

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM BERKELEY COUNTY
In the Court of Common Pleas for the Ninth Circuit

Jean H. Toal, Circuit Court Judge

Appellate Case No.: 2018-000467

Amy Kovach Plaintiff

v.

Joshua S. Whitley and Karen Whitley, in her Individual Capacity, ... Respondents

And

Joshua S. Whitley Defendant/Counterclaimant,

v.

Amy Kovach Plaintiff/Counterclaim Defendant,

And

Joshua S. Whitley Defendant/Third-Party Plaintiff,

v.

Rodney Thompson Third-Party Defendant,

Of Whom Amy Kovach is the Appellant.

RECORD ON APPEAL – VOLUME III OF III

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INDEX

Orders

November 20, 2015 Rule to Show Cause Order signed by Judge Young	004
October 24, 2016 Order Granting Motion for Sanctions	005
February 19, 2018 Order Denying Motion for Reconsideration.....	0029

Pleadings

August 4, 2015 Affidavit of Amy Kovach.....	0033
October 15, 2015 Plaintiff's Complaint	0045
November 3, 2015 Joshua Whitley Answer, Counterclaims and Third-Party Complaint.....	0076
November 3, 2015 Joshua Whitley Motion for Sanctions Against Attorney Bloodgood	00146
November 9, 2015 Attorney General's Rule to Show Cause and Petition in Support	00158
November 16, 2015 Karen Whitley Motion to Dismiss and for Rule 11 Sanctions against Attorney Bloodgood.....	00168
December 2, 2015 Joshua Whitley Amended Answer, Amended Counterclaims and Amended Third Party Complaint.....	00187
December 4, 2015 Plaintiff's Answer to Counterclaims and Answer to Motion to Dismiss	00253
December 4, 2015 Notice and Motion to Strike Stipulation of Dismissal as to Defendant Karen Whitley	00267
February 11, 2016 Bloodgood Memo in Opposition to Sanctions Motion	00270
Ex A: Affidavit of Margaret Fabri	00279
Ex B: Clegg v. Lambrecht, 2009 S.C. App. LEXI 353	00282
Ex. C: October 13, 2015 Email from Attorney Jerry Theos' Office to Nancy Bloodgood enclosing plea hearing transcript.....	00289
Ex D: Nancy Bloodgood time sheet records.....	00290
February 12, 2016 Joshua Whitley Amended Motion for Sanctions Against Attorney Bloodgood and Plaintiff.....	00292

February 23, 2016 Karen Whitley Amended Motion for Sanctions Against Attorney Bloodgood and Plaintiff.....	00311
August 24, 2016 Bloodgood Supplemental Memo in Opposition to Motion for Sanctions	00314
Ex 1: Stipulations of Dismissal as to Karen Whitley; Terry Hardesty; Scott Marino .	00334
Ex 2: November 25, 2015 Letter from Attorney Jeffery Breit to Attorney Nancy Bloodgood refusing dismissal without payment of attorney fees	00347
Ex 3: Anderson County v. Preston, 2013 WL 10154806.....	00349
August 25, 2016 Amended Motion for Sanctions	00372
September 15, 2016 Plaintiff's Response to Amended Motion for Sanctions	00392
Ex A: December 18, 2014 Report: Federal Forensic Associates.....	00403
Ex. B: August 19, 2014: Supplemental Motion to Dismiss.....	00412
Ex C: May 2, 2014 Letter from Attorney Victor Rawl to Dr. Kent Murray, Berkeley County School Board	00449
Ex D: January 20, 2015 Motion to Disqualify Attorney General	00455
Ex E: Partial Transcript of Record: 14-GS-08-266; 15-GS-08-1073	00540
Ex F: Partial Transcript of Record: Show Cause Hearing February 8, 2016.....	00545
Ex G: Facebook Posts from Berkeley County Republicans group.....	00547
November 2, 2016 Affidavit of Howell Morrison.....	00583
November 3, 2016 Petition for Fees of Joshua S. Whitley.....	00599
November 7, 2016 Bloodgood Motion for Reconsideration	00619
November 7, 2016 Affidavit of Lucy Sanders, Esq.....	00642
November 16, 2016 Affidavit of Nancy Bloodgood, Esq. and supporting documents	00645
January 13, 2017 Supplemental Affidavit of Howell Morrison	001060
January 13, 2017 Plaintiff's Motion for Reconsideration and Memo in Support.....	001071
Exhibit: Affidavit of Christopher Kovach	001081

Transcripts

August 28, 2015 Transcript of Record from Amy Kovach's guilty plea and sentencing hearing	001084
February 8, 2016 Show Cause Hearing Transcript.....	001141
September 16, 2016 Hearing Transcript	001154
January 17, 2017 Motion for Reconsideration Hearing Transcript	001233

Other Materials or Documents

April 22, 2014 Letter from Attorney John Freeman to Attorney Victor Rawl.....	001354
August 31, 2015 Letter from Deputy Assistant Attorney General Creighton Waters to the Berkeley County School Board	001358
September 16, 2015 Letter from Berkeley County School District re: denial of Amy Kovach's employment grievance appeal	001365
November 25, 2015 Letter to Attorney Bloodgood from Attorney Jeffrey A. Breit	001367
February 8, 2016 Letter from Joshua S. Whitley to Nancy Bloodgood	001369
January 11, 2017 Letter from Jeffrey A. Breit to Chief Justice Toal.....	001371

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY) COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)

STATE,)

v.)

AMY KOVACH)

DEFENDANT.)

TRANSCRIPT OF RECORD

14-GS-08-266

15-GS-08-1073

August 28, 2015
Monks Corner, South Carolina

B E F O R E :

THE HONORABLE W. JEFFREY YOUNG, JUDGE

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

S. CREIGHTON WATERS, ESQ.
Assistant Solicitor

JERRY N. THEOS, ESQ.
Attorney for Defendant

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter
Typed for Melissa W. Singletary

00977

INDEX

	Page
Calling of the case	3
Questioning of Ms. Kovach	5
Facts given by Mr. Waters	8
Remarks by Mr. Theos	35
Remarks by Mr. Stoney	52
Sentence of the Court	55

EXHIBITS

STATE'S

No.	Description	I.D./EVD.
1	Referendum Do's and Don'ts	3/3
2	Still video photos (15 pages)	3/3
3	Estimate of \$5300	22/22

1 (WHEREUPON, State Exhibits Nos. 1 and 2
2 were marked for identification and
3 admitted into evidence.)

4 MR. WATERS: The State calls the case of
5 State versus Amy Kovach. There are five
6 indictments. That's 2014-GS-08-266, 2014-1403,
7 2015-1072, 1073, and 1074. Ms. Kovach is present
8 with her counsel Jerry Theos. It's my understanding
9 that we're here today and Mr. Kovach intends to
10 enter a guilty plea. And in return the State is nol
11 prossing the two forgery indictments, that being,
12 1403 and 1074, as well as the perjury indictment
13 that's 1075. The defendant will be pleading as
14 indicted to the global common law misconduct in
15 office offense which covers and incorporates all of
16 the conduct that have been charged at issue, as well
17 as the original ethics indictments for use of
18 government funds to influence an election.

19 THE COURT: So let me get this straight,
20 there's just two indictments that she's pleading
21 guilty to.

22 MR. WATERS: That's correct, Your Honor.

23 THE COURT: Mr. Theos, you represent
24 Ms. Amy Sue Kovach under indictment 2014-GS-08-266
25 and 2015-GS-08-1073; is that correct?

1 MR. THEOS: That's correct, Judge.

2 THE COURT: Have you had an opportunity to
3 explain to her the charges contained in the
4 indictment, the possible punishment which she faces,
5 and her constitutional rights?

6 MR. THEOS: I have in great detail.

7 THE COURT: You think she's understood
8 what you told her?

9 MR. THEOS: Completely, Judge.

10 THE COURT: And does she intend to plead
11 guilty or not guilty?

12 MR. THEOS: She does to the two
13 indictments Mr. Waters referenced as to misdemeanor
14 indictments.

15 THE COURT: Do you agree with her
16 decision?

17 MR. THEOS: I agree with her decision.

18 THE COURT: Based upon your investigation
19 of the facts and the circumstances concerning all
20 the issues in this case, do you believe she's making
21 the right decision?

22 MR. THEOS: I believe she's making the
23 right decision and the decision that is in her best
24 interest as well.

25 THE COURT: Do you believe if this case

1 were to go to trial that there would be a
2 substantial likelihood that she'd be found guilty
3 beyond a reasonable doubt?

4 MR. THEOS: I believe that there is, there
5 would be a substantial likelihood.

6 THE COURT: Please place Ms. Kovach under
7 oath.

8 THE CLERK: Please raise your right hand.
9 WHEREUPON,

10 **AMY KOVACH,**
11 having been duly sworn by the Clerk, testified
12 as follows:

13 THE COURT: And I need for you to speak
14 up. We've got a court reporter who needs to hear
15 what you're saying. Ms. Kovach, it's my
16 understanding that you're wanting to plead guilty
17 today, but there's some questions I need to ask you
18 to make sure that you're entering into this plea
19 freely, voluntarily, knowingly and intelligently.
20 The first question I have is, are you under the
21 influence of alcohol or drugs today?

22 THE DEFENDANT: No, sir.

23 THE COURT: Are you taking any medication
24 that would cloud your judgment?

25 THE DEFENDANT: No, sir.

1 THE COURT: Are you aware of any physical,
2 emotional, or nervous conditions that would keep you
3 from understanding what's happening in this
4 courtroom today?

5 THE DEFENDANT: No, sir.

6 THE COURT: Now it's my understanding that
7 you want to plead guilty to these two indictments,
8 and I'm gonna read each one of them. The first one
9 is 2015-GS-08-1073, and the charge is misconduct in
10 office. And the indictment reads that: "Amy Kovach
11 did in Berkeley County from on or about January 1st,
12 2012, to on or about November 30th, 2013, while
13 serving as director of communications and community
14 relations for the Berkeley County school district
15 did willfully and unlawfully commit misconduct in
16 her public office by acts or issues of malfeasance,
17 malfeasance and misfeasance and nonfeasance in
18 breach of her duties to the public including her
19 duty of good faith, honesty, and accountability, to
20 wit, Amy Kovach, continuously used public resources
21 and time to influence the outcome of a bond
22 referendum while covering up her actions with
23 dishonesty. This was done in violation of the
24 common law of the State of South Carolina." Is
25 what's stated in this indictment the truth?

1 THE DEFENDANT: Yes, sir. Yes, sir.

2 THE COURT: The earlier indictment
3 2014-GS-08-266, it charges use of public funds to
4 influence election reads as follows: "That Amy
5 Kovach did in Berkeley County on or about the period
6 between August 1st, 2012 and November 6, 2012, use
7 and authorize the use of public funds, property, or
8 time to influence the outcome of an election, to
9 wit, while employed as communications director by
10 the Berkeley County school district. Amy Kovach did
11 use public funds to pay for the creation of a
12 campaign video and production of other campaign
13 material to draft and disseminate speeches during
14 her public employment intended to persuade the
15 voting public and did perform various other acts
16 using public resources and time, all of which
17 promoted and supported a yes vote as to the school
18 bond referendum held on November 6, 2012 and all of
19 which was in violation of Section 8-13-1346 of the
20 South Carolina Code of Laws as amended against the
21 peace and dignity of the State and contrary to the
22 statute in such case made and provided." Is what's
23 stated in this indictment the truth?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Solicitor Waters.

1 MR. WATERS: Yes, sir, Your Honor. As the
2 indictments state, Ms. Kovach is the communications
3 director for the Berkeley County school district,
4 and this case arises out of a 2012 bond referendum
5 for some two hundred million dollars roughly for the
6 schools. But I want to start by saying very clearly
7 that this case has nothing to do with whether or not
8 the bond referendum was a good idea; nor, is this a
9 case of a school official who got overzealous and
10 unknowingly overstepped the line. This case is
11 about someone who intentionally and knowingly broke
12 the law and broke the ethics act. And that ethics
13 act rule that Your Honor just read of course,
14 governs the fair operation of elections and it
15 provides that a government employee cannot use
16 government time and resources to influence the
17 outcome of an election. And the reason for that is,
18 to insure that both sides are on a level playing
19 field and to insure that the power of the
20 government, that taxpayer's money is not, the thumb
21 is not a one side of the scale or the other. And
22 while a governmental agency to provide information
23 all day long, they can't go from that into the realm
24 of advocacy and that's prohibited by the statute.
25 This case came to us, as many cases do,

1 from a complaint from a private citizen, and often
2 these types of cases come that way. But ultimately
3 this office is not the one, the office of the
4 Attorney General is not the one to investigate
5 anything; we refer that to SLED who does their
6 investigation. And I do want to acknowledge SLED
7 Agent Ryan Kelly who is here today who is the lead
8 investigator, as well as Jimmy Bagnol, investigator
9 with the Ethics Commission who are the two
10 investigators that worked on this case. And they do
11 their investigation and then they provide that
12 information to the prosecuting office and we make
13 our decision based on that information.

14 And at this point I want to acknowledge my
15 cocounsel and my partner Brian Petrano, as well as
16 staff attorney Johnny James who did a lot of work on
17 this case, as well as Allen Meyer who used to be
18 with our office. But how do we make a decision on
19 this case? I think I told Your Honor at the last
20 hearing that when we're looking at these types of
21 cases, how do we decide where something is just
22 purely a civil event or where it moves into the
23 criminal. And over the years in doing these type of
24 cases we've developed sort of a three step, and the
25 first thing we look at is knowledge of the law.

1 We're looking for somebody who knows the law because
2 we're not going to charge someone criminally who
3 overstepped a line that they didn't know was there.
4 And secondly, we're looking for intentional
5 violations of that law. And then finally we're
6 looking for some evidence of criminal intent which
7 comes as Your Honor is familiar with and a motive
8 that can come with lies, it can come with coverups,
9 misrepresentations that show that the person knew
10 what they were doing was wrong and against the law.
11 We don't charge people for innocent mistakes and
12 mere inadvertence. So the two counts that Your
13 Honor has, again, is the global misconduct conduct
14 in office, which again encompasses all the conduct
15 that was charged and then the underlying ethics act
16 count as well.

