short-circuited.

16 A. It was short-circuited because the
17 statement in here about his authority was
18 interpreted by the very language that has found its
19 way into this suit that he was given unfettered
20 authority. I believe those are the words that are
21 used here.

22 Q. Yes, I believe that's true.

23 A. But he was not given unfettered
24 authority.

25 Q. Well, some people would exercise

1 authority even if they don't have it, right?

2 A. Then they should be held to account
3 and --

4 Q. And who holds the executive director of
5 DDSN accountable?

6 A. The commission is charged with that
7 responsibility.

8 Q. Does this lawsuit in your mind reflect
9 that some people do not believe the commission held
10 him accountable?

11 A. It seems to indicate that.

12 Q. And can you appreciate that people of
13 good faith might reach that conclusion?

14 A. Apparently they did.

15 Q. Okay. I've asked you this, but I want
16 to make sure I'm clear about it, as we get ready to
17 go into another area:

18 Did you ever receive, as a member of
19 the commission, a presentation, legal or otherwise,
20 about regulations and whether or not the commission
21 or the staff should try to avoid them?

22 A. I don't know. I don't remember any
23 statement or presentation indicating that they were
24 taboo.

25 Any statements that I'm recalling were

1 in the vein of, nobody is in danger, let's work on
2 this other thing. I mean, in other words, that's
3 covered, let's get these other things -- let's take
4 first things first kind of approach. In other
5 words, let's get our policies straightened out and
6 then we'll get into these other layers.

7 Q. And first things first is --

8 A. -- policy.

9 Q. 15 years after the statute is enacted,
10 we don't have everything done, first things first;
11 so before we're going to turn to regulation, we're
12 going to do first things first in 2005 on a statute
13 enacted in 1990.

14 MR. WOODINGTON: Object to the form of
15 the question.

16 THE WITNESS: I came on in 2005. I
17 found this in the middle of 2006. We got it
18 changed by the first of 2007. We were moving, is
19 my point. I don't think it would have taken us
20 another 17 years to get it done.

21 But if I may interject a ministerial
22 comment, the Lord's will be done, and He raises it
23 up and He puts down and we serve and we do the best
24 we can.

25 Q. Amen.

1 All right. I had directed your
2 attention to Paragraph 14 in this lawsuit.

3 A. Okay, yes. No, you said 13.

4 Q. 13, excuse me. And we had discussed
5 that briefly where I was simply pointing out that
6 some people of good faith concluded that how you
7 avail yourselves of services was not clear to them,
8 correct?

9 A. The lawsuit seems to indicate that they
10 didn't know what to do when the executive director
11 made a decision that they didn't agree with.

12 Q. Now, tell me, as a matter of policy,
13 what is a member of the commission -- as a matter
14 of policy -- what do they do if somebody is saying,
15 I don't understand, I have an issue, I want to make
16 sure it's not arbitrary? What do you ask the
17 executive director to do about that, if anything?

18 A. Well, the first thing we have to
19 determine is, is this a legitimate in-good-faith
20 complaint --

21 Q. And what did you decide?

22 A. -- or is it something other than that?

23 Q. Okay. And what did you decide as a
24 member of the commission as a matter of policy?

25 A. Not as a matter of policy but as a

1 matter of response to the complaint.

2 Q. Okay. What did you conclude?

3 A. My personal conclusion was that much of
4 what we were hearing was personal.

5 Q. And personal means?

6 A. Related to something that wasn't on the
7 table.

8 Q. So if a parent is complaining --

9 A. I'm not talking about a parent.

10 Q. Pardon me?

11 A. I'm not talking about a parent. I'm
12 talking about a spokesman. That there were
13 personal issues that were driving much of what we
14 were hearing.

15 Q. Are you referring now to this lawsuit?

16 A. I don't know who filed this lawsuit.

17 Okay? I mean, P&A. And I'm not talking at that.

18 Q. Oh, you're not talking about that?

19 A. Well, did you ask me about this?

20 Q. Yes.

21 A. Okay, you did. I'm sorry.

22 Q. Yes.

23 A. I'm thinking about other situations.

24 Pardon me.

25 Q. That's fine. That's why I was

1 clarifying.

2 A. Well, as I said, the first time I have
3 seen the text of the lawsuit is today. Now, I may
4 have failed in that, but...

5 Q. And would it surprise you that that
6 surprises me, that somebody like you didn't sort of
7 dig in and see just what is it they're complaining
8 about?

9 I'm honestly surprised, a man of your
10 stature and background is telling me you didn't
11 know that kind of a detail until March the 26th of
12 2010 in a lawsuit filed in April of 2007?

13 A. It must seem surprising.

14 Q. I am. But maybe I shouldn't be.

15 A. But I wonder how many other tens of
16 thousands of pieces of information I am not aware
17 of that I will never become aware of until someone
18 brings them to my attention with surprise that I
19 don't already know them. I mean, how do you decide
20 which piece of paper you're going to give priority
21 to unless somebody that you trust advises you that
22 you should?

23 Q. So are you telling me that as a member
24 of the commission you were never advised that this
25 was significant enough or a matter of policy that

1 had merited your examination?

2 A. That this particular document?

3 Q. Yes.

4 MR. WOODINGTON: I object to the form
5 of the question. And also he's already testified
6 that he was briefed on this lawsuit at a commission
7 meeting.

8 MR. HAMM: That's not the question I
9 have asked. He's told me today that today is the
10 first day that he has actually looked --

11 THE WITNESS: Read.

12 BY MR. HAMM:

13 Q. Read.

14 A. Yes.

15 Q. And would you agree that as you preach
16 on the Lord's word, it's also important that the
17 folks read the Lord's word?

18 A. I would. But I would also say that for
19 thirty years I made announcements that people
20 handed to me on 3-by-5 cards as I was getting in
21 the pulpit.

22 And I think anybody in a position of
23 leadership has to depend on other information that
24 trusted sources are giving him. And when he looks
25 at more paperwork than a person could read in a

1 lifetime, he has to decide how he's going to make
2 his decisions on brief perusals.

3 Q. Again, this is all about policy. Were
4 you, by trusted people you -- I'm trying to think
5 of the phrase you just used.

6 MR. HAMM: What was the phrase that
7 this gentleman just used? Trusted people who he --
8 BY MR. HAMM:

9 Q. I think you just told me trusted
10 sources told you you didn't need to be concerned
11 about this?

12 A. No, no.

13 Q. Well, what did trusted sources tell you
14 about this lawsuit?

15 A. That they had read it and that they
16 were the ones that were supposed to read it. And I
17 think that's where I better stop, because of who it
18 was telling me that.

19 Q. All right.

20 A. But, in other words, if I were to have
21 to choose a professional to render services as a
22 doctor or an attorney or an accountant or something
23 like that, I wouldn't have to read everything that
24 that doctor read to become a doctor to know that I
25 was going to put my life in his hands. I wouldn't

1 have to get an accounting degree to be able to pick
2 out an accountant.

3 I mean, I have to make judgments on the
4 basis of a person's competence and character. Now,
5 if I find out later that they made a decision I
6 wouldn't have made if I had that same information
7 that they had, then I'm going to find out was that
8 a forgivable mistake or should I find myself
9 another doctor.

10 Q. Well, does your doctor or your lawyer
11 establish your policy?

12 A. I take the pills. I mean...

13 Q. So as a member of the commission, it
14 would be your policy that you would simply rely on
15 others and wouldn't look at the underlying
16 document?

17 A. Not in every case, no, of course not.

18 Q. But here we know you did not look at
19 the underlying document until today.

20 A. I haven't read it yet. I mean --

21 Q. I know that you've read Paragraph 13
22 today.

23 A. Yes. And I might be able to comment on
24 others, if you want me to read them. But if there
25 are experts whose business it is and who make their

1 living doing these kinds of things, then I try to
2 make whatever wise decisions I can in the limited
3 time I have with the limited information that I
4 have. And I appreciate your comment that a man of
5 my stature would not have exposed himself to it,
6 but I think that --

7 Q. And that was said very respectfully.

8 A. I accept it. But I think it's a straw
9 man argument, because having character and
10 integrity does not necessarily require a person to
11 have read every document that's about to smack them
12 in the face.

13 Q. Well, how do you decide whether, as a
14 member of the commission, that something is raising
15 a significant policy issue?

16 A. The content of the message.

17 Q. Well, here we know you didn't know what
18 the content was, because you didn't look at it.

19 MR. WOODINGTON: Object to the form of
20 the question.

21 THE WITNESS: Well, I knew that it was
22 about the promulgation of regulations, which is the
23 essence, okay?

24 And the way anybody would. I mean,
25 there are four principles for evaluation of

1 information that you're getting from other people.
2 If I may state them, there is your confidence in
3 the competence of the messenger. There is your
4 respect for the character of the messenger. There
5 is your rapport with the personality of the
6 messenger and your submission to the authority of
7 or authority over the messenger. And when you
8 apply those four principles, you make a decision
9 based on the that information you're getting.

10 BY MR. HAMM:

11 Q. Now, let's now talk about, who was the
12 messenger that you relied upon, had respect for and
13 applied those four principles? Who is it that you
14 applied those principles specifically in making
15 judgments here?

16 A. As stated before, the only knowledge I
17 had about this lawsuit was in a confidential
18 briefing by an attorney.

19 Q. I'm not asking what was said. I want
20 to know who it was.

21 MR. WOODINGTON: It was Will obviously.
22 I don't know if he remembers Will's name or not.

23 THE WITNESS: Yes, it was Will.

24 BY MR. HAMM:

25 Q. So whatever he said to you --

1 A. I trusted him.

2 Q. Well, let me go one other question.

3 Was there any lawsuit ever filed where
4 you were concerned enough as a policy matter that
5 you wanted to individually inspect what was being
6 claimed?

7 A. I would not trust myself to inspect a
8 legal document and understand it sufficiently to
9 make policy without the counsel of someone who
10 speaks that language.

11 Q. Is that a very kind way of saying no?

12 A. Depending on what I was told, I might
13 want to read it, okay, but probably not. I'm not a
14 legal expert.

15 Q. So from a policy standpoint as a member
16 of the commission on DDSN, because you weren't a
17 lawyer, you would not examine and gain a firsthand
18 opinion about allegations by reading them?

19 MR. WOODINGTON: Object to the form of
20 the question.

21 THE WITNESS: I have confidence in
22 these four global policies and understand them to
23 the degree that I can make decisions about things
24 that I know they already address so that I don't
25 have to worry about the details of -- or the

1 conclusions of others about things who do not
2 understand these policies or know what they say.

3 BY MR. HAMM:

4 Q. So what is the directive that you say
5 already addresses the concerns of my clients in
6 Paragraph 13? Where have my clients simply --
7 well, wait a minute, we've dealt with that and what
8 did we miss?

9 A. Can you put the other policies on the
10 table.

11 Q. No, I want you to tell me on Paragraph
12 13.

13 A. Then I can't show you in these global
14 policies where that is precluded unless those are
15 entered.

16 Q. And I understand that. But what I
17 understood you to say is you believe somewhere
18 there's something that specifically addresses
19 Paragraph 13 in writing --

20 A. Yes.

21 Q. -- that one of my clients could look at
22 and rely upon.

23 A. Yes. The principle is on that set of
24 papers.

25 Q. The principles?

1 A. The principle.

2 Q. I'm talking about the procedures of how
3 you do it. There's a difference between a
4 principle. But if a client says, look, they said
5 we're not eligible for this service, I believe
6 they're wrong, and you don't have a uniform system
7 of challenging that, a principle is not going to
8 answer that question; is it?

9 MR. WOODINGTON: Object to the form of
10 the question.

11 THE WITNESS: If the speed limit says
12 70, it doesn't have to say not 72. If there's a
13 principle that's clear, people can quibble about
14 the details; but if the principle is clear and
15 people know what it means, reasonable people can
16 understand the application of those principles.

17 If I may say so respectfully --

18 BY MR. HAMM:

19 Q. Of course.

20 A. -- we have lawyers to argue about,
21 well, 72 is almost 70 and it didn't say not 72 and,
22 you know, all of that sort of thing.

23 Q. That's your answer. I'm not attempting
24 to put words in your mouth. I'm just --

25 A. When it says -- well --

1 Q. I'm going to ask you to look at that
2 and then explain the principle that applies here.

3 A. Well, I like this principle here that
4 it is possible to be harmed by continually and
5 repeatedly expending time and resources attempting
6 to determine --

7 Q. That's my clients in that position.

8 A. Yeah, me too, okay, is my point.

9 Q. Well, but at this point you're the
10 person...

11 A. I know, I know. And I'm making a
12 lighthearted comment there. Pardon me. And I
13 understand that this is serious. I'm not trying to
14 make light of it.

15 Q. And I'm not concerned that you're not
16 taking it seriously.

17 A. But let me see if I can comment on
18 something that you've already put in front of me
19 here.

20 Q. And for purposes of the record, are you
21 referring to the '01 -- the Ends policy?

22 A. No, I have the Ends policy.

23 Q. Okay, yeah. I'm just wanting for the
24 record to reflect what we're referring to. Exhibit
25 Number 2.

1 A. Yes. Well, this is only the ultimate
2 goals. There are other statements in the other
3 global policies which I could bring to bear on
4 Paragraph 13, but those have not -- have not been
5 presented. I mean, I don't have them.

6 Q. Let me make sure, in fairness to you,
7 when you said they have not been presented, I'm not
8 sure what that means.

9 A. Well, I have one policy. There are
10 three others. And if I may refer to one of those
11 policies in my response, I can show you how the
12 principle -- for example, this one that you have
13 put on here talks about achieving respect for
14 community integration, achieving respect for
15 consumers.

16 Now, the commission would have a duty
17 to make sure that whatever the director did was
18 done with respect for that consumer, that the
19 services provided met or exceeded -- not only the
20 services, but the satisfaction achieved by
21 comparable departments in other states.

22 A person could appeal to the commission
23 that I am not satisfied and I'm not getting the
24 services and I'm being treated with disrespect.

25 On the basis of this one policy right

1 here, we would then be able to look at it and
2 determine, this person is frustrated about the
3 situation, but this is what people get across the
4 country, they get value for their money, we can't
5 be perfect, we can't satisfy everybody to the
6 degree that they would like to be; but if we are
7 meeting, as it were, industry standards, and we're
8 being good responsible stewards of the resources
9 that we have, I mean, practically --

10 Q. Did you make that determination that
11 that was the situation of the gentleman that was
12 distraught at the meeting that you discussed and he
13 ultimately left? Were you able to reach the
14 conclusion that, I'm sorry, but you got everything
15 you were supposed to get?

16 A. I would never say it to him that way.
17 I know what you're asking me.

18 Q. I'm just trying to get an understanding
19 of how much you dug down to make a determination.
20 I mean...

21 A. His daughter was receiving the only
22 services that were available to her and the
23 services that were deemed appropriate. The
24 unfortunate situation about that was that the only
25 way to answer the questions that we were being

1 demanded to give an answer to would be to violate
2 HIPAA law, to talk about her medical care and her
3 medical condition.

4 He was asking for a level of service
5 that was beyond what had been medically approved
6 and mandated for DDSN. DDSN did not make that
7 decision. That decision was made by others.

8 And we could not talk about it without
9 violating her and the family's right to those
10 things, so we weren't able to offer an explanation.

11 But, yes, here is what I determined the
12 man's need to be. The man needed to be comforted
13 and encouraged. He needed the help of my
14 profession, and others, to help him deal with the
15 fact that he had suffered this great loss and that
16 his daughter had had this terrible injury which was
17 publicly known. He needed to have hope. He didn't
18 need to be exploited, as he was, in a shameful way,
19 to achieve a legal end.

20 Q. His speaking out and expressing his
21 concern was wrong?

22 A. The way he was used by being told --

23 Q. I'm not sure what that means.

24 A. By being told that this was a hearing
25 on his daughter's case. And while he was crying

1 out in pain, to have others stand and shout about
2 unrelated issues, in what I considered to be a
3 staged media event, convinced me that the people
4 who participated in that were not to be trusted as
5 advocates.

6 Q. Are you talking about a -- I'm just
7 trying to understand. Are you talking about some
8 recognized organization that has a name? What are
9 we talking about here? Are we talking about
10 disgruntled citizens? It sounds like you're
11 talking about an organization. I'm just trying
12 to...

13 A. There was no organization. They were
14 vocal individuals. And I don't want to slander
15 anybody.

16 Q. And I'm not asking you to.

17 A. But I felt like the man was misused.
18 And I was in a dilemma as a commissioner. And I'm
19 in a dilemma right now, because I want people who
20 can be made whole to be made whole, but --

21 And I understand what you have to do
22 here, okay? I mean, I respect what you have to do
23 and I don't discount the value of the legal system
24 in ultimately producing an improved situation, but
25 I wonder how regulations are going to help the

1 people who are going to lose their services on the
2 next round of cuts, the next round of budget cuts.
3 How are regulations going to provide those people
4 any comfort?

5 Q. Well, how are people going to be
6 comforted when, in fact, they lost services that
7 they were entitled to, which we have -- there's
8 court decisions where that's happened at DDSN. And
9 I don't say -- because we're not in a perfect
10 world. So you're saying that, per se, regulations
11 are a bad thing --

12 A. No, no, no.

13 Q. -- and we shouldn't burden ourselves
14 with them.

15 A. No.

16 Q. That's what I keep hearing.

17 A. No, I'm not trying to say that at all.

18 But I think I'm being asked to agree
19 with the view that regulations will cause that
20 never to happen; and I don't believe that.

21 Q. Well, for purposes of this deposition,
22 you have established that, number one, the
23 commission was never asked to take a formal vote as
24 to whether regulations should be included in
25 implementing state law or policy, correct? Because

1 you told me that issue was never directly put
2 before you.

3 A. Who would put something before us?

4 Q. Well, staff could do it. Staff could
5 say, you know, we're hearing noises about
6 regulations. We think as a matter of policy our
7 statutes refer to regulations and the operations of
8 the department. In order so that we get this to
9 the policy level, the commission probably ought to
10 examine this; and at least we can say the
11 commission has adopted a policy. And you have told
12 me that did not happen.

13 A. Well, I think --

14 Q. First, am I right? That did not
15 happen.

16 A. No --

17 Q. Okay.

18 A. -- but we were in the process of trying
19 to communicate to the staff that we wanted to
20 decide what we were going to do and not just be
21 told what they wanted us to approve.

22 So in fairness, we were charged with
23 understanding and clarifying our policies. We
24 decided that's what we wanted to do and we began to
25 do that.

1 Q. So what you're saying to me is perhaps
2 later in the process we might have addressed that
3 very question; we just never got to it?

4 A. I'm sure we would have.

5 Q. But the fact remains, during the period
6 that you served, 2005 to 2009, that policy question
7 was never directly put before the commission where
8 the commission said, no, we have decided we are not
9 going to go down the road of regulations for
10 eligibility or appeals. That's just simply an
11 issue that you just never addressed.

12 A. Well, you're asking me several
13 questions here. The staff never said to us you
14 need to decide whether you're going to promulgate
15 regulations, or you're not going to promulgate
16 regulations.

17 We agreed as a commission that we were
18 going to clean up the policies. I raised the
19 question, does anybody else have a problem with the
20 wording of this statute? Because I'm not real sure
21 how to proceed. You know, it says here the
22 commission shall determine the policy and
23 promulgate regulations. Okay?

24 Then we go down in here and we see
25 these other statements about promulgations. We

1 need some clarification here. We need some
2 clarification on can we even do this if we don't
3 have these advisory boards in place. And are they
4 sure they said what they meant to say? Because
5 we've got this interpolation of this sentence from
6 this other paragraph. Can the legislature help out
7 here? And the legislature seemed to be engaged in
8 other issues with respect to the whole future of
9 DDSN, rather than worry about a statute that might
10 eventually be replaced.

11 Q. If you would, if you would turn to
12 Exhibit Number 1, Paragraph Number 7, I just
13 thought that, so that we're being more specific in
14 the time that we have left, read Paragraph 7. You
15 don't need to read it on the record. Just read it
16 right now.

17 A. Okay.

18 Q. All right. That paragraph, with
19 specificity, references regulations regarding
20 eligibility. Would you agree that goes to the
21 operation of the department?

22 MR. WOODINGTON: Object to the form of
23 the question.

24 THE WITNESS: The statement states a
25 truth that it has not promulgated regulations. It

1 does not claim that there were no procedures, that
2 there were no directives, that there were no state
3 laws or federal laws; therefore, there was nothing
4 to guide the executives.

5 BY MR. HAMM:

6 Q. Does the directive have the force of
7 law, Mr. Vaughn?

8 A. I don't know.

9 Q. So if it doesn't have the force of law,
10 it could say what it wanted all day long, but it's
11 not enforceable, correct?

12 A. The directives are statements from the
13 director and/or his staff signed off on by the
14 chairman, if it's between commission meetings,
15 which it usually is, according to the bylaws, that
16 make the application of the policies.

17 Q. Would it surprise you that a directive
18 has no force of law?

19 MR. WOODINGTON: Object to the form of
20 the question.

21 THE WITNESS: How is that -- what does
22 that mean?

23 BY MR. HAMM:

24 Q. That it can't be enforced in a court.

25 A. Okay. The executive director is

1 responsible to the commission. If the executive
2 director violates commission policy, state statute
3 or federal law, he can be dismissed for cause. He
4 is accountable to the commission. And the
5 commission, through policy, expresses what it
6 expects. Now --

7 Q. Can a consumer rely on a directive?
8 Can they rely on it?

9 A. Can they trust it?

10 Q. Yes, can they trust it? Can they rely
11 on it? Do they know it's going to be consistently
12 applied, even though it has no force of law?

13 MR. WOODINGTON: Object to the form of
14 the question.

15 THE WITNESS: I don't know that there
16 are ever absolute applications, even of a law. And
17 I know that the claim that we have heard is that
18 someone was discriminated against. And I don't
19 know whether it's in the lawsuit or not. But the
20 statements have been that there were capricious and
21 arbitrary decisions made by the director, okay?
22 And that would not be tolerated by the commission
23 if it were shown to be true.

24 The claim that we use as an
25 illustration -- and I don't want to reveal too much

1 about the individual -- but the claim was that the
2 director was just, you know, being stubborn and
3 wouldn't give what was needed.

4 And there was a desire to intimidate
5 the commission enough to get those services; but
6 they had to be approved by people outside the
7 department that had made a different decision.

8 And it was one of those embarrassing
9 situations where your heart went out to the person;
10 but, you know, just because a person says somebody
11 picked this person out and discriminated against
12 them, you know, doesn't mean it's true.

13 Q. And I totally agree. So what is the
14 process, then, whether you attempt to determine the
15 truth of that?

16 A. Well, try to bring your case to the
17 commission, I suppose.

18 Q. Well, the commission is not a court.

19 A. No. Ultimately -- ultimately -- that's
20 what the courts are for, I suppose. If somebody
21 feels they've been wronged and they want redress,
22 they have to get somebody with legal force behind
23 them to say this is the way it's going to be.

24 Q. Let's go back to Paragraph 7.

25 A. Okay.

1 Q. Eligibility for services is part of the
2 operation of the department; is it not?

3 MR. WOODINGTON: Object to the form of
4 the question.

5 BY MR. HAMM:

6 Q. Eligibility for services is part of the
7 operation of the department?

8 MR. WOODINGTON: Object to the form of
9 the question.

10 BY MR. HAMM:

11 Q. Don't mind him, but he's protecting the
12 record.

13 A. All right. The statement is that DDSN
14 has never promulgated regulations, including but
15 not limited to eligibility.

16 Q. Right. And I'm asking is eligibility
17 for services from the department part of the
18 operation of the department?

19 MR. WOODINGTON: Same objection.

20 THE WITNESS: Under the definitions of
21 this paragraph or under the definitions of the
22 statute?

23 BY MR. HAMM:

24 Q. Just, do you view whether or not a
25 person is eligible for services from the department

1 to be a fundamental part of the operation of the
2 department?

3 MR. WOODINGTON: Object to the form of
4 the question.

5 THE WITNESS: Define the word operation
6 for me. I really can't answer that.

7 BY MR. HAMM:

8 Q. The department exists for a reason.
9 Yes?

10 A. Yes.

11 Q. And someone says, well, the department
12 is there so that my daughter can be assisted. And
13 they say, no, we don't have to, we are not required
14 to, or whatever. That determination of whether
15 someone can or cannot use the services is part of
16 the operation of the department. Yes?

17 MR. WOODINGTON: Same objection.

18 THE WITNESS: I really don't fully
19 understand the practical application of this.
20 What's the alternative? Are we going to have a
21 referendum? Are we going to get together and vote
22 on who gets in? I mean, somebody has to make a
23 decision at some point.

24 BY MR. HAMM:

25 Q. That's exactly the point. And so if

1 it's part of the operation of the department, who
2 makes that decision?

3 MR. WOODINGTON: Same objection.

4 THE WITNESS: I think all of that is
5 spelled out in these policies, one of which we have
6 in front of us.

7 BY MR. HAMM:

8 Q. The eligibility for specific services
9 for a specific individual, a consumer would know
10 the answer as to whether the correct decision was
11 made that, yes, you can have services in an
12 eight-bed community house, versus something else,
13 the policy is going to answer that question?

14 A. I think if a person has a question,
15 they can look at these four policies and determine
16 whether the person that did make the decision
17 followed policy.

18 Q. And what did they do then?

19 A. If they don't agree with the policy?

20 Q. Yeah.

21 A. Well, they try to get the governor to
22 appoint some new commissioners.

23 Q. So absent getting a new commissioner,
24 someone has been turned down, the department has no
25 defined appeal procedure. So tough luck? Is that

1 what you're telling me?

2 MR. WOODINGTON: Object to the form.

3 THE WITNESS: No.

4 BY MR. HAMM:

5 Q. What are you telling me? What happens?

6 A. They have to go up the chain of command
7 until they get to the person that says this is the
8 decision, and that's the end of it. Now, wherever
9 that is -- I would suppose maybe the Supreme Court?

10 Q. So someone denied services may have to
11 struggle through all of the court system and get to
12 the Supreme Court, and the department has no
13 responsibility to establish how they determine
14 whether someone is eligible, when, in fact, there's
15 a statute that says they're supposed to?

16 MR. WOODINGTON: Object to the form.

17 THE WITNESS: I think you're pointing
18 out the fundamental problem that brings us to these
19 discussions, that brings us to this table; and that
20 is, that we create an expectation in the minds of
21 people that we can create a bureaucracy and a
22 series of regulations that will solve their problem
23 far more quickly than the deliberative process of
24 making laws and determining their application.

25 People want relief right now; and if

1 they don't get it right now, somebody else should
2 share their pain. That's human nature. And I
3 think there's an awful lot of that in these things.

4 Now, that's not going to help this
5 lawsuit and it's certainly not going to affect the
6 judge, because he's got to make a decision. I
7 understand that. But that's why he's here. I
8 can't make his decision.

9 All I can say is, honest people of
10 integrity and goodwill do the best they can under
11 these circumstances.

12 BY MR. HAMM:

13 Q. No question.

14 A. And there are enough documents for
15 reasonable people to determine whether a decision
16 was made wisely according to policy.

17 And my contention is, no amount of
18 regulation, in addition to what already exists, is
19 going to provide this claimant -- or any of the
20 others I'm aware of -- any more relief than they
21 got.

22 Q. So they'll just stumble around, move
23 through the bureaucracy, there's no defined
24 procedure, and that's good enough as a matter of
25 policy?

1 MR. WOODINGTON: Object to the form.

2 THE WITNESS: I don't know.

3 BY MR. HAMM:

4 Q. So the answer could be, yeah, that may
5 be good enough. If you don't know, then, yeah
6 that's good enough. Let them stumble around --

7 A. No.

8 Q. -- and that's a good policy?

9 MR. WOODINGTON: Object to the form.

10 THE WITNESS: No, that's not policy.

11 BY MR. HAMM:

12 Q. Well, what is it?

13 A. It's the sad reality of being disabled.
14 The DDSN does not exist to compensate for people's
15 disabilities. It exists to provide for them.

16 Q. And if someone believes that -- again,
17 I'm not assuming anybody is right. I'm just
18 talking about the procedures by which they feel
19 like they get a fair review. And you continue to
20 insist to me, well, a regulation that at least
21 outlines the procedures to go through that process
22 is not the answer.

23 A. Well, and, again, we're mixing apples
24 and oranges. And I know we have to.

25 Q. This whole thing is a fruit salad.

1 A. Yeah, it is.

2 On the one hand, we're talking about
3 their standing before the court and their rights.
4 On the other hand, we have a group of volunteer
5 individuals who are trying to make their situation
6 more bearable and trying to help those families,
7 but who, in making their best effort -- and people
8 of goodwill and integrity making their best effort
9 are not able to ameliorate the suffering to the
10 degree that it's hoped. And so many of the
11 resources and so many of the personnel are consumed
12 in trying to find another way to make these people
13 more capable of living with this reality.

14 You can't get them out of the
15 wheelchair, so we're going to find them some money.
16 Or we can't make their problem better, so we're
17 going to make somebody pay. It is impossible to
18 divorce this discussion from that reality.

19 Now, it's not fair for me to bring that
20 up, because we're not talking about that.

21 Q. No, we're not.

22 A. We're talking about a legal issue. But
23 if you ask me is the legal remedy going to solve
24 the problem, we all know it won't.

25 Q. Well, in fairness, the commission did

1 nothing for --

2 A. Objection.

3 Q. -- well, from 1990 until today. 1990
4 until today.

5 Looking at Paragraph Number 7, the
6 commission, apparently as a matter of policy, said
7 that the people that they serve are not worthy of
8 clarifying the eligibility standards, are not
9 worthy of clarifying the appeal standards, are not
10 worthy of the standards for the operation of its
11 residential programs, are not worthy of procedures
12 for its human rights committee and is not worthy of
13 standards for review -- research on human subjects.
14 We're now 20 years after the statute has passed.

15 MR. WOODINGTON: Okay. I object to the
16 form of the whole question, each and every subpart
17 thereof.

18 THE WITNESS: And I think, actually,
19 what you're saying is that the legislature, since
20 1990, has not provided a clear statute for the
21 commission to act on.

22 BY MR. HAMM:

23 Q. I went and looked. I could find
24 nothing where DDSN or the commission asked and
25 notified the general assembly that there was

1 anything wrong with their statutes. Do you know
2 about something I don't know?

3 A. But the date 1990 is in the statute,
4 and you picked that number, so you're referring to
5 their work. Okay?

6 Q. Well, I'm referring to a statute that
7 they entrusted to the commission -- and you
8 respectfully -- and I mean that sincerely -- but,
9 Mr. Hamm, I have some concerns about this language;
10 and that's fine. I am not denigrating your
11 concerns. I'm just saying, that's fine and dandy,
12 but this is 20 years after that got adopted. And
13 so can you appreciate that some folks said, well,
14 don't count on the commission or the department, so
15 we're going to have to try to vindicate our rights
16 through the judicial system. It's not like they
17 rushed out and filed something immediately.

18 And are you aware that this same group
19 met with staff in an effort to see if we could at
20 least address some of these issues and were told,
21 no, that's not the commission's policy? Since I
22 was sitting in that meeting. Are you aware that's
23 what they were telling folks?

24 A. No, I'm not sure. It might have been
25 good for me to be there so I could say we need to

1 go to the legislature so we can work together to
2 get this taken care of.

3 Q. Well, I wish you had been there.

4 A. I do too. But my point is, if we spend
5 our time -- well, that is not germane.

6 What is needed -- and this is not what
7 you're asking me, but I think it is addressing what
8 we're saying. What is needed is for people who
9 believe that they can do something, who have some
10 ideas, to work together to work together to make
11 those ideas happen, instead of resorting to the
12 adversarial system and putting everybody in the
13 bunker while these people continue to suffer.

14 (VAUGHN EXH. 3, a letter addressed to
15 Stephen W. Hamm from James R. Hill, Jr., dated
16 November 22nd, 2005, was marked for
17 identification.)

18 BY MR. HAMM:

19 Q. Let me give you a letter that is
20 reflective on what you were just telling me. And
21 let's mark it as Exhibit Number 3. For the record,
22 it's a letter addressed to Stephen W. Hamm dated
23 November the 22nd, 2005. Just take a look at that,
24 if you would.

25 A. Is this a true statement in the last

1 paragraph or is that a typo, as you noted in your
2 letter, DDSN has promulgated regulations? Is that
3 a mistake?

4 Q. No, that's not a mistake. There are a
5 few regulations. They're not in the statutes that
6 we've -- they're not promulgated regulations in the
7 statutes that were referenced regulations.

8 A. Some. I've got it, I've got it. I
9 believe that I have seen this letter.

10 Q. Okay. And the point of my --

11 A. I may have even seen it before.

12 Q. The point of my putting that in front
13 of you is that I wanted to make sure that you are
14 aware that nobody filed the lawsuit -- my clients
15 initiated this with correspondence and a meeting in
16 which we were essentially advised that, no, we're
17 not going to do these regulations.

18 We pointed out that DDSN was relying on
19 the directives but nobody knew where they were. We
20 pointed out that they weren't on the website. And
21 as you will see in that letter on the second page,
22 they indicated that they would make that change.

23 A. Well, I'm assuming that you did
24 mention, then, these specific concerns that they
25 mentioned --

1 Q. Yes.

2 A. -- that you did mention that and that
3 you did give them advanced notice of how to be
4 prepared for future meetings.