17 And in talking about the three steps that
18 I just referred to, the first thing, of course, is
19 knowledge of the law. And in this particular case,
20 we have ample evidence that Ms. Kovach was aware of
21 these ethics act rules, and we know that in part
22 from the fact that in the months leading up to the
23 referendum they distributed, and indeed Ms. Kovach
24 herself distributed, a referendum do's and don't's
25 sheet which I've had marked as a Court exhibit for

1 this particular proceeding I'll hand up to Your
2 Honor. I, of course, provided a copy to defense
3 counsel. And they had this prepared by a law firm.
4 They sent out to all employees to advise them of
5 this law, 1346, which is one of the counts that
6 Ms. Kovach is pleading to. And in that particular
7 Do's and Don't's document it says, this law is
8 strictly enforced, you can't influence an election.
9 And they define that as telling people how to vote
10 yes or no, or soliciting support or opposition for
11 one side or the other in the bond referendum. And
12 then on the side there's actually a little check
13 list of things you can't do. It says you can't
14 print things with government resources and on
15 government time. You can't send emails on county
16 time. You can't use county email accounts and
17 county equipment to send emails in advocacy. You
18 can't organize rallies. You can't promote support
19 for or against using government resources and time;
20 and as the facts in this case show, Ms. Kovach did
21 all of those. And the evidence of that, the
22 evidence comes primarily from the emails of
23 Ms. Kovach herself. She would say things like,
24 well, I don't want to end up in Columbia before the
25 Ethics Commission, and on at least two occasions

1 told vendors who had submitted for payment to the
2 District for items that were clearly campaign items,
3 she told them you've got to take off the invoice
4 reference to the campaign 'cause I can't pay it if
5 it's got that on there. So she's very well aware of
6 the law. And again, much of the evidence here comes
7 from the district's own records, okay, that's where
8 this, where this case was discovered and was made.
9 It's in the district's own emails. It's in their
10 own records. It's in the information on the
11 District's own servers. It's in the records of the
12 District's own finance department and procurement
13 office. So that's the first prong which is
14 knowledge of the law, and we had ample evidence that
15 Ms. Kovach with aware of these rules.

16 So the second prong, of course, is whether
17 there are intentional violations of that law. And
18 initially I just want to go through a few of the
19 miscellaneous offenses that we were able to discover
20 in the evidenoc, and there are multiple emails
21 throughout August and September 2012 where she was
22 writing pro-referendum scripts for individuals to
23 give at various community meetings, not just
24 information, but blatant advocacy. There are
25 multiple million emails where she — and this starts

1 in July of 2012 through September of 2012, at least
2 five, where it relates to her having her secretary
3 print Yes for Schools with a campaign logo print
4 fliers, stickers and other paraphernalia on the
5 government copiers and government colored copiers
6 and that sort of thing. There are emails and
7 witness statements that talk about using the
8 government, the District warehouse, to store pallets
9 and yard signs for the campaign. There are emails
10 where she talks about putting a trailer or a
11 portable classroom on tour to generate support
12 because of the, in particularly on Daniel Island, to
13 create the sort of fear of the dreaded trailer as
14 she put it in the email. And then, of course, there
15 was organizing Yes for Schools events and indeed
16 getting school children sort of as window dressing
17 for some of those events. So this is not just an
18 isolated event. This is a continued and a long
19 standing course of conduct.

20 But those miscellaneous items that I just
21 mentioned are not really the main points. The main
22 points that really crystalize this case are payment
23 for a campaign video, as well as payment for
24 campaign signs for kids to hold.

25 THE COURT: How much was the campaign

1 video?

2 MR. WATERS: The campaign video ultimately
3 was 5300 dollars, and I'll get to the details of how
4 that was paid for in a moment but that was the
5 ultimate amount that was paid. Additionally, there
6 was roughly 300-dollars. I think it was
7 294-dollars, excuse me, \$259.20 that was used to pay
8 for campaign signs; and those signs, or at least one
9 of those signs were used for school children to hold
10 up in the campaign video as they shouted say Yes for
11 Schools. But that's really the focus that I want to
12 talk about.

13 And before I get to the rest of that, I
14 kind of want to talk a little bit about prong three,
15 about criminal intent and the motive. And what was
16 the motive here? Well, again, her emails show a
17 couple of things as to motive and the first thing is
18 is that she felt that her own career and Doctor
19 Rodney Thompson's career would be advanced by, and
20 by a success in this referendum. On 8/13/12 she
21 wrote that Mr. Thompson, or Doctor Thompson, was
22 very personally invested in this and knows the
23 length of his term as superintendent very much
24 depends on this referendum. And on 9/17/12, that's
25 right before she started to put together this

1 campaign video, she noted in an email that this
2 referendum is the ultimate test of her ability to
3 succeed or fail. And the second aspect of the
4 motive was, is that she was very frustrated by the
5 campaign committee itself. She initially was in
6 control even writing in July of 2012 that the
7 campaign is being run internally from my district
8 desk, from my desk. But ultimately, the campaign
9 committee individual started to assert themselves,
10 and she would frequently criticize them by saying
11 sarcastically finally the committee is taking a
12 role, there's no one who will take a lead. And she
13 would complain about — in September 30th, 2012, she
14 complain about poor leadership from the chamber as
15 she called it, and stated to Doctor Thompson that we
16 can win this but we're gonna have to pull out every
17 trick in the book. And then finally on August 8th,
18 2012, she's complaining that the campaign committee
19 has marginalized her and Doctor Thompson, that they
20 told her that it's not their campaign, it's our
21 campaign, and that there are to have no involvement
22 and she said that their strategy is broken and we're
23 losing momentum. So she felt that this campaign was
24 necessary for their career, but also felt that she
25 had lost control, and she was very frustrated with

1 the, with the direction the campaign was taking.

2 Additionally, she was aware that the
3 campaign was not flushed with cash. So it is in
4 that context that we look and under those
5 circumstances that Amy Kovach decided to use
6 District funds to make a Yes for Schools campaign
7 video.

8 Now she claimed in her statement to the
9 press, she claimed in her statement to SLED, that
10 she was just making a district marketing video, that
11 she was just giving the campaign separate and unused
12 excess footage and that the campaign essentially had
13 requested this and asked for this. And she claimed
14 in her statements that the signs from Nelson
15 Printing were wanted by the campaign, and she just
16 paid for and then prepared a invoice for them to
17 reimburse her. But the campaign workers deny that
18 they had anything to do or knowledge of this
19 particular video, and her own emails in the
20 investigation itself confirm that.

21 So Your Honor, the first thing is, and I'm
22 gonna hand up, and we've marked this as a Court's
23 exhibit, and I'm gonna give you two copies. One is
24 marked as a Court's exhibit because it has stills of
25 the children that were used in the campaign video.

1 The one we have marked for the Court for it to be in
2 the file we've attempted to blur the images of those
3 children's identities, but I've handed you up one
4 and, of course, provided to defense counsel which is
5 not blurred so that you can review it. But in 9/12,
6 on 9/12/2012 she sends an email to Nelson Printing
7 asking them for foam core signs and banners that are
8 going to be held by students; and these are Yes for
9 Schools banners. And again, there's been some who
10 have said that that's all this case is about; but as
11 Your Honor has already described and we'll describe
12 further, this case is much broader than just that
13 invoice for 259-dollars. So she gets and pays for
14 the Yes for Schools banners to be held by the
15 students and the next thing she does is contact Go
16 To Team video and particular, a videographer by the
17 name of Jason Bennett. And her emails and Jason
18 Bennett's emails are very interesting in as much as,
19 in particular Mr. Bennett emails after his meeting
20 with Ms. Kovach, and he says, I just met with Amy
21 Kovach, she's going to need two videos, one video is
22 a specific support for the vote video and the other
23 using the same content will be a re-edit for general
24 purposes. She says the cost for the project is
25 4800-dollars but we need to split it into two

1 estimates of 2400 and the reason for that is, is her
2 budgetary permissions, she's only able to write
3 checks up to 2500-dollars without having to go to
4 committee. So that right there refutes exactly what
5 Amy Kovach told the press until SLED clearly the
6 understanding was, we're making two videos, we're
7 making a campaign video, and he was expressly asked
8 to structure those transactions or we call it
9 smurfing transactions so that would come under her
10 2,400-dollar limit. As we will see under the
11 procurement code, if she's going to spend more than
12 2500-dollars she has to get three bids and she has
13 to choose the lowest bid. So Jason Bennett then
14 provides the estimate, and this is on page two of
15 the document that I just handed up. But it has on
16 the two estimates that are smurfed, that are
17 structured, it has on there the first ones have
18 support for the vote on it. And her secretary, Ms.
19 Kovach's secretary says, I thought we couldn't pay
20 for anything with the bond referendum. So they get
21 that fixed, and ultimately sends two more estimates.
22 Mr. Bennett sends two more estimates that are
23 exactly the same except they've removed any
24 reference that is for support for the vote. So even
25 Mr. Bennett, when he sent the estimate it was just

1 for support for the vote; that was the primary
2 project. And again, the same thing happens on
3 October 3rd with Nelson Printing when they sent
4 their invoice it has Yes for Schools signs on it and
5 she emails back Nelson Printing and says, you got to
6 change Yes for Schools do phone for signs 'cause I
7 can't pay it like the way that you've written it.
8 So on September 19th Ms. Kovach goes ahead and pays
9 Go To Team 2,500-dollars with her District P card,
10 her procurement card, her District credit card, and
11 then she arranges for the shooting, for the shooting
12 of the video and gets some classes and some school
13 children available. And on 9/21/2012, on
14 September 21st the video is shot. And Your Honor,
15 in that document I provided to you I provided stills
16 of that particular video, and the only difference
17 between the campaign video that was the initial one
18 produced in the subsequent District video is that
19 the campaign video contains an extra 44 seconds of
20 various children and we provided those shots,
21 various children either in groups or by themselves
22 either holding up a Yes for Schools banner or saying
23 Yes for Schools or say Yes for Schools. The school
24 children, of course, were used as props in this
25 political ad. And some of them are very, very young

1 and one on page 11, and you can tell they can't
2 really tell what's going on with what they're being
3 asked to do. So the shooting is taking place on
4 September 21st. She's already paid half the bill on
5 September 19th, but she runs into a problem. And
6 the problem is, as I said, she can't spend more than
7 2500 without going through the procurement code
8 which requires three bids and selection of the
9 lowest bid. And she writes the finance person,
10 well, don't worry about it, I had them split it into
11 two invoices, one for shooting and one for editing,
12 and the finance people say you can't do that. You
13 can't do that, you can't structure it like that,
14 we're gonna have to do that. And they say hold off
15 on any commitments until you get the three bids.
16 Well, she's already paid for it, half of it, and
17 she's already shot the video so what does she do at
18 that point. Well, she promptly then starts to
19 generate sham estimates. Even though she's already
20 paid for it, the video has already been shot, she
21 sent out emails to various vendors — these vendors
22 have no idea they're wasting their time — and says,
23 hey, I've got this project coming up, I need an
24 estimate. And so she starts to generate those
25 various sham estimates starting on September 26.

1 She does that on September 26. That same day she
2 gets the campaign video from Jason Bennett. And in
3 that, the email where she acknowledges getting that,
4 she says, I need you to take the District logo off
5 of the campaign version that has Yes for Schools on
6 it because we don't want to be accused of
7 advocating. So she tells him that right then and
8 there, you got to take that off of there. So, even
9 though she was told by the financial department that
10 you can't smurf these transactions and told to hold
11 off, she goes ahead and generates these sham
12 estimates and then on October 1st Pat pays the rest
13 of the money, or actually asks Jason Bennett, I need
14 you to wait until after October 1st to bill the
15 other 2500, okay. So they run the second payment of
16 2500 on October 8 and then they run the final
17 payment of \$300 on October 9 to keep it underneath
18 that 2500 limit, even though she's been told by
19 finance what needs to happen. So on October 5th she
20 receives an estimate from a vendor who, again,
21 doesn't know they're wasting their time. "Dear Ms.
22 Kovach, this is our estimate to you for this
23 project," that's already happened. And then on
24 October 9th there's a board meeting where a board
25 member, a Donna Marino, raises questions about the

1 video, about hearing about a video that might have
2 been done with school funds or something to that
3 effect. And within a couple of days Ms. Kovach is
4 contacting these vendors saying or contacting
5 vendors saying, hey, I really need to get that
6 estimate in, I've got a meeting set up to make a
7 decision on it and I need you to get that estimate
8 in. But the reality is, is that she needed to get
9 that estimate in because some public light was being
10 shine on it and the paperwork needed, finance was
11 requesting, needed to be turned in. So she's gotten
12 the sham estimates from the other two vendors; but
13 the problem is, is that she can't turn in the
14 estimates from Go To Team because the ones that she
15 got were smurfed, they were split into two. To st
16 that time she manufactures a false and fictitious
17 document. And how do we know that? Your Honor, if
18 you look at the exhibit that we've provided, or
19 excuse me — I thought I had it in front of me. Oh,
20 here it is. Your Honor, I apologize. I'm gonna get
21 this marked as Court's 3.

22 (Court's Exhibit Number 3 was marked
23 and made a part of the record.)

24 MR. WATERS: So she turns in that
25 particular estimate for 5300-dollars as the estimate

1 for the procurement code from Go To Team. And in
2 reviewing a number of those documents and
3 Mr. Petrano was going through those and ultimately
4 looked at that one; and as we looked at it, we
5 noticed that the text in the middle is kind of
6 eschewed down to the side and it's in a different
7 font than the rest of the document and that document
8 is printed with an accounting software. And we
9 realized that the accounting software couldn't print
10 that document; there's no way for it to print it.
11 It just could not do that. It could not change the
12 font like that. It cannot change the numbering like
13 that. And we also realized that the text in the
14 middle to the 5300-dollars is in the default font
15 for Word and Outlook that you normally would have.
16 And so what it appears to, what appears to have been
17 done there is that somebody took the original
18 estimate, added up to the 5300-dollars, and scotch
19 taped that on there, and then ran it through the
20 copier. And the other thing we are able tell as
21 well is that the logo is washed out which also
22 indicated that it was washed through a copier.
23 Additionally, if you look at the text of that
24 particular document it was as if someone was copying
25 the text from the original two estimates and didn't

1 get the text right. It says postproduction
2 addition, whereas, the original one said
3 postproduction editing. Postproduction addition
4 doesn't make any sense. It says two days of
5 shooting with a camera man and high definition
6 camera and audio gear, and the original one said
7 high definition camera and audio gear. High
8 definition camera and audio gear is not a thing. So
9 we went to the vendor, to Go To Team, and we said is
10 this your estimate, is this your document, and they
11 said, no, that's not ours, we couldn't make that if
12 we wanted to, our software won't do it. So
13 ultimately, she submitted this false and fictitious
14 document, again, to cover up what had already been
15 done and that was the payment of this campaign
16 video.

17 And just real quick, I know in this
18 particular case our motives have been questioned to
19 some extent. And I think this is a valid point to
20 show that when we look at cases like this and we
21 realize that we have a case where it appears as
22 someone had intentionally and knowingly violated the
23 law; but like in other cases that we've had recently
24 our motives get questioned, our integrity gets
25 questioned, sand gets thrown in our face. But the

1 problem was, was that not only do we know we had a
2 valid case but the more we looked, the more we
3 found. And if, because people throw sand in our
4 face we were to just slink away, (a) we would not be
5 doing our job. But secondly, that would become M.O,
6 all you'd have to do is just throw sand in the face
7 of the Attorney General's Office and SLED and they
8 will slink away. And if that were case, then none
9 of these cases would ever get prosecuted, and we
10 wouldn't be doing our duty and we wouldn't be doing
11 our job. The reality was, is that the more we
12 looked, the more we continued to find.

13 So, ultimately these allegations were
14 brought to our attention, and SLED goes to the
15 District and said, we'd like a copy of that campaign
16 video and they're like, what video, we don't have a
17 video. And so the District doesn't have it. And we
18 go to the campaign and they're saying, well, we
19 never had any, we never had it, we never had any
20 involvement with this. And we go to the
21 videographer, Bennett. He says, I don't have a copy
22 of it. And so we finally go to the owner and low
23 and behold, finally they find a backup copy
24 somewhere on a server. So we get that video, we see
25 what's on the video, we read the emails as to how it

1 was created, and we know at that point we've got
2 something we're gonna have to deal with here, we've
3 got a case of somebody intentionally violating the
4 law.

5 Ms. Kovach says in her interviews that she
6 gave this video to the campaign and it was at their
7 request. And again, they say, we had nothing to do
8 with this and we've never seen it and we never had
9 it. So SLED interviews Ms. Kovach again on
10 November 22nd, 2013, and asks her about paying
11 Nelson Printing for those Yes For School signs that
12 were held in the video; and the ones where she said
13 earlier when she paid the invoice, she said, well, I
14 can't pay this unless you take Yes for Schools out
15 of the invoice. And Ms. Kovach says, well, I
16 prepared an invoice dated October 2nd, 2012, for the
17 campaign to reimburse the District and I'll send it
18 to you. And of course, we receive it on about
19 November 25th, 2013, three days after that SLED
20 interview. But the problem is, is again, her
21 secretary says, I don't recall ever seeing that
22 document at the time, I don't recall ever seeing
23 that invoice. The Campaign says, I don't recall
24 ever seeing that invoice. And as we looked at the
25 District servers that document does not appear until

1 November 25th, 2013, even though it's dated
2 October 2nd, 2012 at the appropriate time during the
3 campaign. And indeed, we were able to find a backup
4 of Ms. Kovach's server from February of 2013, and
5 that document was not on that backup either, but it
6 did show up in November of 2013 after she was being
7 interviewed by SLED. So that is the second false
8 and fictitious document that was alleged in the
9 original charges that we presented.

10 So she ultimately at that particular, at
11 that particular interview on November 22nd, 2013,
12 she gives SLED a detailed timeline about the video;
13 and she says, well, I started getting estimates
14 before the shoot in early September. She says, I
15 picked the lowest of the estimates as I'm required
16 to. She says, that I made sure that the
17 videographer knew that they, that the campaign is
18 only to get unused excess footage. I made sure
19 that, myself, that I looked at it, that footage in
20 those two individual videos was completely separate
21 and distinct and that I verified that myself. And
22 none of that is true at all. The campaign video
23 came first, and the only difference between the
24 campaign video and the subsequent District video is
25 that the District video just doesn't have all the

1 kids yelling Yes for Schools in it. Other than that
2 it's the same exact video, same exact footage, same
3 music, same everything.

4 So ultimately, Your Honor, she knew the
5 law. She was in control of this campaign. She knew
6 this was good for her career but she got frustrated
7 because it wasn't going the way that she wanted and
8 so she knowingly broke the law. She used government
9 resources to advocate for the Yes for Schools
10 campaign, and then she engaged in a cover up and in
11 lies a misrepresentation of both during and after in
12 order to cover up what she had done. And that's the
13 factual basis, not only for the misconduct in
14 office, for using her government funds to advocate
15 for the campaign and then covering up with
16 dishonesty, as well as underlying substantive
17 offense of using governmental resources to advocate
18 a campaign.

19 THE COURT: Ms. Kovach, you agree with the
20 facts as stated by the attorney general?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Tell me in your own words what
23 you did that broke the law.

24 THE DEFENDANT: I did my job at the
25 discretion of the leadership of the school district

1 with the leading counsel and the leadership of
2 district as expected of me and filled my, fulfilled
3 all of my obligations to those purposes at their
4 discretion.

5 THE COURT: So you're telling me you did
6 nothing wrong?

7 MR. THEOS: Your Honor, if I may.

8 THE COURT: Yes, sir.

9 (Attorney and defendant confer.)

10 THE COURT: If you want to plead guilty in
11 front of me, then you're gonna have to tell me in
12 your words what you did that was -- if you don't
13 think you broke the law, then we're not here for a
14 plea. We will proceed to try this case on the 21st
15 of September. If you're here to plead guilty then
16 you're gonna tell me what you did that broke the
17 law.

18 THE DEFENDANT: In doing my job as
19 directed I violated the law that I am guilty to.

20 THE COURT: How did you violate the law?
21 Did you lie? Did you use resources that you
22 shouldn't have? What did you do?

23 THE DEFENDANT: By using resources to
24 promote school district and its agenda of passing
25 the referendum.

1 THE COURT: Are you, in fact, guilty of
2 misconduct in office?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Are you, in fact, guilty of
5 using public funds to influence an election?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And you understand that I
8 think each of these carries up to a ten year
9 sentence; is that correct?

10 MR. WATERS: No, sir, the misconduct is a
11 common law misdemeanor. It's 0 to ten years, Your
12 Honor. Your Honor, the ethics act offense is up to
13 one year and/or a fine up to five hundred percent of
14 the amount of anything that should have been
15 reported is how it's written in the statute.

16 THE COURT: And y'all's interpretation of
17 that would be that it would be roughly 5300-dollars?

18 MR. WATERS: 5300-dollars is the amount of
19 the video. The 259-dollars is the signs so if you
20 do five hundred percent of that, somewhat over
21 2600-dollars which is would be the total amount.
22 And let me, I can calculate that exact for you Your
23 Honor if you give me one —

24 THE COURT: Let me go ahead and question
25 her. You understand that I'm not making a

1 recommendation, but I'm fully within my rights to
2 sentence you if I want to run them consecutively to
3 a 11 years in jail and a 26,000-dollar fine, you
4 understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Knowing that, you still want
7 to plead guilty?

8 THE DEFENDANT: Yes, sir.

9 MR. WATERS: Your Honor, that amount would
10 be maximum under the statute under our
11 interpretation would be, for a fine, would be
12 27,796-dollars and that would be five hundred
13 percent of the 5300-dollars for the video, plus the
14 \$259.20 for the signs. Your Honor, just real quick,
15 Mr. Petrano, this doesn't change anything but
16 Mr. Petrano said I had the dates wrong on the
17 backup, and then the subsequent backup, but the
18 realty is the same. There's a backup in October of
19 2012 after all these events and then a subsequent
20 backup in February 14. But the point I was making
21 was valid; I just mixed up the dates.

22 THE COURT: All right, I understand.

23 So Ms. Kovach, you fully understand the
24 charges you're pleading guilty to and the potential
25 consequences of this plea?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You understand that when you
3 plead guilty you're waiving certain constitutional
4 rights. The first right you waive, of course, your
5 right against self-incrimination. In this great
6 country you will never be required to come in and
7 testify against yourself, however, when you plead
8 guilty you're doing that. You understand?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: So you wish to waive your
11 right against self-incrimination and continue with
12 this plea today?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You're also waiving your right
15 to have a jury trial. In a jury trial twelve
16 citizens of Berkeley County would be selected and
17 only after they have heard evidence of your guilt
18 beyond a reasonable doubt that you'd be convicted.
19 During the course of the trial if you decided not to
20 testify, then I would explain to the jurors they
21 couldn't hold that against you. Further, Mr. Theos
22 could artfully cross-examine the witnesses presented
23 by the State, could call witnesses on your behalf,
24 and could raise legal defenses that could possibly
25 result in you being exonerated. When you plead

1 guilty you don't get to ask any questions about the
2 evidence, and the State doesn't have to prove
3 anything. Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: I need for you to speak loud
6 enough for my court reporter to hear you.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And you wish to waive your
9 right to have a jury trial and confront the
10 witnesses against you?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Has anybody threatened you in
13 any way to get you to plead guilty?

14 THE DEFENDANT: No, sir.

15 THE COURT: Has anybody promised you
16 anything to get you to plead guilty?

17 THE DEFENDANT: No, sir.

18 THE COURT: Is the only reason that you're
19 pleading guilty to the use of public funds to
20 influence an election and misconduct in office is
21 because you are actually guilty of those charges?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Are you satisfied with the
24 services of Mr. Theos?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Has he done everything that
2 you asked him to do?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Has he done anything that you
5 wished he had not have done?

6 THE DEFENDANT: No, sir.

7 THE COURT: And do you need anymore time
8 to speak to Mr. Theos?

9 THE DEFENDANT: No, sir.

10 THE COURT: Have you understood all of my
11 questions today?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you have any questions for
14 the Court?

15 THE DEFENDANT: No, sir.

16 THE COURT: And you understand if you
17 change your mind about your decision to plead guilty
18 or the sentence that I give you, you will only have
19 ten days in which to file an appeal?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. Under indictment
22 2014-GS-08-266 charging you with use of public funds
23 to influence an election, how do you, Amy Kovach,
24 plead, guilty or not guilty?

25 THE DEFENDANT: Guilty.

1 THE COURT: Under indictment 2015-GS-08-
2 1073 charging you, Amy Kovach, with misconduct in
3 office, how do you plead, guilty or not guilty?

4 THE DEFENDANT: Guilty.

5 THE COURT: All right. I find there's
6 sufficient factual basis for the plea. I find the
7 defendant has entered into it freely, voluntarily,
8 knowingly. She has had the advice of counsel who
9 she says is well pleased, I will accept the plea.
10 What is her criminal history?

11 MR. WATERS: There is none, Your Honor.

12 THE COURT: Anything further from the
13 State?

14 MR. WATERS: Your Honor, you've heard the
15 facts and circumstances, and we would just ask you
16 to issue a sentence you deem appropriate in your
17 discretion.

18 THE COURT: Mr. Theos.

19 MR. THEOS: Yes, sir, may it please the
20 Court. Judge, Amy is 44 years old. She's born and
21 raised in Ohio. Her mother was a schoolteacher,
22 father was a payroll of cost accountant with a
23 corporation called Brush-Wellman Corporation for 35
24 years and retired. She attended Fremont Cross High
25 School in Michigan, I'm sorry, Ohio. She was

1 student counsel president. She was in the National
2 Honor Society. She was secretary of that society.
3 She was in the marching band. She was the section
4 leader. She was in a multitude of other
5 extracurricular activities and clubs, including
6 student government where she represented the school
7 on a national level and the only representative from
8 that school. She was on the cross country team.
9 She graduated with honors in 1989. Thereafter,
10 Judge, she attended Ohio University in Athens, Ohio.
11 She graduated with a major in journalism and public
12 relations, a minor in economics, with a 3.6 GPA and
13 graduated sum cum laude. She graduated in 1993.
14 Several years later after having two children and
15 when her husband Chris was out of law school she,
16 she worked toward and obtained her Master's in
17 business from Kent State University.

18 Judge, her employment record is impeccable
19 as you heard Mr. Waters she's got no criminal
20 history, not even a traffic citation. She has lived
21 an exemplary life. She has lived a completely clean
22 and appropriate life and contributed immensely to
23 not only to her family in the communities that she's
24 lived in; but she's also done outstanding work for
25 every, for every employer she has ever been engaged

1 an employment with. Her first job out of college,
2 Your Honor, with McDonalds Corporation in Chicago.
3 At the time Chris, whom she had met earlier, Chris
4 was in law school and they decided to marry so in
5 1994 they did that, but she moved to Cleveland from
6 Chicago because of that marriage. At that time she
7 was, because of her credentials and her work
8 history, she was able to secure a good job with the
9 Benefits Group, which is an insurance provider.
10 Throughout the first few years in their marriage
11 especially when Chris was in law school she was the
12 sole breadwinner for family, sole provider for the
13 family. She then went on to work with Avery
14 Dennison Corporation, and at age 35 she was the
15 youngest executive there. And this was 1995, and
16 she was earning in excess of a hundred thousand
17 dollars a year extensively, internationally. She
18 was a valued employee. She did an outstanding job,
19 received numerous rewards, accolades, etc. As I
20 told you in 2005, in 2005 she earned her Masters
21 degree and it was right after, soon after she had
22 her first two daughters. She has three daughters,
23 beautiful daughters, ages 16, 10 and 7 — Leo,
24 Lindsay, and Lacey. Lacey was born a short time
25 after her she attained her Master's degree.

1 Your Honor, in 2008 she and Chris, her
2 husband, and Chris is here in the courtroom seated
3 on the front row. She and her husband made a
4 decision to relocate and that decision was to
5 relocate to the Tri-County area, the Charleston,
6 Berkeley, Dorchester area. She accepted a job with
7 Meadwestvaco and they moved to Daniel Island where
8 they still live. She served as Meadwestvaco's
9 liaison with the Charleston Metro Chamber of
10 Commerce. She was on the board of directors of the
11 education foundation, and that's where, in fact, she
12 met Doctor Thompson. At the time Doctor Thompson
13 was the associate superintendent. He later became
14 the superintendent. In 2008 she left Meadwestvaco
15 — I'm sorry, 2011, Your Honor, she left
16 Meadwestvaco. At the time she was offered multiple
17 other jobs in Seattle, Washington, Knoxville,
18 Tennessee, Cleveland, Ohio. And those jobs, the
19 salary range in those jobs — and I say that not —
20 I say that because she ultimately accepted the job
21 with Berkeley County school district for far less,
22 for far less income; but those jobs she was offered,
23 the salary ranges were 150 to 200,000-dollars. But
24 she and her husband and her family had relocated
25 here. They loved the Tri-County area. They wanted

1 to stay here. They preferred to stay here. And
2 they decided — Chris was working with a law firm —
3 and they decided that whatever it took to stay in
4 this area that they would do. Rather than search
5 out other jobs in the private sector though Amy
6 decided that, offered a position by Doctor Thompson
7 who was then the superintendent for the District,
8 Amy decided that in spite of the salary cut of a
9 hundred thousand dollars plus that she ---

10 THE COURT: She's actually done pretty
11 good though 'cause she's been getting paid all along
12 on that video.

13 MR. THEOS: Well, she's been getting paid.
14 To say she's done pretty good otherwise would be a
15 mischaracterization.

16 THE COURT: I mean, she's now pleading
17 guilty telling me she's done these things knowing
18 all along while she's been getting paid by the
19 school district. How long was she getting paid?

20 MR. WATERS: She was indicted initially in
21 September of 2013, I believe that's correct.

22 MR. THEOS: That's not ---

23 THE COURT: So she's paid for roughly two
24 years.

25 MR. THEOS: That's in February of 2014,

1 Your Honor, she was indicted.

2 MR. WATERS: I apologize, that's correct,
3 February 11, 2014.

4 THE COURT: So a year-and-a-half she been
5 getting paid for work for the school district
6 knowing she's been guilty of those things.