5 Q. We didn't have any more meetings. We
6 were essentially advised that we would not be
7 particularly welcomed, because we were wanting what
8 you all as a commission, as I understood it, was,
9 well, that's just not our policy.

10 A. Well, it says, in order for us to work
11 with P&A to address their concern, it would be very
12 useful for P&A to provide actual examples where
13 they feel an individual's rights require a
14 regulation for protection or well being. This will
15 help us to be clear about your request and is
16 important in our efforts to make services
17 responsive and accountable.

18 Q. And conversations took place and they
19 weren't particularly -- my point of putting that
20 letter in front of you is I did not want to leave
21 you with the impression that somebody just dropped
22 a lawsuit.

23 A. Oh, no. I haven't suggested that.

24 Q. There had to have been prior
25 conversations and discussions prior to that.

1 A. Yeah, right.

2 Q. And this is a courtesy to you.

3 A. Well, I appreciate that.

4 And, also, let me say that I respect
5 the provision within our system for lawsuits and
6 for judges to make decisions. I mean, that's a
7 good thing.

8 Q. And I agree. And being responsive to a
9 question you just raised, if you'll look at
10 Paragraph 38, it specifically identifies the
11 regulations that have been adopted. I did not want
12 you to think that we were asserting something and
13 not acknowledging.

14 A. Right.

15 Q. And we don't need to go over that. I'm
16 just --

17 A. It mentions that, yes.

18 Q. And we acknowledged that before.

19 A. Yeah, that refreshes my memory.

20 Q. In fairness to you, I wanted you to
21 know that we had done that.

22 A. Right. Well, and I think that that can
23 also be used as an example of the fact that
24 DDSN -- that the commission is not de facto against
25 regulations.

1 Q. Do you know when any of these
2 regulations were adopted?

3 A. No.

4 Q. Again, this is not a trick question;
5 but in terms of your own background and
6 understanding, you have no idea when was the last
7 time they did a regulation?

8 A. No. I mean, that wasn't -- my task was
9 to look at policy --

10 Q. And I understand that.

11 A. Right. That's once of the frustrating
12 realities of having commissioners coming and going;
13 so much of the time is consumed on getting the
14 commissioners to even know what the department is.

15 MR. WOODINGTON: And then you get
16 canned.

17 THE WITNESS: Yeah. But at the same
18 time, I maybe have given a lot longer answers than
19 have been helpful; but I really do want to be
20 forthcoming on these things.

21 BY MR. HAMM:

22 Q. I have tried to let you answer as
23 completely as you deemed appropriate.

24 A. I could do that a lot more clearly if
25 you would go ahead and admit those other three

1 policies.

2 Q. You're going to be longer and clearer?

3 Is what you're telling me?

4 A. If I had them in front of me, you could
5 ask any question you wanted to and I could point to
6 a line on that policy.

7 Q. That would identify the eligibility
8 standards and would identify when somebody at a
9 particular facility says, you are not eligible, you
10 need to do A, B, C and D? Because I have looked,
11 and I didn't see that.

12 A. I could point to a thing that would
13 allow the commission to say, you are not honoring
14 the requirement.

15 Q. Okay. Help me here. And, again, you
16 have left in 2009, which I'm sorry.

17 A. I'm not. I am. That was facetious.
18 That was out of line. I'm sorry.

19 Q. I meant that respectfully.

20 A. And I meant it humorously; and that's
21 not appropriate.

22 Q. That's not a problem.

23 A. Okay.

24 Q. What is the force of this? What do
25 they really mean, right at this moment, to the best

1 of your understanding? I know that you told me,
2 Steve, this is the beginning of a process. And for
3 reasons we're not going to get into here, we didn't
4 get through all of that process.

5 A. This is the commission's amplification
6 of the legislature's mandate. This is the way in
7 which the commission wants the legislature's
8 mandate for the existence of DDSN to be expressed.

9 Q. I don't know the answer to this, and
10 normally you're not going to ask questions when you
11 don't know the answer, but I'm going to ask it
12 anyway:

13 Did you attend that these principles --
14 that the staff would provide you with documents and
15 that on occasion you would make a determination,
16 well, what you've put together is either in
17 conformity with our policies and principles or, no,
18 this is not? Help me how this applies to what the
19 staff is doing on a day-to-day basis.

20 A. We instructed the staff to conform
21 every directive to those policies. When we adopted
22 Carver -- maybe I should have said this at the
23 beginning of the day.

24 When we adopted Carver, policy
25 governance is a system in which governance occurs

1 every time the commission meets; therefore, every
2 motion has the force of policy.

3 One of the things that we required in
4 the staff -- board staff linkage -- and the other
5 policy, about how the commission functions, was
6 that any action that was proposed by a commissioner
7 would be connected to a statement in these
8 policies. We have the following problem that's
9 been brought to our attention. Therefore, in,
10 let's say, the Ends policy --

11 Q. And that means what? I'm not sure.

12 A. These are the ends that we're trying to
13 achieve. What good --

14 Q. Results policy?

15 A. What good for what group at what cost
16 are the main things that these policies are
17 designed to express.

18 Now, what good for what group at what
19 cost by what people; I mean, those are the things
20 that these four address.

21 So if somebody sees a problem --
22 there's a problem with admissions. All right.
23 We're not clear enough on that. All right,
24 Mr. Chairman, policy 800-01-CP, number whatever.
25 Pick a number. Okay? Number 3 states the

1 following. I move that that be changed to read --
2 boom.

3 Therefore, you don't put policies
4 together, stick them in a book and leave them there
5 and never refer to them. Every time a problem
6 comes up, you make policy by making a motion.
7 Under policy government, any commission motion
8 becomes part of policy. These can be changed every
9 month. It's 800-01-CP, dated date of review date,
10 date of last review. It's structured, it was
11 created on this date, or approved, so it can be
12 changed every month, if need be. Every month when
13 the commission meets. Instead of reading the
14 minutes and wasting the hours and watching the
15 dog-and-pony show, we listen to the problems, we
16 make a statement if it's needed.

17 Q. Who tells you about the problems?

18 A. Whoever has got it, however it comes to
19 us.

20 Q. Well, what if the person talking is the
21 problem?

22 A. Well, then, hopefully you'll have a
23 commission that has enough discernment to figure
24 that out; but when an unreasonable person makes
25 that claim and can't back it up, it doesn't carry

1 much weight.

2 Q. No, I'm assuming the commission makes
3 that determination.

4 A. The determination that the information
5 is credible.

6 Q. Or the person speaking is not.

7 A. Yeah.

8 Q. Because I'm trying to understand how
9 one of our clients -- whether you agree or
10 not -- you and I would both agree that there are
11 some people that in good faith think there's a
12 problem, and simply out of respect for their
13 humanity, somebody ought to at least listen to
14 them. Yes?

15 A. Yes.

16 Q. I mean, hopefully we all do that.

17 I'm trying to understand, under the
18 processes you've described to me, how would John
19 Vaughn -- at the moment in this question you're a
20 member of the commission -- how would John Vaughn
21 come to know this? Or what would the system be so
22 you would have a sense of comfort that little Amy
23 Smith's problem, your policies made sure that she
24 was treated appropriately, when you individually
25 don't know about it?

1 I'm trying to understand, it's one
2 thing to have a policy and it's another thing to
3 know that it's actually being applied through the
4 layers of the services you provide. And I'm not
5 clear.

6 It sounds like the only way you would
7 know there's a problem is if somebody on the staff
8 decided they wanted to tell you about it.

9 Did your system, your principles -- no,
10 Steve, we would have found out about it because one
11 of our policies was whatever. Did you address how
12 you make sure that what you're hearing is sort of
13 the whole picture?

14 A. Sure. We ask questions, we read the
15 newspapers. We heard what people were saying. We
16 listened to the consumer groups. The overwhelming
17 majority of the comments were statements of praise
18 and appreciation.

19 Q. Good.

20 A. The complaints that were not able to be
21 resolved, before they ever came to us, during my
22 time on the commission -- I cannot speak before
23 2005 -- I cannot speak after June of 2009 -- but
24 during my time on the commission, the complaints
25 revealed a common denominator.

1 The ones of which I am aware that could
2 not be resolved had a common denominator in the way
3 they were presented; the common denominator was
4 that the executive director was a vindictive man.

5 Q. They're making it personal.

6 A. Yes.

7 And we had no reason to trust that
8 claim. It was not about policy. It was about
9 personality. And the end result of the thing
10 culminated in his dismissal, or his moving on, or
11 however you want to characterize it.

12 Q. Did you think he ought to be dismissed
13 or moved on?

14 A. No, no. I don't think we ever talked
15 about the real problem.

16 Q. Which was?

17 A. Which was personal.

18 Q. I'm sorry?

19 A. Personal. There's no way to solve
20 personal conflicts with policy. You will never
21 read it in a lawsuit. You will never see it in the
22 newspaper. But it was evident to me that we were
23 talking about a lot of personal bitterness over
24 something I don't know about.

25 Q. Okay. And you're not talking about the

1 recipients.

2 A. I'm not talking about anybody in this
3 room.

4 Q. No, I know. I just want to make sure
5 it's clear.

6 A. I'm not talking about the consumers.

7 Q. All right. That's what I wanted to be
8 clear about.

9 A. Yeah.

10 Q. So you're talking about a member of the
11 commission.

12 A. I think that a person on the commission
13 was influenced by someone who has been -- who
14 appears to be -- appeared to be -- bitter at the
15 executive director. And I'm not trying to make it
16 personal by saying that.

17 Q. Did you ever participate in any
18 training regarding the Administrative Procedures
19 Act and how it might be applied to statutes?

20 A. I don't really remember.

21 Q. Okay.

22 A. I doubt if I would have paid a lot of
23 attention to that because --

24 Q. Were you ever given a presentation and
25 materials on the procedures that the staff followed

1 to determine eligibility for services? Was the
2 commission ever given presentations regarding the
3 procedures to determine eligibility?

4 A. I know we were given some information.
5 I don't remember when. I mean, I know that we
6 weren't just going blind on that. We had enough
7 information to believe that there was a
8 satisfactory system in place.

9 Q. What do you understand to be the system
10 in place where a consumer who has been denied
11 services, what they must do inside of DDSN to try
12 to get someone else to look at it? What do you
13 understand to be that procedure?

14 A. That they go up the chain of command,
15 start local, move on up. And when they get to the
16 executive director, if the executive director is
17 making a decision that they believe to be contrary
18 to policy, then they should somehow inform the
19 commission of that, at the same time, of the
20 specifics or something like that.

21 Q. What is the policy about telling a
22 consumer of what their rights are?

23 For example, they've been denied
24 services by someone sitting across the desk, we've
25 decided you're not eligible; what is the policy of

1 what that consumer is told at that point?

2 A. I'm not sure I understand that. I
3 think that it seems to me that anyone who is not
4 satisfied with what they're getting and cannot
5 accept it find someone to help them, an attorney
6 or --

7 Q. So the policy is they figure it out
8 themselves?

9 A. We can't know what people are thinking
10 or whether they're satisfied unless somebody that
11 represents them tells us.

12 Q. But if someone says, we've decided that
13 your daughter is not eligible for services, thank
14 you very much, what do you tell them?

15 A. What do I tell them?

16 Q. A policy.

17 MR. WOODINGTON: If we had a consumer
18 in this list of Plaintiffs -- whose names we
19 theoretically don't know -- and if you had a
20 document that consisted of such a denial, it would
21 be helpful to show that to him and ask him --

22 BY MR. HAMM:

23 Q. We're talking about policy right now.
24 And I'm just trying to understand. Again, very
25 respectfully, as the policy guy --

1 A. I'm not the policy guy, but...

2 Q. Well, you attempted to --

3 A. Yeah, I was the policy editor, but I
4 know what you mean.

5 Q. I'm trying to find out what you think
6 the policy was during your tenure as a commissioner
7 if someone way down in the line was told, your
8 daughter is not eligible; what do you think they
9 should have been told?

10 A. By whom?

11 Q. You tell me. I'm trying to understand
12 the policy for denial of services. I'm sorry, Mary
13 Jane, we've determined or decided she's not
14 eligible for services. And that might be perfectly
15 absolutely accurate.

16 What I'm trying to understand is, what
17 was the policy of what you told a consumer when
18 they were told they weren't eligible?

19 A. Unless it was brought to our attention
20 by someone that the policies were being violated,
21 we would leave that decision to the executive
22 director.

23 Now, if somebody bypassed him through
24 the legal system or the news media or a direct
25 letter to us or a phone call or whatever, to say, I

1 am being treated wrongly.

2 Now, at the same time, I have personal
3 experience with the fact that no answer will ever
4 be satisfactory for some people.

5 Q. I don't quarrel with that. And I'm not
6 quarreling that perhaps the answer that they got
7 was entirely accurate within the law or whatever.

8 What I'm trying to understand is -- you
9 don't have a defined appeal process, so I'm trying
10 to understand.

11 You're saying, all right, Steve, but
12 we've got policies. And a woman is told her
13 daughter is not eligible. I think I'm hearing you
14 say, well, there's no policy that goes with that
15 specific level. Or if they're that upset, they
16 will find somebody to keep it going.

17 MR. WOODINGTON: Object to the form of
18 the question.

19 THE WITNESS: Well, I think you're
20 asking me why we didn't write a policy that would
21 allow an unending appeals process until total
22 satisfaction.

23 I mean, P&A wouldn't exist if such a
24 regulation were in place. I mean, that's why we
25 have groups like that, so they can help these

1 people.

2 BY MR. HAMM:

3 Q. I'm not talking about an unending
4 appeals process. You could adopt a policy in which
5 you know at some particular time the appeal is
6 over. I mean, you're in control of the policy.
7 There is no written policies, so that leads me to
8 think --

9 A. There's no written regulations, you're
10 saying, on that subject.

11 Q. There's no regulation.

12 A. Yeah.

13 Q. But I'm not aware of a specific policy
14 in writing that a consumer is told. So I'm trying
15 to understand, as a former commissioner, what
16 policy applied to this woman when she's told no. I
17 agree, you don't have -- at some point would you
18 agree that simply because the first level says no,
19 that may or may not be accurate?

20 A. Uh-huh.

21 Q. So you get -- it's almost like a
22 doctor, like in my cancer, I got a second opinion.
23 You may have gone through that. Certainly your
24 wife and your daughter may have.

25 There's nothing -- is there anything

1 inappropriate by saying, I want somebody else to
2 look at this?

3 A. Yeah, I think the simple short step for
4 them to take would be to go online where they can
5 find those other policies which have not been
6 admitted into our discussion, and say, you know, I
7 think I have some protection in this statement
8 right here, and I would like to have that
9 protection. I think that's what they would do.

10 Q. But what if they don't -- you know, are
11 you aware that South Carolina ranks in the lower
12 level of citizens that are connected to the
13 internet? Do you know how many consumers of DSS
14 services have access to the internet?

15 A. No, I know it's low and I know the
16 education is low and the income is low.

17 Q. So if they can't get to the internet,
18 how are they going to know this?

19 A. Ask a friend to help them.

20 Q. If they can't get to the internet, they
21 ask a friend?

22 A. Look, they're going to have to keep
23 asking people to help them to do things they can't
24 do for themselves. That's the whole principle for
25 the existence of DDSN, for people who can't help

1 themselves, to get help from other people.

2 Q. Well, how do they know that?

3 A. How does a person who is severely and
4 profoundly retarded --

5 Q. No. How does mama, being told -- if no
6 one tells her, you know, you could raise it to
7 another level and she's not told that --

8 A. How did she find out that DDSN exists?

9 Q. Okay. She's there and now she's told
10 no.

11 A. Okay.

12 Q. And you're saying, well, talk to a
13 friend, or look on the internet, when we would both
14 agree -- would you agree that not all citizens have
15 access to the internet?

16 A. Yes, I would agree with that, yeah.

17 Q. So we've got folks maybe in
18 a rural -- they don't have internet, so they're not
19 going to get to the website.

20 A. Well, at the same time, I don't
21 think -- so what are we going to do? What are we
22 going to do for somebody who can't read? Now we
23 have written a regulation and they can't read.
24 Doesn't your situation apply to that? They can't
25 read. There's a regulation. They don't know what

1 the regulation says. What are they going to do?
2 They're going to have to ask somebody to help them.

3 Q. That goes back to my question. They're
4 sitting in front of somebody who just told them,
5 we've decided you're not eligible. But there is no
6 policy that says, but you do at least have the
7 ability to file an appeal or whatever. That
8 doesn't exist. So how are they supposed to know?
9 Because there's no policy that you tell them.

10 MR. WOODINGTON: Object to the form of
11 the question.

12 THE WITNESS: Can this person read?

13 BY MR. HAMM:

14 Q. It doesn't make any difference. If
15 they're sitting in front of someone and they say,
16 we're turning you down --

17 A. And the person can't read?

18 Q. And the person can't read.

19 A. But there's a policy.

20 Q. But there is no policy where the person
21 is saying, we're turning you down, but you have the
22 ability to file an appeal or do whatever. Is there
23 a policy to tell them that? I haven't found one,
24 but I figured you would know that.

25 A. Wait a minute. Well, I'm asking you,

1 if there was a policy and that person couldn't
2 read, how does that protect them?

3 Q. If someone is sitting in front of
4 you --

5 A. So if they've gotten to me, I'm going
6 to help them.

7 Q. They've gotten to you, you have told
8 them -- and let's just assume it's correct. You've
9 told them they don't qualify.

10 But there is no policy that I can find
11 anywhere where you say to that person, now, we've
12 turned you down -- we believe we have grounds to do
13 that -- but if you want to have further review of
14 consideration, you need to do A, B and C.

15 I have found nothing as a policy or
16 practice or procedure where people who are turned
17 down are being told that. And I was thinking,
18 well, you believe in policy, I believe in policy,
19 maybe you know about a policy I don't know about.

20 A. But your question begs the question
21 that they will always have another step and that
22 they will not eventually get to someone who will
23 say, I'm sorry, we can't do anything for you. What
24 happens to that person, when they continue to go
25 through these layers and they get to the place

1 where the appropriate person identified in some
2 regulation says, I'm sorry, we cannot help you?
3 Then what happens?

4 Q. The regulation applies.

5 A. Yeah. And then the lawsuit happens.
6 The person always has, in our system, until they
7 get to the Supreme Court, steps they can take.

8 Q. But you don't believe DDSN should tell
9 consumers that they have steps available to them?

10 MR. WOODINGTON: Object to the form of
11 the question.

12 THE WITNESS: I don't know that DDSN is
13 not telling them what they need to do. Okay?

14 BY MR. HAMM:

15 Q. Did you adopt a policy directing staff
16 to tell them?

17 A. I don't agree that adopting a
18 regulation, which is what you want --

19 Q. No, no, a policy. I'm asking you, did
20 you adopt a policy? Maybe you don't have a
21 regulation; that's fine.

22 I'm trying to understand, Steve, we
23 don't need a regulation, because we've got a
24 policy. We tell them that when you turn them down.
25 We will tell them that you have the ability to go

1 to the next office, the regional office or
2 whatever.

3 A. I believe if you stay to the principle
4 of proper response and treatment of those
5 consumers, which is stated in policy, if you look
6 at that and then you obey that, you will do that.
7 That's what I believe.

8 Q. And do you realize that, in fact, that
9 does not always happen?

10 MR. WOODINGTON: Object to the form of
11 the question.

12 THE WITNESS: No, I don't.

13 BY MR. HAMM:

14 Q. So you sit here and you believe that
15 every time they are told --

16 A. I would say I do not realize that it
17 doesn't happen. I do not know of specific cases.

18 Q. Okay. And, again, you're confirming to
19 me that during your tenure as a member of the
20 commission, you as a member of the commission did
21 not participate and adopt a policy to make sure
22 that when individuals are turned down and there's
23 been a determination that they're not eligible, you
24 did not adopt a policy telling them, but you still
25 have the ability to do this, A, B or C.

1 A. We did not use that language. We
2 certainly put into policy that intent. I need a
3 two-minute break.

4 MR. HAMM: Take it. We're getting near
5 the end.

6 (A brief recess was held.)

7 BY MR. HAMM:

8 Q. For the purposes of the record, the
9 witness has made reference to his -- I don't think
10 you want to make it yours. It's --

11 A. I had made reference to all of the
12 global policies.

13 MR. HAMM: And we're going to place
14 into the record -- what is Exhibit 3?

15 MS. WESSINGER HILL: The letter.

16 MR. HAMM: The letter, okay.

17 For purposes of the record, we're going
18 to make Exhibit 3A -- I'm going to hand these to
19 you -- the governing process policy.

20 BY MR. HAMM:

21 Q. Do you agree that I am correctly
22 referencing that, Mr. Vaughn?

23 A. Governance process, yes.

24 Q. Okay. And Number 4 would be executive
25 limitations policy.

1 A. No.

2 Q. Number 4 is commission staff linkage
3 delegation.

4 MR. WOODINGTON: No, Exhibit 4.

5 BY MR. HAMM:

6 Q. Look on the bottom.

7 A. I'm sorry. Yes, I'm sorry.

8 Q. That's fine.

9 A. I was looking at policy numbers.
10 Exhibit 4 is --

11 Q. That's why I'm doing this on the
12 record.

13 A. Yeah, Exhibit 4.

14 Q. And then Number 5 would be Commission
15 Staff Linkage Delegation, which is actually
16 800-04-CP, right?

17 A. Yes.

18 (VAUGHN EXH. 3A, 800-02-CP, SCDDSN
19 Governance Process Policy, was marked for
20 identification.)

21 (VAUGHN EXH. 4, 800-03-CP SCDDSN
22 Executive Limitations Policy, was marked for
23 identification.)

24 (VAUGHN EXH. 5, 800-04-CP SCDDSN
25 Commission Staff Linkage Delegation, was marked for

1 identification.)

2 BY MR. HAMM:

3 Q. Now, let's go to very briefly -- go to
4 Exhibit 4. I'm going to something you and I talked
5 off the record about just a moment ago. And go to
6 Paragraph 9.

7 A. Yes.

8 Q. "Failed to enforce directives
9 concerning eligibility of applicants and make final
10 decisions on sequence of..."

11 That's something that the director is
12 not supposed to do, I'm reading.

13 A. He shall not fail to enforce. He has
14 to --

15 Q. Shall not fail. You're correct.

16 A. He has to enforce the directives. That
17 statement, of course, is made after he is precluded
18 from failing to establish the necessary directives.

19 Q. Okay.

20 A. Okay. But the director is responsible
21 for department operations subject to commission
22 policies and actions -- that means voting --
23 applied through department directives. Therefore
24 that's his job. And then he shall not fail to
25 enforce them concerning eligibility of applicants

1 and make final decisions on sequence of admissions.

2 Q. But in Number 9, the directives don't
3 require that the director, through his staff, state
4 the basis for the eligibility decision or how they
5 arrived at it, the directive that you want him to
6 enforce.

7 A. And what is it about it?

8 MR. WOODINGTON: Object to the form.

9 BY MR. HAMM:

10 Q. Does the directive require the staff to
11 tell the consumer the basis for the decision for
12 denial of services and how they appeal it?

13 MR. WOODINGTON: The question was
14 directive?

15 MR. HAMM: Yes, directive.

16 MR. WOODINGTON: He doesn't have any
17 directives in front of him.

18 MR. HAMM: I know. If he knows, fine.
19 If he doesn't know, fine.

20 THE WITNESS: All the policies work
21 together.

22 BY MR. HAMM:

23 Q. But if a directive does not contain a
24 requirement that you tell a consumer the basis and
25 the standards applied to determine eligibility and

1 if the directive does not require that the consumer
2 be told what their procedures are for appeal, the
3 directive, that policy, isn't going to make it
4 happen if it's not in the directive?

5 A. Exhibit 5 specifically addresses the
6 development or promulgation of directives. The
7 executive limitations policy says he shall not fail
8 to apply them and that he has the final authority
9 in their application. The reason for that being,
10 that he and his staff are experts in the field of
11 disabilities and services provided to them. The
12 commissioners are representatives of the community
13 and not necessarily experts in that area.

14 Q. But if the directive --

15 A. Yes.

16 Q. -- does not, then they won't --

17 A. Yes.

18 Q. If the directive does not include a
19 requirement of telling you the bases that you're
20 not eligible or telling you how it is that you
21 might appeal that decision, then your policy is not
22 going to make them do that which is not contained
23 in the directive.

24 A. Commission staff linkage delegation
25 says, the commission, in delegating its authority

1 to promulgate directives that accurately express
2 and apply federal and state laws and regulations
3 and commission policies, retains its responsibility
4 to govern the department.

5 Of particular concern to the commission
6 are department responsiveness in person-centered
7 services, and then the money follows the consumer
8 and so on, Quality management, establish a Family
9 Consumer Advisory Council.

10 In other words, there is the global
11 expression of policy that would naturally be
12 flushed out.

13 If it didn't, that would certainly be
14 an area for the commission to swiftly deal with
15 under the statement inclusion and appropriate
16 directives, those statements listed in rescinded
17 commission policies -- and it lists them, but not
18 listed specifically, and the commission's adopted
19 to establish policy governance.

20 If there has ever been a statement or a
21 policy or a directive about how to treat consumers,
22 there's a mechanism in these policies to include
23 that in the future, or to include it now.

24 Q. Do you know whether that's happened?

25 A. No, I don't think it has. I don't

1 think it has.

2 Q. I don't think it has either. I'm not
3 clear on the following: Does the commission
4 approve all directives?

5 A. No, I don't think so, no, no. In other
6 words, I think some of them might be of such a
7 nature that there's something in the bylaws or
8 possibly in the statute that would require the
9 commission's approval; but the bylaws state that
10 the chairman can act on behalf of the commission
11 between meetings.

12 And that's so that you don't have to
13 let some situation continue until the next meeting,
14 that the chairman -- of course, he is the chairman
15 of the commission and he therefore is the spokesman
16 for the commission.

17 Q. In fairness to you, I'm just going back
18 to -- we were looking at Exhibit Number --

19 A. Number 4.

20 Q. -- number 4. We were looking at
21 Paragraph Number 9.

22 Are you aware of any directive that
23 requires staff to advise a consumer who is denied
24 services about the basis that they determined there
25 was not eligibility, or the process by which they

1 might challenge that determination?

2 A. I am not personally conversant with
3 that directive.

4 Q. And that's fine. And that's all I was,
5 trying to make clear.

6 A. Yeah.

7 Q. Yeah, as a member of the commission,
8 did you have a staff person that was sort of
9 assigned to be your resource, you know, we need to
10 get X information or --

11 A. Executive director. The policies
12 preclude commission interaction with the executive
13 director's staff except through the executive
14 director. I would require things of him, which he
15 would then assign to the staff member of his
16 choice.

17 Q. So would it be improper for a staff
18 person to call you about a question?

19 A. Not unless they were the auditor.

20 Q. Unless they were the auditor, okay.

21 A. Yes.

22 Q. Did you ever have such a call?

23 A. From an auditor?

24 Q. No, from staff.

25 A. Commonsense things. I mean, so I have

1 to say yes. I mean, Lois Mold would ask me what I
2 wanted for lunch on the commission meeting day.
3 But, you know, that's not about the policy or
4 directive issues, no.

5 Q. Despite the fact that we've had just an
6 enormously fun time and a great lunch, I think I
7 I'm done.

8 A. Okay.

9 Q. And it's been a pleasure to meet you.

10 A. Well, for me as well.

11 Q. And I am looking forward to telling
12 Mike Fair that I have had the opportunity to make
13 your acquaintance.

14 A. All right. For the record, I want to
15 express my deep appreciation for the work that you
16 people do and the reason you do it. And for the
17 good of --

18 Q. We hope so.

19 A. -- all the consumers --

20 Q. In good faith.

21 A. -- and those who need services.

22 MR. WOODINGTON: And I have no
23 questions.

24 (The deposition was concluded at 5:17
25 p.m.)

1 (The witness, after having been advised
2 of his right to read and sign this transcript, does
3 not waive that right.)

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SIGNATURE OF DEPONENT

I, the undersigned, JOHN C. VAUGHN, do
hereby certify that I have read the foregoing
deposition and find it to be a true and accurate
transcription of my testimony, with the following
corrections, if any:

PAGE	LINE	CHANGE	REASON

JOHN C. VAUGHN	Date

1
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CERTIFICATE OF REPORTER

I, Susan M. Valsecchi, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript, pages 1 through 227, is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 16th day of April, 2010 at Charleston, Charleston County, South Carolina.

Susan M. Valsecchi, RPR, CRR
My Commission expires
January 4, 2015

1	I N D E X		
2		Page	Line
3	STIPULATION	3	1
4	JOHN C. VAUGHN	3	18
5	EXAMINATION	3	20
6	BY MR. HAMM		
7	VOIR DIRE EXAMINATION	115	1
8	BY MR. WOODINGTON		
9	EXAMINATION	116	1
10	BY MR. HAMM		
11	SIGNATURE OF DEPONENT	228	1
12	CERTIFICATE OF REPORTER	229	1

13

14

15 E X H I B I T S

16

17		Page	Line
18	VAUGHN EXH. 1, Summons and	73	10
19	Complaint for Protection and		
20	Advocacy for People with		
21	Disabilities v. South Carolina		
22	Department of Disabilities and		
23	Special Needs		
24	VAUGHN EXH. 2, SCDDSN Ends	73	15
25	Policy		

1	VAUGHN EXH. 3, a letter	194	14
2	addressed to Stephen W. Hamm		
3	from James R. Hill, Jr., dated		
4	November 22nd, 2005		
5	VAUGHN EXH. 3A, 800-02-CP,	219	18
6	SCDDSN Governance Process		
7	Policy		
8	VAUGHN EXH. 4, 800-03-CP	219	21
9	SCDDSN Executive Limitations		
10	Policy		
11	VAUGHN EXH. 5, 800-04-CP	219	24
12	SCDDSN Commission Staff		
13	Linkage Delegation		

(Original VAUGHN Exhibit 2 and
VAUGHN Exhibit 3 Retained by Counsel)

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Protection and Advocacy for People with Disabilities, Inc, MJB on behalf of and as next friend of J.B., CBB on behalf of and as guardian of P.B., GC and LC on behalf of and as guardian of F.C., DP on behalf of and as guardian of C.M.D., KF and SF on behalf of and as next friend of A.F., JH on behalf of and as next friend of A.J., GM on behalf of and as next friend of E.M., MM on behalf of and as guardian of E.J.M., RP on behalf of and as guardian of S.P., RR and JR on behalf of and as guardian of K.D.R., and JK on behalf of and as guardian of S.S.

Plaintiff(s)

vs.

South Carolina Department of Disabilities and Special Needs, Dr. Stanley J. Butkus, in his official capacity as Director of the South Carolina Department of Disabilities and Special Needs, and Edythe Dove, Mary Katherine Bagnal, Ronald Forrest, John Vaughn, Dr. Otis Speight, W. Robert Harrell as Commissioners of the South Carolina Department of Disabilities and Special Needs.

Defendant(s)

(Please Print)

Submitted By: Kenya Carver Miller

Address: 1900 Barnwell Street, Columbia, SC 29201
PO Drawer 7788, Columbia, SC 29202

SC Bar #: 72634
Telephone #: 803-771-4400
Fax #: 803-779-0016
Other:
E-mail: kmiller@rpcrlaw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

- Contracts**
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199)

- Torts - Professional Malpractice**
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Notice/ File Med Mal (230)
☐ Other (299)

- Torts - Personal Injury**
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399)

- Real Property**
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVER SHEET

2007CP4002187

2007 APR -5 PM 4:36
 BARBARA A. SCOTT
 C.O.C. & G.S.

RICHLAND COUNTY
FILED

- Inmate Petitions**
- ☐ PCR (500)
 - ☐ Sexual Predator (510)
 - ☐ Mandamus (520)
 - ☐ Habeas Corpus (530)
 - ☐ Other (599)

- Judgments/Settlements**
- ☐ Death Settlement (700)
 - ☐ Foreign Judgment (710)
 - ☐ Magistrate's Judgment (720)
 - ☐ Minor Settlement (730)
 - ☐ Transcript Judgment (740)
 - ☐ Lis Pendens (750)
 - ☐ Other (799)

- Administrative Law/Relief**
- ☐ Reinstate Driver's License (800)
 - ☐ Judicial Review (810)
 - ☐ Relief (820)
 - ☐ Permanent Injunction (830)
 - ☐ Forfeiture (840)
 - ☒ Other (899)
 - ☐ Declaratory Judgment Action

- Appeals**
- ☐ Arbitration (900)
 - ☐ Magistrate-Civil (910)
 - ☐ Magistrate-Criminal (920)
 - ☐ Municipal (930)
 - ☐ Probate Court (940)
 - ☐ SCDOT (950)
 - ☐ Worker's Comp (960)
 - ☐ Zoning Board (970)
 - ☐ Administrative Law Judge (980)
 - ☐ Public Service Commission (990)
 - ☐ Employment Security Comm (991)
 - ☐ Other (999)

- Special/Complex /Other**
- ☐ Environmental (600)
 - ☐ Automobile Arb. (610)
 - ☐ Medical (620)
 - ☐ Other (699)
 - ☐ Negligence: Damages to Under Ground Utilities
 - ☐ Pharmaceuticals (630)
 - ☐ Unfair Trade Practices (640)
 - ☐ Out-of State Depositions (650)

Submitting Party Signature: _____

Date: April 5, 2007

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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PLAINTIFFS,

v.