7 MR. THEOS: Your Honor, a lot has happened
8 during that time frame that has affected, that
9 affected her decision as to whether or not to enter
10 a guilty plea or not, outside forces that were
11 beyond her control; but personal, professional, as
12 well as legal issues associated with the case. And
13 I now you're relatively new in the case, but there
14 was a decision related to legal issues that was
15 rendered in December of 2013 by Judge Young -- I'm
16 sorry, 2014, by Judge Young, the other Judge Young,
17 Roger Young.

18 THE COURT: The younger judge.

19 MR. THEOS: Roger Young. The other judge
20 and slightly younger Judge Young, and as well as
21 additional indictments. So all of those things
22 certainly played into the decision, the delay in the
23 decision, and I certainly would ask the Court not to
24 hold that against Ms. Kovach in anyway. As you
25 know, clients, certainly defendants in criminal

1 cases, they should listen to their lawyer and they
2 should comply with their lawyer's advice and
3 recommendations. And in light of these other
4 factors, in particular the indictments that continue
5 to come that you're aware of, as well as these
6 outside issues that were beyond her control, the
7 decision was delayed to some extent. But again,
8 Your Honor, she's here entering this guilty plea
9 freely and voluntarily as we said and she's
10 accepting full responsibility for it so I want to
11 make sure that that above all else is clear to the
12 Court.

13 Your Honor, in May of 2011 at the request
14 of Doctor Thompson she was, she accepted a job offer
15 with Berkeley County school district; and that job
16 offer, that job was interim coordinator of, interim
17 coordinator of community relations. It was, it
18 wasn't a part-time position per se, but it was a 35
19 hour per week position. It was a one year, a one
20 year job. The contract called for her to, her
21 position to end at the end of June of 2012, so she
22 hadn't planned on remaining on with the school
23 district. However, the person, the director of
24 communications at the time or I believe the title
25 was public information officer, that that person

1 resigned. With that resignation she was offered the
2 position of director of communications for Berkeley
3 County school district. She accepted it because she
4 believed that it was important to work for the
5 school district, important to give back to the
6 community, important to, especially since her
7 children were all in the public school system.
8 Again, it was — pay wasn't the issue. She resigned
9 herself to the fact she was going to make a lot less
10 than she could in the private sector; but again, she
11 wanted, she enjoyed work she had done on a part-time
12 basis on that contract for a year, and she wanted to
13 continue on.

14 Your Honor, not to make any excuses
15 whatsoever and please don't misconstrue this as an
16 excuse; but when Ms. Kovach was hired as the
17 director of communications, one of the things that
18 was told to her was that they really wanted her to
19 focus on this referendum that had not yet been based
20 places on the ballot but that was one of their, that
21 was to be one of her primary areas of focus and
22 concentration. In and of itself that's not, that
23 didn't create any problems and didn't create any
24 potential for impropriety so to speak; but what
25 happened is, she was asked to do more than that.

1 She was also asked to be on and be actively involved
2 with the actual campaign itself so within the school
3 district she was working, she was working on the
4 referendum with certain boundaries as you read and
5 as Mr. Waters indicated; but she was also wearing a
6 second hat, and that hat was of a person integrally
7 involved with the campaign. Unfortunately, with
8 that dual role and the wearing of two hats as you've
9 heard a great deal about in our last hearing from
10 the AG as well as for me, there's an inherent
11 conflict. I would like to think, Your Honor, that
12 we would not be here at all if she wasn't asked to
13 do both of those things. Again, I don't offer that
14 as an excuse and Ms. Kovach does not, does not blame
15 her situation and her predicament on that, on the
16 wearing of those two hats. But what's began as the
17 35, 35 hour per week job of evolved into a 60 to 80
18 hour per week dual job and dual role. And as
19 Mr. Waters said, at some point she was, she was not
20 only handling her job as a public relations and
21 director of communications; but she was ostensibly
22 running, in essence, running the campaign as well
23 and reporting those things. Now again, we don't
24 offer that as an excuse but that's where this
25 conduct arose, this misconduct arose. It was in an

1 effort, it was in an effort to fulfill both rolls.
2 Did she cross the line? She's entered a guilty plea
3 to it, Your Honor, she crossed that line. Was that
4 the initial intent? The initial intent was to do
5 her job and then to fulfill both roles; but in her
6 zeal and aggressiveness to do both things to her
7 fullest extent, the line was crossed and she's
8 admitted that and she's testified responsibility for
9 it.

10 You've heard and we've all heard in rare
11 cases and the AG office has prosecuted cases
12 involving misconduct in office regarding ethics
13 violations; and we all know that the common thread
14 in those cases is one thing, it's greed, and money.
15 That's the common thread. Ms. Kovach did not
16 receive a penny for any of this. There was no
17 embezzlement. There was no misappropriation to for
18 personal gain of any funds. I understand —

19 THE COURT: Well, the personal gain of
20 doing this well and continuing on with her job and
21 getting promotion of —

22 MR. THEOS: Well, there were no promotions
23 Your Honor. She didn't receive any promotions. And
24 you are right though, the satisfaction of being I
25 guess judged by, judged by the outcome of the

1 referendum and whether she did her job well. But
2 that's — regardless of the misconduct that's how
3 she's functioned all her life was to do the job as
4 best she could and not necessarily to receive
5 accolades and commendations, just the satisfaction
6 of knowing she did whenever job well. That said,
7 again, she's here acknowledging her responsibility
8 accepting responsibility for crossing that line and
9 doing those things that have brought her before you.

10 But I wanted to make clear that, as we all
11 know, these cases normally -- and I don't know that
12 I've ever seen a case that didn't involve money with
13 these sorts of violations. To the contrary, Your
14 Honor, for the last almost three years now because
15 this investigation began long ago and the ballot was
16 voted on in 2012, the investigation began soon
17 thereafter. Since that time Ms. Kovach has -- it's
18 been very difficult for her and her family. Again,
19 understanding that she's entered a guilty plea,
20 accepted responsibility for those actions,
21 nonetheless, Your Honor, it's been torturous for her
22 and her family. She's been condemned. She's been
23 an outcast in the community. She has been, her
24 children have been accosted in school. They have
25 been ridiculed by fellow classmates that her mother

1 was going to prison, that she's a criminal. She's
2 been accosted in grocery stores by people she
3 doesn't know. She's been threatened. I can't, I
4 can't fully explain the impact that it's had on her
5 and her family. Again, that is no excuse for what
6 happened, but there has been suffering. There has
7 been, there has been punishment exacted upon her
8 based — even though she had not entered a guilty
9 plea or not been found guilty, there was a
10 presumption of guilt, as we all know tends to
11 happen, especially when something is reported as
12 often as this was. And at last count, excluding
13 what may be reported today or tomorrow, I believe it
14 was up to somewhere in the neighborhood of 26 or 27
15 articles in our local newspaper, not to mention
16 what's been on television so she's been the subject
17 of great scrutiny and public condemnation, Your
18 Honor, and it's taken a toll.

19 But what I will say about Amy, Your Honor,
20 is that nonetheless she's continued to contribute to
21 the community. Now she hasn't talked about remorse.
22 She hasn't apologized in the public arena; and I
23 take, I take the blame or the credit for that. I
24 mean, we just don't allow our clients to say
25 anything of course, and she's honored that. But

1 what she's done is much more significant than
2 claiming to be remorseful, claiming to be
3 apologetic. She's demonstrated remorse. She's
4 demonstrated rehabilitation. She's demonstrated her
5 desire to do good deeds. And I'm gonna, if I may,
6 I'll read to you what she's done since she's been
7 let — she's suspended with pay but she can't, can't
8 find work. In fact, some of the work that she was
9 volunteering to do, those companies, those entities,
10 told her that they just didn't feel comfortable with
11 it because charges were pending against her. So
12 even when she's begun to do things without pay it's
13 had an impact on her. And as Your Honor knows it
14 will continue to have an impact on her with these,
15 with these pleas. But Your Honor, she's taught yoga
16 and self-esteem classes to disadvantaged children.
17 She's taught free yoga classes. All this is free of
18 course, she hasn't received any compensation.
19 Classes to Berkeley County teachers and staff every
20 Monday evening in Goose Creek. She's taught
21 community yoga classes in Charleston. She's
22 volunteered with the Hanahan marching band Booster
23 Club and she currently serves as its president. She
24 volunteered, she's volunteered two weeks this summer
25 of this past year at the Coastal Carolina fair on

1 behalf of the Marching Band Booster club. This
2 summer she provided breakfast at her own expense to
3 the marching band when they were in summer camp.
4 She's taught yoga classes to the Hanahan Marching
5 Band. She's very involved in her church. She was
6 involved in church before; this is not new found
7 religion. And she's continued to be very involved.
8 She's got the support of all of her fellow church
9 members, the support of her family of course, and
10 those friends, those true friends that have remained
11 close with her throughout that have been very
12 supportive.

13 Your Honor, we — there are a few people
14 here but we could have filled this courtroom with
15 people; but as is Ms. Kovach's nature, she didn't
16 want that. Her desire was to come in here, accept
17 responsibility, enter these guilty pleas, not put
18 her friends and her family members beyond her
19 husband to, I guess to the ordeal of having to
20 witness this because we had — I can't tell you how
21 many offers of people to come in here and speak on
22 her behalf; but again, I credit her that she did not
23 want to impose on those folks. She did not think it
24 was fair, so to speak.

25 Your Honor, she's here without any history

1 of any impropriety whatsoever, criminal or
2 otherwise. She's never been disciplined in any way
3 by any employer she's had, any school she's
4 attended. She's lived an exemplary life. This
5 blemish, this blemish, this misconduct will
6 create — blemish is an understatement. It will
7 create a mark on her, on her history, on her resume,
8 on her life that is really cannot be erased; and so
9 there will be a continued a lifelong effect of this.

10 You know, Judge, most of these cases that
11 we read about, these sorts of cases in which people
12 have actually benefited financially like the
13 politicians and the other governmental employees,
14 their sentences are, their sentences are
15 probationary sentences. I would ask you to consider
16 something a little unusual because, because of the
17 fact that there was no personal, financial, or
18 monetary gain. And Your Honor may not be inclined
19 to do it, but I think under the circumstances given
20 not just the nature of this matter and the lack of
21 gain and her history, clean, very clean history, is
22 that you consider a fine only, rather than
23 probation. I know you might not be inclined to do
24 that, but I don't believe a probationary sentence
25 would serve any purpose other than punishment

1 itself. And you may believe that that's warranted
2 under the circumstances and we certainly, we
3 certainly defer to your ---

4 THE COURT: I imagine some people think
5 she ought get another year.

6 MR. THEOS: Well, you know Judge, you say
7 that, but I at this time that anybody feels that
8 way, I really do. I haven't interviewed anybody but
9 I would be absolutely shocked if anybody thought she
10 should receive a sentence of incarceration. We
11 would ask you to consider a fine only, and I've
12 never stood before a Court and asked for just a fine
13 only; but I think under the circumstances it's
14 certainly, it's certainly justified. Whether you
15 agree with it or not, it may be a different matter.

16 I would take issue with the amount of
17 money that the State contends is at issue. The
18 259-dollars was paid so although it was an initial
19 loss, it was paid. The 5300-dollars, even in the
20 State's, in the State's case, and not just in
21 Ms. Kovach's case but as attested to in grand jury
22 proceedings in Doctor Thompson's case, even from the
23 State's investigators that there were two videos.
24 One was a campaign video. One was a promotional
25 video for the District. The total price was

1 5300-dollars, and the testimony before the State
2 grand jury was that it was a two-for-one deal. So I
3 would ask you to, meaning that was the cost, she
4 just, you received two videos for the price of one.
5 So if you feel that that should be factored into the
6 setting of a fine I would ask you to consider it on
7 a fifty percent basis because there was a second
8 video that was produced, and certainly the School
9 District received the benefit of that promotional
10 video.

11 And the other thing I would say, Your
12 Honor, and it doesn't change the facts related to
13 the second video; but the second video, the only
14 time it was aired, it was aired at principal
15 meeting. Their monthly principals meetings and the
16 principals attend the meeting and some other staff
17 members, and I think some board members attend as
18 well. But that campaign video Ms. Kovach showed at
19 the, at that principals meeting. That's the only
20 time it was ever aired. It was not aired as a
21 commercial or at any other time.

22 So Your Honor, in closing I would just
23 again urge you to fashion a sentence that's fair,
24 that's reasonable considering all the facts and
25 circumstances, and also factors into very

1 prominently her history, her lack of any sort of
2 impropriety prior, prior to this, and also factor
3 into what the future holds for her because, again,
4 this will in and of itself without any sentence from
5 the Court, this in and of itself will have a
6 significant impact on her future employability as
7 well as her future reputation in the community. I
8 wish it weren't so; unfortunately it will be.

9 Your Honor, Randall Stoney is present.
10 Randall is a partner in a law firm in Charleston,
11 Barnwell Whaley firm; and he is, he'd like to
12 address the Court, Your Honor. He's — he probably
13 wouldn't tell you this, but he is a, he's the former
14 deputy solicitor here in Berkeley County. That was
15 years ago and but, he's the employer, one of the
16 partners that employs Chris Kovach who is
17 Ms. Kovach's husband.

18 THE COURT: Come forward.

19 MR. STONEY: Thank you, Your Honor, may it
20 please the Court. I appreciate the opportunity and
21 certainly sorry to be here under these
22 circumstances. As Jerry has said, Chris works with
23 us at Barnwell Whaley. He and I have had
24 opportunity to work together very closely on several
25 cases. And I cannot say enough good things about

1 not on Chris's work product but Chris as a person
2 and Amy and their family. I have not been involved
3 in this case other than vicariously in hearing what
4 is going on and watching it affect Chris and Amy;
5 and I can tell you unequivocally that they have
6 suffered terribly over the last two years that this
7 thing has been pending. This is the sort of thing
8 that is a nightmare for people like this, Your
9 Honor. They're honorable people. They love their
10 family; they love each other. They're active in the
11 community. And I certainly understand the State's
12 position and I've heard what they said and I've
13 heard what Jerry said; but I just, I just ask the
14 Court to consider that. And certainly your position
15 in imposing sentence is a difficult one; but I can
16 think of no better circumstance than to be lenient
17 and to have mercy on these people because, as I say,
18 this thing has been devastating. It's been
19 something that they've lived with constantly. It's
20 been in the press and, as I say, I have, I
21 personally witnessed the effect that it's had on
22 these people. And so I just thank you for your
23 time.

24 THE COURT: Thank you.

25 MR. STONEY: And appreciate your

1 consideration.

2 THE COURT: Thank you. Anyone else like
3 to say anything?

4 MR. THEOS: No, sir.

5 THE COURT: Anything further, Mr. Theos?

6 MR. THEOS: No, sir.

7 THE COURT: Mr. Waters.

8 MR. WATERS: Your Honor, just very
9 briefly, and I appreciate the Defense's
10 presentation. I just wanted to reiterate rather
11 than just take, you know, issues with little minor
12 things here and there and I know Your Honor has
13 already heard lot in this case; but you know, we had
14 these do's and don'ts right here. It's very clear.
15 There's plenty of things that a person in this
16 position could do legally, and they actually had
17 training. In fact, Amy was the one, Ms. Kovach was
18 the one that wrote on the company email about
19 training they had on May of 2012 about it. It talks
20 about that line between advocacy and just providing
21 information. And that's not getting overzealous
22 when you take your P card, your District card, and
23 start buying campaign materials with it and then,
24 you know, engaging in misrepresentations and telling
25 people to change logos or to change invoices, to

1 remove logos, to forging documents, to all sorts of
2 things like that. And I just, I just want to make
3 sure that you were clear that that's the kind of
4 conduct that the State has presented today.

5 THE COURT: All right.

6 MR. WATERS: Thank you, Your Honor.

7 THE COURT: What I'm gonna do is we're
8 gonna take a 15 minute recess. I'm gonna look over
9 some of this. We'll take a 15 minute recess and
10 come back and I'll give you the sentence of
11 Ms. Kovach.

12 (WHEREUPON, a recess was taken from the
13 proceedings.)

14 THE COURT: All right, I've considered the
15 presentations given by the attorney general and
16 Mr. Theos; and even in my limited exposure to this
17 case was started a month ago, what I see here is
18 lies, lies, and lies. Ms. Kovach from what I see
19 ignored every warning sign that was available to
20 her. Again, she lied to every opportunity reading
21 one's emails somebody warned her that this was not
22 the right thing to do. The email says all fixed.
23 Well, it's not all fixed. Her actions included,
24 again, lies, fabrication of document, and at every
25 opportunity she chose deceit over the truth. The

1 public servants have the duty and the obligation to
2 not just be good as the rest of the public, but to
3 behave better. Thank God most public servants do
4 that, and most of them serve very proudly. But
5 Ms. Kovach has not upheld her position and tried to
6 sway the will of the public who hired her in her
7 position to try to sway an election, and I take that
8 very seriously.

9 And I also look at her past history. She
10 has not had any type of criminal history and I'm not
11 sure that a jail sentence would serve needs for
12 justice for anyone in this case. The sentence of
13 the Court, please stand, under indictment 2015 --
14 2014-GS-08-266, under use of public funds to
15 influence election, the sentence is that you be
16 committed to the State Department of Corrections for
17 a period of one year and that you pay a fine of
18 25,000-dollars. That is suspended upon your paying
19 a 25,000-dollar fine and serving two years
20 probation. On the indictment 2015-GS-08-1073, on
21 the charge of misconduct in office, the sentence is
22 that you be committed to the State Department of
23 Corrections for a period of five years, and that is
24 suspended upon two years probation. These sentences
25 shall run concurrently. Thank you.

1 MR. THEOS: Your Honor, with respect to
2 that fine, you haven't indicated how that will be
3 paid.

4 THE COURT: She may pay it however they
5 work it out during her probationary period. It
6 needs to be paid during those two years that she's
7 on probation.

8
9
10 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE }

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding was transcribed by me for Melissa Winfield Singletary through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 7th day of October, 2015.

S/Frances B. Ray

FRANCES B. RAY, RPR

Edits from Theos - added to Z

drive 10/13/15

Kovach notes
12586

para 90 - may not be accurate -
check facts

para 80 + other places criminal ^{defense} attorney

90 - JT killed Amy; Amy submitted; PCSB verimp.

(91) Look @ letter

AG provided opin

instructed not to verimp.

106
min def. etty

by a forensic analyst/scientist

- opin → not backdated

and expert → inconclusive

108 and were later den not "had to be"

109 - delete - false

001035

110 - poss and it was never in her poss "

111 - did prov. info reg creation & origin -
dispute as to whether
info
accurate /
refuted it

111 - 2nd sent → leave at

114 - del. "and ~~there~~ the AG of "
This ind. was false / unfounded as
was the first ind. and was
ref. down. "

115 → just and was it was not PI

had a 5-went from Hedrick

got it from
Amy

~~116~~

✓ 119 "Was and is the auth"

✓ 121 were being made,

✓ 122 therefore she could not

✓ 124 ~~the~~ the case

✓ 166 front row → at PI's crim case hearings

✓ 180 check facts → Jerry thinks Laura on
admin leave for 5 months but
is as emp. 061037

180 → and were w/ him.

not and had to
be w/ him

Wherefore
Defendants, not Defendant

Nancy Bloodgood

From: Nancy Bloodgood
Sent: Tuesday, October 13, 2015 5:27 PM
To: call.kovach@yahoo.com
Subject: Complaint
Attachments: Complaint.docx

Finally! ☺ Jerry has suggested a few minor changes and I have made all of his and Joe Griffith's, so I feel comfortable- It'll go out in the mail tomorrow morning. If you see something tonight that looks wrong let me know. Nancy

meeting w/ Howell - 10-27-15

Karen Whitley

not had motivations
teacher - long years
quiet, soft-spoken
bad in BC jury
Hole in concert

She told Josh she couldn't
get involved.

Josh will say that
will return to teaching

→ What did she do?
early mediation

Amend to not include her.

Josh - d of
~~the~~ Gilchrist

assoc w/

Haynesworth

Linker

Boyd

→ tried not
to jeop. her.

≠ member of
Rep. Party

forgery = problem

→ fires get up.

Nancy Bloodgood

From: Joseph Griffith <joegriffithjr@hotmail.com>
Sent: Wednesday, November 18, 2015 4:28 PM
To: Nancy Bloodgood
Subject: Kovach suit

Nancy, do you have a time-frame on your/Amy's decision as to whether or not to drop the suit?

I spoke to Josh Whitley and he is not going to drop his 3rd party claim against Rodney unless the Kovach suit against him and his mother are dropped.

As Jerry and I stated to you last week, for the reasons we discussed, I do believe it would be in Amy's best interest to drop the suit.

I spoke to Jerry again today and he is deeply worried about Amy's emotional/mental state should the suit be maintained and litigated.

I also believe that the AG's Office would look favorably upon a dismissal as well.

Please let me know as soon as you can. Thank you!

Joseph

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Nancy Bloodgood

From: Joseph Griffith <joegriffithjr@hotmail.com>
Sent: Friday, November 20, 2015 4:57 PM
To: Nancy Bloodgood; 'Michael O'Connell'
Subject: Kovach Lawsuit

Nancy / Mike: Have you guys come to a decision on the Kovach litigation?
I am very worried that once the litigation escalates with answers, motions, subpoenas, discovery requests, etc..., that a resolution is not going to be obtainable.

FWIW, I spoke to Josh Whitley yesterday, and he seems very interested in a quick global resolution.

Thanks.

Joseph

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Nancy Bloodgood

From: Joseph Griffith <joegriffithjr@hotmail.com>
Sent: Monday, November 23, 2015 11:17 AM
To: Nancy Bloodgood
Subject: RE: Amy Kovach

Nancy, Thank you for the update.

Joseph

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From: Nancy Bloodgood [<mailto:nbloodgood@fosterfoster.com>]
Sent: Monday, November 23, 2015 11:15 AM
To: Joseph Griffith (joegriffithjr@hotmail.com) <joegriffithjr@hotmail.com>
Subject: Amy Kovach

Joe, I am dismissing the entire suit today. (I'm also no longer representing Ms. Kovach.) Nancy

Nancy Bloodgood, Partner
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nbloodgood@fosterfoster.com

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF BERKELEY) Court of General Sessions
3) Case No. 2015-GS-08-01073
4 STATE OF SOUTH CAROLINA)
5 vs.) Transcript of Record
6 AMY KOVACH,)
7 Defendant.)
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DATE: February 8, 2016

9 B E F O R E:

10 The Honorable W. Jeffrey Young

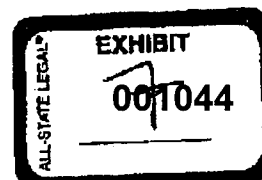
11

12 A P P E A R A N C E:

13 S. CREIGHTON WATERS and BRIAN T. PETRANO
14 Attorneys for the State

15 ANDREW J. SAVAGE, III, CHERYL L. SAVAGE,
16 and DONALD McCUNE
17 Attorneys for the Defendant

18 Karen V. Andersen, RMR, CRR
19 Circuit Court Reporter



INDEX

EXHIBITS

	Exhibit	Description	Identification	Evidence
1				
2				
3	S-1	8/28/15 Plea Transcript	4	
4	State's Exh. No. 1B	Facebook Records	4	
5	State's Exh. 1C	SLED Interview with Amy Kovach	4	
6	S-2	Probation Terms	4	
7	State's Exh. 2B	Defendant's Affidavit	4	
8	State's Exh. 3	All e-mails	4	
9	State's Exh. 7	E-Mail chain and price estimate from Go To Team	4	
10	State's Exh. 7B	Invoice dated 9/12/12	4	
11	State's Exh. 7C	Law Enforcements' Statements	4	
12	State's Exh. 7D	Video	4	
13	State's Exh. 37B	District Files	4	
14	State's Exh. 37C	E-mail dated 10/10/12 and 10/8/12	4	
15	State's Exh. 42	Search warrant dated 12/6/13 and Affidavit	4	
16	State's Exh. 42B	Search Warrant signed 5/12/15	5	
17	State's Exh. 42C	Search Warrant dated 7/28/15	5	
18	State's	Network Folder	5	

001045

1	Exh. 50		
2	State's	July 2013 estimates	5
	Exh. 51		
3			
4	State's	Facebook Records	5
	Exh. 53		
5	State's	E-mails regarding video	5
	Exh. 56		
6			
7			
8			
9			
10			
11			
12			
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1 (State's Exhibit No. 1, August 28, 2015, Transcript
2 of Record, was marked for identification.)

3 (State's Exhibit No. 1B, Facebook Records, was
4 marked for identification.)

5 (State's Exhibit No. 1C, SLED Interview with Amy
6 Kovach, was marked for identification.)

7 (State's Exhibit No. 2A, Probation Terms, was
8 marked for identification.)

9 (State's Exhibit No. 2B, Defendant's Affidavit, was
10 marked for identification.)

11 (State's Exhibit No. 3, all e-mails, was marked for
12 identification.)

13 (State's Exhibit No. 7, E-Mail chain and price
14 estimate from Go To Team, was marked for identification.)

15 (State's Exhibit 7B, Invoice dated 9/12/12, was
16 marked for identification.)

17 (State's Exhibit 7C, law enforcement statements,
18 was marked for identification.)

19 (State's Exhibit 7D, Video, was marked for
20 identification.)

21 (State's Exhibit 37B, District files, was marked
22 for identification.)

23 (State's Exhibit 37C, E-mail dated 10/10/12 and
24 10/8/12, was marked for identification.)

25 (State's Exhibit 42, Search warrant dated 12/6/13

1 and Affidavit, was marked for identification.),

2 (State's Exhibit 42B, Search Warrant signed
3 5/12/15, was marked for identification.)

4 (State's Exhibit 42C, Search Warrant dated 7/28/15,
5 was marked for identification.)

6 (State's Exhibit 50, Network folder, was marked for
7 identification.)

8 (State's Exhibit 51, July 2013 estimates, was
9 marked for identification.)

10 (State's Exhibit 53, Facebook records, was marked
11 for identification.)

12 (State's Exhibit 56, E-mails regarding video, was
13 marked for identification.)

14 MR. WATERS: We are here today on a rule to show
15 cause that Your Honor signed on November 20th, 2015, in the
16 matter of Ms. Amy Kovach.

17 As Your Honor recalls, Ms. Kovach pled guilty before
18 Your Honor on August 28th, 2015. She pled guilty to
19 misconduct in office, an ethics act offense. And during that
20 particular plea, she ultimately, in questioning by Your
21 Honor, agreed to the truth of the allegations and to a very
22 extensive factual basis that was set forward by the State.

23 Since that time, since her plea, she subsequently
24 signed an affidavit as part of a grievance procedure which
25 materially contradicted the matters to which she admitted at

1 the guilty plea, indeed, which are supported by the
2 overwhelming evidence in this case.

3 And, Your Honor, we have, in fact, marked a number
4 of exhibits, pre-marked a number of exhibits that support the
5 truth of the factual allegations to which she ultimately pled
6 guilty.

7 She also filed a lawsuit that called into question
8 the integrity of this process and called into question the
9 integrity of the actors in this particular process.

10 So at that point, the State filed a petition with
11 Your Honor to see whether or not Ms. Kovach should be held in
12 contempt, whether she should be held in direct contempt for
13 essentially lying to Your Honor during the guilty plea or
14 whether she should be held in constructive contempt for
15 making a mockery of her solemn plea of guilty and of the
16 criminal justice system with her conduct and actions after
17 that particular plea.

18 Again, it's the State's position that she did not
19 lie to Your Honor, because, again, that is consistent with
20 the overwhelming evidence. And we are prepared to go through
21 that again with Your Honor today with the supporting
22 documentation and witnesses, if need be. However, because
23 her statements do call into question the integrity of this
24 process, we thought it was important that we file this
25 petition and that there be a hearing before Your Honor so you

1 can address those particular claims.

2 So that's just kind of to set the table. I do
3 believe the defense probably has something they would like to
4 address before we proceed.

5 MR. SAVAGE: Good morning, Judge.

6 THE COURT: Good morning, Mr. Savage.

7 MR. SAVAGE: You remember Amy Kovach?

8 THE COURT: I do.

9 MR. SAVAGE: And Donald McCune, who works in my
10 office, and Cheryl Savage, who also works with me.

11 We appreciate this opportunity. But, Judge, we're a
12 little disappointed that we are here today. And for the
13 reasons that we are here attributable to Ms. Kovach, we
14 humbly apologize to this Court and we ask this Court to
15 forgive us.

16 Before we get into that, I did want to say that this
17 rule that was served on us in late December, we filed a
18 notice of appearance December 30th. Your Honor was gracious
19 enough to give us a continuance from the original court date
20 of January 4th. During that time, we had used that time to
21 thoroughly investigate this matter.

22 We submit to the jurisdiction of this court in
23 accord with the order of this Court setting this hearing for
24 today in Charleston. So we don't have any objection to that
25 at all.

1 But, Judge, during that time period, that month or
2 so that we had to investigate this case, we found some pretty
3 horrible situations occurred, both prior to the sentencing
4 hearing that Your Honor held in Berkeley County, as well as
5 post-sentencing matters involving members of the legal
6 profession. It is clear from our analysis that the time that
7 a civil suit was filed, no due diligence, none, was
8 performed.

9 The advice given to Ms. Kovach for her affidavit and
10 her filing of the civil case was done without a clear
11 understanding of what the attorney general had alleged and
12 the statements that the attorney general made at the
13 sentencing hearing and the statements even that Ms. Kovach
14 made to Your Honor in Berkeley County.

15 Once it was discovered that the transcript of the
16 proceeding had not even been read prior to the filing, it
17 wasn't even prepared prior to the filing of the civil suit,
18 Ms. Kovach withdrew, and we believe perjured herself from any
19 misstatement she had made in the context of the civil suit.
20 That civil suit has been withdrawn, as we understand it, in
21 all respects except for a counter-suit with one of the
22 individuals involved.