South Carolina Department of Disabilities and Special Needs, Dr. Stanley J. Butkus, in his official capacity as Director of the South Carolina Department of Disabilities and Special Needs, and Edythe Dove, Mary Katherine Bagnal, Ronald Forrest, John Vaughn, Dr. Otis Speight, W. Robert Harrell as Commissioners of the South Carolina Department of Disabilities and Special Needs.

DEFENDANTS.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO.:

RICHLAND COUNTY
FILED
2007 APR -5 PM 4:40
BARBARA A. SCOTT
Clerk
S.S.
SUMMONS
(Non-Jury)

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint on the Plaintiff at 1900 Barnwell Street, Columbia, South Carolina 29201, within thirty (30) days after the service hereof, exclusive of the day of such

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO.:

SUMMONS
(Non-Jury)
BARBARA A. SCOTT
J.C.C. & G.S.
2007 APR -5 PM 4:40
FILED
RICHLAND COUNTY

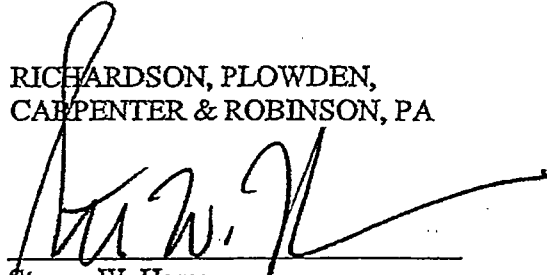
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service, and if you fail to answer the Complaint within the time aforesaid, Plaintiff will apply to the Court for the relief demanded in the Complaint.

RICHARDSON, PLOWDEN,
CARPENTER & ROBINSON, PA

BY:



Steven W. Hamm
C. Jo Anne Wessinger Hill
Kenya Carver-Miller
1900 Barnwell Street
Columbia, South Carolina 29201
803-771-4400

ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina

April 5, 2007

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Protection and Advocacy for People with
Disabilities, Inc, MJB on behalf of and as
next friend of J.B., CBB on behalf of and as
guardian of P.B., GC and LC on behalf of
and as guardian of F.C., DP on behalf of
and as guardian of C.M.D., KF and SF on
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behalf of and as guardian of E.J.M., RP on
behalf of and as guardian of S.P., RR and
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South Carolina Department of Disabilities
and Special Needs, Dr. Stanley J. Butkus,
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Katherine Bagnol, Ronald Forrest, John
Vaughn, Dr. Otis Speight, W. Robert
Harrell as Commissioners of the South
Carolina Department of Disabilities and
Special Needs.

DEFENDANTS.

) IN THE COURT OF COMMON PLEAS

) CIVIL ACTION NO.:

COMPLAINT
(Non-Jury)

RICHLAND COUNTY
FILED
2007 APR -5 PM 4:40
BARBARA A. SCOTT
C.C.C. & G.S.

Plaintiffs would respectfully show unto the Court:

PARTIES AND JURISDICTION

1. That Plaintiff Protection and Advocacy for People with Disabilities, Inc.
(hereinafter "P&A") is a private, non-profit corporation established pursuant to Federal and State
law to protect and advocate for the rights of people with disabilities in the State of South

Carolina, including individuals eligible for or receiving services from SCDDSN. P&A represents individuals and their families who receive some services from or seek appropriate services from SCDDSN.

2. That individual Plaintiffs are citizens and residents of the State of South Carolina who have need for services from Defendant South Carolina Department of Disabilities and Special Needs (hereinafter "SCDDSN"). Due to the highly personal nature of the facts surrounding their claims and due to their fear of retaliation by Defendant, Plaintiffs will be identified in this Complaint by their initials only. Additionally, any reference to his or her, herein, is not an indication of any particular gender.

3. That Defendant SCDDSN is a state agency created by and operating through the authority of the South Carolina General Assembly, pursuant to S. C. Code Ann. §§ 44-20-10 *et seq.* with the stated purpose of "[having] authority over all of the state's services and programs for the treatment and training of persons with mental retardation, related disabilities, head injuries, and spinal cord injuries." S.C. Code Ann. § 44-20-240.

4. That Defendant Dr. Stanley Butkus is the duly appointed Director of defendant SCDDSN, and in such capacity has virtually unfettered and nonreviewable authority over decisions affecting thousands of citizens of this State.

5. The Defendants Edythe Dove, Mary Katherine Bagnol, Ronald Forrest, John Vaughn, Dr. Otis Speight, W. Robert Harrell as Commissioners of the South Carolina Department of Disabilities and Special Needs, are charged with the statutory duty to determine the policy and promulgate regulations governing the operation of the department [SCDDSN] and the employment of professional staff and personnel.

6. That pursuant to the South Carolina Administrative Procedures Act (APA), S.C. Code Ann. 1-23-10 *et seq.* and SCDDSN's enabling statute (S.C. Code Ann. 44-20-10 *et seq.*) SCDDSN is statutorily required to promulgate regulations. Additionally, the APA was intended to provide a standardized process for all public agencies to formulate rules in order to obtain public comment and to provide access to agencies' operations as well as an avenue for appellate review of administrative decisions.

7. That SCDDSN has never promulgated regulations regarding issues of critical concern to applicants and recipients of its services; including but not limited to eligibility for its services; appeal procedures; standards for the operation of its residential programs; procedures for its Human Rights Committees; and standards for research on human subjects.

8. That SCDDSN's failure to comply with the requirements of the APA has resulted in South Carolina citizens and entities being unable to seek information about its policies in the South Carolina Administrative Code, unable to determine their rights to receive or dispute SCDDSN decisions, and participate in the rule-making process as intended by the APA.

9. That the individual Plaintiffs have been, are being and will continue to be harmed as the direct result of said deficiencies, through denial of services, inadequate services and unequal availability and quality of services, and lack of an appropriate grievance procedure; all of which affect their health, safety, well-being, their right to live and participate in their communities and their ability to enjoy typical lifestyles.

10. That Plaintiff P&A has been, and will continue to be, injured by Defendant's failure to promulgate regulations in that it has and will continue to repeatedly expend time and resources attempting to determine and enforce rights of developmentally disabled persons

without access to any meaningful or enforceable rules or regulations regarding eligibility and services, and with no access to judicial review of decisions affecting its clients.

11. That this Court has jurisdiction to declare, rights, status, and other legal relations and to grant injunctive and other relief pursuant to the South Carolina Uniform Declaratory Judgment Act, S.C. Code Ann. §§ 15-53-10, *et seq.*, by ordering Defendant to promulgate regulations concerning its operation and services, as more fully set forth in this complaint.

BACKGROUND FACTS

12. The allegations of all preceding paragraphs are incorporated as if repeated verbatim herein.

13. Plaintiff P&A has been, and will continue to be, injured by SCDDSN's failure to promulgate regulations in that it has and will continue to repeatedly expend time and resources attempting to determine and enforce rights of developmentally disabled persons without access to any meaningful or enforceable rules or regulations regarding eligibility and services, and with no access to judicial review of decisions affecting its clients.

14. J.B. is a resident of a facility for people with developmental disabilities and has been a SCDDSN client for many years. His disabilities include a tendency towards self-destructive and aggressive behaviors. The facility, defined as a Community Training Home II ("CTH II") by SCDDSN, included in his care plan that he would be provided with services of a psychologist to develop a "Behavior Support Plan (BSP)". BSPs are designed to provide the resident staff with specific target behavior identification along with effective prevention and interventions tailored to the needs of the individual client. They are an integral part of effective services and are required to enhance the individual's skills in order to increase independence and minimize self-injury and injuries to other clients and staff. However, for over a year while J.B.

lived in the supervised facility, SCDDSN failed to develop a BSP, despite repeated efforts by P&A and J.B.'s family.

15. BSPs are critically important to the recipients of services and to the service providers. However, SCDDSN has never promulgated regulations regarding their process or components nor has SCDDSN promulgated regulations for the operation of these CTH II homes. Instead, SCDDSN implements internal directives to serve as a guide in implementing BSPs. Pursuant to SCDDSN internal directives, BSPs must be approved by a Human Rights Committee (HRC). See S.C. Code of Laws § 44-26-70 (mandating the establishment of Human Rights Committees). The role of the HRCs is to safeguard and protect the rights of people receiving services and to ensure that individuals are treated with dignity and respect in the full recognition of their rights. However, HRCs do not have the authority to order that a BSP be developed within a certain time frame as SCDDSN has not promulgated any regulations regarding the membership, jurisdiction, or procedures of HRCs.

16. During the time that J.B. went without any BSP in place, J.B. suffered increased aggressiveness and self-destructive behavior. Not only did he pose a danger of harm to himself, but staff and other clients were at increased risk as well. Although J.B.'s family and P&A worked for over a year to get a BSP for J.B., their efforts were met with limited success as no regulation exists to provide a method to appeal the failure to develop or implement a BSP. J. B., and others like him, are and will continue to be subjected to this type of arbitrary failure and refusal to provide a proper level of services unless and until SCDDSN is forced to promulgate and adhere to regulations, with the availability of judicial review.

17. P.B. is a person who has mental retardation residing in a supervised apartment ("SLP II") funded by SCDDSN. Without prior notice to P.B.'s guardian or other persons

receiving similar services across the state, SCDDSN implemented a change in policy purportedly eliminating P.B.'s eligibility to receive the adult companion services which SCDDSN had provided for many years prior to this change of policy. In addition, without notice to guardians or family members, SCDDSN changed the standards for supervision of the program, so that 24 hours a day on-site supervision is not provided to P.B. and other persons living in SLP II settings as was required when P.B. was admitted to the program. P.B. was subsequently left unsupervised at a public fair. P.B.'s guardian reported this neglect to the South Carolina Department of Social Services after the SCDDSN private/contract provider refused to do so. SCDDSN has not promulgated any regulations with regard to operation of SLPs. Regulations are needed to establish standards for supervision, reporting procedures, an appeals process to challenge decisions of the SCDDSN and procedures for the operation of an independent HRC.

18. SCDDSN's failure to promulgate regulations has resulted in P.B. incurring significant legal expenses to protect his services. Promulgation of regulations by Defendant would provide P.B., his family and others like him with meaningful participation into the rulemaking process, access to information about the agency's rules and eligibility requirements as well as standards for particular services, and ensure that services are provided uniformly and fairly throughout the state.

19. F.C. is a minor child who lives with his parents. F.C. has a long history of hospitalizations and treatment, as his parents have tried desperately to find the right kind of help for him. Experts have concluded that F.C. has Asperger's Disorder, as well as Attention Deficit Hyperactivity Disorder (ADHD) and other diagnoses. Asperger's Disorder is a developmental disability (not a mental illness), classified in the Diagnostic and Statistical Manual (DSM-IV) under "Pervasive Developmental Disorders". It is characterized by symptoms such as

impairment in the use of nonverbal behaviors to regulate social interaction, apparently inflexible adherence to specific, nonfunctional routines or rituals, and severe and sustained impairment in social interaction. Likewise, F.C., who has severe developmental delays including emotional and social deficits, is unable to socialize effectively, has difficulty understanding nonverbal social and other cues, is unable to function effectively in many school and home situations, and requires specialized training and habilitation.

20. F.C.'s mother contacted SCDDSN and attempted to have F.C. evaluated for services. However, SCDDSN refused to evaluate F.C. stating that SCDDSN does not recognize the diagnosis of Asperger's as criteria for eligibility for services. SCDDSN denied services to F.C. despite the fact that Asperger's is very similar to Autism, a condition that SCDDSN does serve, and despite that South Carolina statutory law requires that Defendant SCDDSN treat individuals with mental retardation and "related disabilities". See S.C. Code Ann. § 44-20-240.

21. The Department of Mental Health and the Continuum of Care for Emotionally Disturbed Children have provided some services to assist F.C., but due to their lack of expertise in the treatment of developmental disorders such as Autism and Asperger's, these services have not and cannot adequately address the needs of F.C. As a result, F.C. remains in danger of institutionalization due to a lack of appropriate long-term services, which could and should be provided by SCDDSN as the agency charged by law with serving people of all ages who have developmental disorders.

22. Neither the standards for eligibility and receipt of SCDDSN services nor the grievance process have been subjected to review by the public or the General Assembly. SCDDSN has no regulation or clearly established procedures for appealing the denial of services to an internal or external hearing officer. Consequently, F.C. and his family have no meaningful

access to standards used to determine to which services he may be entitled. F.C. and his family have no avenue for appealing any SCDDSN determination regarding services provided, or not, by SCDDSN. Promulgation of regulations by Defendant would provide F.C., his family and others like him with meaningful participation into the rulemaking process, access to information about the agency's rules and eligibility requirements as well as standards for particular services, and ensure that services are provided uniformly and fairly throughout the state. Promulgation of regulations would also provide individuals such as F.C. and his family with a process for accessing the courts to obtain a decision by a neutral third party where SCDDSN's actions fail to conform to the regulation.

23. C.M.D. is an adult residing in a group home funded by SCDDSN which is classified as a CTH II home. Funds for the purchase of this residence were provided by SCDDSN and the South Carolina Housing Trust Fund. C.M.D. disputes the method used to calculate her rental payment to the CTH II home. SCDDSN has failed to promulgate regulations for the establishment of rent charged to residents of SCDDSN CTH II funded residences. In addition, SCDDSN has failed to promulgate regulations for the release of records and investigations to victims of abuse, neglect and exploitation and has denied C.M.D.'s brother and guardian access to records regarding abuse and neglect of C.M.D. Promulgation of regulations by Defendant would provide C.M.D., his family and others like him with meaningful participation into the rulemaking process, access to information about the agency's rules and eligibility requirements as well as standards for particular services, and ensure that services are provided uniformly and fairly throughout the state. Promulgation of regulations would also provide individuals such as C.M.D. and his family with a process for accessing the courts to

obtain a decision by a neutral third party where SCDDSN's actions fail to conform to the regulation.

24. Plaintiff A.F., age 19, lives with his parents and natural guardians, K.F. and S.F. A.F. has been diagnosed with and treated for many years for severe developmental disabilities, including Asperger's Syndrome and Pervasive Developmental Disorder. As the result of his developmental disorders, he has extreme difficulty with social interaction and adaptation, with independent living skills, and with learning. He has become increasingly aggressive and difficult for his parents to handle, to the point that it has become clear that, without appropriate support services, his parents will be forced to place him in a residential care facility. Despite A.F.'s critical and obvious need for services, Defendant SCDDSN steadfastly refused to provide services or participate in meetings with other service providers, including the local school district, local Department of Mental Health Center, and local Department of Juvenile Justice personnel.

25. Eventually, the Family Court in a juvenile justice proceeding ordered SCDDSN to provide services to A.F., who will need services for the rest of his life. However, once A.F. reached the age of eighteen, SCDDSN was no longer obligated under the Court Order to provide him with services. Recently, SCDDSN terminated A.F. from services. SCDDSN has not promulgated any regulations for A.F.'s family to refer to or for SCDDSN employees to follow, in making the decision to continue or discontinue services, or in determining what services A.F. would receive if any. There is also no avenue for appealing any SCDDSN determination with regard to denied services. Although SCDDSN has a "grievance process", this loosely defined process is subject to change at any time without notice. Neither the standards for eligibility and

receipt of services nor the grievance process have been subjected to review by the public or the General Assembly.

26. Promulgation of regulations by Defendant would provide A.F., his family and others like him with meaningful participation into the rulemaking process, access to information about the agency's rules and eligibility requirements as well as standards for particular services, and ensure that services are provided uniformly and fairly throughout the state. Promulgation would also provide individuals such as A.F. and his family with a process for accessing the courts to obtain a decision by a neutral third party where SCDDSN's actions fail to conform to the regulations.

27. A.J. is a person who has mental retardation and resides in an SLP II. SCDDSN has paid for his participation in a workshop program; however, A.J. has been assaulted twice at the workshop and is fearful of returning to the workshop. SCDDSN has denied A.J. and other residents of SLP II's eligibility for less expensive adult companion services by changing the eligibility criteria to require A.J. and others like him to attend institutional day programs. SCDDSN has not promulgated any regulations with regard to the standards for eligibility and receipt of services. SCDDSN has no regulation or clearly established procedures for appealing the denial of services to an internal or external hearing officer. Promulgation of regulations by Defendant would provide A.J., his family and others like him with meaningful participation into the rulemaking process, access to information about the agency's rules and eligibility requirements as well as standards for particular services, and ensure that services are provided uniformly and fairly throughout the state.

28. E.M. is a long-time client of Defendant SCDDSN. Over the years, E.M. has utilized day services obtained through the use of Medicaid funds administered by Defendant

SCDDSN. E.M. has participated in a job training program and is employable in the private sector, albeit in very limited areas. E.M.'s parents have always cared for him in the home, and though E.M. is well into adulthood, he is unable, and is unlikely to ever be able, to live on his own. Although E.M. and his parents are aware that there is a long waiting list for residential services through Defendant SCDDSN, they have, for many years, attempted to have E. M. placed on a waiting list. Despite the declining health of E.M.'s parents, Defendant SCDDSN for years refused to place E.M. on a waiting list for residential placement. In effect, Defendant SCDDSN informed E.M. and his family that unless E.M.'s needs were "critical" (i.e. he was facing immediate homelessness) or if he could be shown that he needed residential placement within twelve months, he could not be placed on any list. E.M.'s parents even offered to pay for the difference between E.M.'s current funding and the cost of a residential placement. SCDDSN, however, refused to allow such use of the funds, and failed to provide any explanation for such refusal or appeal options.

29. After years of requesting that E.M. be placed on the waiting list, just recently in late 2006, SCDDSN finally provided GM with a verbal offer of residential placement. Nevertheless, due to SCDDSN's failure to promulgate regulations as it is required to do so, E.M. and his family was not afforded access to any formal procedure for challenging Defendant's waiting list procedures or their decisions regarding the use of funds in which Plaintiff E.M. had already been approved. Neither the standards for eligibility and receipt of services, the standards governing choice of services needed/provided, the waiting list process, nor the grievance process are subjected to review by the public or the General Assembly. SCDDSN has no regulation or clearly established procedures for appealing the denial of services, denial of change in services, or admission to or priority on a waiting list to an internal or external hearing officer.

30. E.M. and his family were afforded no avenue for appealing any SCDDSN determination regarding services provided, or not, by SCDDSN as no such procedure exists. Promulgation of regulations by Defendant would have provided E.M., his family and others like him with meaningful participation into the rulemaking process, access to information about the agency's rules and eligibility requirements as well as standards for particular services, and ensure that services are provided uniformly and fairly throughout the state. Promulgation of regulations would also provide individuals such as E.M. and his family with a process for accessing the courts to obtain a decision by a neutral third party where SCDDSN's actions fail to conform to the regulations.

31. E.J.M. has profound mental retardation and was voluntarily admitted to SCDDSN services in 1999. For the next six years, E.J.M. was subjected to repeated physical and psychological abuse at a private facility (the "Private or Contract Provider") funded by SCDDSN. Violations of the human rights of residents of this facility are not reviewed by a Human Rights Committee operated by the county SCDDSN Board. Instead, SCDDSN allows the Private or Contract Provider to operate its own Human Rights Committee (HRC). SCDDSN has not promulgated any regulations with regard to operation of such a committee or with regard to the appeals process to challenge the decision of the Private or Contract Provider's HRC. Thus, E.J.M. has not had access to a HRC through promulgation.

32. E.J.M.'s mother attempted to move him to a safer facility but SCDDSN refused to do so, even to the point of refusing to permit his guardian to terminate SCDDSN services. As SCDDSN does not promulgate regulations with regard to eligibility of services or appeals rights/processes, E.J.M.'s mother was forced to employ the services of an attorney in order to acquire the needed services in which E.J.M. was entitled. Only after E.J.M. incurred significant

legal expenses were these services finally provided. Promulgation of regulations by Defendant would provide E.J.M., his family and others like him with meaningful participation into the rulemaking process, access to information about the agency's rules and eligibility requirements as well as standards for particular services, and ensure that services are provided uniformly and fairly throughout the state. Promulgation of regulations would also provide individuals such as E.J.M and his family with a process for accessing the courts to obtain a decision by a neutral third party where SCDDSN's actions fail to conform to the regulations.

33. K.D.R. is a minor who lives with his parents. As a young child, K.D.R. had developmental delays and was a client of SCDDSN. At age seven, K.D.R. was diagnosed with Asperger's Disorder and continued to receive sporadic services from Defendant. At age nine, despite the fact that his symptoms and difficulties had worsened, SCDDSN cut off K.D.R.'s services, stating he was not qualified to receive them. K.D.R.'s parents were told by a local DSN Board employee that there was no appeal process. However, K.D.R.'s parents persisted and eventually received a determination that K.D.R. was ineligible for services because he did not meet diagnostic criteria for autism or Mental Retardation, and that neither PDD-NOS nor Asperger's were considered "related disabilities". If SCDDSN promulgated regulations as it is required to do, K.D.R., his family and others like him would be provided with meaningful participation into the rulemaking process, access to information about the agency's rules and eligibility requirements as well as standards for particular services, and ensure that services are provided uniformly and fairly throughout the state. They would also have a process for accessing the courts to obtain a decision by a neutral third party where SCDDSN's actions fail to conform to the regulations.

34. S.P began receiving SCDDSN funded residential services in 2003 when he filed a lawsuit against SCDDSN and Defendant Butkus. In 2005 SCDDSN found S.P. to be ineligible for SCDDSN services based on eligibility criteria which are more restrictive than those contained in state and federal law. SCDDSN has failed to promulgate regulations establishing eligibility criteria which comply with state and federal law. In addition, SCDDSN has refused to follow the guardian's wishes in providing appropriate residential services to S.P. SCDDSN has released protected health records to other entities in violation of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and possibly other state and federal law. See 29 U.S.C.A. § 1181, Pub. L 104-191, August 21, 1996, 110 Stat. 1936. SCDDSN has not promulgated regulations for compliance with HIPAA. Promulgation of regulations by Defendant would provide S.P., his family and others like him with meaningful participation into the rulemaking process, access to information about the agency's rules and eligibility requirements as well as standards for particular services, and ensure that services are provided uniformly and fairly throughout the state.

35. Minor Plaintiff S.S. is currently in an out of home placement, but formerly lived with his mother, stepfather and siblings in their family home. S.S. has been treated for many years for a variety of diagnoses due to unusual and at times unmanageable behaviors, strange thought patterns and, as he has become older, episodes of severe aggression. In 2005, the Medical University of South Carolina evaluated S.S. and diagnosed him with Asperger's Disorder. This disorder, very similar to autism, is one of a group of diagnoses referred to in the DSM IV as "Pervasive Developmental Disorders." S.S. is unable to socialize effectively, has difficulty understanding nonverbal social and other cues, is unable to function effectively in many school and home situations, and requires specialized training and habilitation. Defendant

SCDDSN denied services to S.S., stating only that he did not meet requirements for a diagnosis of Autism. He was not evaluated for "related disabilities" and has never received SCDDSN services.

36. Despite S.S.'s mother's "appeal" to state-level SCDDSN, Defendant has consistently refused to provide services. S.S. has been repeatedly committed to treatment facilities and foster homes because services from the Department of Mental Health have been inadequate for his needs. S.S.'s mother has no access to any formal procedure for challenging Defendant's refusal to provide services. Neither the standards for eligibility and receipt of services nor the grievance process have been subjected to review by the public or the General Assembly. SCDDSN has no regulation or clearly established procedures for appealing the denial of services to an internal or external hearing officer. S.S. and his family have no meaningful access to standards used to determine to which services he may be entitled. Additionally, S.S. and his family have no avenue for appealing any SCDDSN determination regarding services provided, or not, by SCDDSN. Promulgation of regulations by Defendant would provide S.S., his family and others like him with meaningful participation into the rulemaking process, access to information about the agency's rules and eligibility requirements as well as standards for particular services, and ensure that services are provided uniformly and fairly throughout the state. They would also have a process for accessing the courts to obtain a decision by a neutral third party where SCDDSN's actions fail to conform to the regulations.

FOR A CAUSE OF ACTION

DECLARATORY JUDGMENT

37. The allegations of all preceding paragraphs are incorporated as if repeated verbatim herein.

38. That SCDDSN has promulgated only five regulations: R. 88-105, License Requirement for Facilities and Programs; R. 88-210-Definitions; R. 88-310, Recreational Camps for Mentally Retarded Persons; R. 88-405, Day Programs for Mentally Retarded Persons; and R-88-910, Unclassified Facilities and Programs. SCDDSN has never promulgated regulations defining for issues of critical concern to applicants and recipients of its services, including but not limited to eligibility for its services; appeal procedures; standards for the operation of its residential programs; procedures for its Human Rights Committees; and standards for research on human subjects.

39. That SCDDSN's enabling statute requires that the Commission of the SCDDSN promulgate regulations, stating "The commission **shall determine the policy and promulgate regulations** governing the operation of the department and the employment of professional staff and personnel." S.C. Code Ann. § 44-20-220 (emphasis added).

40. That SCDDSN is additionally required to promulgate regulations pursuant to S.C. Code Ann. § 44-26-180 ("...The department **shall promulgate regulations** to obtain informed consent and to protect the dignity of the individual.") (emphasis added).

41. Section 44-20-790 of the South Carolina Code of Laws dealing with promulgation of regulations governing hearings provides that "[t]he procedures governing hearings authorized by "Notice of Deficiencies . . ." must be in accordance with regulations promulgated by the department.

42. That the APA was intended to provide a standardized process for all public agencies to formulate rules in order to obtain public comment and to provide access to agencies' operations as well as an avenue for appellate review of administrative decisions.

43. That Defendant Dr. Stan Butkus is the duly appointed Director of defendant SCDDSN, and in such capacity has virtually unfettered and nonreviewable authority over decisions affecting thousands of citizens of this State.

44. That on or about October 24, 2005, Plaintiffs, by and through counsel, delivered to Defendant SCDDSN a letter demanding that regulations be promulgated pursuant to S.C. Code Ann. §§ 1-23-10 *et seq.*, commonly known as the Administrative Procedures Act or APA.

45. That SCDDSN has refused to adhere to its statutory duty to promulgate regulations.

46. That the failure to promulgate regulations under the APA results in Defendant SCDDSN having unfettered decision-making authority, with no opportunity for public participation in the rulemaking process, review by the General Assembly or opportunity for independent judicial review.

47. That such unfettered decision-making authority has marked potential for, and indeed has resulted in, numerous instances of inconsistency, misapplication of the law, failure to provide services, failure to provide adequate services, provision of unequal levels of service coordination and delivery, arbitrary and capricious eligibility decisions, and no avenue for judicial scrutiny of agency decisions.

48. That by failing to promulgate regulations, SCDDSN and the Commission have circumvented not only the requirements of its own enabling legislation, but the requirements of the APA, leaving the public, P&A, the individually named Plaintiffs, defendant's employees, the legislature and the courts with no meaningful access to generally applicable standards which can be judicially reviewed.

49. That Plaintiffs are informed and believe themselves entitled to a Declaratory Judgment requiring that SCDDSN promulgate regulations governing the operation of the department and the employment of professional staff and personnel and to obtain informed consent and to protect the dignity of the individual.

50. That Defendants do not have substantial justification for refusal to promulgate regulations.

51. That attorney's fees and costs have continued to incur in this matter.

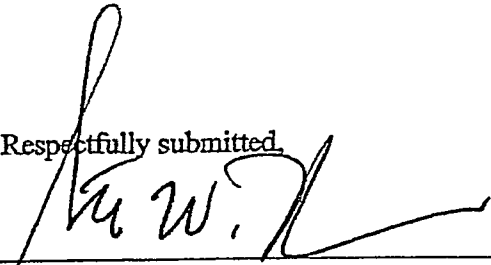
52. That upon information and belief, there are no special circumstances which would make an award of attorney's fees and costs unjust.

53. That Plaintiffs are informed and believe they are entitled to an order of this court requiring Defendants to pay Plaintiffs' attorney fees and costs pursuant to S.C. Code Ann. § 15-77-300.

WHEREFORE, Plaintiffs pray this Court for an Order:

1. Declaring that Defendant SCDDSN is required to, and that it shall promptly promulgate regulations governing the operation of the department and the employment of professional staff and personnel, and to obtain informed consent and to protect the dignity of the individual in research settings; and
2. Awarding reasonable attorney's fees and costs to Plaintiffs.

Respectfully submitted,


Steven W. Hamm
C. Jo Anne Wessinger Hill
Kenya Carver-Miller
RICHARDSON, PLOWDEN, CARPENTER
& ROBINSON, P.A.
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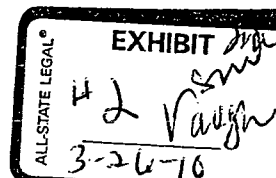
Columbia, South Carolina
April 5, 2007

ATTORNEYS FOR THE PLAINTIFFS

Reference Number: 800-01-CP
Title of Document: SCDDSN Ends Policy
Date of Issue: January 18, 2007
Effective Date: January 18, 2007
Last Review Date: January 18, 2007 **CREATED**
Date of Last Review: January 18, 2007

SCDDSN exists for the success of its consumers by coordinating person-centered services and programs for persons with mental retardation and related disabilities, autism, head injuries and spinal cord injuries. SCDDSN will, accordingly:

1. Support a statewide network of disabilities and special needs boards, regional centers and qualified private providers to, as possible:
 - a. Offer choice of provider to consumers
 - b. Provide services as needed, as near as possible to the consumer's home, in family-like settings
 - c. Achieve respect for and community integration of consumers.
2. Assist local service providers with quality management, licensure, technical assistance and training to achieve compliance with all department policies, directives and regulations, and applicable state and federal laws and regulations.
3. Assess eligibility according to Section 44-20-390 of the South Carolina Code and applied in an individual service plan to develop each consumer's full potential in the least restrictive environment for those who meet residency requirements.
4. The Commission expects SCDDSN to utilize all available federal and state funds, and encourages local leaders to develop additional sources of supplementary support recognizing that:
 - a. Resources may not be adequate for all needs and that funding priority must be based on severity of need and vulnerability
 - b. Funding is a resource to individuals to meet identified needs
 - c. Funding accountability will be maintained and enforced.



5. Support prevention research and public education to reduce the incidence and severity of all disabilities addressed by SCDDSN.
6. Insure that all activities meet or exceed the quality of services and satisfaction achieved by comparable departments in other states.

John C. Vaughn
Vice Chairman
(Originator)

W. Robert Harrell
Chairman
(Approved)

Stanley J. Butkus, Ph.D.
State Director
Robert W. Barfield
Deputy State Director
Administration
Ronald G. Dorler
Associate State Director
Operations
Kathi K. Lacy, Ph.D.
Associate State Director
Policy



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Toll Free: 888/DSN-INFO
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W. Robert Harrell
Edythe C. Dove
John C. Vaughn

November 22, 2005

Mr. Steven W. Hamm, Esq.
Richardson, Plowden, Carpenter & Robinson, P.A.
1600 Marion Street
Columbia, SC 29201

RE: Administrative Procedures Act - Regulation Promulgation and Related Issues

Dear Mr. Hamm:

I was contacted by your assistant about meeting with you on October 24, 2005, but the topic for discussion was not conveyed, even upon my request for it. I adjusted my schedule to accommodate a colleague. Although I was again uninformed by your office, you brought Ms. Gloria Prevost, Executive Director, and Ms. Nancy McCormick, Attorney, for South Carolina Protection and Advocacy for People with Disabilities, Inc. to the meeting. You handed me a letter dated October 24, 2005, addressed to Stan Butkus, Ph.D., State Director for SCDDSN and stated that you initially wanted to meet with Dr. Butkus, but were directed to me.

Since I was not told the reason for the meeting, I was not prepared to discuss the issue you raised. As I recall, you stated this was done on purpose. As might be expected the meeting was not productive. Upon review of your letter to Dr. Butkus, it appears that you want SCDDSN to promulgate a series of regulations dealing with eligibility of persons seeking services from SCDDSN, appeals with independent fact finders, Human Rights Committees and standards for placement and transfer of residents in facilities. You also requested that all SCDDSN directives be posted on our website. Further, your letter and discussion intimated that if you did not receive an immediate agreement to do these things that you would seek "more formal means" to achieve your objectives.

As you noted in your letter, DDSN has promulgated regulations. Many agencies have no regulations. Many agencies are like DDSN and have some regulations. DDSN has not needed to promulgate more regulations because the S. C. Code of Laws concerning DDSN state in detail

DISTRICT I

6301 Farrow Road, Columbia, SC 29203
Phone: 803/935-7412

Midlands Center - Phone: 803/695-7300
Written Center - Phone: 864/853-1771

DISTRICT II

PO Box 1744, Columbia, SC 29502-3200
Phone: 803/253-1234

Coastal
Pee Dee
Spartanburg

1280

7400-A-006

EXHIBIT 8n

ALL-STATE LEGAL

43
Vaughn
3-26-10

Mr. Steven W. Hamm, Esq.
November 22, 2005
Page 2

the issues that might otherwise require regulation. S. C. Code Ann. § 1-23-10 even recognizes that there are policy, guidance or procedures which do not require regulation. Another aspect of this issue is that the code of laws concerning DDSN authorizes DDSN to directly contract for services. This enables DDSN to hold its contractors accountable through detailed contract provisions.