23 THE COURT: But on her side, it's been withdrawn
24 with prejudice?

25 MR. SAVAGE: That is correct. It was done

1 immediately and brought to the attention of the attorneys
2 involved that the civil suit was inconsistent with the
3 matters that were addressed by this Court at the sentencing
4 hearing. So for that, Ms. Kovach extends her humble
5 apologies to this Court with the explanation that she did
6 what she did on the advice of counsel, who we believe may
7 have advised Ms. Kovach not to perform due diligence that's
8 required in one case instead of filing an action in this
9 courtroom.

10 Ms. Kovach, please.

11 THE COURT: Good morning.

12 MR. SAVAGE: You've heard the statements I've
13 offered to the Court.

14 MS. KOVACH: Yes, sir.

15 MR. SAVAGE: Will you repeat those in a way that
16 comes from your heart?

17 THE COURT: Before you do, please place her under
18 oath.

19 (Whereupon, Amy Kovach is sworn.)

20 THE CLERK: Please state your full name.

21 THE COURT: We may need to have a microphone. She
22 speaks very softly and we want the Court to hear what she has
23 to say.

24 MR. SAVAGE: Ms. Kovach, you heard the presentation
25 that I made on your behalf to the Court?

1 MS. KOVACH: Yes, sir.

2 THE COURT: Is it true in all respects?

3 MS. KOVACH: Yes, sir.

4 MR. SAVAGE: Will you kindly repeat the analysis
5 that you and Don and I, your husband, have done over the past
6 30 days before the filing of the civil suit?

7 MS. KOVACH: Over the past 30 days of filing the
8 civil suit, we worked with attorney Andy Savage and attorney
9 Don McKuhn to better understand the actions taken by my civil
10 lawyer, Nancy Bloodgood, on my behalf, to better understand
11 the error that she made in filing the suit without having
12 done proper due diligence and without the advantage of having
13 a transcript from the August 28th hearing.

14 MR. SAVAGE: Actually, the error was made by you
15 based on the erroneous legal representation that you had; is
16 that correct? You were the one who filed the suit.

17 MS. KOVACH: I filed the suit at the advice of Nancy
18 Bloodgood, my counsel, yes.

19 THE COURT: Ms. Kovach, you understand that, again,
20 you would have had to have signed the lawsuit; is that
21 correct?

22 MS. KOVACH: Yes, sir.

23 THE COURT: And you signed that lawsuit?

24 MS. KOVACH: Yes, sir.

25 THE COURT: You are now wishing to -- and that

1 lawsuit had information that was contrary to the statements
2 that you made during your plea; is that correct?

3 MR. SAVAGE: Do you understand the question? That
4 the lawsuit contained the information that was inconsistent
5 with what you had said to this Court? I can't answer that
6 for you.

7 MS. KOVACH: The lawsuit had inconsistencies,
8 correct.

9 THE COURT: What you told me on the day of your plea
10 to the criminal charges was the truth; is that correct?

11 MS. KOVACH: That's correct.

12 THE COURT: You are guilty of those charges; is that
13 correct?

14 MS. KOVACH: Yes, sir.

15 THE COURT: Okay. And you've now withdrawn your
16 lawsuit with prejudice; is that correct?

17 MS. KOVACH: Yes, sir.

18 THE COURT: And you will file no further lawsuits on
19 anything involved in this matter; is that correct?

20 MR. SAVAGE: We hadn't discussed that, but I can
21 assure you our firm will not file any.

22 MS. KOVACH: I would have to speak with my husband
23 and determine our --

24 THE COURT: Well, I guess by this, I cannot take --
25 yes, sir.

1 MR. MCCUNE: Can we approach for a moment?

2 THE COURT: Yes.

3 (Whereupon, a bench conference takes place off the
4 record.)

5 MR. SAVAGE: Ms. Kovach understands that she will
6 not aggrieve to this Court. She will not file another
7 lawsuit based on the same factual basis as this one.

8 Is that correct?

9 MS. KOVACH: That's correct.

10 THE COURT: Okay. With this statement, this
11 resolves this matter; is that correct?

12 MR. WATERS: Your Honor, obviously, with her
13 statements sort of renouncing that the allegations that were
14 made, if Your Honor is satisfied, then the State is satisfied
15 that the process has been vindicated.

16 THE COURT: Okay. I've been involved with this case
17 for a long time. And I've seen it come to a crescendo. And
18 I, of all people, thought it was over with in August. I am
19 glad to now know that it is over with. And I will accept her
20 apology to this Court.

21 I understand that you can get bad advice out there.
22 But that, ultimately, it's going to fall on your shoulders,
23 as it always does. You can't always just blame the lawyer
24 because it's your lawsuit. It was your name on the lawsuit.

25 So I'm glad we were able to resolve this without a

1 lengthy hearing today. And so for the purposes of the rule
2 to show cause, this matter is truncated.

3 Thank you. Good luck in the future. Court is
4 adjourned.

5 (Whereupon, the proceedings are adjourned.)

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CERTIFICATE OF REPORTER

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I, Karen V. Andersen, Registered Merit Reporter
certified Realtime Reporter, and Notary Public for the State
of South Carolina at Large, do hereby certify that the
foregoing transcript is a true, accurate and complete
Transcript of Record of the proceedings.

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 9th day of February, 2016, at Charleston,
Charleston County, South Carolina.

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Amy Kovach,

Plaintiff,

vs.

The Berkeley County School District;
Joshua S. Whitley; Terry Hardesty; Scott
Marino; Karen Whitley in her individual
capacity; and The Berkeley County
Republican Party, LLC,

Defendants.

Joshua S. Whitley,

Defendant/Counterclaimant

vs.

Amy Kovach,

Plaintiff/Counterclaim
Defendant.

Joshua S. Whitley,

Defendant/Third-Party
Plaintiff.

vs.

Rodney Thompson,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS FOR

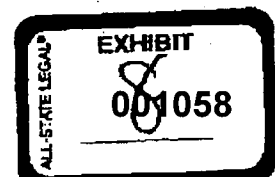
THE NINTH JUDICIAL CIRCUIT

Case No.: 2015-CP-8- 2380

15 NOV 2015 PM 4:43
CLERK OF COURT
BERKELEY COUNTY, S.C.

STIPULATION OF
DISMISSAL
WITHOUT PREJUDICE
FOR DEFENDANT
KAREN WHITLEY

NB



Pursuant to Rule 41(a)(1) of the South Carolina Rules of Civil Procedure, Plaintiff Amy Kovach hereby voluntarily dismisses all claims asserted or that might have been asserted in this action without prejudice.

Dated this 23rd day of November, 2015.

Nancy Bloodgood

FOSTER LAW FIRM, L.L.C.
Nancy Bloodgood, SC Bar No.: 6459
Lucy C. Sanders, SC Bar No.: 78169
895 Island Park Drive, Suite 202
Daniel Island, SC 29492
Telephone: (843) 972-0313
Facsimile: (888) 519-0934
Email: nbloodgood@fosterfoster.com
lsanders@fosterfoster.com
Attorneys for Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Amy Kovach,

Plaintiff,

vs.

The Berkeley County School District,
Joshua S. Whitley, Terry Hardesty, Scott
Marino, Karen Whitley in her Individual
Capacity, and The Berkeley County
Republican Party,

Defendants.

) IN THE COURT OF COMMON PLEAS

) C.A. No.: 2015-CP-08-2380

**SUPPLEMENTAL AFFIDAVIT OF
WM. HOWELL MORRISON**

FILED
JAN 13 AM 11:50
CLERK OF COURT
BERKELEY COUNTY, SC

Personally appeared before me Wm. Howell Morrison, who being duly sworn, swears and affirms as follows:

1. I submit this Supplemental Affidavit pursuant to the *Order Granting Defendants Joshua S. Whitley's And Karen Whitley's Motions for Sanctions* filed on October 24, 2016, in order to update the parties and Court as to relevant developments in this action involving my client Dr. Karen Whitley.

2. This Supplemental Affidavit is not intended to alter the substance of the prior affidavit submitted by me on November 2, 2016 ("Original Affidavit"), but rather to report on change in factual circumstances that ameliorates the legal position of my client.

3. As discussed in my Original Affidavit, prior to mid-December 2016, the Berkeley County School District ("BCSD") refused Dr. Whitley's several requests for reimbursement of the costs of defending the instant legal action pursuant to South Carolina Code Ann. § 59-17-110. Recently, however, after additional discussions with the attorneys for BCSD regarding the potential for imminent legal action against BCSD (*See Original Affidavit at ¶ 7*), and after the

HM

recent election in Berkeley County changing the personnel on the board of the BCSD, the School District's elected board altered its position and settled all potential claims of Dr. Whitley against the BCSD, including a portion of Karen Whitley's costs of defense in the instant action, in a confidential settlement agreement and release.

4. The confidential settlement agreement reached between Dr. Whitley and the BCSD is only between Dr. Whitley and the BCSD and did not release Plaintiff or Ms. Bloodgood, neither of whom is a party to the agreement.

5. The total settlement paid to Dr. Whitley offsets much of the cost of her total representation in the instant action and includes an undifferentiated amount paid by BCSD in consideration for Dr. Whitley's covenant not to sue BCSD for potential employment torts and/or to sue on a statutory claim against individual members of BCSD who have failed to seek reimbursement from Amy Kovach and Rodney Thompson of taxpayer monies spent on the defense of their criminal indictments. Both of those individuals have now been convicted through guilty pleas, thereby invalidating their prior contentions that they acted in good faith—the statutory prerequisite for their respective demands that BCSD reimburse their criminal defenses.

6. Now, in an effort to bring the pending sanctions motion to a close, Dr. Whitley has authorized Haynsworth Sinkler Boyd, P.A. to apply full credit of the total amount paid by BCSD in the recent settlement of several potential claims by Dr. Whitley toward the costs of this firm's representation of Dr. Whitley in this instant case. As a result of Dr. Whitley's settlement with the BCSD, therefore, she now amends the amount she seeks in reimbursement of her defense costs, as well as the sanctions and damages payable by Kovach and Bloodgood under Rule 11 and the Frivolous Civil Proceedings Sanctions Act ("FCPSA"), to the total sum of Fifteen Thousand (\$15,000.00) dollars.

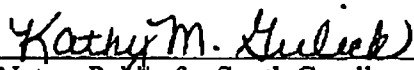
7. This substantially reduced demand from the total amount incurred to date in attorneys' fees provides *significant unearned financial credit* directly to Plaintiff and Nancy Bloodgood from a settlement to which they were not parties, and to which they did not contribute. Additionally, this amount now requested from the Court by Dr. Whitley also represents a compromise of the remaining unreimbursed costs of representation incurred by Karen Whitley to date in this action for her defense including her pursuit of Rule 11 sanctions and FCPSA liability.¹ Accordingly, affiant respectfully submits that the reduced figure of \$15,000 is a fair award as sanctions against the parties whom the Court has ruled to be jointly and severally responsible for this bad faith legal action.

Further Affiant Saith Naught.

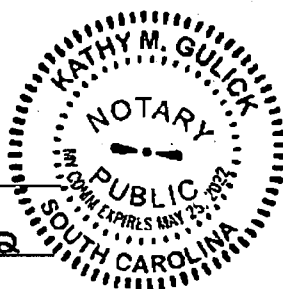


Wm. Howell Morrison

Sworn to before me this 9th
day of January 9, 2017.


Notary Public for South Carolina

My Commission Expires: 5/25/22



DM: 4653134

¹ In the event either Ms. Bloodgood and/or Ms. Kovach should pursue appeal(s) to which Karen Whitley must respond, Dr. Whitley will pursue additional costs of representation necessarily incurred to affirm this Court's orders.

EXHIBIT A

001063

134 MEETING STREET, THIRD FLOOR (29401-2240)
POST OFFICE BOX 340 (29402-0340)
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TELEPHONE 843.722.3386
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WM. HOWELL MORRISON
DIRECT DIAL NUMBER 843.720.4405
hmorrison@hsblawfirm.com

January 10, 2017

The Honorable Jean Hoefer Toal
c/o Hon. Mary P. Brown
Berkeley County Clerk of Court
P.O. Box 219
Moncks Corner, SC 29461
Email: awaring@sccourts.org

Re: *Amy Kovach v. Berkeley County School District, et al.*
Case No. 15-CP-8-2380
HSB File: 35395-2

Dear Chief Justice Toal:

Pertinent to the upcoming sanctions/damages hearing in this matter on January 17 in Charleston and the Court's instructions that Defendants segregate their billing entries, I attach the following for the Court's consideration along with the explanation in this letter.

1. *Supplemental Affidavit of Wm. Howell Morrison* (Exh. A) — updating the parties and Court as to developments in this action affecting the sanctions amount sought by Dr. Whitley; and
2. *Updated Legal Bill* (Exh. B)—Haynsworth Sinkler Boyd, P.A.'s updated billing for this matter through 1/9/17 augmenting Exh. A to the Morrison Affidavit filed November 2, 2016.

Some explanation is necessary regarding the segregation of the time entries on our firm's billings. Of course, we believe that Dr. Whitley is entitled to recover her attorneys' fees and costs incurred in prosecuting her claim for sanctions as part of the costs of defending this frivolous action. This issue was decided in Ex Parte Gregory relied on in the Court's *Order Granting Defendants Joshua S. Whitley's and Karen Whitley's Motions For Sanctions* of October 21, 2016. The Gregory court held that the FCPSA "clearly allows respondent to recover the fees and costs that were incurred in seeking sanctions pursuant to the Act." 378 S.C. 430, 663 S.E.2d at 52 (2008).

At the Court's instruction, we have endeavored to segregate the billing between time spent defending and time spent seeking sanctions under Rule 11 and the FCPSA. The Court will recall that the movants had to force a procedurally proper and final dismissal of Dr. Whitley from the Plaintiff and Ms. Bloodgood, as that was not their actual offer. (The purported "Stipulation of Dismissal" was offered *without prejudice* and drafted under the wrong section of SCRCP 41.)

At this point, differentiating our billing time entries between defense of the frivolous case and pursuit of FCPSA and Rule 11 sanctions is an inexact exercise. Those components of the representation were often handled simultaneously such that our firm's normal billing entries often did not segregate its work in that manner. None the less, our good faith effort follows:

- October 15, 2015 – December 1, 2015: From the initiation of the lawsuit until the purported Stipulation of Dismissal without prejudice was offered to Dr. Whitley, one hundred percent (100%) of the billing was incurred defending the frivolous action. This represents \$31,838.50 of our firm's total billing.
- December 2, 2015 – May 19, 2016: During this five and one-half month period, the majority of the billing was incurred insisting on the procedurally clear and proper dismissal of Dr. Whitley, with prejudice, from the frivolous lawsuit. Ms. Bloodgood's effort to dismiss Dr. Whitley without prejudice, which the Order of October 21, 2016, recognized as improper, required additional work and considerable time to secure a full and final dismissal. The very likely reason for Ms. Bloodgood's reluctance to dismiss with prejudice was her hope to avoid sanctions. Because the Rule 11 and the Frivolous Proceedings Act claims motion were pending at this time, some of the time spent during this time period was certainly "in pursuit of sanctions." In our judgment, however, seventy-five percent (75%) of our time during this period was spent defending the frivolous action and seeking a proper dismissal. This translates to an additional \$9,768.38 of our firm's total bill to the client.
- August 10, 2016 – current: Most of the representation during this latest period was spent prosecuting the sanctions motion. However, we believe it is reasonable to assign some portion of this billing to defending the action. (It was not until the hearing on September 16, 2016, that Plaintiff's attorney consented on the record to dismissal of Dr. Whitley with prejudice.) Accordingly, we estimate that twenty-five percent (25%) of the total billing from this period can fairly be justified as "defense." This comes to \$13,466.98 of our firm's billings to Dr. Whitley.