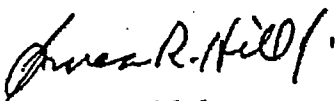
The point you made concerning having the policies available to the public is a reasonable suggestion. Availability of these policies has never been a problem. All requests for copies of policies are fulfilled, but this can be one more way to provide this information. DDSN will add its directives to the website by the spring of next year.

Your letter states its purpose "is to express our increasing concern about DDSN's failure to promulgate regulations...". To my knowledge, Ms. Prevost has not contacted Dr. Butkus with any such concern. Mr. Ron Dozier, DDSN Associate State Director-Operations, and Ms. Robin Wheeler of P & A have been meeting regularly to discuss in good faith any issue of concern of either agency. This issue has not been raised. We are unclear where any lack of regulation has threatened the rights and wellbeing of individuals with disabilities.

In order for us to work with P & A to address their concerns, it would be very useful for P & A to provide actual examples where they feel an individual's rights require a regulation for protection or wellbeing. This will help us be clear about your request and is important in our efforts to make services responsive and accountable. We need to know where there may be issues so that we can address them. You stated on October 24 that you would provide me with this information.

DDSN makes every effort to have a professional and cooperative relationship with P & A. Dr. Butkus is aware of your letter and anticipates your provision of the actual case examples for discussion to further resolve any concerns.

Sincerely,


James R. Hill, Jr.
General Counsel

JRH/cch

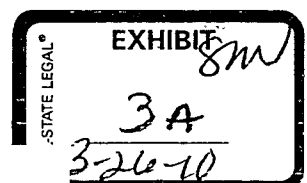
Encl.

cc: Dr. Stan Butkus, State Director, SCDDSN
Ms. Gloria Prevost, Executive Director, Protection and Advocacy
Board Members, Protection and Advocacy for People with Disabilities, Inc.
Members, SC Commission on Disabilities and Special Needs

Reference Number: 800-02-CP
Title of Document: SCDDSN Governance Process Policy
Date of Issue: January 18, 2007
Effective Date: January 18, 2007
Last Revision Date: January 18, 2007 CREATED
Date of Last Revision: January 18, 2007

The Commission of SCDDSN will govern with an emphasis on (a) outward vision rather than internal preoccupation, (b) strategic leadership more than administrative detail, (c) clear distinction of commission and state director roles, (d) collective rather than individual decisions, (e) future rather than past or present, and (f) proactivity rather than reactivity. The commission will:

1. Deliberate in many voices, but speak in one to the state director by approving policy and by passing motions.
2. Cultivate a sense of group responsibility for excellence in governing, initiating commission policy, not reacting to staff initiatives, utilizing individual commission expertise to enhance commission governance but not substituting individual judgments for commission values.
3. Direct, control and inspire the SCDDSN through broad policies reflecting commission values that focus on long term impacts rather than administrative means of attaining those effects.
4. Enforce upon itself the discipline needed to govern with excellence:
 - a. In matters such as attendance, preparation, and policy governance principles to include commission training
 - b. By allowing no officer, individual, or committee to hinder the fulfillment of its policy governance process
 - c. By monitoring its process and performance at every meeting, comparing commission activity to commission policies.



The Commission is appointed by the Governor with the advice and consent of the Senate and operates under the authority of the South Carolina Mental Retardation, Related Disabilities, Head Injuries, and Spinal Cord Injuries Act of 1993. The commission will:

1. Approve and adopt Bylaws to regulate its rules and procedures.
2. Establish policies that govern all department directives to include:
 - a. An "Ends" policy – what good for which recipients at what cost
 - b. A "Governance Process" policy – how the commission functions
 - c. A "Commission-Staff Linkage/Delegation" policy
 - d. An "Executive Limitation" policy to insure ethics and prudence
 - e. Other global policies required, without redundancy.

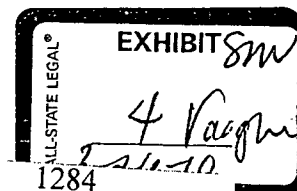
John C. Vaughn
Vice Chairman
(Originator)

W. Robert Harrell
Chairman
(Approved)

Reference: Number: 800-03-CP
Title of Document: SCDDSN Executive Limitations Policy
Date of Issue: January 18, 2007
Effective Date: January 18, 2007
Last Review Date: January 18, 2007 **CREATED**
Date of Last Revision: January 18, 2007

The State Director of SCDDSN is selected and appointed by the Commission and serves at its pleasure. The director is responsible for department operation, subject to commission policies and actions, applied through department directives. The state director shall not:

1. Fail to maintain ethics and prudence in the administration of SCDDSN or to conform SCDDSN to all federal, state, and commission requirements, and to protect SCDDSN assets.
2. Fail to prescribe SCDDSN organizational structure, adequate qualified personnel, and effective programs necessary to carry out the legislative mandate and commission policies of SCDDSN.
3. Fail to use resources effectively and efficiently and maintain transparency and accountability with the commission through reports on services, finances, and other monitoring data necessary to the commission's policy governance.
4. Fail to follow the personnel grievance procedures of the Office of Human Resources of the Budget and Control Board.
5. Fail to communicate effectively with the commission, staff and the public, nor allow the commission to be unaware of relevant trends, anticipated adverse media coverage, material change, or assumptions on which commission policy has been established.
6. Present unnecessarily complex information that does not clearly differentiate information necessary for monitoring and/or decisions, and that which is merely incidental, nor burden the commission with reports or agenda items unnecessary to policy deliberations.
7. Fail to inform the commission if, in the director's opinion, the commission is not in compliance with its own policies.



8. Fail to develop directives for the receipt of gifts, establishment of fees, and promote funding and support for SCDDSN and its agents.
9. Fail to enforce directives concerning eligibility of applicants and make final decisions on sequence of admissions.
10. Fail to oversee the Audit Director administratively according to an annual work plan, while not restricting the commission's functional oversight of and access to the Audit Director.
11. Respond officially to individual commissioners, but deal with the commission as a whole except when individuals are specifically authorized to speak for the commission.

John C Vaughn
Vice Chairman
(Originator)

W Robert Harrell
Chairman
(Approved)

Reference: Number: 800-04-CP

Title of Document: SCDDSN Commission Staff Linkage Delegation

Date of Issue: January 18, 2007

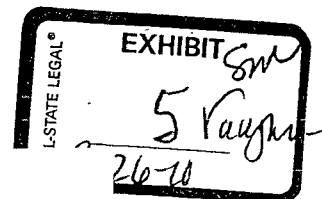
Effective Date: January 18, 2007

Last Review Date: January 18, 2007

Date of Las Revision: January 18, 2007

SCDDSN Commission authority delegated to staff is delegated through the State Director so that all authority and accountability of staff—so far as the commission is concerned—is considered to be the authority and accountability of the director. Accordingly:

1. The commission requires the director to achieve certain results for certain recipients at a certain cost through the establishment of "Ends Policy," and limits the latitude the director may exercise in all "means" through the establishment of "Executive Limitations Policy."
2. As long as the director uses any reasonable interpretation of the commission's Ends and Executive Limitations policies, the director is authorized to establish all directives, make all decisions, take all actions, establish all practices, and develop all activities.
3. As long as a particular delegation is in place, it will be respected by the commission. Any unresolved concerns with interpretation of policies will be addressed through clarifying amendment of those policies.
4. Only decisions of the commission acting as a body are binding upon the director. Decisions, instructions or requests of individuals are not binding on the director except as specifically authorized by the commission.
5. The commission, in delegating its authority to promulgate directives that accurately express and apply federal and state laws and regulations, and commission policies, retains its responsibility to govern the department. Of particular concern to the commission are directives regarding:
 - a. Department responsiveness in person-centered services as expressed in a money-follows-the-individual concept/practice and consumer choice of provider



- b. Establishment of family/consumer advisory councils by county DSN boards and private service providers, and regional and local human rights advisory groups
- c. Quality management of administration, finances, program and service delivery functions such as standards, licensing/certification and reviews, independent quality review, consumer/family surveys, annual independent financial audits, periodic compliance audits, special audits, critical incident reporting/tracking, abuse/neglect/exploitation reporting/follow-up
- d. Inclusion in appropriate directives those statements listed in rescinded commission policies 106-03-CP, 107-01-CP, 108-01-CP, 509-01-CP and 400-13-CP but not listed specifically in commission policies adopted to establish Policy Governance on 01-18-07 but determined by the commission to be appropriate "means" to be addressed by department directive.

John C Vaughn
Vice Chairman
(Originator)

W Robert Harrell
Chairman
(Approved)

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Protection and Advocacy for the People
with Disabilities, Inc.; et al,

v.

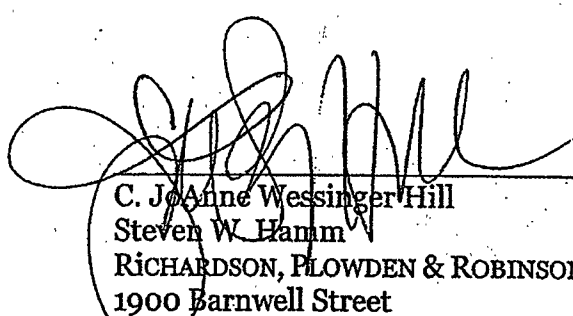
South Carolina Department of
Disabilities and Special Needs; et al.

) IN THE COURT OF COMMON PLEAS

) CIVIL ACTION NO.: 07-CP-40-2187

) NOTICE OF TAKING ORAL
) DEPOSITION OF
) DR. JOHN C. VAUGHN
)

PLEASE TAKE NOTICE that the oral deposition of Dr. John C. Vaughn, in the above-captioned action will be taken before a Notary Public for South Carolina, or before some other officer authorized by law to take depositions, on the 26th day of March, 2010, at 11:00 a.m., at the offices of Richardson, Plowden & Robinson, PA, 1900 Barnwell Street, Columbia, South Carolina 29201, at which time and place you are hereby notified, requested and required to produce the said person for said examination on oral deposition. The examination on oral deposition shall continue from time to time and day to day until conclusion, and this deposition may be adjourned from time to time as necessary. You are further invited to attend and participate as proper under the Rules.



C. JoAnne Wessinger Hill
Steven W. Hamm
RICHARDSON, PLOWDEN & ROBINSON, P.A.
1900 Barnwell Street
PO Drawer 7788
Columbia, SC 29202
(803) 771-4400

Columbia, South Carolina
March 17, 2010

) IN THE COURT OF COMMON PLEAS

) CIVIL ACTION NO.: 07-CP-40-2187

~~~~~

# CERTIFICATE OF SERVICE

) ) )

William H. Davidson, II  
Kenneth P. Woodington, Esq.  
1611 Devonshire Drive, Second Floor  
PO Box 8568  
Columbia, SC 29202

Kathy J. Templeton

1289

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF RICHLAND

PROTECTION AND ADVOCACY  
FOR THE PEOPLE WITH  
DISABILITIES, INC., et al.,

Plaintiff,

vs.

CASE NO. 07-CP-40-2187

SOUTH CAROLINA DEPARTMENT  
OF DISABILITIES AND SPECIAL  
NEEDS, et al.,

Defendant.

DEPOSITION OF: DEBORAH C. MCPHERSON

DATE: September 23, 2011

TIME: 10:08 A.M.

LOCATION: Richardson, Plowden & Robinson  
1900 Barnwell Street  
Columbia, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: SANDRA K. BJERKE, RMR, RDR, CRR

A. WILLIAM ROBERTS, JR. & ASSOCIATES

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1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFF  
 3 PROTECTION AND ADVOCACY FOR THE PEOPLE  
 4 WITH DISABILITIES, INC., et al.:

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11 and

12 PROTECTION AND ADVOCACY FOR PEOPLE WITH  
 13 DISABILITIES, INC.:  
 14 BY: SARAH G. ST. ONGE  
 15 3710 Landmark Drive, Suite 208  
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19 ATTORNEYS FOR THE DEFENDANT  
 20 SOUTH CAROLINA DEPARTMENT  
 21 OF DISABILITIES AND SPECIAL  
 22 NEEDS, et al.:

23 DAVIDSON & LINDEMANN  
 24 BY: KENNETH P. WOODINGTON  
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 Columbia, SC 29204  
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 kwoodington@dml-law.com

ALSO PRESENT:

Nancy McCormick  
 Tana Vanderbilt  
 Heather McPherson

(INDEX AT REAR OF TRANSCRIPT)

1 DEBORAH C. MCPHERSON

2 being first duly sworn, testified as follows:

3 EXAMINATION

4 BY MS. HILL:

5 Q. Good morning, Ms. McPherson. And let  
6 me make sure I'm addressing you properly.

7 And how would you like for me to  
8 address you today? Ms. McPherson or --

9 A. Yeah.

10 Q. Today you're having your deposition  
11 taken. It is being taken in accordance with the  
12 rules of procedure for South Carolina.

13 Now that we've started, it's not an  
14 endurance contest or anything like that. If you  
15 need to take a break or use the facilities or want  
16 something to drink or whatever, just let us know  
17 and we'll stop and do that.

18 At any break or at any point that we  
19 may stop or recess the deposition, you can't  
20 discuss anything that we're talking about at all  
21 about your deposition or about the case with your  
22 attorneys.

23 Is that understood?

24 A. Yes.

25 Q. Thank you, ma'am. Okay. And the court



1 reporter has just sworn you under oath. And by  
2 that, meaning just like if you were in a courtroom,  
3 sworn to tell the truth, the whole truth.

4 Basically, it's exactly the same thing as here.

5 And I'm going to ask you several  
6 questions today related to DDSN and also include a  
7 little bit about yourself, your personal background  
8 and stuff, employment history and everything as  
9 well.

10 You may hear some objections.  
11 Typically, there aren't -- all objections are  
12 basically reserved for trial or hearing, but you  
13 may hear some of us -- your counsel object to form.

14 That doesn't mean that you're not  
15 supposed to answer. That just means he's noting  
16 something on the record, and then you go ahead and  
17 proceed to answer.

18 The only thing that you could talk  
19 about, for instance -- and I will not ask you at  
20 any time -- and if you think I'm asking, just let  
21 me know.

22 But I'm not going to intend to ask any  
23 conversation with regard to this litigation that  
24 you may have had with Mr. Davidson or  
25 Mr. Woodington with regard to this case. I don't

1 want to know what your attorneys told you about it.

2 I just want to know what you know and understand.

3 And before we begin, are there any  
4 reasons, medical or otherwise, or any kind of  
5 medications that you're on that would impair your  
6 ability to answer truthfully?

7 A. No.

8 Q. Okay. And if -- as we go through, if  
9 you don't understand what I'm asking or whatever,  
10 please don't hesitate to let me know. Because  
11 otherwise, I'll assume you understood the question  
12 when you answer.

13 And since this case has a lot -- is  
14 dealing with Department of Disabilities and Special  
15 Needs, I'll probably refer to it as DDSN.

16 And by that, unless I specifically say  
17 otherwise, I'm including the commission itself, the  
18 executive director, and the employees if I say  
19 agency or DDSN.

20 Is that okay with you?

21 A. Yes.

22 Q. Okay. For the record, Ms. McPherson,  
23 can you give us your full name.

24 A. It's Deborah Crawford McPherson.

25 Q. Okay. I'm sorry. I have pronounced it

1     incorrectly.  McPherson?

2             A.     Um-hum.

3             Q.     I may say it wrong.  I apologize.

4             A.     That's okay.

5             Q.     Have you ever been known by any other  
6     name?

7             A.     Deborah Anita Crawford.

8             Q.     Okay.  And where were you born?

9             A.     Here in Columbia, South Carolina.

10            Q.     Okay.  And what was your date of birth?

11            A.

12            Q.     Okay.  And where do you currently  
13     reside?

14            A.     I reside at

15

16            Q.     Okay.  And how long have you lived  
17     there on                 ?

18            A.     24 -- approximately 24 years.

19            Q.     Okay.  Have you always lived in the  
20     Columbia area?

21            A.     No.

22            Q.     Can you tell me --

23            A.     Previous to that we lived at 504 Maxey  
24     Street in Walterboro, South Carolina, and that's  
25     where my first daughter was born, and we moved to

1 Columbia following her birth to get early  
2 intervention services.

3 Q. Okay. And your first daughter, is that  
4 the daughter you have here with you today?

5 A. Yes; Heather.

6 Q. Heather? Okay. And other than living  
7 in Walterboro and Columbia, is that basically  
8 everywhere you've lived?

9 A. Six months lived -- prior to living in  
10 Walterboro, six months lived in Charleston with a  
11 cousin. That was my first job, was with a health  
12 system agency, and it was six months prior to my  
13 getting married.

14 Q. Okay. You're currently a commissioner  
15 on the Commission for the Department of  
16 Disabilities and Special Needs.

17 A. That's correct, and represent the  
18 Second Congressional District.

19 Q. And when were you first appointed  
20 commissioner?

21 A. May, I believe, 20th -- first  
22 commission meeting I attended was May of 2009.

23 Q. Okay. So Governor Sanford is the one  
24 that appointed you?

25 A. That's correct. And then went through

1 confirmation through the Senate.

2 Q. And how long is your term?

3 A. A three-year term. It ends June of  
4 this year.

5 Q. I was going to say it sounds like it's  
6 coming up soon.

7 A. That's correct.

8 Q. And by June of this year you mean June  
9 of 2011 or 2013 or 2012? Sorry.

10 A. 2012.

11 Q. Okay. Have you ever served on any  
12 other boards or commissions?

13 A. I've served on other boards. Not other  
14 commissions.

15 Q. Okay. What boards have you served on?

16 A. Served on the Arc of the Midlands, I've  
17 served on Parents Reaching Out to Parents. Trying  
18 to think of any others. I believe those are the  
19 two.

20 Q. Okay. With the first board you  
21 mentioned, Arc of the Midlands, what were your  
22 positions there?

23 A. Served as a member and also is  
24 secretary, and I was on that board for  
25 approximately 19 years.

1 Q. And what are the functions of that  
2 particular entity?

3 A. It's a nonprofit organization that  
4 advocates for the rights of persons with mental  
5 retardation and other disabilities.

6 Q. And how were you selected to get on  
7 that board?

8 A. Voluntary.

9 Q. Okay. And so prior to being a member  
10 of that board, you were a volunteer for that  
11 organization?

12 A. That's correct.

13 Q. Okay. How long would you say you've  
14 been -- are you currently still a volunteer for  
15 that organization?

16 A. No, I'm not.

17 Q. Okay. How long had you been involved  
18 with that particular organization?

19 A. I indicated before, about -- I served  
20 for about 19 years.

21 Q. 19 years?

22 A. Um-hum.

23 Q. Okay. And with Parents Reaching Out  
24 for --

25 A. Parents? I was on the board for that

1 organization as well and served in an officer's  
2 capacity. I can't remember if it was vice chair or  
3 secretary.

4 I was on the founding board for that  
5 organization and helped them obtain their first  
6 funding through the South Carolina Developmental  
7 Disabilities Council, and then subsequent to that  
8 we received funding from the U.S. Department of  
9 Education. And I believe I served on that board  
10 for nine years.

11 Q. And you mentioned you were on the  
12 founding board and helped to obtain funding for  
13 them.

14 A. (Witness moves head up and down.)

15 Q. Was that fair to say, you were a  
16 founder also?

17 A. Um-hum.

18 Q. And can you give me -- tell me a little  
19 bit about what they do.

20 A. Well, South Carolina was one of the  
21 last states to receive funding from the U.S.  
22 Department of Education, and it's an information  
23 training center for parents who have children with  
24 special needs, and it's regarding their --  
25 providing the information regarding special

1 education services and their rights to special  
2 education services.

3 Q. And how long were you associated with  
4 them?

5 A. I was on their board for, like I said,  
6 I believe nine years.

7 Q. Nine years?

8 A. Um-hum.

9 Q. Do you remember -- like estimated time?  
10 1980 whatever or 1990 sometime?

11 A. It would be when Heather was in school.  
12 She was born in '84. So that would have been like  
13 in the '90s.

14 Q. Okay.

15 A. And after I -- I retired from the state  
16 in January of 2009. On a volunteer basis I wrote a  
17 grant for them to establish an adult sibling  
18 leadership network, and I did that strictly on a  
19 volunteer basis, received no compensation. And so  
20 I have been affiliated with them since being on the  
21 commission.

22 Q. Okay. You mentioned whenever you first  
23 were involved with Parents Reaching Out for  
24 Parents -- did I get the name correct?

25 A. Um-hum.



1 Q. That you also helped obtain funding  
2 through, I think, the Department of Disabilities  
3 and Special Needs?

4 A. No. It was through the Developmental  
5 Disabilities Council. The first year of funding  
6 we -- another parent and I wrote a grant to the  
7 South Carolina Developmental Disabilities Council,  
8 and we received funding, which then we were able to  
9 get -- hire an executive director for the agency.

10 Q. Um-hum.

11 A. And then that director then wrote the  
12 grant, the first grant to obtain funding for the  
13 U.S. Department of Education.

14 Q. Okay. Is the parents entity, are they  
15 a quasi governmental entity or anything?

16 A. No. It's private, nonprofit.

17 Q. What -- you mentioned you're still  
18 somewhat involved with them now?

19 A. I serve on a steering committee for the  
20 adult sibling leadership network, and that's the  
21 one I said that I was involved in writing the grant  
22 to obtain funding. And the grant was written to  
23 the South Carolina Developmental Disabilities  
24 Council for three years of funding.

25 Q. Okay. And tell me a little bit about

1     that process.

2                 Whenever you seek a grant, who would  
3     make the decision, how do you go about doing it,  
4     and does any other entity besides that entity have  
5     any involvement in it?

6                 A.     In applying to the Developmental  
7     Disabilities Council, they basically send out a  
8     request for a proposal. And they have specific  
9     guidelines regarding the grant proposal, which is  
10    what, basically, I did for them, is write the  
11    grant, and then it was submitted. And then there's  
12    a committee of the Developmental Disabilities  
13    Council that makes a decision of what grants are  
14    funded.

15                Q.     Okay.

16                A.     They have categories for grants, and  
17    they have specified amounts that can be provided.  
18    Typically, the funding, it's only for a three-year  
19    period. It's basically seed money, and the funding  
20    is reduced each year to less and less so that you  
21    have to come up with more and more match funds.

22                Q.     Tell me a little bit about your  
23    education. Where did you go to high school?

24                A.     I went to -- graduated from Dreher High  
25    School here in Columbia, and I went to the

1 University of South Carolina and I graduated with a  
2 BS in biology. And then I also obtained my  
3 master's in public health from the university.

4 And then after -- while I was employed  
5 in Charleston, I went back and completed 27 hours  
6 toward an education specialist degree at the  
7 Citadel.

8 Q. Can you tell me about what year that  
9 was?

10 A. Graduated from high school in 1972 and  
11 graduated from college in '75, and then completed  
12 my master's in, I believe, '78, and then went back.  
13 Education specialist courses were taken until '83.

14 Q. Other than -- have you been involved or  
15 received any other type of educational training in  
16 any other fields other than what you've just  
17 mentioned?

18 A. No.

19 Q. Okay. Let me -- tell me, after you  
20 graduated from University of South Carolina and got  
21 your degree, did -- in biology, did you begin work  
22 at that time, or did you go straight to get your  
23 master's?

24 A. Straight to get my master's.

25 Q. Okay.

1           A.    I was working -- well, I was working  
2 part time while I was working on my master's, and I  
3 did substitute teaching here in Columbia.

4           Q.    Okay.

5           A.    But it was not in a full-time capacity.

6           Q.    After substitute teaching, is that --  
7 and when you got your master's degree, is that when  
8 you went into full-time employment?

9           A.    Yes. My first job was with Palmetto  
10 Low Country Health System Agency in Summerville,  
11 South Carolina.

12                   And they were responsible for doing  
13 health planning and development for 12 counties in  
14 the low country area. They were working in concert  
15 with the Department of Health and Environmental  
16 Control, doing state health planning, and I worked  
17 there for six and a half years, doing health  
18 planning.

19           Q.    Okay. And when doing the health  
20 planning, what type of South Carolinians or  
21 citizens were they serving?

22           A.    It was all.

23           Q.    Okay.

24           A.    And basically what we were doing, we  
25 were involved in certificate of need reviews for

1 hospitals, nursing homes, alcohol and drug, mental  
2 health, proposed uses of federal funds. The whole  
3 gamut.

4 Q. Okay.

5 A. At that point in time in my life I had  
6 absolutely no idea that I would ever work in the  
7 field of disabilities.

8 In fact, while I was working there and  
9 taking the courses toward the education specialist  
10 degree, I took a course when I was pregnant with my  
11 first child in introduction to exceptional  
12 children, not knowing that I would have a child  
13 born with a disability, did my paper on genetic  
14 counseling services.

15 Q. That's pretty amazing, isn't it?

16 A. Um-hum.

17 Q. Wow.

18 A. And after I left that position, I was  
19 pregnant with my daughter, and I had been commuting  
20 to work from Walterboro to Summerville, which was  
21 basically two hours a day.

22 I was offered a position at Colleton  
23 Regional Hospital in Walterboro, and it was in  
24 charge of their education department, doing staff  
25 training for their hospital personnel. And I

1 worked there for a year.

2 And then my daughter was born with a  
3 disability, and we decided to move to Columbia.  
4 And after having worked the year at the hospital, I  
5 obtained a position with what was then called the  
6 Department of Health and Finance Commission. Was  
7 not Health and Human Services, but it was the  
8 Finance Commission.

9 And I was employed for two years there,  
10 working and doing state health planning, which is  
11 what I had done previous to that at a local level.  
12 This was then at the state level.

13 And then from there went to work a year  
14 in the governor's office with the Developmental  
15 Disabilities Council.

16 Q. And who was governor at that time?

17 A. Campbell. Governor Campbell. And then  
18 after that is when I was offered a position at the  
19 what was then the Department of Mental Retardation,  
20 and that would have been in 1987, is when I started  
21 working with the Department of Mental Retardation.

22 Q. And what were your positions that you  
23 held at the Department of Mental Retardation?

24 A. Director of planning and grants. Then  
25 executive assistant to the state director. And

1 then the director of Consumer and Family  
2 Empowerment.

3 And I left DDSN in 2002 and then went  
4 to work for the Department of Health and Human  
5 Services in the Office of Senior Services on a Real  
6 Choice Systems Change Grant.

7 Following that I worked with a Medicaid  
8 infrastructure grant, and it was -- my employer at  
9 that time was the University of South Carolina with  
10 working at the Department of Health and Human  
11 Services.

12 And then following that, I went to work  
13 on another CMS grant with the Office on Aging, and  
14 that's where I retired in 2009.

15 Q. Okay. Was your first -- let's see.  
16 Whenever -- can you tell me a little -- whenever  
17 you went on to Development Disabilities Council  
18 that was part of the governor's office, Governor  
19 Campbell's administration, do you remember about  
20 what time period that was? I assume that was in  
21 the '80s when he was elected somewhere.

22 A. That would have been about '86. I  
23 believe in about '86.

24 Q. Okay. And with regard to that, can you  
25 tell me a little bit more about what you actually

1 did and what your functions were, what your  
2 responsibilities were?

3 A. Developmental Disabilities Council?

4 Q. Yes. Just so you know, I was going to  
5 walk you through --

6 A. Okay. I was responsible for a program  
7 in administration, and that involved basically  
8 monitoring the grants that were funded,  
9 overseeing and working with the Developmental  
10 Disabilities Council that's appointed by the  
11 governor. So I was staff to that.

12 Q. Okay. And whenever you left there and  
13 went to the Department of Mental Retardation, is  
14 that what used to be or what ultimately became the  
15 Department of Disabilities and Special Needs later  
16 on when it was restructured through Governor  
17 Campbell's office?

18 A. That's correct.

19 Q. And you had various positions there.  
20 Can you tell us a little bit about what you did in  
21 each position? I know you mentioned you were  
22 director of planning grants.

23 A. Basically, first thing I remember was  
24 preparing a five-year planning plan for the  
25 Department of Mental Retardation, because at that



1 time they did not -- and Dr. Massey was the  
2 director at that time. And so I was responsible  
3 for development of that five-year plan, monitoring  
4 the implementation of the plan and also responsible  
5 for some of the federal grants that they were  
6 receiving funding.

7 At that time they were receiving  
8 funding from State Library, American Printing House  
9 For the Blind. They were receiving chapter -- I  
10 think it was Chapter I funding. There were a lot  
11 of federal funds outside of Medicaid funds that  
12 they were receiving, and so I was responsible for  
13 overseeing those.

14 Q. Basically the five-year plan that you  
15 developed for them, the first one they had, is that  
16 basically kind of carried over and lived on to what  
17 is now to DDSN?

18 A. No. I think it's quite different from  
19 what was done at that time.

20 Q. And how did your -- when you became the  
21 executive -- I think executive assistant to the  
22 director?

23 A. Right.

24 Q. Did any of your responsibilities change  
25 other than what you previously had?

1           A.    They definitely did change, and my  
2   responsibilities were basically to provide staff to  
3   the commission.

4           Q.    Okay. And by staff to the commission,  
5   can you tell me, what does -- what would you do as  
6   a staff to the commission?

7           A.    At that time, assisting the state  
8   director, for example, in making sure there are  
9   monthly meetings, assisting with development of the  
10  agenda.

11               Also, I was involved at that time of  
12  making sure that -- about commission policies. And  
13  particularly there were -- when there was a change  
14  from the Department of Mental Retardation to the  
15  Department of Disabilities and Special Needs, I was  
16  responsible for doing the initial drafting of the  
17  commission policies to make sure that they were  
18  consistent with the state code.

19           Q.    And who -- you mentioned about the  
20  commission policies. Who else was involved in  
21  the -- I know you said you did the initial  
22  drafting.

23               Was there anyone else involved?

24           A.    The state director and then the  
25  commission chair, and they were approved -- the

1 commission policies were approved by the  
2 commission, the seven-member commission.

3 Also at that time I was responsible for  
4 taking and trying to resolve if there were consumer  
5 family complaints, taking all those calls and  
6 trying to make sure that there was resolution.

7 Now, I think that's quite different --  
8 it's quite different than when Dr. Butkus was  
9 director. But when Dr. Massey was there, that was  
10 one of the things he expected in that position, for  
11 you to -- until it -- if you could not handle it,  
12 then it went to him, but it -- generally, you had  
13 to handle it.

14 Q. Which directors, while you were there  
15 at Department of Mental Retardation and also at  
16 DDSN, which directors did you serve under or serve  
17 with?

18 A. I served for a very short time under  
19 Dr. Barnet, who was the first director, and he then  
20 retired. And after that Dr. Massey became state  
21 director, and I served under him. And then I was  
22 there when Dr. Butkus was director. And then I  
23 left the Department of Disabilities in 2002.

24 Q. You mentioned about the policy -- as  
25 staff at that time, about the development of

1 policy, and you were involved in the initial  
2 drafting and development of the policies that were  
3 used by DDSN.

4 Is that the same process that is used  
5 today?

6 A. No. It's my understanding, and I  
7 certainly -- I was not affiliated with the  
8 Department of Disabilities when this happened.

9 But the commission policies that were  
10 drafted under the time of Dr. Massey, those were  
11 subsequently repealed by the commission, and there  
12 are now four policies that are consistent with  
13 Carver governance, and those were done by a  
14 previous commission. So those policies that I was  
15 involved with are no longer there. They've been  
16 repealed.

17 Q. Since you've been a commissioner, have  
18 you or the commission taken up any policy review or  
19 changes?

20 A. No.

21 Q. Based upon your experience right now as  
22 a commissioner with DDSN, has any -- to your  
23 knowledge, any commissioner or staff person  
24 suggested any changes to any of the commission  
25 policies or department policies?

1           A.    I'm aware there has been discussion,  
2   but there has not been any changes made.

3           Q.    Okay.  Have those discussions been on  
4   any agenda for any commission meeting?

5           A.    The issue has been discussed in  
6   commission meetings.  In fact, there was one in, I  
7   believe, May, just recently, but there has not been  
8   any change.

9           Q.    Okay.

10          A.    The vote at that time was to leave  
11   things as is..

12          Q.    Okay.  Was that a voice vote or a roll  
13   call vote; do you remember?

14          A.    It was just a --

15          Q.    Raise your hand vote?

16          A.    Or basically, you know, how many -- you  
17   know, if you approve, how many disapprove.

18          Q.    If -- for instance, like would the  
19   agenda or any minutes reflect that it was like a  
20   vote of X to X or just --

21          A.    I don't recall.

22          Q.    You don't know?

23          A.    No.

24          Q.    Do you recall how you voted at that  
25   time?

1           A.    No, I don't, but I recall I was the one  
2   that brought up the issue.

3           Q.    Oh, for there to be a change.

4           A.    (Witness moves head up and down.)

5           Q.    Okay. And can you tell me what exactly  
6   you brought up at that time?

7           A.    My concern was that the commission was  
8   being asked to vote on Medicaid waiver, both  
9   renewals and amendments, and we were not receiving  
10  copies -- or we were not being asked to approve  
11  directives and standards that related to the  
12  waiver.

13                   And my concern was that here we are  
14  approving a Medicaid waiver, when in fact changes  
15  had been made that were not consistent with the  
16  waiver document.

17           Q.    And by changes being made not  
18  consistent with the waiver document, you're talking  
19  changes in the directives or standards?

20           A.    Correct.

21           Q.    Who actually reviews any changes to a  
22  directive?

23           A.    The commission is not involved with  
24  review of those directives and standards.

25           Q.    Do you know who is?

1 A. The state director.

2 Q. Okay.

3 A. And the staff that would be developing  
4 those directives.

5 Q. And who would approve them?

6 A. State director.

7 Q. Okay. Can you tell me, what is the  
8 responsibility -- what is a -- what are the  
9 responsibilities of a commissioner for DDSN?

10 A. Okay. Well, if you go back to state  
11 code, basically it says our responsibility is to  
12 develop policy. We also are responsible for  
13 approving contracts and funding. We're responsible  
14 for educating the general public and legislators  
15 regarding the needs of people with disabilities.  
16 We're also responsible for promoting the prevention  
17 of disabilities. And the state code also says  
18 promulgate regulations.

19 Q. Have there been any regulations  
20 promulgated, to your knowledge, since you've been a  
21 commissioner?

22 A. No.

23 Q. When you were on staff with either the  
24 Department of Mental Retardation or the Department  
25 of Disabilities and Special Needs, were there any

1 regulations, to your knowledge, promulgated at that  
2 time?

3 A. Not to my recollection.

4 Q. If there had been any regulations based  
5 upon the positions you held with the Department of  
6 Mental Retardation, which was the predecessor to  
7 the Department of Disabilities and Special Needs,  
8 would that have come within your scope to know  
9 about or be responsible for?

10 A. Yes.

11 Q. Ms. McPherson, who does the commission  
12 answer to?

13 A. Well, the commission answers to the  
14 governor since we're appointed by the governor.

15 Q. And with regard to the carrying out of  
16 your -- the commission's responsibilities, are --  
17 is it fair to say that the commissioner's  
18 responsibilities are the same responsibilities that  
19 apply to the agency?

20 A. No.

21 Q. Okay. What would be the difference?

22 A. Commission members are not involved in  
23 the day-to-day operations of the department.

24 Q. Well, is it fair to say that the  
25 commission establishes the guidelines or the



1 policies or procedures that are to be used in the  
2 day-to-day operations?

3 MR. WOODINGTON: I'll object to the  
4 form.

5 THE WITNESS: The commission is  
6 responsible for the selection of the state director  
7 and the supervision of that state director, and  
8 that's the only staff member that the commission  
9 has review authority of, is the actions of that  
10 state director, and we have to hold that state  
11 director accountable for the operations of the  
12 agency.

13 BY MS. HILL:

14 Q. And then the state director -- the  
15 director then holds the -- everybody else  
16 underneath that particular person accountable to  
17 them.

18 A. That's correct.

19 Q. In order to carry out the operations of  
20 the agency, which include the policies and  
21 procedures established by the commission.

22 A. That's correct.

23 Q. So is it fair -- kind of like an  
24 analogy. If y'all are -- if you can -- if the  
25 director answers to you, do y'all not indirectly

1 then have the rest of the agency answering to you  
2 also?

3 MR. WOODINGTON: Object to the form.

4 THE WITNESS: As a commission member,  
5 we have been -- if I have a question, I do not  
6 have -- I've been told not to communicate my  
7 questions to a staff member. I would direct my  
8 questions to the state director and my  
9 communication would be with the state director.

10 BY MS. HILL:

11 Q. And you were told that when you became  
12 a commissioner?

13 A. Yes. And that is consistent with the  
14 existing commission policies.

15 Q. Okay. And previously, based upon your  
16 experience with DDSN and its predecessor agency,  
17 was that also the policy and practice at that time?

18 A. No, absolutely not.

19 Q. Do you know who came up with that  
20 policy, that you can only communicate with the  
21 director and no one else as a commissioner?

22 A. That came with the repeal of the  
23 existing policies and the new policies that were  
24 approved, and that would have been under -- I can't  
25 remember all the commissioners at the time, but

1 John Vaughn was the commissioner at that time who  
2 was chair of that. It may have been the Policy  
3 Committee. Bobby Harrell was on, Mary Catherine  
4 Bagnall, Edythe Dove, Kelly Floyd, and Otis Speight  
5 would have been the commissioners at that time.

6 Q. And when you talk about the DDSN  
7 policies that you're referencing that replaced the  
8 prior ones, are those the ones that are often like  
9 the 800 series numbers? I think there are five of  
10 them, four or five?

11 A. Um-hum.

12 (PLF. EXH. 1, Screen Shot of DDSN  
13 Commission Policies, marked for identification.)

14 BY MS. HILL:

15 Q. I'll give you a minute, Ms. McPherson,  
16 to look over that.

17 A. Um-hum, these are the ones.

18 Q. Those are the ones? And that would be  
19 the DDSN ends policy which is 800-01-CP?

20 A. Right.

21 Q. The DDSN governance process policy  
22 which is 800-02-CP?

23 A. That's correct.

24 Q. DDSN executive limitations, which is  
25 800-03-CP?

1 A. Correct.

2 Q. And the DDSN commission staff linkage  
3 delegation, 800-04-CP.

4 A. Correct.

5 Q. And DDSN Public Invocation Act,  
6 800-05-CP. Those are the ones you're talking  
7 about?

8 A. And when the previous policies were  
9 repealed, they basically -- it's -- what I recall  
10 is the top four were the ones, and then subsequent  
11 to that is when the Public Invocation Act was  
12 added, but these are -- these are the existing  
13 policies.

14 Q. Was the one that is the Public  
15 Invocation Act, was that adopted while you were a  
16 commissioner or before you?

17 A. Before.

18 Q. Before? Okay. What I handed you which  
19 we marked Exhibit No. 1 is just a photo -- is a  
20 picture copy of the DDSN website that shows  
21 commission policies.

22 Have you seen that website before or  
23 the commission website?

24 A. I'm aware that the policies are posted  
25 there, yes. And prior to 2009, those policies were

1 not on a website, so they are now currently on the  
2 website, as well as the commission's contact  
3 information.

4 Q. Were the directives on the website  
5 prior to 2009?

6 A. I believe so. I'm not a hundred  
7 percent sure of that, but I believe so. Back when  
8 I was previously working for DDSN, there was a  
9 system of numbering that was developed by staff  
10 members for the directives and the standards. At  
11 that time, though, they were not posted.

12 Q. Okay.

13 A. So I'm not a hundred percent sure of  
14 when those directives were posted on the website.

15 Q. And would that be true also -- well,  
16 were there also standards at that time when you  
17 worked for DDSN?

18 A. Yes, there were.

19 Q. And would that also be true for them as  
20 well, that while you were there, based upon your  
21 knowledge, while you were an employee at DDSN, that  
22 the standards were also not posted on the website?

23 A. That's correct. Now, one thing that  
24 did happen at that time was that if there were a  
25 policy -- a directive under review or a standard to

1 be changed, there was a major mailing. Didn't  
2 matter whether it was being proposed to be changed.  
3 It was just up for review, annual review. There  
4 would be copies sent out and mailed for people to  
5 review and provide input.

6 Now the process is, is if a directive  
7 or standard were up for review or change, you would  
8 have to go to the website and check to see if it's  
9 being posted as being reviewed.

10 Q. Okay. So unless you went to the  
11 website to check, you would not know if it was  
12 being up for review or had been changed.

13 A. That's correct.

14 Q. Okay. And with regard to the procedure  
15 prior to the posting on the website when the  
16 commission -- excuse me -- when the department was  
17 actually mailing out copies while you were employed  
18 there, I think up through -- was it 2002?

19 A. 2002.

20 Q. With the folks it was being mailed to,  
21 how did you get on the mailing list?

22 A. All they had to do was contact the  
23 department and request to be put on the mailing  
24 list. There were certain agencies that were  
25 identified that were automatically. Like, for

1 example, the Department of Health and Human  
2 Services, if it was the South Carolina  
3 Developmental Disabilities Council. It may be --  
4 you know, any of the agencies like the Arc or  
5 Autism Society, any of the advocacy organizations,  
6 those were already on. But if you as an  
7 individual, you just general public wanted, all you  
8 had to do was call and asked to be put on the  
9 mailing list.

10 Q. And if I didn't happen to call and be  
11 put on the mailing list, I wouldn't know.

12 A. It would have been sent certainly to  
13 the local boards and such too. And there again,  
14 the reason why I think it was changed, though, was  
15 the cost. The manual labor and the cost of mailing  
16 and such is the reason why it was changed to this  
17 format.

18 Q. We kind of jumped all over a little  
19 bit. Let me go back and get a little more  
20 background stuff and then we'll go back, because  
21 you mentioned some stuff I want to follow up on. I  
22 know that your daughter's here today.

23 Can you tell me, how many children do  
24 you have?

25 A. I have two.

1 Q. And are both of them over the age of  
2 18?

3 A. Yes.

4 Q. And are you currently married?

5 A. Yes.

6 Q. Okay. And what's name of your husband?

7 A. Douglas Wayne McPherson.

8 Q. And what does your husband do?

9 A. He's a dentist, and he's employed at  
10 Fort Jackson.

11 Q. I know prior to the deposition you  
12 mentioned your youngest daughter, I believe, is a  
13 junior at the College of Charleston?

14 A. At the College of Charleston, that's  
15 correct.

16 Q. And tell me, how old is your oldest  
17 daughter, Heather?

18 A. Heather is 27 today.

19 MS. HILL: Happy birthday, Heather.

20 MR. WOODINGTON: She's falling asleep  
21 in here like the rest of us.

22 MS. HILL: I know, I know, I know.

23 BY MS. HILL:

24 Q. Okay. And I think you mentioned that  
25 you had -- whenever Heather was born, that y'all



1 moved from Walterboro to Columbia in order to be  
2 able to obtain services.

3 A. Well, early intervention services, and  
4 it was not through the Department of Disabilities  
5 and Special Needs. At that time -- Heather was  
6 born in '84, and there was no service such as  
7 BabyNet at that time.

8 And there was a program here in  
9 Columbia through Epworth Children's Home. And I  
10 took Heather, when she was five weeks old, to visit  
11 the program and had Heather's name put on the  
12 waiting list, and she started services when she was  
13 a year old.

14 And Heather did not start receiving any  
15 services from the Department of Disabilities until  
16 she was 16. And then I believe Heather must have  
17 been about 20 that I moved her services to the  
18 Department of Health and Human Services. And so  
19 she is served through community long-term care.

20 Q. Why did Heather not receive services  
21 through DDSN until she was 16?

22 A. Didn't need them.

23 Q. Okay.

24 A. We did -- Heather was at that time in  
25 regular classes. We were paying for private

1 tutoring, and also she went to private school for  
2 six and a half years. She was in public school  
3 for -- through fifth grade, and then she went to a  
4 private school for six and a half years. And then  
5 she got sick right before 17 with a rare autoimmune  
6 condition that changed her life tremendously.

7 Q. And why did you end up moving her  
8 services from DDSN?

9 A. Basically, for convenience. I had been  
10 involved when I was working at the Department of  
11 Health and Human Services. I wrote -- was involved  
12 with the Real Choice Systems Change Grant, and we  
13 received approval for the first consumer-directed  
14 waiver for seniors and adults with physical  
15 disabilities. And that particular Medicaid waiver  
16 called SC Choice allowed more consumer direction.

17 And we also were involved in developing  
18 a system called Care Call, which is now still used  
19 for monitoring and billing of Medicaid services.

20 And after my experiences with the local  
21 board here in town, I just decided that it was  
22 going to be much easier for her and her needs to be  
23 met through community long-term care. And so I  
24 moved her services.

25 Q. Tell me -- and you just mentioned about

1 waiting lists and all.

2 A. Right.

3 Q. Are there -- are you aware of waiting  
4 lists at the Department of Disabilities and Special  
5 Needs?

6 A. Definitely.

7 Q. Were there waiting lists -- are there  
8 currently waiting lists now?

9 A. Yes.

10 Q. Were there waiting lists at the time  
11 when you were on staff with DDSN and its  
12 predecessor agency?

13 A. Yes. There have always been waiting  
14 lists.

15 Q. And can you tell me -- are you familiar  
16 with the process of the waiting list and how  
17 that -- how do you move up or how do you get on a  
18 waiting list?

19 A. I am aware of how the -- the fact that  
20 there are variety waiting lists.

21 Q. Um-hum.

22 A. There are waiting lists for the  
23 waivers. There's also waiting lists for  
24 residential services and there are waiting lists  
25 for community services.

1           Q.   And can you tell me, as a commissioner,  
2   what is your understanding about the waiting lists?

3           A.   Well, my biggest frustration as  
4   commissioner is if I had a magic wand, I would  
5   obtain the funding from the legislature so we would  
6   have the matching funds and be able to address the  
7   waiting lists.

8                So my biggest frustration as a  
9   commissioner is the fact that I would love to  
10   address the waiting list. I would love for people  
11   not to have to be waiting as long as they are, but  
12   the problem is we have had to operate within the  
13   budget and the funds that have been allocated by  
14   the general assembly.

15          Q.   And given that, how does the commission  
16   address that issue of determining the process with  
17   regard to the waiting lists?

18          A.   The commission -- one of the things  
19   that we did, even in our most previous work  
20   session, was through the funding that had been  
21   allocated by the general assembly we were able to  
22   identify what were going to be our priorities as  
23   far as addressing needs.

24               And one of the things that we did just  
25   recently address was being able to address some of

1 the numbers on the waiting lists by some of the  
2 funding that had been allocated. We can't do  
3 anything without the dollars being there to provide  
4 the match.

5 Q. And whenever those priorities were  
6 developed, how did y'all develop it? You mentioned  
7 regulations. Did y'all do it by policy?

8 A. We were given a list that had been  
9 developed by staff that had been -- staff had got  
10 input from families, from consumers, from  
11 providers, and there was a list that we were  
12 provided of -- in order for us to meet our current  
13 obligations, this is how much money we need, this  
14 is how much net that we project that we will have  
15 available, and these are the needs that have been  
16 identified. Now, how do you propose that we  
17 address that?

18 And one of the key things that we  
19 identified was -- there were two things: The  
20 providers were saying we're having more and more  
21 difficulty because of the cost-of-living increases,  
22 and we have received so many cuts to our base that  
23 something's got to give. We need more funds. And  
24 the other thing was the outpour of concerns by  
25 parents about the waiting list.

1           So those were the two priorities that I  
2 know for me as a commissioner, that was what I felt  
3 like I needed to be sure was addressed, the waiting  
4 list and the situation with providers..

5           Q.    Okay. And ultimately, in the  
6 decision -- you mentioned that DDSN, the  
7 commission, y'all did make a decision with regard  
8 to the priorities.

9           A.    Um-hum.

10          Q.    And --

11          A.    And those two issues were addressed.

12          Q.    And were they -- we know it wasn't done  
13 by regulation; right?

14          A.    Correct.

15          Q.    And we don't -- and was it done by --  
16 it wasn't done by policy since -- or it didn't seem  
17 to be listed in one of the 800 series policies.

18          A.    Correct.

19          Q.    Then how was it done?

20          A.    Basically, the department has a  
21 critical list, and the waiting list is addressed by  
22 those that are listed as being in a critical  
23 situation. And we've had to do that, and that  
24 makes perfectly good sense if you have limited  
25 funds. What you try to do is address those issues

1 that are utmost importance.

2 Q. And I would take it in making some of  
3 these decisions, there were probably some people  
4 that were receiving services or a certain amount of  
5 funding or services, and then after the development  
6 of priorities, there were some that were not.

7 A. That's correct.

8 Q. Even if they may have been before.

9 A. The first commission meeting that I  
10 attended in May of 2009, there were four new  
11 commissioners: Susan Lait, Nancy Banov, Nick  
12 Huntress and myself. And the most difficult thing  
13 we had to face our first meeting was we were faced  
14 with you've got to make cuts to the waiver.

15 And subsequent to that -- I think it  
16 may have been like maybe a July meeting, even the  
17 director of the Department of Health and Human  
18 Services said you've got to vote for these cuts in  
19 services or all folks served through the waiver  
20 will lose services.

21 So we were put in a position, and  
22 that's been the constant thing since I've been on  
23 the commission, is trying to decide who do you --  
24 you know, when you make cuts, who are you going to  
25 hurt the least, and that's a difficult decision to

1 make.

2 Q. Oh, yes, ma'am. I have no doubt that  
3 it is.

4 A. And what has typically been the  
5 decision has been if folks are in residential  
6 placement, they are the ones that have more severe  
7 needs and they're the ones that we have tried to  
8 protect because they don't have a safety net.