In total, we calculate that \$55,073.86 out of the costs of representing Dr. Whitley can reasonably be said to be in the "defense of this action," as distinct from the pursuit of sanctions. Although, the reality is that it was the pursuit of sanctions that ultimately forced the prejudicial dismissal of the frivolous claims against Dr. Whitley.

Finally, as further described in my *Supplemental Affidavit* submitted herewith, Dr. Whitley is now actually requesting only a total of \$15,000 for her costs of representation in this matter and in full satisfaction of her claim for sanctions. This deeply-compromised amount reflects application of unearned but full credit to Plaintiff and Ms. Bloodgood for the amount recently reimbursed to Dr. Whitley by the Berkeley County School District as explained in the *Supplemental Affidavit*.

Haynsworth
Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

We look forward to the upcoming hearing, which we hope can achieve a conclusion to this matter.

Yours respectfully,



Wm. Howell Morrison

WHM/kmg

Enclosures

cc (via email): Dawes Cooke, Esq.
Katie Monoc, Esq.
Josh Whitley, Esq.
Jeffrey Breit, Esq.

DM: 4741060

EXHIBIT B

001067

Kovach, Amy v. The Berkeley County School District; Joshua S. Whitley; Terry Hardesty; Scott Marino; Karen Whitley in her individual capacity and The Berkeley County Republican Party, LLC

Invoice No. 1745481

TIMEKEEPER SUMMARY			
Timekeeper	Hours	Rate	Amount
William H Morrison - Shareholder	21.50	385.00	8,277.50
Perry T. MacLennan - Associate	8.90	215.00	1,913.50
Total All Staff	30.40		\$10,191.00

FEE DETAIL				
Date	Atty	Description	Hours	Amount
11/01/16	WHM	Complete fee application process; Telephone conference with Mr. Whitley regarding proposed "settlement"; Letter to clerk and court; Final review of legal invoices	1.20	462.00
11/04/16	WHM	Legal research on appeal of attorneys' fee sanctions; Telephone call to L. Evans and e-mail to D. Cooke for conferral regarding appeal intentions of Kovach and Bloodgood; Draft final to BCSD's attorneys re fee reimbursement and assignment offer; Telephone conference with J. Whitley regarding K. Whitley's interest	1.50	577.50
11/07/16	WHM	Edits to demand letter to BCSD Board; Confer with client regarding same; Confer with J. Whitley regarding all aspects	1.50	577.50
11/07/16	PTM	Review and analyze Bloodgood's motion for reconsideration; start drafting response in opposition.	0.60	129.00
11/07/16	PTM	Draft response in opposition to Bloodgood motion for reconsideration.	0.60	129.00
11/08/16	WHM	Letter to Justice Toal regarding Form 4 Dismissal; Revise/edit Reply to Motion for Reconsideration; Finalize demand letter to R. Tyson	1.60	616.00
11/08/16	PTM	Draft response in opposition to Bloodgood motion for reconsideration.	2.80	602.00
11/08/16	PTM	Review H. Morrison edits to Karen response to Bloodgood reconsideration memo; revise and edit; review transcript; emails with J. Whitley re: same.	0.80	172.00
11/08/16	PTM	Draft letter to Chief Justice Toal re: Motion to Dismiss.	0.40	86.00
11/11/16	WHM	Ongoing work seeking order for attorneys' fees; E-mails with Court and opposing counsel regarding hearings and motions	0.70	269.50
11/11/16	PTM	Review D. Cooke and K. Monoc emails; review case cited by D. Cooke and additional research re: same; calls and emails with H. Morrison re: same; draft email to J. Toal clerk re: same.	0.80	172.00
11/15/16	WHM	E-mail from Judge Toal with directions and case citation	0.40	154.00
11/15/16	PTM	legal fees research re: pee dee health care and gregory discussion; discussions with H. Morrison re: same.	0.30	64.50
11/17/16	WHM	Telephone conference with BCSD attorney regarding settlement overture; Telephone conference with K. Whitley regarding same; Review legal bills and draft settlement proposal to R. Tyson and BCSD	1.00	385.00

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January 9, 2017

Kovach, Amy v. The Berkeley County School District; Joshua S. Whitley; Terry Hardesty; Scott Marino; Karen Whitley in her individual capacity and The Berkeley County Republican Party, LLC

Invoice No. 1745481

11/21/16	WHM	Extended conference with J. Whitley regarding developments; Exchange of e-mails with R. Dorsey regarding BCSD's rejection of settlement demand	1.30	500.50
11/22/16	WHM	E-mails with BCSD attorney regarding negotiations; Telephone conference with same	0.50	192.50
12/14/16	WHM	Calls with R. Tyson, et al. regarding Board vote and settlement with Mrs. Whitley	0.30	115.50
12/19/16	WHM	Final negotiations with BCSD for partial payment of defense costs and edits to Settlement Agreement; Settlement offer to attorneys for Kovach/Bloodgood	0.80	308.00
12/20/16	WHM	Telephone call from K. Whitley regarding status of negotiations; Telephone conference with D. Cooke regarding settlement negotiations; Review final Release from R. Tyson; E-mail to J. Whitley regarding Childs' and Halligan revelations; Forward approved Release to K. Whitley for signature; Receipt and deliver signed Release to R. Tyson; Work on new response memo to court	1.20	462.00
12/21/16	WHM	Telephone conference with Mr. Whitley regarding preparation for second sanctions hearing	0.50	192.50
12/26/16	WHM	Draft Second Affidavit for filing prior to upcoming hearing on sanctions	1.30	500.50
12/27/16	WHM	Continue work on Supplemental Affidavit; Planning with client regarding same and filings/arguments for upcoming second hearing on sanctions	2.40	924.00
12/27/16	PTM	Review and provide comment on H. Morrison affidavit for court.	0.30	64.50
12/28/16	WHM	Continue drafting Amended Affidavit; Memo to P. MacLennan regarding completing briefing for hearing	0.80	308.00
12/28/16	PTM	Communications with H. Morrison re: preparation for damages hearing.	0.30	64.50
01/03/17	WHM	Legal bill segregation; E-correspondence regarding confirmation of hearing and respond; Revise/edit letter to Court.	1.00	385.00
01/03/17	PTM	Prepare for damages hearing - draft letter to Court explaining bill and segregation of time; review bill and segregate time; review H. Morrison draft affidavit on reduced request.	1.70	365.50
01/06/17	WHM	Revisions to response to Court in preparation for hearing; Legal research on computation of attorneys' fees	1.50	577.50
01/06/17	PTM	Preparation for damages hearing- discussion with H. Morrison re: affidavit and segregation of legal bills.	0.30	64.50
01/09/17	WHM	Finalize affidavit and letter to Court; incorporate recent time into total fees for hearing; prepare for hearing; file and serve affidavit.	2.00	770.00
Total Hours and Fees			30.40	\$ 10,191.00

EXPENSE RECAP

Date	Description	Amount
11/02/16	Courier Service - 10/18/16 Barnwell Whaley	\$ 5.54
11/02/16	Courier Service - 10/18/16 Smith Moore Leatherwood	6.08
11/02/16	Courier Service - 11/1/16 Smith Moore Leatherwood	6.08
	Photocopies - 63 pages @ 0.10	6.30

35395.0002

Kovach, Amy v. The Berkeley County School District; Joshua S. Whitley; Terry Hardesty; Scott Marino; Karen Whitley in her individual capacity and The Berkeley County Republican Party, LLC

January 9, 2017

Invoice No. 1745481

Postage

3.77

Total Expenses

\$ 27.77

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	C.A. NO: 2015-CP-08-2380
Amy Kovach,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	PLAINTIFF'S MOTION FOR
	)	RECONSIDERATION AND
Joshua S. Whitley and	)	MEMORANDUM IN SUPPORT
Karen Whitley,	)	
	)	
Defendants.	)	

15
 2017 JAN 18 AM 9:54
 MARY P. BROWN
 CLERK OF COURT
 BERKELEY COUNTY, SC
 FILED

Plaintiff, Amy Kovach, by and through counsel, pursuant to Rules 52, 59, and 60 of the South Carolina Rules of Civil Procedure, respectfully requests that this Honorable Court reconsider its previously entered Order dated October 24, 2016. Alternatively, she submits the following points for consideration as to the amount of sanctions to be awarded against her.

Plaintiff respectfully adopts and incorporates by reference the motion for reconsideration previously filed by Attorney Nancy Bloodgood. As Plaintiff has argued previously, the fact that she pleaded guilty to violating the law does not as a matter of law foreclose any possible civil claim against the Defendants herein. *See, e.g., Haring v. Prosise*, 462 U.S. 306, 103 S.Ct. 2368 (1983).¹ The claims that Ms. Bloodgood advanced on Plaintiff's behalf did not depend upon her innocence of the underlying criminal charges, and the claims were supportable under existing law or its reasonable extension. Further, a lawsuit is "not frivolous merely because the facts have

¹ "It is clear from the foregoing that the doctrine of collateral estoppel would not be invoked in this case by the Virginia courts for at least three reasons. First, the legality of the search of Prosise's apartment was not actually litigated in the criminal proceedings. Indeed, no issue was 'actually litigated' in the state proceeding since Prosise declined to contest his guilt in any way. Second, the criminal proceedings did not actually decide against Prosise any issue on which he must prevail in order to establish his § 1983 claim. The only question raised by the criminal indictment and determined by Prosise's guilty plea in Arlington Circuit Court was whether Prosise unlawfully engaged in the manufacture of a controlled substance. This question is simply irrelevant to the legality of the search under the Fourth Amendment or to Prosise's right to compensation from state officials under § 1983.

Finally, none of the issues in the § 1983 action could have been 'necessarily' determined in the criminal proceeding. Specifically, a determination that the county police officers engaged in no illegal police conduct would not have been essential to the trial court's acceptance of Prosise's guilty plea. Indeed, a determination that the search of Prosise's apartment was illegal would have been entirely irrelevant in the context of the guilty plea proceeding." *Haring v. Prosise*, 462 U.S. 306, 316, 103 S.Ct. 2368, 76 L.Ed.2d 595 (1983)

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not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. What is required of lawyers, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions." Comment 2 to South Carolina Rule of Professional Conduct 3.1. The facts alleged against these Defendants have not been disproved; in fact, some of the essential facts have been admitted. The common thread running through the cases this Court cited for the imposition of sanctions is that there was a pattern of abusive conduct in the litigation and persistent refusal to relinquish claims that had been proven to lack merit. Such is not the case here. The Plaintiff had reason to believe that the Defendants had conspired to injure her – indeed, Defendant Josh Whitley acknowledges in his filings in support of his motion for sanctions that he initiated the criminal investigation against her. Attorney Bloodgood, an experienced employment attorney, investigated the Plaintiff's allegations and formed the professional judgment that she had meritorious claims against the Defendants, her guilty plea notwithstanding. Plaintiff's claims have never been disproved. Plaintiff agreed almost immediately to dismiss her case because of concern about how it would affect her plea agreement in her criminal case. This does not mean that her claims were frivolous. Neither Plaintiff nor Attorney Bloodgood should be sanctioned for merely filing this action.

In addition to the arguments that Attorney Bloodgood advances, Plaintiff submits the following points that the Court should consider in amending or vacating its prior order or, in the alternative, in setting the amount of sanctions against her.

A. Neither Rule 11 Nor the FCPSA Provides for Sanctions Against a Represented Party Based on Defective Legal Theories.

The Court's Order finds that, "Pursuant to several legal doctrines, no actionable claim for civil conspiracy could exist against Defendants because of Ms. Kovach's admissions under oath at the sentencing hearing." (Order pg. 15). However, the Order fails to cite any authority for its finding that a represented party can be sanctioned for her attorney's advancement of faulty legal theories. The gravamen of the Order is that the legal theories advanced in Plaintiff's Complaint were legally defective, not that the factual allegations against the Defendants were false. Indeed, no discovery has been conducted and the Court has had no opportunity to find facts. The Order cites the elements of a civil conspiracy cause of action. (Order pg. 15). It then proceeds to

001072

discount Attorney Bloodgood's argument that her theory of civil conspiracy is supported by four different reported decisions. (Order pg. 20). This is followed by an analysis of *Angus v. Burroughs & Chapin Co.*, 368 S.C. 167, 628 S.E.2d 261 (2006) and its holding that a fired county administrator could not maintain an action for civil conspiracy regarding his termination. (Order pg. 18). The Order also cites authority that, "Once a person has been criminally convicted, the person is bound by that adjudication in a subsequent civil proceeding based on the same facts underlying the criminal conviction." *Doe v. Doe*, 346 S.C. 145, 146, 551 S.E.2d 257, 258 (2001). The Order ends its analysis by stating, "There simply exists no legal basis to support the alleged civil conspiracy claim against Defendants." (Order pg. 20). The Order concludes, "There was no factual or legal basis to support the conspiracy claim, and the inference is unavoidable that improper motives on the part of Ms. Kovach and poor judgment on the part of Ms. Bloodgood drove the filing of the complaint against defendants." (Order pg. 20). While the Order places blame upon the Plaintiff for pursuing the case in the face of statements she made in her criminal proceeding, it does not explain how these statements or the guilty plea foreclose a conspiracy claim. None of the elements of Plaintiff's conspiracy claim was that she was innocent of the charges brought against her. The essence of the civil conspiracy claim was that a school district employee and board members maliciously utilized the school bond referendum and the criminal process to terminate Plaintiff's employment. In support of this claim the Complaint makes specific factual allegations, none of which have been disproved:

- a. Shortly after Dr. Rodney Thompson was hired as Superintendent, Defendant Karen Whitley was laterally transferred to a position with less authority and she had expressed dissatisfaction publically with Dr. Thompson as a result of the move. (Complaint ¶43).
- b. Upon information and belief, Defendant Karen Whitley believed one of her direct reports, Gwen Scarborough, should have been assigned Plaintiff's job responsibilities, and accordingly, Defendant Karen Whitley held a personal vendetta against Plaintiff. (Complaint ¶44).
- c. Upon information and belief, one of Defendant Karen Whitley's objectives was to cause harm and embarrassment to her supervisors, Mr. Franchini and Dr. Rodney

Thompson, so she would be able to rise in leadership at Defendant BCSD. (Complaint ¶45).