9 Folks that are in the community may or  
10 may not have family, but usually there's a little  
11 bit more of a safety net for them.

12 And the other thing that financially  
13 you have to look at if it's Medicaid funding, when  
14 you cut that state funding, you're cutting those  
15 matching federal dollars. And so what you try to  
16 do is, if you're going to make a cut, you try not  
17 to cut those Medicaid dollars, and you look at the  
18 services that are your hundred percent state funds  
19 or you look at ways in which you get more people  
20 who are served by the department Medicaid eligible.

21 Q. And in making all those decisions, if  
22 you are someone that is, let's say, before some of  
23 those decisions -- we recognize all agencies have  
24 been having budgetary issues and even across the  
25 nation and stuff with regard to the economy and



1 everything. Based upon the determination of what  
2 the priorities are -- and I mentioned you try to  
3 address the critical first.

4 In making -- in establishing the  
5 criteria for that, how is someone who is affected  
6 by, let's say, an adverse decision on that end, how  
7 are they able to challenge that decision?

8 A. Well, there is an appeal procedure, and  
9 initially -- for example, if they're served and  
10 their services are funded through a Medicaid  
11 waiver, they would initially file an appeal to the  
12 Department of Disabilities and Special Needs. And  
13 then that decision would go, like I said, to the  
14 state director. And if they wanted to or were not  
15 pleased with that decision, then their next appeal  
16 would be through the Department of Health and Human  
17 Services.

18 Q. Okay. And if they don't have a  
19 Medicaid waiver, what would be their matter of  
20 recourse?

21 A. It would be through the Department of  
22 Disabilities and Special Needs, and it would go  
23 basically chain of command up to, finally, the  
24 state director.

25 Q. And when you mention --

1           A.    And the commission is not involved in  
2 those -- is not involved in those decisions.

3           Q.    When you mentioned chain of command.  
4 So it's like the analyst or person who works with  
5 them --

6           A.    You would start at your local board  
7 level.

8           Q.    Okay.

9           A.    And then go up to the next level with a  
10 regional -- or district director, rather. I'm  
11 sorry. The district director then would go up to  
12 the next level of deputy and then the deputy up to  
13 the state director.

14          Q.    So you start at your local board first?

15          A.    (Witness moves head up and down.)

16          Q.    And then you go to the Department of  
17 Disabilities and Special Needs through the regional  
18 director?

19          A.    Well, the district direct.

20          Q.    The district. I'm sorry. Then  
21 regional, and then --

22          A.    Well, district -- used to be regional  
23 offices. Now they're district offices. There are  
24 two district offices, and that would then go up to  
25 the level of a deputy and deputy up to the state

1 director.

2 Q. And how would someone know that they  
3 had this ability to challenge that decision or  
4 appeal that decision?

5 A. They should have been notified by their  
6 service coordinator.

7 Q. Is there anything in writing?  
8 Is there a regulation on letting  
9 someone know that that's the process upon which  
10 they need to appeal if they have a challenge?

11 A. It would be covered in a directive.

12 Q. Okay. And a directive's not a  
13 regulation.

14 A. Correct.

15 Q. And you've got to have, basically,  
16 Internet services or access to the web to know the  
17 directive exists.

18 A. They would also know their right to  
19 appeal through their service coordinator. Their  
20 service coordinator, in developing, for example,  
21 their service plan, in monitoring their services,  
22 if there were ever a time that there were  
23 any disagreement, that service coordinator at the  
24 local level should inform the parent of their right  
25 to appeal.

1 Q. And do you know how that's done?

2 How do they inform them?

3 A. It should be done in writing.

4 Q. And if it's not done in writing, how  
5 would you know?

6 A. Service coordinator is supposed to be  
7 contacting that family and monitoring those  
8 services. And so it would be up to that service  
9 coordinator. Their responsibility would be to  
10 inform the family.

11 For example, one of the things that  
12 they have to do, too, is that they have freedom of  
13 choice. They have freedom of choice to decide, you  
14 know, the services, whether they want institutional  
15 services or community-based services. They would  
16 also be doing -- involved with assessment.

17 But if there were any disagreement,  
18 that service coordinator should be informing the  
19 family that they have that right of appeal, and it  
20 would be done in writing. And then their step  
21 would be to contact that executive director of the  
22 local board.

23 Q. Okay. How is it done -- you mentioned  
24 it's a little bit different appeal procedure for  
25 when you have a Medicaid waiver.

1           How is it done in the Medicaid system?

2           A.    Medicaid system -- I mean, 60-some  
3 percent of the services that are provided by the  
4 Department of Disabilities and Special Needs are  
5 Medicaid funded. So most of -- the majority of  
6 services provided by DDSN are Medicaid funded.

7           But, for example, the appeals procedure  
8 for Medicaid waiver services, whether it's  
9 community long-term care or DDSN, are basically the  
10 same except for if it's -- if it's provided through  
11 the Department of Disabilities and Special Needs,  
12 is you go through, and that goes to the director.  
13 They have 10 days to review. And then if there's  
14 not an agreement, then it goes to the Department of  
15 Disabilities and Special Needs. You have that  
16 right of appeal.

17          Q.    Do you mean it goes to the director  
18 at -- which? Director of DDSN or Health and Human  
19 Services?

20          A.    Health and Human -- after 10 days, if  
21 there's no agreement, then you can appeal and it  
22 goes to a hearing officer at the Department of  
23 Health and Human Services.

24          Q.    So it first comes to the director at  
25 DDSN, and then it goes to the -- if it's not

1 resolved there, you can appeal.

2 Or if you're not happy with the  
3 decision you get, you can appeal?

4 A. And it used to be that all appeals went  
5 to the Department of Health and Human Services.  
6 That was changed. There was a change made into --  
7 it was a waiver amendment many years ago. But it  
8 used to be that all appeals went directly to the  
9 Department of Health and Human Services.

10 Q. And by waiver amendment, do you mean  
11 that was an amendment made to a statute by the  
12 general assembly?

13 A. DHHS made that change. That was done  
14 through the Department of Health and Human Services  
15 and CMS. That was an agreement made, and CMS  
16 approved that.

17 Q. So the waiver amendment wasn't a  
18 contractual agreement or understanding or  
19 memorandum of understanding between the inner  
20 workings of the state agencies or the entities that  
21 were -- well, I guess that would be federal and  
22 state agencies.

23 A. It's my understanding -- I was not  
24 involved at the time, but it's my -- so it would  
25 have been after 2002 that this happened.

1           There was a committee meeting with the  
2   Department of Disabilities and Special Needs.  
3   There were several recommendations made as far as  
4   waiver amendments. In fact, I believe PNA was a  
5   part of that committee as well as some other  
6   advocacy organizations.

7           There was some dissension among the  
8   group as far as their desire not to do that, but it  
9   basically was sent from a recommendation. The  
10   Department of Health and Human Services drafted it  
11   as a waiver amendment as part of their waiver  
12   document, the appeals process, and that was  
13   approved by the Centers for Medicare and Medicaid  
14   Services. Prior to that all appeals on waiver  
15   services went directly to the Department of Health  
16   and Human Services.

17           MR. WOODINGTON: Jo Anne, we're a  
18   little past an hour.

19           MS. HILL: Yes, we were going to take a  
20   break in about an hour.

21           (A recess transpired from 11:11 until  
22   11:26.)

23   BY MS. HILL:

24           Q. Right before we broke we were  
25   discussing a little bit about various issues

1 related to some appeals and stuff, and I want to go  
2 back.

3           You mentioned with regard to the  
4 commission set -- the members of the commission  
5 were asked, in order to make some determinations  
6 with regard to changes in the services, to address  
7 some of the budgetary problems and stuff.

8           And with regard to the criteria of who  
9 was going to be served and sort of -- I think you  
10 mentioned -- please don't let me put words in your  
11 mouth, but what critical needs and stuff of that  
12 nature were determined.

13           Did the commission itself have the  
14 ability to look at the criteria to establish  
15 what -- excuse me. Let me rephrase that.

16           Does the commission itself, were y'all,  
17 in making your decisions, able to look or know what  
18 the policy -- or set the policy or criteria that  
19 was going to be used for making the determinations  
20 with regard to eligibility for services or what  
21 would be a critical need service that would have --  
22 in making those priorities?

23           A. See if I can answer it this way: We've  
24 had to make decisions, for example, for early  
25 intervention services regarding eligibility



1 criteria, and we have, as a commission, had to vote  
2 on that.

3 I don't recall any other decisions, for  
4 example, with the waiver of determining -- you  
5 know, making a change in determination of  
6 eligibility that we've had to vote on.

7 The changes that we have had to vote  
8 on, for example, were when the waiver was amended,  
9 reduction of the number of hours, for example, for  
10 a particular service and reducing the number of  
11 hours for certain services.

12 Q. Okay. With regard to the intervention  
13 eligibility criteria, was -- and y'all voted on  
14 those.

15 Was that part -- or was that in a  
16 directive or a standard that the department had?

17 A. No.

18 Q. So when you voted on it at the  
19 commission meeting to make changes or to -- well,  
20 were y'all making changes in what was previously  
21 used as the criteria to be eligible for  
22 intervention services?

23 A. Yes, and it was -- the changes we made  
24 were made strictly from a standpoint of because of  
25 budgetary restrictions.

1           Q.    But removing the money -- I'm not  
2    thinking about the money.

3                    But in making those changes to address  
4    the budget issues that you had to do, y'all made  
5    changes in the eligibility criteria, that if I came  
6    looking for services, that I would have to meet in  
7    order to receive a service.

8           A.    For that particular service that I  
9    mentioned.

10          Q.    Yes, ma'am.

11          A.    Yes.

12          Q.    For the intervention services.

13          A.    Yes, um-hum.

14          Q.    Okay. So -- and that was a change that  
15    had previously from -- the criteria that was  
16    previously used to be eligible for intervention  
17    services.

18          A.    That was the criteria that was being  
19    used by BabyNet.

20          Q.    Okay.

21          A.    And what happened was BabyNet services,  
22    which were a global service, and we were -- like I  
23    said, we were a baby -- a part of the agencies  
24    providing BabyNet services.

25          Q.    Okay. So the commission, though,

1 addressed the part of BabyNet services that are  
2 provided or supervised through DDSN.

3 Y'all addressed those criteria for the  
4 folks that you service.

5 A. (Witness moves head up and down.)

6 Q. And is it fair to say that in doing  
7 that, y'all were changing an existing directive or  
8 standard -- I don't know which one -- that would  
9 have been in place to let the public know what  
10 those criteria were?

11 A. And I cannot say whether that was  
12 specific in a directive or a standard. I don't  
13 know.

14 Q. But somewhere you would think that  
15 there -- in providing intervention services to the  
16 folks that DDSN services and citizens that they  
17 service, there has to be something out there that  
18 is used whenever I approach -- I the consumer  
19 approach DDSN for services.

20 There's some sort of guideline or  
21 criteria or policy or something to tell me what the  
22 eligibility is, or is there not?

23 A. Well, eligibility for DDSN services is  
24 established by state code.

25 Q. Okay. And how is it implemented?

1           A.    It's implemented by the department  
2 following the state code. For example, you have to  
3 be a resident of South Carolina. We do not use  
4 financial criteria for eligibility for DDSN  
5 services.

6           Now for the waiver, the Medicaid  
7 waiver, that's different, but you do not have to be  
8 Medicaid eligible to receive DDSN services.

9           Q.    Okay. And since the statute says what  
10 you've got to do and what your criteria are,  
11 does -- how then is that implemented at the agency,  
12 within the agency itself?

13          A.    It's implemented through the state  
14 director.

15          Q.    Okay. And how does the state director  
16 implement the South Carolina law?

17               MR. WOODINGTON: Object to the form.

18 BY MS. HILL:

19          Q.    Well, let me rephrase this. How does  
20 the state director then take -- since she is  
21 charged -- state law provides what the criteria is.

22          A.    Um-hum.

23          Q.    Then the state director is the one to  
24 implement the criteria to provide services to  
25 anyone seeking services from DDSN.

1 A. Um-hum.

2 Q. Then how does the director, him or  
3 herself, go from that point of actually  
4 implementing the criteria?

5 A. It's done through directives and  
6 standards.

7 Q. Okay. And when there are eligibility  
8 criteria placed in directives and standards -- is  
9 that what you're telling me? That's how she does  
10 it?

11 A. (Witness moves head up and down.)

12 Q. So if the commission itself then  
13 changes or adjusts the criteria, are y'all not then  
14 adjusting a directive or standard?

15 A. Well, there is eligibility criteria for  
16 the department of Department of Disabilities and  
17 Special Needs, but there's also eligibility  
18 criteria for a Medicaid waiver.

19 Q. Um-hum.

20 A. A person may be eligible for DDSN  
21 services that is not necessarily eligible for a  
22 Medicaid waiver service. It could be that they're  
23 over the resource limit, maybe they're not Medicaid  
24 eligible. Whatever.

25 So there's actually two sets, if you

1 want to say. There's a set of criteria for the  
2 Medicaid services that is the responsibility of the  
3 Department of Health and Human Services, and then  
4 there's a set of eligibility for the Department of  
5 Disabilities and Special Needs.

6 Those services are the  
7 responsibility -- like I said, that determination  
8 of eligibility is ultimately the responsibility of  
9 the state director.

10 Q. Okay. And the commission supervises  
11 the state director.

12 A. That's correct.

13 Q. And the commission answers to the  
14 governor.

15 A. That's correct.

16 Q. And the director implements its  
17 statutory responsibilities through the policies  
18 established by the commission.

19 A. Yes.

20 Q. Yes. Okay. And does the director also  
21 implement the responsibilities charged with  
22 operating the department, which includes the  
23 providing of services to the citizens and  
24 responding to them with the needs that they have?

25 MR. WOODINGTON: Object to the form of

1 the question.

2 BY MS. HILL:

3 Q. Well, tell me, what is -- what are the  
4 responsibilities of the executive director?

5 A. The state director --

6 Q. Yes.

7 A. -- is responsible to the commission.  
8 The state director is responsible for the daily  
9 operations of the department. The state director  
10 is responsible for making the decisions on  
11 eligibility as well as, for example, as we  
12 mentioned earlier, about appeals of decisions made  
13 by the Department of Disabilities and Special  
14 Needs.

15 Q. Tell me, what are the daily operations  
16 of the department that the executive -- what are  
17 her duties with regard to the daily operations?  
18 Explain to me what the daily operations of the  
19 department are.

20 A. Well, a major part of that would be the  
21 planning and coordination of services, the  
22 budgetary responsibilities, and I think that  
23 probably takes as much as anything, ensuring that  
24 we operate within our budget.

25 Also, a major part of his or her time

1 is spent in educating the general assembly and  
2 coordinating services with other state agencies,  
3 ensuring that the policies of the department are  
4 carried out and one who's ultimately held  
5 accountable by the commission.

6 Q. And can you explain to me, what are the  
7 planning and coordination of services? What would  
8 that be?

9 A. Planning the direction, for example, of  
10 the department. And that would include all  
11 services. A major part of the Department of  
12 Disabilities and Special Needs too is coordinating  
13 with the Department of Health and Human Services  
14 since the majority of our services are Medicaid  
15 funded. It may be, for example, ensuring that the  
16 needs of their -- I'll give you a good example.

17 CMS ruled a couple years ago that folks  
18 that were receiving individual rehab supports, that  
19 that was considered rehabilitation, and folks with  
20 developmental disabilities cannot be rehabilitated.  
21 They have to be habilitated.

22 So that, in essence, was a need that we  
23 knew we had. And then department then addressed it  
24 by development of a new waiver, community supports  
25 waiver, where folks that had been in individual



1 rehab supports were able to be moved into that new  
2 waiver. So addressing future needs.

3 One of the things, for example, right  
4 now that we're looking at is a new assessment tool.  
5 So it's trying to address current as well as future  
6 needs and planning for those needs.

7 Q. Okay. And the waiver you mentioned as  
8 an example, was that a waiver that was developed  
9 and also -- not only by DDSN, but is it  
10 administered by DDSN?

11 A. No. It is operated by DDSN through  
12 contract with the Department of Health and Human  
13 Services. The Department of Health and Human  
14 Services is the Medicaid agency responsible for  
15 administration of all Medicaid waivers.

16 Q. Okay. And when you just mentioned  
17 planning of the department and all services, and  
18 what do you mean by all services?

19 Is that including like -- and when I'm  
20 talking about -- not the Medicaid or federal  
21 related services or Health and Human Services --  
22 Department of Health and Human Services, just DDSN  
23 services. What would those be?

24 A. It could be early intervention  
25 services, it could be prevention services, it could

1 be day services, it could be residential services,  
2 it could be family support services, which would  
3 encompass respite.

4 Q. And in following their statutory  
5 requirements that the department's been charged  
6 with and the executive director is supposed to  
7 implement and carry out, in handling those  
8 particular services that are DDSN services you just  
9 went now and listed, how does the -- what are the  
10 director's responsibility? How does he do that?  
11 Or she -- excuse me -- do that?

12 A. Basically through staff and basically  
13 through contracts with local boards in the state as  
14 well as working with private providers for the  
15 provision of those services.

16 Q. Okay. All right. And everything you  
17 just mentioned to me related to -- not the other  
18 federal related stuff or Department of Health and  
19 Human Services stuff. Just the DDSN stuff. That  
20 is part of the operations of DDSN.

21 MR. WOODINGTON: Object to the form of  
22 the question.

23 BY MS. HILL:

24 Q. You can go ahead and answer. And I'm  
25 talking about the stuff you just mentioned, the

1 nonfederal, non-HHS stuff.

2 A. But as I indicated before, over 60  
3 percent of the funding for DDSN services is  
4 federal, you know, Medicaid.

5 Q. I understand.

6 A. And so the majority of it is Medicaid  
7 funded, but the services that I just mentioned are  
8 all --

9 Q. DDSN, state-funded services. Or  
10 DDSN-responsible services, whether it's funded --  
11 however it may be funded. And --

12 A. They are services that are currently  
13 provided by DDSN.

14 Q. Okay.

15 A. Now, remember, waiver services in this  
16 state are optional services.

17 Q. Um-hum.

18 A. Our Medicaid agency could say we're no  
19 longer going to participate in waiver services.

20 Q. Um-hum.

21 A. And so a lot of those services that I  
22 just mentioned are funded through Medicaid. We  
23 would have no funding for them.

24 Q. Okay. But even regardless of state or  
25 federal funding, doesn't DDSN have some

1 responsibility in the provision of those services  
2 through the legislature since they are one of the  
3 entities that's got to -- is charged with providing  
4 a certain type of service to South Carolinians that  
5 avail themselves of it if they meet that criteria  
6 that's established by statute?

7 A. There are services, but I don't  
8 believe -- if you go back and read the state code,  
9 they're not -- the services that I've listed out  
10 are not specific in the state code.

11 Q. No, ma'am. I wouldn't expect them to  
12 be.

13 A. Right.

14 Q. But you had previously mentioned to me  
15 that that's part of the operations of the  
16 department.

17 A. That's correct.

18 Q. And, I believe, the planning and  
19 coordinating of services and in the director's  
20 responsibilities in seeing what the needs are and  
21 what services need to be provided.

22 MR. WOODINGTON: Object to the form.

23 BY MS. HILL:

24 Q. Is that correct?

25 A. Correct.

1 Q. Other than -- is there anything -- and  
2 I believe you mentioned that the director also, in  
3 carrying out the operations of the department, does  
4 work through and use staff.

5 A. Correct.

6 MR. WOODINGTON: Object to the form.

7 BY MS. HILL:

8 Q. So is it fair to say then whatever  
9 staff does is part of the operations of the  
10 Department of Disabilities and Special Needs?

11 MR. WOODINGTON: Object to the form.

12 THE WITNESS: Yes.

13 BY MS. HILL:

14 Q. Okay. And I realize you're in a unique  
15 position because you not only are currently a  
16 commissioner, but you've also been a prior staff  
17 member of DDSN and also its predecessor entity.

18 And based upon your knowledge, is that,  
19 in your view, what -- what you've told me, what the  
20 operations of the department have been and  
21 currently are?

22 MR. WOODINGTON: Object to the form.

23 BY MS. HILL:

24 Q. Or should be?

25 A. Can you repeat the question?

1 Q. Okay. I'll try, I'll try. Because  
2 you've actually -- you just mentioned what the  
3 operations of the department are, and the director  
4 does work through staff in order to carry out  
5 operations of the department. And so what the  
6 staff does would be considered their functions.

7 What the director tells them to do,  
8 what they do every day when they come into the  
9 office is part of the operations of the department;  
10 correct?

11 A. Correct.

12 MR. WOODINGTON: Object to the form.

13 BY MS. HILL:

14 Q. Previously when we were talking you  
15 mentioned that whenever you were on staff, because  
16 you were -- I call it like a liaison, the staff  
17 person for the commission itself. And you actually  
18 interacted with them, and you were the person who  
19 initially drafted many of the documents and things  
20 of that nature that the department did use.

21 You'd mentioned that those policies and  
22 procedures -- policies, department policies that  
23 were in place prior to the five 800 series current  
24 DDSN policies -- what types of policies were in  
25 place previously before the five existing ones?

1 What would those areas have covered?

2 A. What I was involved in was only the  
3 drafting of commission policies.

4 Q. Okay.

5 A. I was not involved in the drafting of  
6 directives that weren't in place at that time.

7 Q. What types of commission policies  
8 existed?

9 A. The commission policies were drafted to  
10 be consistent with the state code when the  
11 Department of Disabilities and Special Needs was  
12 first created.

13 For example, one policy I remember  
14 drafting, but it was never sent to the commission  
15 for approval, was regarding the establishment of  
16 advisory committees for the three divisions.  
17 That's never been done.

18 No governor has ever appointed those  
19 three advisory councils, but that was one of the --  
20 one of the commission policies that I drafted.

21 Q. Um-hum. And I bet you drafted it, as  
22 you just said, because it's found in state code.  
23 They're supposed to.

24 A. It's found in state code, correct.

25 Q. And it's a requirement that is supposed

1 to be undertaken which is not.

2 A. Correct.

3 Q. Um-hum. And it's still not to this  
4 day.

5 A. Correct. There was an attempt under  
6 Governor Sanford, and, in fact, contacts were made.  
7 We as commission members were requested to submit  
8 names of individuals from our congressional  
9 district for those three divisions, and we did, and  
10 those appointments were never made.

11 Q. Are there -- let me see. Well,  
12 since -- what types of -- whether you drafted them  
13 or not, are you aware of any other policies that  
14 existed prior to the five 800 series ones now?

15 Can you tell me a little bit about what  
16 types of policies they were prior to the five  
17 existing ones?

18 A. The biggest difference that I find with  
19 the existing policies versus the policies that were  
20 in place before is a clear line has been delineated  
21 for the commission as far as this is your  
22 responsibility to oversee the state director, and  
23 you're not to be involved in the day-to-day  
24 operations of the commission -- of the department,  
25 rather. I'm sorry. That, to me, if you look at



1 those new policies, I see that as being the biggest  
2 difference.

3 The other difference with the existing  
4 policies is the old policies you could sit and read  
5 and they mirrored the state code.

6 Q. Um-hum. And the current ones don't.

7 A. And the current ones don't. But that  
8 to me is the two biggest differences between the  
9 old commission policies and the policies that we  
10 have in place today.

11 And I guess because of my involvement  
12 in those previous policies, I know there's a  
13 difference of opinion among commissioners. I see  
14 some value to policies mirroring state code.

15 Q. With regard -- you'd mentioned a little  
16 bit earlier this morning, too, that the  
17 commission -- and you just did previously too. The  
18 commission -- the director -- excuse me. The  
19 director actually -- executive director actually  
20 answers to the commission.

21 A. The state director.

22 Q. Yes, ma'am, state director. And who is  
23 that currently right now?

24 A. Dr. Beverly Buscemi.

25 Q. And how is the state director obtained

1 or hired?

2 A. There was a subcommittee of the  
3 commission appointed, and we also, though, this  
4 time involved other advocacy groups in the  
5 selection committee that listened and was a part of  
6 the -- listened to the interviewing.

7 We asked the questions. They were able  
8 to listen to the interviews. And the commission  
9 then made their recommendations, and Dr. Buscemi  
10 was selected as the best candidate for the  
11 position.

12 Q. And how often -- well, does the state  
13 director ever come up for evaluation?

14 A. She does every -- or he every year.  
15 There is an annual review.

16 Q. And how does the commission go about  
17 evaluating the performance of the executive  
18 director?

19 A. There is an agency performance. There  
20 is a set standard of evaluation that we use.

21 Q. Is it the same standard that is used  
22 for all other state employees?

23 A. All state agencies, yes.

24 Q. And how does the commission gather  
25 information in order to fill out or conduct that

1 assessment?

2 A. Well, the assessment, too, also has to  
3 mirror the criteria in the accountability report,  
4 and that information is obtained from the state  
5 director as well as we provide our input.

6 And we have agreed this upcoming year,  
7 rather than waiting a year, what we're going to  
8 do is on a quarterly basis we will be evaluating  
9 and providing feedback to the state director.

10 Q. Okay. And in doing that, you get your  
11 information from the state director and then what  
12 else?

13 A. I know I as a commission member, I  
14 receive input from providers, consumers, families,  
15 and I don't rely strictly on what I hear from going  
16 to a commission meeting.

17 Q. Um-hum.

18 A. So when I make a recommendation to the  
19 state director about an area that I may see needs  
20 to be improved, I'm basing that on information that  
21 I'm getting from a lot of different parties.

22 Q. And is that something that you as a  
23 commissioner were trained to do or advised to do  
24 when you first became a commissioner?

25 A. No. That's just me as an individual

1 and my taking the responsibility of a commissioner  
2 as being that I try to listen and keep an ear open  
3 to what's going on.

4 Q. Okay. And do you know what other  
5 commissioners do in making that evaluation?

6 A. I think they pretty much do what I do  
7 as well.

8 Q. Okay. And in making your evaluation,  
9 can you talk to staff at all to find out exactly  
10 any information of what's going on within the  
11 department itself?

12 A. No.

13 Q. Do you think it would be helpful to be  
14 able to talk to staff to be able to know what was  
15 going on inside the department to evaluate the  
16 director's carrying out of her duties or any  
17 director's carrying out of their duties?

18 A. Yes.

19 Q. Okay. You mentioned that you get input  
20 from other outside sources, other groups and  
21 providers and things.

22 How often do you get input? Not -- and  
23 by this I'm not referencing with regard to  
24 evaluating the director or anything like that.  
25 Just in general as a commissioner.

1           A.     Sometimes I get phone calls.     Sometimes  
2     I get e-mails.     Sometimes I get stopped at places  
3     like church.     If someone's upset about something,  
4     believe me, I hear about it.     And I prefer -- I  
5     prefer to know ahead rather than being stopped  
6     somewhere when I'm out in the community and say,  
7     did you know this is happening?

8           I also -- there are several advocacy  
9     groups that have websites and they post information  
10    and I read the information.     That gives me a good  
11    feel about what's going on and what are the  
12    concerns.

13           Sometimes the information posted on the  
14    websites is not accurate, but that's also good  
15    because there's some executive directors that have  
16    also been on these websites and they'll respond  
17    back saying no, this is not right, you know, and  
18    give them correct information.

19           I don't comment when I read these  
20    websites.     I don't comment.     But I do read the  
21    websites, and generally I get three or four of  
22    those a day.

23           Q.     And you mentioned that you like to know  
24    things in advance.

25           How does a commissioner learn of things

1 in advance?

2 Or what's the communication between the  
3 director and the commission to know what's going  
4 on?

5 A. It's improving. I will say that, but  
6 that was one of the concerns that I expressed to  
7 the state director, that I did not feel that there  
8 was enough communication going to the commission,  
9 and I will say that is improving.

10 Q. And when you -- has -- I can't remember  
11 when Dr. Buscemi became the executive director.

12 Has she been the executive director the  
13 entire time since you've been on the commission?

14 A. No. When I came on the commission  
15 Dr. Butkus had resigned and Dr. Andy Laurent was  
16 the interim director, and then I believe it was  
17 like in October or November that Dr. Buscemi was  
18 selected.

19 Q. Okay. All right. So whenever she  
20 became -- was hired as the director, that's when  
21 you expressed some concern about the communication  
22 between the directors and the commissioners?

23 A. Only because the interesting thing is,  
24 I as a -- I personally. I can't speak for the  
25 other commissions. But I personally felt like I

1 was getting more information when Dr. Laurent was  
2 there than when Dr. Buscemi came on as director.

3 Q. Oh, really?

4 A. And it's probably a difference in  
5 management style, but I felt like that Dr. Laurent  
6 was keeping us more abreast of what was going on,  
7 and I expressed some concerns about that. And I  
8 will say lately it has been improving.

9 Q. Okay. And can you kind of give me an  
10 example of what the difference is that you're  
11 talking about? Did he do something different? You  
12 said different style. I mean, did he send out  
13 e-mails, letters, calls?

14 A. E-mail. E-mail. He didn't call, but  
15 he sent out more e-mails to keep us informed about  
16 what was going on.

17 Q. And previously -- well, you may not  
18 have -- prior to Dr. Laurent, when -- Dr. Butkus  
19 had already resigned when you got on there?

20 A. Yes.

21 Q. So you wouldn't necessarily --

22 A. I don't really know what his, you know,  
23 form of communicating with the commission. I have  
24 no idea.

25 Q. And whenever you were on staff at DDSN,

1 I think it was 2002 and before that, were you --  
2 were you involved in the communication between the  
3 executive director and the commission since you  
4 were the --

5 A. The state director?

6 Q. Yes, ma'am.

7 A. No. State director communicated with  
8 commission. I did not. On occasion I might have  
9 too, but it generally would have been something  
10 about -- regarding meeting or meeting arrangements  
11 or things like that.

12 Q. I know we've talked about those  
13 directives right there, and I do have copies of  
14 them if you need them.

15 If you were able today, what would you  
16 change from those five policies?

17 A. If it were up to me as commissioner, I  
18 would repeal those policies and go back to policies  
19 that mirror the state code.

20 Q. And I believe you said earlier that one  
21 of the duties of the department or the commission  
22 is to promulgate regulations.

23 Would that be something you would  
24 change also?

25 A. Well, there are two things now that --



1 you know, looked at the state code this morning.  
2 The state code says promulgate regulations for the  
3 operation of the department, and then it implies  
4 that shall promulgate regulations regarding the  
5 services and such.

6 So it's interesting, when you look at  
7 it, when it's saying promulgate regulations of the  
8 operation, and yet we've got policies, commission  
9 policies that are -- have been pretty clear to say  
10 you don't get involved in the day-to-day  
11 operations. You can't have it both ways.

12 Q. Makes it a little difficult, doesn't  
13 it?

14 A. Yes.

15 Q. Ma'am, you also mentioned when you  
16 switched Heather from her waiver -- and please tell  
17 me if I got it wrong. You also mentioned that  
18 there were various reasons, but one of them also,  
19 you had an issue with the local board?

20 A. (Witness moves head up and down.)

21 Q. What type of issue did you have with  
22 the local board?

23 A. Well, my main complaint at that time  
24 was Heather's service plan that was developed had  
25 major errors, and that particular year the director

1 of service coordination did her plan.

2 Q. And help me. Who would be the  
3 director? Would that be a DDSN person employee, or  
4 local board, or regional?

5 A. It was an employee of the  
6 Richland-Lexington Department of Disabilities and  
7 Special Needs Board.

8 Contact information was not correct.  
9 Did not even have her listed on the service plan  
10 that she was in a waiver. It took me close to six  
11 weeks to get a case of, at that time, diapers.  
12 There were major problems.

13 The other thing is, at that time my  
14 provider of services was having to drive across  
15 town every two weeks to submit an invoice for hours  
16 provided of services, which I knew by using Care  
17 Call it could be called in.

18 So given the problems I was having with  
19 everything and the convenience of being able to use  
20 the Care Call system, I just said, you know what?  
21 These are the services she's getting. She can just  
22 as easily get them through community long-term  
23 care.

24 And I realized at that time I would  
25 have to be physically unable for Heather to get

1 residential services, and that was the only service  
2 that I couldn't get through community long-term  
3 care that I could get through the Department of  
4 Disabilities and Special Needs. And so I just  
5 decided at that point I was going to make my life a  
6 whole lot easier.

7 Did I know at that time I would later  
8 be serving on the commission? No. That had no  
9 influence. It had no influence on my wanting to be  
10 on the commission. It was just a matter of wanting  
11 to make my life a lot easier and for my daughter to  
12 get the services that she needed.

13 Q. Why did you want to be on the  
14 commission?

15 A. Basically, because I felt that there  
16 was a need to help improve the service delivery  
17 system. And I'll be honest. I mean, I as an  
18 individual, having a daughter with a disability,  
19 over the years I've heard people's stories time and  
20 time again, and I also know their frustrations.  
21 And I was hoping that by serving on the commission,  
22 maybe I would be able to help.

23 Q. Um-hum.

24 A. Have I been frustrated serving on the  
25 commission? Yes. I have felt, at times, my hands

1 have been tied.

2 Q. And with your hands being tied, would  
3 that be tied by the director, state director, or by  
4 whom?

5 A. Been tied basically because of  
6 commission policy.

7 Q. Okay. Can you tell me a little bit  
8 about -- how does DDSN's relationship with the  
9 local boards work?

10 How is that -- how do they interact and  
11 what responsibilities, if any, does DDSN have with  
12 regard to them?

13 A. DDSN subcontracts with the local  
14 disability boards. They are not their employees.  
15 So the state director -- for example, the executive  
16 director of a local board does not answer to the  
17 state director. It's basically a contractual  
18 relationship.

19 Q. Okay. So it's almost like they're a  
20 provider of services, technically. Or, I mean, you  
21 contract with them in order to do a function.

22 A. But it's different in the sense that  
23 state code, you know, specifies the local -- the  
24 existence of the local boards.

25 Q. Okay. And so the only -- with them

1 contracting with them, the contract will spell out  
2 whatever duties and responsibilities the local  
3 board would have to DDSN or would be handling for  
4 DDSN.

5 A. (Witness moves head up and down.)

6 Q. And I see you're shaking your head,  
7 nodding your head yes.

8 A. Yes.

9 Q. What types of things does a local board  
10 do on behalf of DDSN, or would they contract  
11 with --

12 A. Well, they're doing the planning and  
13 coordination of services. And in most instances,  
14 the majority also provide services. And there has  
15 been some concern over the years expressed of the  
16 potential conflict of interest of planning and  
17 delivering services.

18 Q. And how often are those contracts  
19 reviewed between the local board and DDSN?

20 A. Annual basis and as needed. I mean,  
21 they could be -- you could amend, you know, a  
22 contract at any time but on an annual basis.

23 Q. And is that one of the functions -- you  
24 said previously that the duties and  
25 responsibilities of a commissioner is with regard

1 to contracts.

2 Is this one of the contracts that y'all  
3 are responsible for approving?

4 A. What we do is generally, after the  
5 general assembly has made the appropriation, what  
6 we would do is just like at our meeting, last  
7 meetings where we go through and we basically  
8 approve the contracts to the local boards for the  
9 various services that will be provided as well as  
10 also to private providers.

11 And then there are also some that are  
12 given -- for example, we went through a whole  
13 process this time that we have never done before in  
14 looking at the various contracts to other entities  
15 like the Autism Society, for example, was one.

16 Q. And there had been previously contracts  
17 with them before, but they had not been looked at?

18 A. They had been included, been approved  
19 by the commission but had not been specifically  
20 reviewed by the commission, that's correct.

21 Now, I was not aware of this until  
22 maybe a couple months after getting on the  
23 commission, and this was something that Dr. Laurent  
24 indicated to us, is that the commission has the  
25 authority to approve contracts a hundred thousand

1 or more. And so anything under a hundred  
2 thousand -- because the situation came up about a  
3 particular contract that was under a hundred  
4 thousand that did not go through the commission.

5 Q. Okay. And what Dr. Laurent's informed  
6 you, has that changed since Dr. Buscemi has been  
7 there?

8 A. Not to my knowledge.

9 Q. Okay. You mentioned you get a lot of  
10 feedback occasionally from other than the state  
11 director with regard to DDSN.

12 Have you ever gotten any complaints?

13 A. Yes.

14 Q. How many would you say that you get  
15 or -- well, I'll say how many have you gotten since  
16 you've been a commissioner, but that may be too  
17 difficult to know.

18 Can you give an estimate of how many  
19 you get on like maybe a monthly basis or six-month  
20 period or whatever?

21 A. It varies.

22 Q. It varies?

23 A. For example, when we were put in the  
24 position initially of having to make the reduction  
25 in services in the mental retardation and learning

1 disabilities waiver back in 2009, you would not  
2 believe the phone calls and the e-mails I was  
3 getting.

4 Q. And that was probably to be effective  
5 with the fiscal budget that started on July 1,  
6 2009?

7 A. (Witness moves head up and down.)

8 Q. What types of other complaints do  
9 you -- have you gotten or do you get?

10 A. Generally, it's been complaints  
11 regarding reductions of services. One recently was  
12 regarding adult day healthcare services.

13 Q. Who is responsible for adult day health  
14 services? Who manages that or supervisors that?

15 A. The administering agency is the  
16 Department of Health and Human Services, and DDSN  
17 then operates the waiver, and that's one of the  
18 waiver services.

19 Q. Okay. With DDSN operating the  
20 waiver -- that's a waiver service.

21 What are the DDSN responsibilities with  
22 regard to adult day healthcare?

23 A. They work with the Department of Health  
24 and Human Services in development of the standards.  
25 They also would be working to -- with the providers



1 of those services. They also would be doing the  
2 assessments for folks in determining who is  
3 eligible for those services under the waiver. They  
4 would be -- at the local board, would be  
5 authorizing the services and then funding the  
6 services.

7 Q. In developing the assessments for  
8 determining eligibility, how is that done? Is that  
9 through -- it's not through a commission policy,  
10 it's not through a commission regulation.

11 So is it through -- is that a  
12 commission or DDSN standard?

13 A. It's through a standard, and at one  
14 time it was nurse assessment and doctor order.

15 Q. Can you tell me, what are the  
16 differences between a directive and a standard, or  
17 is there a difference?

18 A. A directive would be -- is generally  
19 developed by staff, signed off by the state  
20 director, and it is sent out then to the local  
21 boards and providers of services.

22 A standard is what basically sets the  
23 criteria for that particular service. A standard  
24 would establish, for example, staffing. It may put  
25 down -- like the licensing standard would be

1 included. Facilities, how many times it would be  
2 monitored, those types of things.

3 Q. And in staff developing it and then  
4 Dr. Buscemi or whomever the state director may be  
5 in signing off on it, is that part of the  
6 director's carrying out of her duties and  
7 responsibilities as outlined or directed by the  
8 commission or by statute?

9 A. Yes.

10 Q. Okay. And with regard to directives,  
11 how are directives developed?

12 Is it the same manner as standards?

13 A. Directives are -- generally, there are  
14 some directives -- for example, depending on the  
15 area, there's usually a key staff person who  
16 develops that directive, is sent out to the boards  
17 and the providers for input. It's posted on a  
18 website for review. Those comments would be  
19 considered. Then it's finalized, and it would be  
20 sent then for final approval to the state director.

21 For example, there's a whole section of  
22 directives that just deals with personnel issues.  
23 So the director of human resources would be clearly  
24 working with that.

25 Q. Um-hum.

1           A.    There may be a directive on a  
2 particular service that would deal more with  
3 someone that's in the service or program area.

4           Q.    That the -- if I'm a consumer or  
5 citizen of South Carolina that I would come to DDSN  
6 for, that would affect me, not if I'm an employee  
7 there.

8           So basically, the ones dealing with  
9 from the personnel side are dealing with issues  
10 internally with the department itself related to  
11 employees, and there are also directives that also  
12 deal with issues related -- or services related  
13 that a consumer or citizen could receive or could  
14 have access to by approaching the Department of  
15 Disabilities and Special Needs.

16          A.    That's correct. And they would be if  
17 they were going to be up for renewal or, you know,  
18 review or whatever. It would be posted on the  
19 website.

20          Q.    And even when they're -- who decides  
21 when they're up for renewal; do you know?

22          A.    They're to be reviewed typically on an  
23 annual basis.

24          Q.    And after they're reviewed, the  
25 director would sign -- the state director would

1 sign off on it as well just like they did  
2 previously when it would have been initiated.

3 A. That's correct.

4 MR. WOODINGTON: Are we talking about  
5 the directives being reviewed now?

6 MS. HILL: Yes, directives.

7 MR. WOODINGTON: Okay.

8 BY MS. HILL:

9 Q. And that is part of the process that  
10 you just mentioned with regard to the directives  
11 that the director carries out and signs on is --  
12 signs off on or approves is also part of her  
13 functions in carrying out her duties and  
14 responsibilities as outlined to her by statute and  
15 also by the commission?

16 A. Correct.

17 Q. Okay. And that's part of her  
18 operations with regard to the department.

19 MR. WOODINGTON: Object to the form.

20 THE WITNESS: Question again?

21 BY MS. HILL:

22 Q. That's part of her fulfilling out her  
23 responsibility -- as part of the operations for the  
24 Department of Disabilities and Special Needs  
25 includes the director signing or approving or

1 handling -- yeah, signing and approving directives.

2 A. I don't know that the state code is  
3 that specific to say that that's their  
4 responsibility.

5 Q. But it's the responsibility that the  
6 commission has told her in order to do. Somebody  
7 had to tell her or she just came up with it.

8 A. It was, I think -- at least prior to my  
9 being on the commission, it was something that was  
10 carried out by the state director.

11 Q. Okay. So at least -- and what the  
12 state director does is operate the Department of  
13 Disabilities and Special Needs. Carry out its  
14 operations.

15 MR. WOODINGTON: Object to the form.

16 THE WITNESS: The state director's  
17 responsible for the daily operations of the  
18 department, that's correct.

19 BY MS. HILL:

20 Q. And that's one of the operations of the  
21 department.

22 MR. WOODINGTON: Object to the form.

23 THE WITNESS: I don't know that there's  
24 anything that specifically says in state code that  
25 yes, she has to develop directives and standards.

1 BY MS. HILL:

2 Q. Yes, ma'am, but code sometimes  
3 doesn't -- that's why we have regulations, to help  
4 implement or tell, you know, how things are going  
5 to be done.

6 But at least with regard to -- well, we  
7 assume that the director, when she comes to work  
8 every day, that she's going to fulfill her  
9 responsibilities as required by the state. And  
10 part of that is the operations of the Department of  
11 Disabilities and Special Needs.

12 A. I'm going back on memory.

13 Q. Okay.

14 A. And it would have been about 1990-91  
15 that there was the creation of the system of  
16 directives.

17 Prior to that, for example, when  
18 Dr. Barnet was state director, he wasn't called  
19 state director. He was called, you know, the  
20 commissioner. There were no directives. Did the  
21 agency operate? Yes. Did he follow state code?  
22 Yes.

23 But about -- approximately -- it would  
24 have been '90-91 is when there was a system  
25 developed and it was developed under Marilyn Moody

1 who is now deceased. She died with cancer. And  
2 she's the one that developed the numbering system  
3 and the process that was followed.

4 To answer your question, were there  
5 directives and standards signed off by a state  
6 director? Yes, there were, but certainly prior to  
7 that time with Dr. Barnet there weren't.

8 Q. But somewhere over time it's become  
9 part of the operation --

10 A. Somewhere over time --

11 MR. WOODINGTON: Object to the form.

12 THE WITNESS: -- there has been this  
13 process followed.

14 BY MS. HILL:

15 Q. Okay. And that's how the Department of  
16 Disabilities and Special Needs operates today.  
17 They use directives and standards and commission  
18 policies.

19 A. Correct.

20 Q. Okay.

21 MR. WOODINGTON: You know what? If you  
22 think you're going to be a while yet --

23 MS. HILL: Yes, sir. Do you want to go  
24 ahead and break? It is after 12 o'clock. Will  
25 that be okay if we break for lunch? We're probably

1 going to go beyond 1 o'clock. I'm not sure how  
2 much, but if that's okay with you. We're off the  
3 record. I'm sorry.

4 (A recess transpired from 12:22 until  
5 1:19.)

6 (PLF. EXH. 2, Summons and Complaint,  
7 marked for identification.)

8 BY MS. HILL:

9 Q. What did you do before -- in  
10 preparation for today's deposition?

11 A. The only thing I did was really this  
12 morning.

13 Q. And what did you do this morning?

14 A. I met with Ken Woodington and Tana  
15 Vanderbilt and I saw this, the complaint, for the  
16 first time.

17 Q. You saw the complaint.

18 A. Uh-huh.

19 Q. And this was the first time you've seen  
20 the complaint?

21 A. And I read through it quickly. I  
22 didn't study every page, but I looked through.

23 Q. And I know it was filed before you came  
24 onto the commission because it was filed in April  
25 of 2007.



1 A. Okay.

2 Q. Before today, reading the complaint,  
3 and before your deposition notice, were you aware  
4 there was a lawsuit pending?

5 A. Yes.

6 Q. And what did -- what did -- were you  
7 aware that it was involving or over?

8 A. Basically, I did not have all of this  
9 detail, but it was basically that -- the issue was  
10 whether the commission was responsible for  
11 promulgating regulation.

12 Q. Okay. And if you will -- I just handed  
13 you Exhibit 2, which is a copy of the complaint.

14 A. Yes.

15 Q. Did you do -- other than meeting -- and  
16 I'm not asking you what Mr. Woodington and counsel  
17 had told you or whatever, but have you looked at  
18 any other documents related to this lawsuit before  
19 the complaint today?

20 A. I don't -- I know as a commissioner I  
21 never received this.

22 Q. Okay. If you can go to Page 16 of the  
23 complaint.

24 A. Page 16?

25 Q. Yes, ma'am.

1 A. Okay.

2 Q. It's down there at the bottom.

3 A. Okay. All right.

4 Q. Right there on Paragraph 38 it  
5 references certain regulations that DDSN has  
6 promulgated in the past.

7 A. Right.

8 Q. Based upon your knowledge as a  
9 commissioner and then your prior knowledge as a  
10 staff member for DDSN and its predecessor entity,  
11 does that look familiar to you, those five  
12 regulations, as in --

13 A. (Witness moves head up and down.)

14 Q. There are five regulations at this time  
15 and have been since -- probably since you have  
16 been -- you were originally on staff at DDSN that  
17 DDSN has promulgated.

18 A. I was not aware that there were only  
19 five until today when I read --

20 Q. Does that surprise you, that there are  
21 only five?

22 A. Yes.

23 Q. In your employment history and also in  
24 your personal experience, I know that you've had a  
25 lot of interaction with the obtaining and the

1 providing of services as well as writing grants.

2 And in that process is it typical,  
3 would you say, that you have had to deal with lots  
4 of regulation, either through Medicaid or through  
5 HHS or any other entity?

6 A. When I worked at -- and I will say  
7 this: When I worked for DMR/DDSN, my job did not  
8 entail knowing the specifics about Medicaid  
9 waivers.

10 When I left DDSN and went to the  
11 Department of Health and Human Services and I told  
12 you worked with their staff, that is when I became  
13 a lot more knowledge about Medicaid waivers.

14 And I would have to say my knowledge of  
15 Medicaid waiver services grew from my experience  
16 having worked at the Department of Health and Human  
17 Services, not at the Department of Disabilities and  
18 Special Needs.

19 Q. And you probably discovered there's a  
20 lot of more regulations also than would be five to  
21 deal with covering Medicaid and the issues that the  
22 Department of Health and Human Services must  
23 govern.

24 A. Well, the thing about Medicaid is  
25 Medicaid is so complicated as well, and there are

1 so many -- and I don't know of anyone in this state  
2 that I would consider to be a Medicaid expert.  
3 There are so many facets. And just like the folks  
4 that work with waiver services don't necessarily  
5 know the specifics about Medicaid eligibility.  
6 There's a whole Medicaid eligibility section.

7 And so I'm just saying that my  
8 knowledge of Medicaid waivers and the requirements  
9 and the procedure for writing a waiver and getting  
10 approval from the Centers For Medicare and Medicaid  
11 Services, my knowledge grew from my knowledge at  
12 the Department of Health and Human Services.

13 Q. Okay. And if you'll also look -- part  
14 of our allegations is that we are claiming -- this  
15 is the last sentence or midway, fourth line down.

16 DDSN has never promulgated regulations  
17 defining for issues of critical concern to  
18 applicants or recipients of its services, including  
19 but not limited to eligibility for its services;  
20 appeal procedures; standards for the operation of  
21 its residential programs; procedures for its Human  
22 Rights Committees; and standards for research on  
23 human subjects.

24 Is that what it says?

25 A. That's what you just read in Section

1 38, uh-huh.

2 Q. And I know we talked a little bit  
3 earlier today with regard to the fact -- or you  
4 told me that the eligibility is also defined by  
5 statute, but it doesn't -- but the statute does not  
6 tell you exactly how those services are going to be  
7 provided or distributed to people who are eligible;  
8 is that correct?

9 A. Correct.

10 Q. And that there are directives or maybe  
11 even standards in some respects that may touch upon  
12 some of those types of issues of determining how a  
13 person would receive services and selected as part  
14 of -- once you meet the eligibility criteria or  
15 you're eligible to receive services, how those are  
16 distributed or whether you are eligible for this or  
17 that or whatever it may be.

18 A. Correct.

19 Q. Okay. And you also mentioned, I think,  
20 earlier today that part of -- one of the decisions  
21 y'all recently had to face with the board back in  
22 2009 related that you had to go in and look into  
23 eligibility for services, of how those services --  
24 once you meet the eligibility criteria to come into  
25 the DDSN door, which is set by statute, what

1 happens once you get there, whether or not you're  
2 going to be a recipient of services of critical  
3 needs or whatever it may be, if you're eligible for  
4 that or eligible in any other way, shape or form,  
5 that y'all had to step in due to other reasons and  
6 act -- and by they, meaning the commission itself  
7 had to step in and make some decisions with regard  
8 to those criteria to receive services based upon  
9 budgetary issues.

10 A. And the decisions, for example, in 2009  
11 that we made pertained to the waiver and pertained  
12 to reductions in the number of hours. Not  
13 necessarily the eligibility for those services, but  
14 it was more the hours of services that were  
15 reduced.

16 Q. And I think you said earlier, but y'all  
17 had to also, with regard -- maybe it was this year,  
18 with this fiscal year, make some determinations of  
19 critical -- who would be classified as critical  
20 need in order to receive services.

21 A. That did not change.

22 Q. That didn't change?

23 A. That pretty much has been the criteria  
24 that DDSN used as far as people that were on a  
25 waiting list and those that would be considered a

1 critical situation or urgent situation as far as  
2 they're being served off of the waiting list.

3 Q. Okay. And I know we also discussed a  
4 little bit about the appeals procedures with regard  
5 to if you're a pure DDSN receiving pure DDSN  
6 services versus other services that would be either  
7 managed or some way controlled by the Department of  
8 Health and Human Services, which has a different  
9 appeals procedure, there are no appeals procedures  
10 in regulation right now for pure DDSN services.

11 MR. WOODINGTON: I'm going to object to  
12 the form of the question.

13 THE WITNESS: I'm not aware of any.

14 BY MS. HILL:

15 Q. And even with the appeals process you  
16 had referenced a little bit earlier, for a pure  
17 DDSN issue over services is that you actually go  
18 through the executive director for review. You go  
19 through, I believe, the local board.

20 A. Well, there's a procedure that you  
21 follow. State director is really the one that  
22 makes the decision. If you want to appeal that, if  
23 it's not a Medicaid-funded service, then at that  
24 point, after 10 days it could be appealed at the  
25 Department of Health and Human Services.

1 Q. Okay. And there isn't a regulation  
2 that sets that out, to your knowledge. I think you  
3 just told me no.

4 MR. WOODINGTON: Is this pure DDSN  
5 services only you're talking about?

6 MS. HILL: Yes, DDSN services.

7 THE WITNESS: There actually is in  
8 state statute. I mean, it specifies who has -- and  
9 it's the state director has final authority over  
10 those decisions like, for example, placement  
11 decisions. I'm not -- I'm not personally aware of  
12 any regulation that specifies that.

13 BY MS. HILL:

14 Q. But the reference you're making, I do  
15 believe, is to the director making a decision and  
16 not necessarily a third party or another entity  
17 other than he or she, the state director.

18 A. It would be the state director making  
19 that decision.

20 Q. And if you'll look down in Paragraph  
21 39.

22 A. Um-hum.

23 Q. And I think we briefly touched on that.

24 A. Right.

25 Q. Because you actually made reference to



1 it.

2 A. Right.

3 Q. That's South Carolina 44-20-220 with  
4 regard to that:

5 The commission shall determine the  
6 policy and promulgate regulations governing the  
7 operation of the department and the employment of  
8 professional staff and personnel.

9 I know we mentioned that, but that's  
10 one of the allegations we have made in here with  
11 regard to it, and I know we've already referenced  
12 with regard to the fact of what the policies that  
13 the commission have are just those eight -- excuse  
14 me -- those five policies in the 800 series and  
15 that there are not any regulations with regard to  
16 the -- other than the five above that are  
17 referenced in Paragraph 38 with regard to the  
18 operation of the department.

19 A. That's --

20 MR. WOODINGTON: Object to the form.

21 THE WITNESS: That's correct.

22 BY MS. HILL:

23 Q. Were you also aware that there are also  
24 regulations -- I know we mentioned there were some  
25 other regulations that are mandates. You said

1 about the advisory committees that DDSN is not  
2 complying with at this time.

3 Were you also aware that -- and you may  
4 be -- in Section 44-26 -- and I'm going straight to  
5 Paragraph 40.

6 A. Um-hum.

7 Q. Section 44-26-180.

8 A. About informed consent?

9 Q. Yes, ma'am, about informed consent.

10 And that it provides that:

11 A client or his representative shall  
12 give informed consent in every case before  
13 participation in research conducted by, for, or in  
14 cooperation with the department. The department  
15 shall promulgate regulations to obtain informed  
16 consent and to protect the dignity of the  
17 individual.

18 And as we've noted up above in  
19 Paragraph 38 and we've talked about, there are not  
20 any regulations with regard to the provision of  
21 informed consent.

22 A. Right. There is -- there is a  
23 directive about informed consent.

24 Q. But it's not in regulation.

25 A. Correct.

1 Q. Okay. Is there any reason, to your  
2 knowledge, why that directive has not been placed  
3 in regulation form on dealing with informed  
4 consent?

5 A. No.

6 Q. I have a question: With regard to the  
7 directives, whenever whomever, a staff person or  
8 the director or anyone else that would be required  
9 to follow the directive, not the consumer person,  
10 but either a provider or the caseworker or anyone  
11 else that would make a decision, are they able to  
12 deviate from the directive, or are they supposed to  
13 follow that directive?

14 A. They are supposed to follow the  
15 directive. That's not saying that it doesn't  
16 happen, but I'm just saying that they're expected  
17 to follow the directive.

18 Q. And based upon the commission's  
19 knowledge of how the department's operating, if  
20 there is a directive out there, y'all expect -- or  
21 would expect either through the director -- the  
22 state director down to the staff and everyone else  
23 that if there is a directive out there, that the  
24 department itself, even the state director to a  
25 certain degree, I would suppose, would apply since

1 he's technically an employee of his own department  
2 too, is required to follow that directive. It  
3 doesn't have the discretion to just deviate from it  
4 based upon any particular circumstance or whatever,  
5 but they're supposed to follow it.

6 MR. WOODINGTON: Object to the form.

7 THE WITNESS: The expectation is that  
8 the directive will be followed.

9 BY MS. HILL:

10 Q. Okay. Is it also similar that the  
11 expectation is that -- same way with a standard as  
12 well? That if you've got a standard in place  
13 that's already been reviewed and gone through the  
14 process and approved by the director in operating  
15 the department, that they're also supposed to  
16 follow those standards and cannot deviate from them  
17 either?

18 A. Yes.

19 MR. WOODINGTON: Object to the form.

20 BY MS. HILL:

21 Q. And let me just clarify, and I'll try  
22 to combine it for ease. So if it's different for  
23 either one, please let me. So basically, make sure  
24 I understand.

25 That if you've got a directive that's

1 in place and you -- and/or you've got a standard  
2 that is in place -- and by in place I mean that  
3 it's been approved by the director, gone through  
4 the process of what it's supposed to do.

5 A. It's signed.

6 Q. Signed and everything else. That when  
7 it comes to implementing that directive or that  
8 standard, whomever is implementing it within the  
9 department itself or otherwise, they cannot deviate  
10 from that directive. They are supposed to follow  
11 that directive or follow that standard, whatever  
12 the case -- or both may be at the time.

13 A. They are supposed --

14 MR. WOODINGTON: And I object to the  
15 form.

16 THE WITNESS: They're supposed to  
17 follow the directive or standard. That is the  
18 expectation.

19 BY MS. HILL:

20 Q. Okay. And to your knowledge, they  
21 don't have the discretion to deviate from that.

22 A. (Witness moves head from side to side.)

23 MR. WOODINGTON: Object to the form  
24 again.

25 BY MS. HILL:

1 Q. You're shaking your head no.

2 A. To my knowledge, you know, I guess if  
3 it were a situation that it was -- there was a  
4 circumstance that it shouldn't be followed or not  
5 in the best interests, then, you know, certainly it  
6 would be brought to the attention of the state  
7 director.

8 Q. And would he then bring it -- or should  
9 he or should she bring it to the attention of the  
10 commission?

11 A. It should be brought to our attention.

12 Q. Okay. And at this point in time, to  
13 your knowledge, have y'all -- have you as a  
14 commissioner ever had any such circumstance come to  
15 your attention?

16 A. The only circumstance that -- I do not  
17 recall the state director bringing a situation to  
18 our attention.

19 As I mentioned a couple months ago,  
20 there was a situation about a particular service  
21 that I was concerned because I was hearing from  
22 families and that the standard and what was  
23 contained in the waiver that we had approved was  
24 different.

25 Q. Um-hum. And the commission -- y'all

1 discussed it and took it up and either decided to  
2 act or not act.

3 A. It --

4 Q. And by that, either to change it or not  
5 change it.

6 A. It was brought to the attention of the  
7 commission, and they chose to leave it as is.

8 Q. So basically, what you're telling me,  
9 the instance you're talking about, because you  
10 believed there was a conflict with regard to what  
11 they could or couldn't do between the standard and  
12 what the law provided, the commission decided as a  
13 whole to keep it as is and not change it.

14 A. The commission decided -- let's put it  
15 this way: On that particular subject, because  
16 there had been a lawsuit filed, there was no  
17 specific discussion about it.

18 There was discussion about the issue of  
19 standards and directives not coming to the  
20 commission, but the specifics of that particular  
21 one, like I said, we could not discuss because  
22 there was a pending lawsuit.

23 Q. And you just mentioned about standards  
24 and directives not coming to the commission.

25 What do you mean by that?

1           A.    They are not presented to the  
2   commission for approval.

3           Q.    And they're given to the executive  
4   director for approval.

5           A.    The state director.

6           Q.    I'm sorry.  State director for  
7   approval.

8           A.    State director for approval.

9           Q.    Did some folks on the commission want  
10   to -- did some of the members of the commission  
11   want to have them come before them for approval?

12          A.    Yes.

13          Q.    I'm going to ask the question:  I take  
14   it you may have been one of them?

15          A.    Yes.  And there were two others.

16          Q.    And how many people -- how many members  
17   are on the commission?

18          A.    Seven.

19          Q.    So basically, by a vote of four to  
20   three y'all were overruled.

21          A.    Well, at the time one of the  
22   commissioners who felt that way had been removed.  
23   So we're basically talking about two commissioners,  
24   and that position had not been filled.  So at the  
25   time it was only six commission members.



1 Q. So by a vote of four to two, basically.

2 A. (Witness moves head up and down.)

3 Q. Are all commission spots filled at this  
4 time, or is there still a vacancy?

5 A. There's still one. Kathryn Davis has  
6 not been confirmed. Because basically, what you're  
7 dealing with right now with commission members,  
8 there are three of us that are kind of a carryover,  
9 and then you've got three that are brand new.

10 Q. Okay. Thank you, ma'am. And also, if  
11 you'll look at the same Page 16 and Paragraph 41  
12 which is referencing Section 44-20-790.

13 A. Um-hum.

14 Q. That deals with the promulgation of  
15 regulations governing hearings. It says:

16 To provide procedures governing  
17 hearings authorized by notice of deficiencies must  
18 be in accordance with regulations promulgated by  
19 the department.

20 But there aren't any regulations, at  
21 least that we're aware of and they are not cited  
22 above, with regard to the providing for -- or  
23 procedure to govern hearings in order to provide  
24 notice of deficiencies to individuals, is there?

25 A. No.

1 Q. I take it, is there -- are you aware of  
2 a directive or a standard that may be out there?

3 A. No.

4 Q. Before this lawsuit had you had any  
5 knowledge of what the Administrative Procedures  
6 Act -- some people call it the APA -- actually did  
7 or entailed?

8 A. No.

9 Q. Do you have any understanding of what  
10 it involves now or what its purpose is?

11 A. Somewhat.

12 Q. What would that be?

13 A. I think it basically defines a purpose  
14 for procedures to be followed so that -- to ensure  
15 that the general assembly and the public are  
16 notified of those changes and have an opportunity  
17 for review, comment.

18 Q. And then ultimately, the general  
19 assembly can vote on it.

20 A. Correct.

21 Q. My understanding, it either has to --  
22 if it's a regulation, they've either got to  
23 disapprove it by a resolution voted on by the  
24 general assembly or approve it. And they can not  
25 act by not approving something, but at least

1 underneath their rules of procedures, they've got  
2 to at least have a hearing on it to let opportunity  
3 for the public to comment whether they  
4 affirmatively vote to pass it or affirmatively act  
5 to let it go in place without action. They can do  
6 that.

7 Is that your understanding as well?

8 A. That's my understanding, yes.

9 Q. And whenever -- in your other positions  
10 that you've had, were you ever aware -- because  
11 I -- were you ever aware of any state agencies  
12 having -- if they promulgate a regulation, to  
13 withdraw them and resubmit them with changes?

14 Is that anything you're aware of?

15 A. No.

16 Q. Are you familiar with regard to --  
17 there was a recent -- well, let me ask you this  
18 question. Never mind. Well, I'll ask you anyway.

19 There was a recent decision before the  
20 administrative law court that was, I think, filed  
21 by someone by the name of Barbara Hickey that dealt  
22 with a regulatory process.

23 Are you familiar with that case at all?

24 A. Yes.

25 Q. Can you tell me what that -- what your

1 familiarity with that case is, or is that the issue  
2 y'all were talking about earlier?

3 A. (Witness moves head from side to side.)

4 Q. No, ma'am?

5 A. No. It's my understanding that this  
6 particular individual, services were produced, and  
7 that was based on an amendment to the waiver. And  
8 this particular case was one in which the  
9 Department of Health and Human Services and the  
10 allegation was being made that they did not  
11 promulgate regulations.

12 That basically it just said this is the  
13 number of hours of services of a particular service  
14 that you can receive. And, therefore, that case, I  
15 guess, is kind of referred to as the binding norm,  
16 is the term that I've heard used for that case.

17 Q. Okay.

18 A. I did look at the Department of Health  
19 and Human Services code to see, and it basically  
20 says may promulgate. It doesn't say shall, but it  
21 says may promulgate regulation. But this was --  
22 case is specific to a change in services that  
23 related to a Medicaid waiver.

24 Q. Okay. And if I'm not mistaken, I think  
25 it also dealt with a little bit -- with regard to

1 the regulations of what the APA requires and  
2 doesn't require with regard to state agencies.

3 A. Um-hum.

4 Q. I have asked you a little bit with  
5 regard to the APA a minute ago.

6 Do you know what the difference is in  
7 having a regulation are versus not having a  
8 regulation?

9 A. No.

10 Q. Do you think it's important for a  
11 person who's been denied service to have a fair  
12 hearing?

13 A. Yes.

14 Q. Do you think it's important for them to  
15 know the procedure and process in order to have a  
16 fair hearing?

17 A. Yes.

18 Q. Do you think that as a commissioner  
19 that it's important for the individual to be  
20 protected with regard to that right to have a fair  
21 hearing?

22 A. Yes.

23 Q. Do you also think that as a  
24 commissioner that it's important for a person who  
25 is seeking services from DDSN to have an

1 understanding of how those services are allocated  
2 or determined to be allocated to various persons?

3 A. Yes.

4 Q. Are you a member of the Policy  
5 Committee for the DDSN department?

6 A. I have not been. I just recently  
7 requested to be on that committee. I had been  
8 chairing the Audit Finance Committee, and I asked  
9 to serve on the Policy Committee. Mr. Lynn is the  
10 one that will be chairing that committee, and so it  
11 will be Mr. Lynn, Nancy Banov, and myself.

12 Q. Okay. And why did you ask to be on  
13 that committee?

14 A. My personal interest.

15 Q. Are you aware of the Policy Committee  
16 doing anything prior to -- well, during your tenure  
17 on the commission?

18 A. I'm only aware that they had one  
19 meeting.

20 Q. Okay. And do you recall what that --  
21 substance of that meeting was?

22 A. I wasn't on that committee, so I did  
23 not attend that meeting.

24 Q. Are they responsible to give reports or  
25 a report to the commission as a whole?

1           A.    If there had been a meeting and there  
2    had been some substantive -- you know, something  
3    that would have been recommended, whatever, yes, it  
4    would have been reported out to the full  
5    commission.

6           Q.    Are you aware -- and you probably are  
7    since you worked at the Department of Health and  
8    Human Services -- that they have a fair hearing  
9    regulation and procedures outlined in reg for the  
10   public to know?

11                   Are you familiar with it or just aware  
12   of its existence?

13           A.    I just aware. I'm not familiar with  
14   it, but I'm aware of it.

15           Q.    But you are aware that DDSN doesn't  
16   have a comparable regulation outlining a hearing  
17   process for folks that may have an issue or problem  
18   with regard to a decision that DDSN has made.

19           A.    Yes.

20           Q.    Do you think there should be one for  
21   DDSN, a fair hearing regulation?

22           A.    Personally, yes.

23                   MS. HILL: Can we take just a quick  
24   break? And I may be close to finishing.

25                   THE WITNESS: Sure.

1 (A recess transpired from 1:50 until  
2 1:52.)

3 MS. HILL: Back on the record.

4 BY MS. HILL:

5 Q. Ms. McPherson, I'm going to ask you a  
6 couple questions. I'll try to be really quick.

7 I think we talked a little bit about  
8 there are DDSN day programs. I know there are some  
9 other types of adult day healthcare programs that  
10 are administered through someone else or another  
11 agency.

12 A. Well, actually, on adult day healthcare  
13 programs, they are funded through the waiver, and  
14 then there are private providers that provide those  
15 services.

16 Q. And aren't they also regulated, I  
17 think, through either Health and Human Services or  
18 DHEC with regard to the licensing regulations?

19 A. Correct.

20 Q. And also, if I'm not mistaken, the  
21 requirements for those particular programs that are  
22 supposed to be provided as well?

23 A. But also DDSN has standards for adult  
24 day healthcare.

25 Q. But not a regulation, but other people



1 have regulations affecting them.

2 A. That's correct.

3 Q. Okay. With regard to day programs  
4 which are similar but different, there are no  
5 regulations with regard to those, DDSN-wise, with  
6 regard to --

7 A. My understanding is that DDSN licensed  
8 their day programs, and therefore, DHEC does not  
9 license those programs.

10 Q. And unlike the other program that is  
11 regulated, licensed by DHEC and also regulated by  
12 regulation also with another state agency, the DDSN  
13 one that is licensed does not have, by regulation,  
14 any like specific requirements or like  
15 staff-to-patient ratio or anything like that.

16 A. Day programs?

17 Q. Yes, ma'am.

18 A. That's contained in the standard.

19 Q. But not by regulation.

20 A. Correct.

21 Q. And I think you got -- what are CTHs?  
22 Do you know what those are?

23 A. The CTHs are community training homes.

24 Q. Okay. And who runs -- who regulates  
25 those?

1           A.    Those are not -- those would be through  
2 the boards.

3           Q.    The local DDSN boards?

4           A.    Those services are provided through  
5 those boards.

6           Q.    And --

7           A.    And there are, I'm pretty sure too,  
8 some private providers, but that would be, again,  
9 covered through a standard of DDSN.

10          Q.    And not a regulation.

11          A.    Correct.

12          Q.    Now, does DDSN license those or --  
13 CTHs?

14          A.    Well, the -- remember what happened  
15 after -- within the last couple years has been now  
16 that licensing that had been done at DDSN was  
17 transferred by contract over to the Department of  
18 Health and Environmental Control.

19          Q.    Okay. And even with the transfer of  
20 licensing, it didn't transfer the other functions  
21 of any type of control, supervision or plan of  
22 operation or services to be provided and how that's  
23 supposed to be done.

24          A.    That's correct.

25          Q.    And that still rests with DDSN.

1           A.    DDSN, that's correct.

2           Q.    And they may license the person or the  
3   entity, but they don't control what goes -- once  
4   you get the license, they don't control what goes  
5   on inside.

6           A.    That's correct.

7           Q.    Or within the program.

8           A.    That's my understanding, correct.

9           Q.    And typically, in licensing  
10   regulations, there's a procedure for someone if  
11   they have a problem. They can either file a  
12   complaint, have their license revoked or some sort  
13   of penalty assessed.

14                You may be aware of that through your  
15   prior life experience as well.

16           A.    Um-hum.

17           Q.    If there is a complaint or problem with  
18   what goes on inside the program itself, there's not  
19   a comparable regulation for a person who may be  
20   impacted by that or affected by it or may have been  
21   harmed to file a complaint with -- not a litigation  
22   complaint, but another type of complaint or  
23   dispute, for there to be any type of consequence  
24   internally or administratively.

25           A.    I'm not aware of any. There may be.

1 I'm just not aware.

2 Q. I'm not aware of any either. It's not  
3 one of the five with regard to it, so you're  
4 correct.

5 A. I'm not aware.

6 Q. Do you think there should be  
7 regulations with regard to the -- to protect the  
8 rights of individuals receiving services within  
9 those programs, for there to be regulations for  
10 them?

11 A. Yes.

12 Q. What kind of training have you received  
13 as a commissioner?

14 A. Initially when I came on board  
15 Dr. Laurent spent some time. There were four new  
16 commissioners. And Mr. Huntress could not be there  
17 so he met with Ms. Banov, Ms. Lait and myself, and  
18 we spent like an afternoon. And then following  
19 that we had a two-day work session, and each year  
20 there's been like a work session.

21 We just finished -- and we're doing it  
22 a little bit differently this time in that we're  
23 not doing it several days together, but we're  
24 tacking it on to our commission meeting time, that  
25 we're having a work session.

1           We had a speaker come in this past time  
2   talking about governance training. We had, the  
3   prior month, a legal update. And we also had some  
4   training coming in from the state agencies about  
5   how to deal with performance evaluation of the  
6   state director. And we also spent time going over  
7   the actual budget for the upcoming year. So  
8   those -- I hope that helps you understand kind  
9   of --

10           Q.   Yes, ma'am. With regard to the legal  
11   update -- and I'm not asking anything they said.

12                    Would that be a legal update as to  
13   status of cases upon which DDSN is sued or a legal  
14   update to let you know which laws and processes you  
15   must follow?

16           A.   Basically cases.

17           Q.   Cases?

18           A.   Um-hum.

19           Q.   Have -- I think you've already answered  
20   that question.

21                    And you mentioned, I think, the topic  
22   of governance. Was that related to the -- I think  
23   the Carver method with the 800 -- the five 800  
24   series policies?

25           A.   Basically, the individual was covering,

1     you know, what was our mission, what were our roles  
2     and responsibilities. We did not go into the  
3     specifics of covering the commission policies and  
4     such.

5                 But it was very clear or made clear to  
6     us that there was a line there and that, you know,  
7     we do not get involved in the day-to-day operations  
8     of the department.

9                 Q.     That's the state director's  
10     responsibility.

11                A.     Correct.

12                Q.     Okay.

13                MS. HILL: I think I'm done. You may  
14     have some questions from Mr. Woodington.

15                MR. WOODINGTON: I don't have any  
16     questions.

17                (The witness, after having been advised  
18     of her right to read and sign this transcript,  
19     waives that right.)

20                (The deposition was concluded at  
21     2:01 p.m.)

22

23

24

25

1 CERTIFICATE OF REPORTER  
2

3 I, Sandra K. Bjerke, Registered  
4 Professional Reporter and Notary Public for the  
5 State of South Carolina at Large, do hereby certify  
6 that the foregoing transcript is a true, accurate,  
7 and complete record.

8 I further certify that I am neither  
9 related to nor counsel for any party to the cause  
10 pending or interested in the events thereof.

11 Witness my hand, I have hereunto  
12 affixed my official seal this 28th day of  
13 September, 2011 at Charleston, Charleston County,  
14 South Carolina.  
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23 \_\_\_\_\_  
24 Sandra K. Bjerke, RMR, RDR, CRR  
25 My Commission Expires  
June 18, 2020

## I N D E X

|                         | Page | Line |
|-------------------------|------|------|
| DEBORAH C. McPHERSON    | 3    | 1    |
| EXAMINATION             | 3    | 3    |
| BY MS. HILL             |      |      |
| CERTIFICATE OF REPORTER | 122  | 1    |

## REQUESTED INFORMATION INDEX

(No Information Requested)

## E X H I B I T S

|                             | Page | Line |
|-----------------------------|------|------|
| PLF. EXH. 1, Screen Shot of | 30   | 12   |
| DDSN Commission Policies    |      |      |
| PLF. EXH. 2, Summons and    | 91   | 6    |
| Complaint                   |      |      |





QUICK LINKS ▶

- Home
- About DDSN
- DDSN Commission
  - Members
  - Meeting Schedule
  - Meeting Notices
  - Meeting Minutes
  - Commission Policies
- Consumers And Families
- Service Providers
- Services
- Job Opportunities
- Relevant Links

Applying for Services Find a Service Provider How to Report Abuse Recent News Budget Updates

ddsn.sc.gov > DDSN Commission > Commission Policies

Commission Policies

**Current DDSN Directives**  
You are welcome to comment on any current directive at any time. Click on the "Send comment" link to the right of the Directive you wish to comment on.

| Title of Document                               | Reference Number | Email Comments               |
|-------------------------------------------------|------------------|------------------------------|
| <b>Commission Policies</b>                      |                  |                              |
| <u>SCDDSN Enact Policy</u>                      | 800-01-CP        | <a href="#">Send comment</a> |
| <u>SCDDSN Governance Process Policy</u>         | 800-02-CP        | <a href="#">Send comment</a> |
| <u>SCDDSN Executive Limitations Policy</u>      | 800-03-CP        | <a href="#">Send comment</a> |
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| <u>SCDDSN Public Involvement Act</u>            | 800-05-CP        | <a href="#">Send comment</a> |
| <u>SCDDSN Commission By-Laws</u>                |                  |                              |



## STATE OF SOUTH CAROLINA

## COUNTY OF RICHLAND

Protection and Advocacy for People with Disabilities, Inc, MJB on behalf of and as next friend of J.B., CBB on behalf of and as guardian of P.B., GC and LC on behalf of and as guardian of F.C., DP on behalf of and as guardian of C.M.D., KF and SF on behalf of and as next friend of A.F., JH on behalf of and as next friend of A.J., GM on behalf of and as next friend of E.M., MM on behalf of and as guardian of E.J.M., RP on behalf of and as guardian of S.P., RR and JR on behalf of and as guardian of K.D.R., and JK on behalf of and as guardian of S.S.

Plaintiff(s)

vs.

South Carolina Department of Disabilities and Special Needs, Dr. Stanley J. Butkus, in his official capacity as Director of the South Carolina Department of Disabilities and Special Needs, and Edythe Dove, Mary Katherine Bagnal, Ronald Forrest, John Vaughn, Dr. Otis Speight, W. Robert Harrell as Commissioners of the South Carolina Department of Disabilities and Special Needs.

Defendant(s)

(Please Print)

Submitted By: Kenya Carver Miller  
Address: 1900 Barnwell Street, Columbia, SC 29201  
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Telephone #: 803-771-4400  
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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

## DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.  
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.  
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.  
☐ This case is exempt from ADR (certificate attached).

## NATURE OF ACTION (Check One Box Below)

- |                                                   |                                                                  |                                                         |                                                        |
|---------------------------------------------------|------------------------------------------------------------------|---------------------------------------------------------|--------------------------------------------------------|
| <input type="checkbox"/> <b>Contracts</b>         | <input type="checkbox"/> <b>Torts - Professional Malpractice</b> | <input type="checkbox"/> <b>Torts - Personal Injury</b> | <input type="checkbox"/> <b>Real Property</b>          |
| <input type="checkbox"/> Constructions (100)      | <input type="checkbox"/> Dental Malpractice (200)                | <input type="checkbox"/> Assault/Slander/Libel (300)    | <input type="checkbox"/> Claim & Delivery (400)        |
| <input type="checkbox"/> Debt Collection (110)    | <input type="checkbox"/> Legal Malpractice (210)                 | <input type="checkbox"/> Conversion (310)               | <input type="checkbox"/> Condemnation (410)            |
| <input type="checkbox"/> Employment (120)         | <input type="checkbox"/> Medical Malpractice (220)               | <input type="checkbox"/> Motor Vehicle Accident (320)   | <input type="checkbox"/> Foreclosure (420)             |
| <input type="checkbox"/> General (130)            | <input type="checkbox"/> Notice/ File Med Mal (230)              | <input type="checkbox"/> Premises Liability (330)       | <input type="checkbox"/> Mechanic's Lien (430)         |
| <input type="checkbox"/> Breach of Contract (140) | <input type="checkbox"/> Other (299)                             | <input type="checkbox"/> Products Liability (340)       | <input type="checkbox"/> Partition (440)               |
| <input type="checkbox"/> Other (199)              |                                                                  | <input type="checkbox"/> Personal Injury (350)          | <input type="checkbox"/> Possession (450)              |
|                                                   |                                                                  | <input type="checkbox"/> Wrongful Death (360)           | <input type="checkbox"/> Building Code Violation (460) |
|                                                   |                                                                  | <input type="checkbox"/> Other (399)                    | <input type="checkbox"/> Other (499)                   |

IN THE COURT OF COMMON PLEAS

## CIVIL ACTION COVER SHEET

2007 CP4002187

2007 APR -5 PM 4:36  
BARBARA A. SCOTT  
C.C.C. & G.S.  
RICHLAND COUNTY  
FILED



- Inmate Petitions**
- ☐ PCR (500)
  - ☐ Sexual Predator (510)
  - ☐ Mandamus (520)
  - ☐ Habeas Corpus (530)
  - ☐ Other (599)

- Judgments/Settlements**
- ☐ Death Settlement (700)
  - ☐ Foreign Judgment (710)
  - ☐ Magistrate's Judgment (720)
  - ☐ Minor Settlement (730)
  - ☐ Transcript Judgment (740)
  - ☐ Lis Pendens (750)
  - ☐ Other (799)

- Administrative Law/Relief**
- ☐ Reinstate Driver's License (800)
  - ☐ Judicial Review (810)
  - ☐ Relief (820)
  - ☐ Permanent Injunction (830)
  - ☐ Forfeiture (840)
  - ☒ Other (899)
  - Declaratory Judgment Action

- Appeals**
- ☐ Arbitration (900)
  - ☐ Magistrate-Civil (910)
  - ☐ Magistrate-Criminal (920)
  - ☐ Municipal (930)
  - ☐ Probate Court (940)
  - ☐ SCDOT (950)
  - ☐ Worker's Comp (960)
  - ☐ Zoning Board (970)
  - ☐ Administrative Law Judge (980)
  - ☐ Public Service Commission (990)
  - ☐ Employment Security Comm (991)
  - ☐ Other (999)

- Special/Complex /Other**
- ☐ Environmental (600)
  - ☐ Automobile Arb. (610)
  - ☐ Medical (620)
  - ☐ Other (699)
  - ☐ Negligence: Damages to Under Ground Utilities
  - ☐ Pharmaceuticals (630)
  - ☐ Unfair Trade Practices (640)
  - ☐ Out-of State Depositions (650)

Submitting Party Signature: \_\_\_\_\_

Date: April 5, 2007

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Protection and Advocacy for People with Disabilities, Inc, MJB on behalf of and as next friend of J.B., CBB on behalf of and as guardian of P.B., GC and LC on behalf of and as guardian of F.C., DP on behalf of and as guardian of C.M.D., KF and SF on behalf of and as next friend of A.F., JH on behalf of and as next friend of A.J., GM on behalf of and as next friend of E.M., MM on behalf of and as guardian of E.J.M., RP on behalf of and as guardian of S.P., RR and JR on behalf of and as guardian of K.D.R., and JK on behalf of and as guardian of S.S.

PLAINTIFFS,

v.

South Carolina Department of Disabilities and Special Needs, Dr. Stanley J. Butkus, in his official capacity as Director of the South Carolina Department of Disabilities and Special Needs, and Edythe Dove, Mary Katherine Bagnol, Ronald Forrest, John Vaughn, Dr. Otis Speight, W. Robert Harrell as Commissioners of the South Carolina Department of Disabilities and Special Needs.

DEFENDANTS.

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO.:

RICHLAND COUNTY  
FILED  
2001 APR -5 PM 4:40  
BARBARA A. SCOTT  
Clerk  
SUMMONS  
(Non-Jury)

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint on the Plaintiff at 1900 Barnwell Street, Columbia, South Carolina 29201, within thirty (30) days after the service hereof, exclusive of the day of such

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Protection and Advocacy for People with Disabilities, Inc, MJB on behalf of and as next friend of J.B., CBB on behalf of and as guardian of P.B., GC and LC on behalf of and as guardian of F.C., DP on behalf of and as guardian of C.M.D., KF and SF on behalf of and as next friend of A.F., JH on behalf of and as next friend of A.J., GM on behalf of and as next friend of E.M., MM on behalf of and as guardian of E.J.M., RP on behalf of and as guardian of S.P., RR and JR on behalf of and as guardian of K.D.R., and JK on behalf of and as guardian of S.S.

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IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO.:

SUMMONS  
(Non-Jury)  
BARBARA A. SCOTT  
S.C.C. & G.S.  
2007 APR -5 PM 4:40  
RICHLAND COUNTY  
FILED

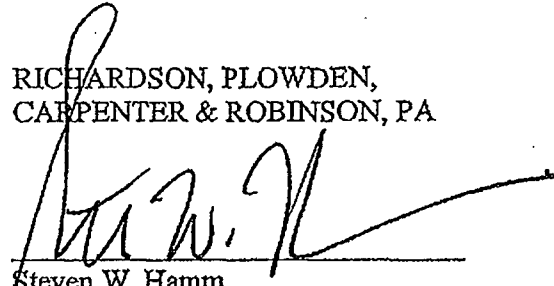
TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint on the Plaintiff at 1900 Barnwell Street, Columbia, South Carolina 29201, within thirty (30) days after the service hereof, exclusive of the day of such

service, and if you fail to answer the Complaint within the time aforesaid, Plaintiff will apply to the Court for the relief demanded in the Complaint.

RICHARDSON, PLOWDEN,  
CARPENTER & ROBINSON, PA

BY:

  
Steven W. Hamm  
C. Jo Anne Wessinger Hill  
Kenya Carver-Miller  
1900 Barnwell Street  
Columbia, South Carolina 29201  
803-771-4400

ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina

April 5, 2007

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Protection and Advocacy for People with  
Disabilities, Inc, MJB on behalf of and as  
next friend of J.B., CBB on behalf of and as  
guardian of P.B., GC and LC on behalf of  
and as guardian of F.C., DP on behalf of  
and as guardian of C.M.D., KF and SF on  
behalf of and as next friend of A.F., JH on  
behalf of and as next friend of A.J., GM on  
behalf of and as next friend of E.M., MM on  
behalf of and as guardian of E.J.M.; RP on  
behalf of and as guardian of S.P., RR and  
JR on behalf of and as guardian of K.D.R.,  
and JK on behalf of and as guardian of S.S.

PLAINTIFFS,

v.

South Carolina Department of Disabilities  
and Special Needs, Dr. Stanley J. Butkus,  
in his official capacity as Director of the  
South Carolina Department of Disabilities  
and Special Needs, and Edythe Dove, Mary  
Katherine Bagnal, Ronald Forrest, John  
Vaughn, Dr. Otis Speight, W. Robert  
Harrell as Commissioners of the South  
Carolina Department of Disabilities and  
Special Needs.

DEFENDANTS.

) IN THE COURT OF COMMON PLEAS

) CIVIL ACTION NO.:

COMPLAINT  
(Non-Jury)

RICHLAND COUNTY  
FILED  
2007 APR -5 PM 4:40  
BARBARA A. SCOTT  
C.C.C. & G.S.

Plaintiffs would respectfully show unto the Court:

PARTIES AND JURISDICTION

1. That Plaintiff Protection and Advocacy for People with Disabilities, Inc.  
(hereinafter "P&A") is a private, non-profit corporation established pursuant to Federal and State  
law to protect and advocate for the rights of people with disabilities in the State of South

Carolina, including individuals eligible for or receiving services from SCDDSN. P&A represents individuals and their families who receive some services from or seek appropriate services from SCDDSN.

2. That individual Plaintiffs are citizens and residents of the State of South Carolina who have need for services from Defendant South Carolina Department of Disabilities and Special Needs (hereinafter "SCDDSN"). Due to the highly personal nature of the facts surrounding their claims and due to their fear of retaliation by Defendant, Plaintiffs will be identified in this Complaint by their initials only. Additionally, any reference to his or her, herein, is not an indication of any particular gender.

3. That Defendant SCDDSN is a state agency created by and operating through the authority of the South Carolina General Assembly, pursuant to S. C. Code Ann. §§ 44-20-10 *et seq.* with the stated purpose of "[having] authority over all of the state's services and programs for the treatment and training of persons with mental retardation, related disabilities, head injuries, and spinal cord injuries." S.C. Code Ann. § 44-20-240.

4. That Defendant Dr. Stanley Butkus is the duly appointed Director of defendant SCDDSN, and in such capacity has virtually unfettered and nonreviewable authority over decisions affecting thousands of citizens of this State.

5. The Defendants Edythe Dove, Mary Katherine Bagnol, Ronald Forrest, John Vaughn, Dr. Otis Speight, W. Robert Harrell as Commissioners of the South Carolina Department of Disabilities and Special Needs, are charged with the statutory duty to determine the policy and promulgate regulations governing the operation of the department [SCDDSN] and the employment of professional staff and personnel.



6. That pursuant to the South Carolina Administrative Procedures Act (APA), S.C. Code Ann. 1-23-10 *et seq.* and SCDDSN's enabling statute (S.C. Code Ann. 44-20-10 *et seq.*) SCDDSN is statutorily required to promulgate regulations. Additionally, the APA was intended to provide a standardized process for all public agencies to formulate rules in order to obtain public comment and to provide access to agencies' operations as well as an avenue for appellate review of administrative decisions.

7. That SCDDSN has never promulgated regulations regarding issues of critical concern to applicants and recipients of its services, including but not limited to eligibility for its services; appeal procedures; standards for the operation of its residential programs; procedures for its Human Rights Committees; and standards for research on human subjects.

8. That SCDDSN's failure to comply with the requirements of the APA has resulted in South Carolina citizens and entities being unable to seek information about its policies in the South Carolina Administrative Code, unable to determine their rights to receive or dispute SCDDSN decisions, and participate in the rule-making process as intended by the APA.

9. That the individual Plaintiffs have been, are being and will continue to be harmed as the direct result of said deficiencies, through denial of services, inadequate services and unequal availability and quality of services, and lack of an appropriate grievance procedure; all of which affect their health, safety, well-being, their right to live and participate in their communities and their ability to enjoy typical lifestyles.

10. That Plaintiff P&A has been, and will continue to be, injured by Defendant's failure to promulgate regulations in that it has and will continue to repeatedly expend time and resources attempting to determine and enforce rights of developmentally disabled persons

without access to any meaningful or enforceable rules or regulations regarding eligibility and services, and with no access to judicial review of decisions affecting its clients.

11. That this Court has jurisdiction to declare, rights, status, and other legal relations and to grant injunctive and other relief pursuant to the South Carolina Uniform Declaratory Judgment Act, S.C. Code Ann. §§ 15-53-10, *et seq.*, by ordering Defendant to promulgate regulations concerning its operation and services, as more fully set forth in this complaint.

### **BACKGROUND FACTS**

12. The allegations of all preceding paragraphs are incorporated as if repeated verbatim herein.

13. Plaintiff P&A has been, and will continue to be, injured by SCDDSN's failure to promulgate regulations in that it has and will continue to repeatedly expend time and resources attempting to determine and enforce rights of developmentally disabled persons without access to any meaningful or enforceable rules or regulations regarding eligibility and services, and with no access to judicial review of decisions affecting its clients.

14. J.B. is a resident of a facility for people with developmental disabilities and has been a SCDDSN client for many years. His disabilities include a tendency towards self-destructive and aggressive behaviors. The facility, defined as a Community Training Home II ("CTH II") by SCDDSN, included in his care plan that he would be provided with services of a psychologist to develop a "Behavior Support Plan (BSP)". BSPs are designed to provide the resident staff with specific target behavior identification along with effective prevention and interventions tailored to the needs of the individual client. They are an integral part of effective services and are required to enhance the individual's skills in order to increase independence and minimize self-injury and injuries to other clients and staff. However, for over a year while J.B.

lived in the supervised facility, SCDDSN failed to develop a BSP, despite repeated efforts by P&A and J.B.'s family.

15. BSPs are critically important to the recipients of services and to the service providers. However, SCDDSN has never promulgated regulations regarding their process or components nor has SCDDSN promulgated regulations for the operation of these CTH II homes. Instead, SCDDSN implements internal directives to serve as a guide in implementing BSPs. Pursuant to SCDDSN internal directives, BSPs must be approved by a Human Rights Committee (HRC). See S.C. Code of Laws § 44-26-70 (mandating the establishment of Human Rights Committees). The role of the HRCs is to safeguard and protect the rights of people receiving services and to ensure that individuals are treated with dignity and respect in the full recognition of their rights. However, HRCs do not have the authority to order that a BSP be developed within a certain time frame as SCDDSN has not promulgated any regulations regarding the membership, jurisdiction, or procedures of HRCs.

16. During the time that J.B. went without any BSP in place, J.B. suffered increased aggressiveness and self-destructive behavior. Not only did he pose a danger of harm to himself, but staff and other clients were at increased risk as well. Although J.B.'s family and P&A worked for over a year to get a BSP for J.B, their efforts were met with limited success as no regulation exists to provide a method to appeal the failure to develop or implement a BSP. J. B., and others like him, are and will continue to be subjected to this type of arbitrary failure and refusal to provide a proper level of services unless and until SCDDSN is forced to promulgate and adhere to regulations, with the availability of judicial review.

17. P.B. is a person who has mental retardation residing in a supervised apartment ("SLP II") funded by SCDDSN. Without prior notice to P.B.'s guardian or other persons

receiving similar services across the state, SCDDSN implemented a change in policy purportedly eliminating P.B.'s eligibility to receive the adult companion services which SCDDSN had provided for many years prior to this change of policy. In addition, without notice to guardians or family members, SCDDSN changed the standards for supervision of the program, so that 24 hours a day on-site supervision is not provided to P.B. and other persons living in SLP II settings as was required when P.B. was admitted to the program. P.B. was subsequently left unsupervised at a public fair. P.B.'s guardian reported this neglect to the South Carolina Department of Social Services after the SCDDSN private/contract provider refused to do so. SCDDSN has not promulgated any regulations with regard to operation of SLPs. Regulations are needed to establish standards for supervision, reporting procedures, an appeals process to challenge decisions of the SCDDSN and procedures for the operation of an independent HRC.

18. SCDDSN's failure to promulgate regulations has resulted in P.B. incurring significant legal expenses to protect his services. Promulgation of regulations by Defendant would provide P.B., his family and others like him with meaningful participation into the rulemaking process, access to information about the agency's rules and eligibility requirements as well as standards for particular services, and ensure that services are provided uniformly and fairly throughout the state.

19. F.C. is a minor child who lives with his parents. F.C. has a long history of hospitalizations and treatment, as his parents have tried desperately to find the right kind of help for him. Experts have concluded that F.C. has Asperger's Disorder, as well as Attention Deficit Hyperactivity Disorder (ADHD) and other diagnoses. Asperger's Disorder is a developmental disability (not a mental illness), classified in the Diagnostic and Statistical Manual (DSM-IV) under "Pervasive Developmental Disorders". It is characterized by symptoms such as

impairment in the use of nonverbal behaviors to regulate social interaction, apparently inflexible adherence to specific, nonfunctional routines or rituals, and severe and sustained impairment in social interaction. Likewise, F.C., who has severe developmental delays including emotional and social deficits, is unable to socialize effectively, has difficulty understanding nonverbal social and other cues, is unable to function effectively in many school and home situations, and requires specialized training and habilitation.

20. F.C.'s mother contacted SCDDSN and attempted to have F.C. evaluated for services. However, SCDDSN refused to evaluate F.C. stating that SCDDSN does not recognize the diagnosis of Asperger's as criteria for eligibility for services. SCDDSN denied services to F.C. despite the fact that Asperger's is very similar to Autism, a condition that SCDDSN does serve, and despite that South Carolina statutory law requires that Defendant SCDDSN treat individuals with mental retardation and "related disabilities". See S.C. Code Ann. § 44-20-240.

21. The Department of Mental Health and the Continuum of Care for Emotionally Disturbed Children have provided some services to assist F.C., but due to their lack of expertise in the treatment of developmental disorders such as Autism and Asperger's, these services have not and cannot adequately address the needs of F.C. As a result, F.C. remains in danger of institutionalization due to a lack of appropriate long-term services, which could and should be provided by SCDDSN as the agency charged by law with serving people of all ages who have developmental disorders.

22. Neither the standards for eligibility and receipt of SCDDSN services nor the grievance process have been subjected to review by the public or the General Assembly. SCDDSN has no regulation or clearly established procedures for appealing the denial of services to an internal or external hearing officer. Consequently, F.C. and his family have no meaningful

access to standards used to determine to which services he may be entitled. F.C. and his family have no avenue for appealing any SCDDSN determination regarding services provided, or not, by SCDDSN. Promulgation of regulations by Defendant would provide F.C., his family and others like him with meaningful participation into the rulemaking process, access to information about the agency's rules and eligibility requirements as well as standards for particular services, and ensure that services are provided uniformly and fairly throughout the state. Promulgation of regulations would also provide individuals such as F.C. and his family with a process for accessing the courts to obtain a decision by a neutral third party where SCDDSN's actions fail to conform to the regulation.

23. C.M.D. is an adult residing in a group home funded by SCDDSN which is classified as a CTH II home. Funds for the purchase of this residence were provided by SCDDSN and the South Carolina Housing Trust Fund. C.M.D. disputes the method used to calculate her rental payment to the CTH II home. SCDDSN has failed to promulgate regulations for the establishment of rent charged to residents of SCDDSN CTH II funded residences. In addition, SCDDSN has failed to promulgate regulations for the release of records and investigations to victims of abuse, neglect and exploitation and has denied C.M.D.'s brother and guardian access to records regarding abuse and neglect of C.M.D. Promulgation of regulations by Defendant would provide C.M.D., his family and others like him with meaningful participation into the rulemaking process, access to information about the agency's rules and eligibility requirements as well as standards for particular services, and ensure that services are provided uniformly and fairly throughout the state. Promulgation of regulations would also provide individuals such as C.M.D. and his family with a process for accessing the courts to

obtain a decision by a neutral third party where SCDDSN's actions fail to conform to the regulation.

24. Plaintiff A.F., age 19, lives with his parents and natural guardians, K.F. and S.F. A.F. has been diagnosed with and treated for many years for severe developmental disabilities, including Asperger's Syndrome and Pervasive Developmental Disorder. As the result of his developmental disorders, he has extreme difficulty with social interaction and adaptation, with independent living skills, and with learning. He has become increasingly aggressive and difficult for his parents to handle, to the point that it has become clear that, without appropriate support services, his parents will be forced to place him in a residential care facility. Despite A.F.'s critical and obvious need for services, Defendant SCDDSN steadfastly refused to provide services or participate in meetings with other service providers, including the local school district, local Department of Mental Health Center, and local Department of Juvenile Justice personnel.

25. Eventually, the Family Court in a juvenile justice proceeding ordered SCDDSN to provide services to A.F., who will need services for the rest of his life. However, once A.F. reached the age of eighteen, SCDDSN was no longer obligated under the Court Order to provide him with services. Recently, SCDDSN terminated A.F. from services. SCDDSN has not promulgated any regulations for A.F.'s family to refer to or for SCDDSN employees to follow, in making the decision to continue or discontinue services, or in determining what services A.F. would receive if any. There is also no avenue for appealing any SCDDSN determination with regard to denied services. Although SCDDSN has a "grievance process", this loosely defined process is subject to change at any time without notice. Neither the standards for eligibility and

receipt of services nor the grievance process have been subjected to review by the public or the General Assembly.

26. Promulgation of regulations by Defendant would provide A.F., his family and others like him with meaningful participation into the rulemaking process, access to information about the agency's rules and eligibility requirements as well as standards for particular services, and ensure that services are provided uniformly and fairly throughout the state. Promulgation would also provide individuals such as A.F. and his family with a process for accessing the courts to obtain a decision by a neutral third party where SCDDSN's actions fail to conform to the regulations.

27. A.J. is a person who has mental retardation and resides in an SLP II. SCDDSN has paid for his participation in a workshop program; however, A.J. has been assaulted twice at the workshop and is fearful of returning to the workshop. SCDDSN has denied A.J. and other residents of SLP II's eligibility for less expensive adult companion services by changing the eligibility criteria to require A.J. and others like him to attend institutional day programs. SCDDSN has not promulgated any regulations with regard to the standards for eligibility and receipt of services. SCDDSN has no regulation or clearly established procedures for appealing the denial of services to an internal or external hearing officer. Promulgation of regulations by Defendant would provide A.J., his family and others like him with meaningful participation into the rulemaking process, access to information about the agency's rules and eligibility requirements as well as standards for particular services, and ensure that services are provided uniformly and fairly throughout the state.

28. E.M. is a long-time client of Defendant SCDDSN. Over the years, E.M. has utilized day services obtained through the use of Medicaid funds administered by Defendant



SCDDSN. E.M. has participated in a job training program and is employable in the private sector, albeit in very limited areas. E.M.'s parents have always cared for him in the home, and though E.M. is well into adulthood, he is unable, and is unlikely to ever be able, to live on his own. Although E.M. and his parents are aware that there is a long waiting list for residential services through Defendant SCDDSN, they have, for many years, attempted to have E. M. placed on a waiting list. Despite the declining health of E.M.'s parents, Defendant SCDDSN for years refused to place E.M. on a waiting list for residential placement. In effect, Defendant SCDDSN informed E.M. and his family that unless E.M.'s needs were "critical" (i.e. he was facing immediate homelessness) or it he could be shown that he needed residential placement within twelve months, he could not be placed on any list. E.M.'s parents even offered to pay for the difference between E.M.'s current funding and the cost of a residential placement. SCDDSN, however, refused to allow such use of the funds, and failed to provide any explanation for such refusal or appeal options.

29. After years of requesting that E.M. be placed on the waiting list, just recently in late 2006, SCDDSN finally provided GM with a verbal offer of residential placement. Nevertheless, due to SCDDSN's failure to promulgate regulations as it is required to do so, E.M. and his family was not afforded access to any formal procedure for challenging Defendant's waiting list procedures or their decisions regarding the use of funds in which Plaintiff E.M. had already been approved. Neither the standards for eligibility and receipt of services, the standards governing choice of services needed/provided, the waiting list process, nor the grievance process are subjected to review by the public or the General Assembly. SCDDSN has no regulation or clearly established procedures for appealing the denial of services, denial of change in services, or admission to or priority on a waiting list to an internal or external hearing officer.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Protection and Advocacy for the People  
with Disabilities, Inc.; et al,

v.

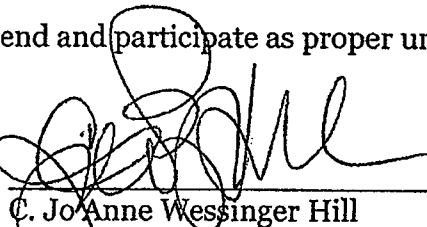
South Carolina Department of  
Disabilities and Special Needs; et al.

) IN THE COURT OF COMMON PLEAS

) CIVIL ACTION NO.: 07-CP-40-2187

) NOTICE OF TAKING ORAL  
) DEPOSITION OF DEBORAH McPHERSON  
) (RESCHEDULED)  
)

**PLEASE TAKE NOTICE** that the oral deposition of Deborah McPherson, in the above-captioned action will be taken before a Notary Public for South Carolina, or before some other officer authorized by law to take depositions, on the 23rd day of September, 2011, at 10:00 a.m., at the offices of Richardson, Plowden & Robinson, P.A., 1900 Barnwell Street, Columbia, SC 29201, at which time and place you are hereby notified, requested and required to produce the said person for said examination on oral deposition. The examination on oral deposition shall continue from time to time and day to day until conclusion, and this deposition may be adjourned from time to time as necessary. You are further invited to attend and participate as proper under the Rules.



C. Jo Anne Wessinger Hill  
RICHARDSON, PLOWDEN & ROBINSON, P.A.  
1900 Barnwell Street  
PO Drawer 7788  
Columbia, SC 29202  
(803) 771-4400

Columbia, South Carolina  
August 31, 2011

30. E.M. and his family were afforded no avenue for appealing any SCDDSN determination regarding services provided, or not, by SCDDSN as no such procedure exists. Promulgation of regulations by Defendant would have provided E.M., his family and others like him with meaningful participation into the rulemaking process, access to information about the agency's rules and eligibility requirements as well as standards for particular services, and ensure that services are provided uniformly and fairly throughout the state. Promulgation of regulations would also provide individuals such as E.M. and his family with a process for accessing the courts to obtain a decision by a neutral third party where SCDDSN's actions fail to conform to the regulations.

31. E.J.M. has profound mental retardation and was voluntarily admitted to SCDDSN services in 1999. For the next six years, E.J.M. was subjected to repeated physical and psychological abuse at a private facility (the "Private or Contract Provider") funded by SCDDSN. Violations of the human rights of residents of this facility are not reviewed by a Human Rights Committee operated by the county SCDDSN Board. Instead, SCDDSN allows the Private or Contract Provider to operate its own Human Rights Committee (HRC). SCDDSN has not promulgated any regulations with regard to operation of such a committee or with regard to the appeals process to challenge the decision of the Private or Contract Provider's HRC. Thus, E.J.M. has not had access to a HRC through promulgation.

32. E.J.M.'s mother attempted to move him to a safer facility but SCDDSN refused to do so, even to the point of refusing to permit his guardian to terminate SCDDSN services. As SCDDSN does not promulgate regulations with regard to eligibility of services or appeals rights/processes, E.J.M.'s mother was forced to employ the services of an attorney in order to acquire the needed services in which E.J.M. was entitled. Only after E.J.M. incurred significant

legal expenses were these services finally provided. Promulgation of regulations by Defendant would provide E.J.M., his family and others like him with meaningful participation into the rulemaking process, access to information about the agency's rules and eligibility requirements as well as standards for particular services, and ensure that services are provided uniformly and fairly throughout the state. Promulgation of regulations would also provide individuals such as E.J.M and his family with a process for accessing the courts to obtain a decision by a neutral third party where SCDDSN's actions fail to conform to the regulations.

33. K.D.R. is a minor who lives with his parents. As a young child, K.D.R. had developmental delays and was a client of SCDDSN. At age seven, K.D.R. was diagnosed with Asperger's Disorder and continued to receive sporadic services from Defendant. At age nine, despite the fact that his symptoms and difficulties had worsened, SCDDSN cut off K.D.R.'s services, stating he was not qualified to receive them. K.D.R.'s parents were told by a local DSN Board employee that there was no appeal process. However, K.D.R.'s parents persisted and eventually received a determination that K.D.R. was ineligible for services because he did not meet diagnostic criteria for autism or Mental Retardation, and that neither PDD-NOS nor Asperger's were considered "related disabilities". If SCDDSN promulgated regulations as it is required to do, K.D.R., his family and others like him would be provided with meaningful participation into the rulemaking process, access to information about the agency's rules and eligibility requirements as well as standards for particular services, and ensure that services are provided uniformly and fairly throughout the state. They would also have a process for accessing the courts to obtain a decision by a neutral third party where SCDDSN's actions fail to conform to the regulations.

34. S.P. began receiving SCDDSN funded residential services in 2003 when he filed a lawsuit against SCDDSN and Defendant Butkus. In 2005 SCDDSN found S.P. to be ineligible for SCDDSN services based on eligibility criteria which are more restrictive than those contained in state and federal law. SCDDSN has failed to promulgate regulations establishing eligibility criteria which comply with state and federal law. In addition, SCDDSN has refused to follow the guardian's wishes in providing appropriate residential services to S.P. SCDDSN has released protected health records to other entities in violation of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and possibly other state and federal law. See 29 U.S.C.A. § 1181, Pub. L. 104-191, August 21, 1996, 110 Stat. 1936. SCDDSN has not promulgated regulations for compliance with HIPAA. Promulgation of regulations by Defendant would provide S.P., his family and others like him with meaningful participation into the rulemaking process, access to information about the agency's rules and eligibility requirements as well as standards for particular services, and ensure that services are provided uniformly and fairly throughout the state.

35. Minor Plaintiff S.S. is currently in an out of home placement, but formerly lived with his mother, stepfather and siblings in their family home. S.S. has been treated for many years for a variety of diagnoses due to unusual and at times unmanageable behaviors, strange thought patterns and, as he has become older, episodes of severe aggression. In 2005, the Medical University of South Carolina evaluated S.S. and diagnosed him with Asperger's Disorder. This disorder, very similar to autism, is one of a group of diagnoses referred to in the DSM IV as "Pervasive Developmental Disorders." S.S. is unable to socialize effectively, has difficulty understanding nonverbal social and other cues, is unable to function effectively in many school and home situations, and requires specialized training and habilitation. Defendant

SCDDSN denied services to S.S., stating only that he did not meet requirements for a diagnosis of Autism. He was not evaluated for "related disabilities" and has never received SCDDSN services.

36. Despite S.S.'s mother's "appeal" to state-level SCDDSN, Defendant has consistently refused to provide services. S.S. has been repeatedly committed to treatment facilities and foster homes because services from the Department of Mental Health have been inadequate for his needs. S.S.'s mother has no access to any formal procedure for challenging Defendant's refusal to provide services. Neither the standards for eligibility and receipt of services nor the grievance process have been subjected to review by the public or the General Assembly. SCDDSN has no regulation or clearly established procedures for appealing the denial of services to an internal or external hearing officer. S.S. and his family have no meaningful access to standards used to determine to which services he may be entitled. Additionally, S.S. and his family have no avenue for appealing any SCDDSN determination regarding services provided, or not, by SCDDSN. Promulgation of regulations by Defendant would provide S.S., his family and others like him with meaningful participation into the rulemaking process, access to information about the agency's rules and eligibility requirements as well as standards for particular services, and ensure that services are provided uniformly and fairly throughout the state. They would also have a process for accessing the courts to obtain a decision by a neutral third party where SCDDSN's actions fail to conform to the regulations.

#### **FOR A CAUSE OF ACTION**

#### **DECLARATORY JUDGMENT**

37. The allegations of all preceding paragraphs are incorporated as if repeated verbatim herein.

38. That SCDDSN has promulgated only five regulations: R. 88-105, License Requirement for Facilities and Programs; R. 88-210-Definitions; R. 88-310, Recreational Camps for Mentally Retarded Persons; R. 88-405, Day Programs for Mentally Retarded Persons; and R-88-910, Unclassified Facilities and Programs. SCDDSN has never promulgated regulations defining for issues of critical concern to applicants and recipients of its services, including but not limited to eligibility for its services; appeal procedures; standards for the operation of its residential programs; procedures for its Human Rights Committees; and standards for research on human subjects.

39. That SCDDSN's enabling statute requires that the Commission of the SCDDSN promulgate regulations, stating "The commission **shall** determine the policy and **promulgate regulations** governing the operation of the department and the employment of professional staff and personnel." S.C. Code Ann. § 44-20-220 (emphasis added).

40. That SCDDSN is additionally required to promulgate regulations pursuant to S.C. Code Ann. § 44-26-180 ("...The department **shall promulgate regulations** to obtain informed consent and to protect the dignity of the individual.") (emphasis added).

41. Section 44-20-790 of the South Carolina Code of Laws dealing with promulgation of regulations governing hearings provides that "[t]he procedures governing hearings authorized by "Notice of Deficiencies . . ." must be in accordance with regulations promulgated by the department.

42. That the APA was intended to provide a standardized process for all public agencies to formulate rules in order to obtain public comment and to provide access to agencies' operations as well as an avenue for appellate review of administrative decisions.

43. That Defendant Dr. Stan Butkus is the duly appointed Director of defendant SCDDSN, and in such capacity has virtually unfettered and nonreviewable authority over decisions affecting thousands of citizens of this State.

44. That on or about October 24, 2005, Plaintiffs, by and through counsel, delivered to Defendant SCDDSN a letter demanding that regulations be promulgated pursuant to S.C. Code Ann. §§ 1-23-10 *et seq.*, commonly known as the Administrative Procedures Act or APA.

45. That SCDDSN has refused to adhere to its statutory duty to promulgate regulations.

46. That the failure to promulgate regulations under the APA results in Defendant SCDDSN having unfettered decision-making authority, with no opportunity for public participation in the rulemaking process, review by the General Assembly or opportunity for independent judicial review.

47. That such unfettered decision-making authority has marked potential for, and indeed has resulted in, numerous instances of inconsistency, misapplication of the law, failure to provide services, failure to provide adequate services, provision of unequal levels of service coordination and delivery, arbitrary and capricious eligibility decisions, and no avenue for judicial scrutiny of agency decisions.

48. That by failing to promulgate regulations, SCDDSN and the Commission have circumvented not only the requirements of its own enabling legislation, but the requirements of the APA, leaving the public, P&A, the individually named Plaintiffs, defendant's employees, the legislature and the courts with no meaningful access to generally applicable standards which can be judicially reviewed.



49. That Plaintiffs are informed and believe themselves entitled to a Declaratory Judgment requiring that SCDDSN promulgate regulations governing the operation of the department and the employment of professional staff and personnel and to obtain informed consent and to protect the dignity of the individual.

50. That Defendants do not have substantial justification for refusal to promulgate regulations.

51. That attorney's fees and costs have continued to incur in this matter.

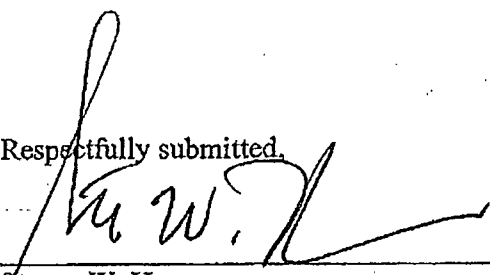
52. That upon information and belief, there are no special circumstances which would make an award of attorney's fees and costs unjust.

53. That Plaintiffs are informed and believe they are entitled to an order of this court requiring Defendants to pay Plaintiffs' attorney fees and costs pursuant to S.C. Code Ann. § 15-77-300.

WHEREFORE, Plaintiffs pray this Court for an Order:

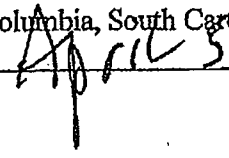
1. Declaring that Defendant SCDDSN is required to, and that it shall promptly promulgate regulations governing the operation of the department and the employment of professional staff and personnel, and to obtain informed consent and to protect the dignity of the individual in research settings; and
2. Awarding reasonable attorney's fees and costs to Plaintiffs.

Respectfully submitted,



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Kenya Carver-Miller  
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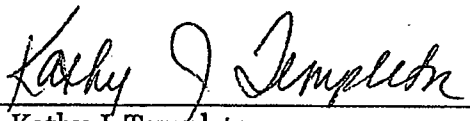
Columbia, South Carolina  
April 5, 2007

ATTORNEYS FOR THE PLAINTIFFS

|                                               |   |                                 |
|-----------------------------------------------|---|---------------------------------|
| STATE OF SOUTH CAROLINA                       | ) | IN THE COURT OF COMMON PLEAS    |
|                                               | ) |                                 |
| COUNTY OF RICHLAND                            | ) | CIVIL ACTION NO.: 07-CP-40-2187 |
|                                               | ) |                                 |
| Protection and Advocacy for the People        | ) |                                 |
| with Disabilities, Inc.; et al,               | ) |                                 |
|                                               | ) |                                 |
| v.                                            | ) | CERTIFICATE OF SERVICE          |
|                                               | ) |                                 |
| South Carolina Department of                  | ) |                                 |
| <u>Disabilities and Special Needs; et al.</u> | ) |                                 |

I, the undersigned, an employee of the firm of Richardson, Plowden & Robinson, P.A., attorneys for the Defendant, hereby certify that I have served the foregoing NOTICE OF TAKING ORAL DEPOSITION OF DEBORAH McPHERSON, via first class mail, postage pre-paid, to Plaintiff's attorney, as indicated below:

William H. Davidson, II  
 Kenneth P. Woodington, Esq.  
 1611 Devonshire Drive, Second Floor  
 PO Box 8568  
 Columbia, SC 29202

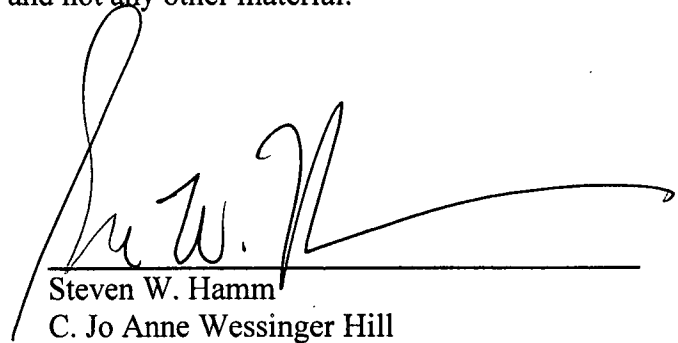
  
 \_\_\_\_\_  
 Kathy J. Templeton

Columbia, South Carolina  
 August 31, 2011

**RECEIVED**  
 SEP 24 2014  
**SC Court of Appeals**

**CERTIFICATE OF COUNSEL**

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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ATTORNEYS FOR APPELLANTS

*23rd*  
September 18, 2014  
Columbia, South Carolina

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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**RECEIVED**

SEP 24 2014

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

**SC Court of Appeals**

The Honorable G. Thomas Cooper, Jr., Circuit Court Judge

Appellate Case No. 2014-000244

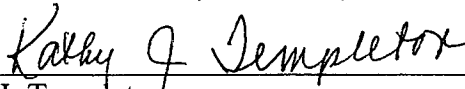
Protection and Advocacy for the People with Disabilities, Inc.; M.J.B. on behalf of and as next friend of J.B.; C.B.B. on behalf of and as guardian of P.B.; G.C. and L.C. on behalf of and as guardians of F.C.; D.P. on behalf of and as guardian of C.M.D.; K.F. and S.F. on behalf of and as next friend of A.E.; J.H. on behalf of and as next friend of A.J.; G.M. on behalf of and as next friend of E.M.; N.M. on behalf of and as guardian of E.J.M.; R.P. on behalf of and as Guardian of S.P.; R.R. and J.R. on behalf of and as guardians of K.D.R.; and J.K. on behalf of and guardian of S.S. . . . . . **APPELLANTS**

v.

South Carolina Department of Disabilities and Special Needs; Dr. Beverly Buscemi, in her official capacity as Director of the South Carolina Department of Disabilities and Special Needs; and Nancy Banor, Deborah McPherson, Christine Sharp, Rick Huntress, Fred Lynn, Harvey Shiver and Kelly Hanson Floyd, as Commissioners of the South Carolina Department of Disabilities and Special Needs . . . . . **RESPONDENTS**

PROOF OF SERVICE

I CERTIFY THAT I HAVE SERVED the Record on Appeal on Respondents by depositing a copy of it in the United States Mail, postage prepaid, on September 24, 2014, addressed to their attorney of record, William H. Davidson, II, Esq., Kenneth P. Woodington, Esq. Davidson Morrison & Lindemann, PA, P.O. Box 8568, Columbia, SC 29202.

  
Kathy J. Templeton

September 24, 2014