- d. Scott Marino is Defendant Joshua S. Whitley's brother-in-law. After Dr. Rodney Thompson was hired as Superintendent, Scott Marino's wife (Defendant Joshua S. Whitley's sister and Defendant Karen Whitley's daughter) did not receive a principal position from Superintendent Rodney Thompson which angered Scott Marino and Defendant Joshua S. Whitley. (Complaint ¶46).

1. Rule 11

Plaintiff asks the Court to reconsider its imposition of Rule 11 sanctions upon her for two reasons. The first reason is common to her and to Attorney Bloodgood, and it is that Plaintiff's guilty plea was not as a matter of law fatal to her conspiracy claim against the Defendants. This case is quite analogous to *Haring v. Prosise*, 462 U.S. 306, 103 S.Ct. 2368 (1983), cited above. The plaintiff there was unarguably guilty of the drug offense to which he had pleaded guilty. Yet, the Supreme Court held that he could pursue a civil claim against those who may have violated his rights in the process of developing the charges against him. Analogously to *Haring*, the Plaintiff's guilt or innocence of violating the election laws was simply not an element of her civil claim. An attorney, and her client, are afforded wide leeway in bringing an action that in the end might not be legally or factually supportable. This Court's Order is already being cited by litigants seeking to cow lawyers from zealously representing their clients in controversial cases. This is simply not an instance where a lawyer and her client have doggedly and abusively pursued a meritless claim. If left to stand, this Court's Order might well be the basis for a motion for sanctions in every case wherein a litigant voluntarily dismisses a case or withdraws a defense. This can hardly be the result contemplated by the Rules of Civil Procedure or by the Rules of Professional Conduct.

The second reason is that the Plaintiff should be protected, not punished, by Rule 11. Attorney Bloodgood -- an excellent, experienced, reputable attorney -- undertook to represent the Plaintiff's legal interests. Ms. Bloodgood's signature on the Complaint that she filed on Plaintiff's behalf was her certification that she "has read the pleading, . . . that to the best of [her] knowledge, information and belief there is good ground to support it; and that it is not interposed

for delay." Attorney Bloodgood has detailed for this Court the extensive, *independent* investigation that she conducted before she filed this suit. She does not claim, nor can this Court find, that the Plaintiff misled her in any way in laying out her factual claims. If Plaintiff's claims were legally deficient, this cannot be blamed on her. It is thus respectfully submitted that Rule 11 provides no basis to sanction the Plaintiff in this case.

2. Frivolous Civil Proceedings Sanctions Act

All of the arguments made above with regard to Rule 11 apply as well to the Frivolous Civil Proceedings Sanctions Act. Moreover, the FCPSA is even more explicit than Rule 11 that a represented litigant cannot be sanctioned for the legal insufficiency of her claims. The FCPSA does not impose upon a represented party a duty to interpret or apply the law in preparing a pleading. Indeed, Section 15-36-10(A) creates two distinct classes of persons responsible under the Act: attorneys representing parties and pro-se litigants who represent themselves. A careful reading of the statute finds that the statute is divided into two distinct phases corresponding to the life of a civil action: pleadings and dispositive motions or trials. The pleading stage is addressed in 15-36-10(A) which specifically limits the application of each subsection 1 through 4 to "*an attorney or pro se litigant*". Section 15-36-10(B)(1) states, "If a document is not signed or does not otherwise comply with this section, it must be stricken unless it is signed promptly or amended to comply with this section after the omission is called to the attention of the attorney or the party." And Section 15-36-10(B)(2) states, "If a document is signed in violation of this section, or *an attorney or pro se litigant* has violated sub-section (A)(4)², the court, upon its own motion or motion of a party, may impose upon the person in violation any sanction which the court considers just, equitable, and proper under the circumstance."

² Section 15-36-10(A)(4): An *attorney or pro se litigant* participating in a civil or administrative action or defense may be sanctioned for: (a) filing a frivolous pleading, motion or document if: (i) the person has not read the frivolous pleading, motion or document; (ii) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law; (iii) a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party; or, (iv) a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based; (b) making frivolous arguments that a reasonable attorney would believe were not warranted by the facts; or (c) making frivolous arguments that reasonable attorney would believe were not warranted under the existing law or if there is no good faith argument that exists for the extension, modification, or reversal of existing law.

During the pleading stage it is thus the attorney or a *pro se* litigant who bears responsibility under the FCPSA, not the represented party. In fact, no mention is made of any form of liability for the represented party until dispositive motion or trial. Specifically, Section 15-36-10(C) states, "At the conclusion of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a directed verdict, summary judgment, or judgment notwithstanding the verdict, upon motion of the prevailing party, the court shall proceed to determine if the claim or defense was frivolous. *An attorney, party, or pro se litigant* shall be sanctioned for a frivolous claim or defense if the court finds the attorney, party, or *pro se* litigant failed to comply with one of the following conditions:" As Chief Justice Pliecones correctly notes in his dissent in *Holmes v. E. Cooper Cmty. Hosp., Inc.*, regarding the applicability of Section 15-36-10 to a party, "In my view, subsection (C) permits the party herself to be sanctioned only where the evidence adduced at the trial, or submitted at summary judgment, reveals factual misrepresentations or omissions on the part of that party, not previously known to her attorney, which establish that the party's position in the litigation is frivolous. If the attorney learns of these facts but allows the claim or defense to continue, then she too is subject to sanctions under (C). Where the sanction rests upon facts known to both the lawyer and the party at the time the suit is brought, I would hold no sanction against the party alone is permissible under subsection (C) to authorize sanctions upon a party because her attorney's argument against legal precedent as deemed not to have been made in good faith or because the trial judge finds no substantive discovery was undertaken." In this case, the Plaintiff made no secret of her criminal conviction, either the events leading to it or her guilty plea. Indeed, Attorney Bloodgood strongly affirms that she was well aware of it when she filed the suit.

As stated in Attorney Bloodgood's Motion for Reconsideration, Section 15-36-10(J) states, "The provisions of this section shall not apply where *an attorney or pro se litigant* establishes a basis to proceed with litigation, or to assert or controvert an issue therein, that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of the existing law." (emphasis added). The import of these two provisions is clear. A represented party cannot be held liable for her counsel's interpretations of the law. It is not incumbent upon a represented party to establish a legal basis to proceed with litigation and indeed, the FCPSA by its express language in Section 15-36-10(J) does not provide for a represented party to do so. A

001076

represented party has the obligation not to make factual misrepresentations to her attorney and Ms. Kovach has not done so in this case. As observed above, no discovery has ever been conducted in this case and none of the facts pleaded against the Defendants have been disproved.

B. Plaintiff Has Never Contradicted the Statements Made in the Complaint Regarding the Specific Actions Alleged Against Defendants Joshua Whitley and Karen Whitley

In its Order, the Court focuses upon the statements of Ms. Kovach at her Contempt Hearing held on February 9, 2016. The Court specifically notes her statement that there were "inconsistencies" between the allegations in the Complaint and her guilty plea. However, no specific inconsistencies are noted in the hearing transcript. Indeed, the Order cites none that would preclude Plaintiff's conspiracy claim as a matter of law. Moreover, none relate to the allegations made against Defendants Joshua Whitley and Karen Whitley regarding civil conspiracy. As argued at length above, Plaintiff's essential claim, that the Defendants conspired to use the criminal process and other means to cause her to be fired and otherwise to injure her, did not depend in any way upon her guilt or innocence of violating state election laws. Nothing that she has said in her criminal proceedings in any way undermines her claim that the Defendants acted improperly towards her. The Attorney General, followed by these Defendants, have broadly accused the Plaintiff of repeatedly changing her story under oath, yet they cite no specific example of this. She admitted to the elements of offenses to which she pleaded guilty, and she has never wavered from those admissions. Plaintiff would respectfully ask this Court to require the Defendants to identify specifically what misrepresentations she has made, especially what representations that relate to her conspiracy claim against them. Without this, the Court should not sanction the Plaintiff for her part in the filing of this lawsuit.

C. Should the Court Impose Monetary Sanctions, the Amount Should Reflect the Mitigating Factors Described Above, in Addition to the Fact That Plaintiff Agreed To Dismiss This Action Almost Immediately After It Was Filed.

"The decision of whether to award attorney's fees pursuant to Rule 11 or the FCPSA is treated as one in equity. *S.E. Site Prep, LLC v. Atl. Coast Builders & Contractors, LLD*, 394 S.C. 97, 713 S.E.2d 650 (Ct. App. 2011). The Federal and State versions of Rule 11 are substantially similar; in fact, the State rule is based upon the pre-1983 version of the Federal rule. When a

001077

state court analyzes the purposes behind the Rule 11, interpretations from the U.S. Court of Appeals for the Fourth Circuit are instructive. *Pee Dee Health Care v. Thompson*, (S.C. App., 2016).

The primary purpose of sanctions under Rule 11 is not to compensate the prevailing party, but rather to deter future litigation abuse. *Hunter v. Earthgrains Co. Bakery*, 281 F.3d 144, 151 (4th Cir. 2002). In keeping with the rule's purpose, the least severe sanction adequate to serve the deterrence function of the rule should be imposed. *In re Kunstler*, 914 F.2d 505 (C.A.4 (N.C.), 1990). In assessing sanctions, the court should assess 4 factors: 1) the reasonableness of the opposing party's attorney fees; 2) the minimum to deter; 3) the ability to pay; and 4) factors related to the severity of the Rule 11 violation. *Id.*

1. The reasonableness of the opposing party's attorney fees.

In examining the reasonableness of attorney fees, "the injured party has a duty to mitigate costs by not overstaffing, overresearching or overdiscovering clearly meritless claims." *Id.* at 523. Plaintiff does not contest that the Court is empowered to award fees and costs for the moving parties' efforts to seek sanctions in addition to their defense of the offending claim, *see Ex Parte Gregory*, 378 S.C. 430, 663 S.E.2d 46 (2008), but in this case that would be a miscarriage of justice to do so because Defendants' efforts to seek sanctions and otherwise get their fees paid so vastly overwhelm the reasonable cost they incurred in defending the Plaintiff's claims. Plaintiff filed suit on October 15, 2015. Mr. Whitley filed his Answer and Counterclaims on November 3. Dr. Whitley filed her motion to dismiss on November 16. Within one month of filing suit, Plaintiff instructed her counsel to dismiss it (Affidavit of Christopher Kovach, para. 14). The only reason that it was not dismissed is that the Defendants objected to its dismissal. It defies the purposes underlying Rule 11 and the FCPSA to impose sanctions beyond the minimal cost the Defendants necessarily incurred before the Plaintiff agreed to dismiss this suit. To do so would send the message to litigants that, once they commence litigation, they must see it through to the bitter end. The Court should, to the contrary, encourage litigants to freely re-evaluate their position in litigation and to dismiss their claims when they see reason to do so.

2. The minimum amount necessary to deter

The minimum amount necessary to deter should be the amount necessary to prevent further misconduct and not to compensate the opposing party for the filing of the suit. *Kunstler* at 524. "It is particularly inappropriate to use sanctions as a means of driving certain attorneys out of practice." *Id.* This principle is equally applicable to litigation parties. In this case, Plaintiff has been subject to constant ridicule in the media as well as a contempt motion in her criminal case based upon the filing of this action. (See Affidavit of Christopher Kovach). She requires no further deterrence as she will not and cannot take any further action in this matter and has stated her intention not to do so. To sanction the Plaintiff further through monetary sanctions will simply serve to bankrupt her and her family as she earnestly seeks to rebuild her life. Plaintiff has already paid dearly in criminal fines and court costs and continues to do so.

3. Ability to pay

"It is hornbook law that the financial condition of the offender is an appropriate consideration in the determination of punitive damages." *Id.* at 524. In this case, the Plaintiff and her family have suffered tremendously, both financially and emotionally from the criminal proceeding and have sought to end the civil proceeding as soon as possible. (Affidavit of Christopher Kovach). The Plaintiff is currently working as a yoga instructor and health and wellness instructor for elderly nursing home residents. While these positions have provided Plaintiff with emotionally satisfying employment and allowed her to continue working to help others as she did when working for the school district, neither pursuit is financially enriching. Plaintiff's income from both pursuits amounts to less than \$1,000 per month. (*Id.*) In addition, Plaintiff has three children with all the accompanying expenses necessary to provide for them. Plaintiff has borrowed heavily in order to pay her court fines, legal fees and court costs arising out of her criminal case and the subsequent contempt proceeding. While working to repay these debts, Plaintiff's pursuit of other employment positions has been unsuccessful due to her criminal matter and the unrelenting media attention focused on her. (*Id.*)

4. Other factors

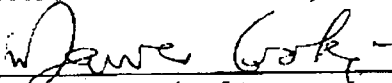
"In addition, the court may consider factors such as the offending party's history, experience, and ability, the severity of the violation, the degree to which malice or bad faith

contributed to the violation, the risk of chilling the type of litigation involved, and other factors as deemed appropriate in individual circumstances.” *Id.* at 524-5. In this case, Plaintiff has no prior history for filing any civil lawsuit for any reason. She had never before experienced a situation requiring the retention of employment counsel. Plaintiff has never spoken to the media regarding this matter, nor has she spoken publically against any party. In the instant action, it was the Plaintiff who sought the dismissal of all claims when it became evident that moving forward would serve no further purpose than further harm.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully asks this Court to reconsider its prior Order and to relieve her of sanctions in this Matter. In the alternative, she asks the Court to impose no monetary sanction, as she simply cannot afford to pay it. In the further alternative, she asks the Court to limit the sanction to the small amount that the Defendants necessarily incurred in retaining counsel before she agreed to dismiss this case.

BARNWELL WHALEY
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ATTORNEYS FOR PLAINTIFF

January 13, 2017

001080

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Amy Kovach,

Plaintiff,

vs.

Joshua S. Whitley and

Karen Whitley

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

C.A. NO: 2015-CP-08-2380

FILED
2017 JAN 18 AM 9:54
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

AFFIDAVIT OF CHRISTOPHER M. KOVACH

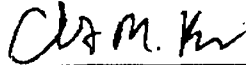
The undersigned, Christopher M. Kovach, being duly sworn, deposes and says as follows:

1. I am over the age of 18 and am competent to make this affidavit and do so on my own personal knowledge.
2. I am citizen and resident of Berkeley County, South Carolina. I am an attorney licensed to practice law in South Carolina.
3. I have been married to the Plaintiff, Amy S. Kovach for 22 years and have direct knowledge regarding the status of her employment and finances.
4. Amy S. Kovach currently maintains three part-time positions for her employment. The first is as an independent yoga and fitness instructor. The second is with the Charleston County Parks Department, and the third is with Somerby Retirement Center.
5. As a yoga and fitness instructor, she provides instruction to individuals in the practice of yoga and to elderly persons in water aerobics and low-impact exercise. At the Charleston County Parks Department, she serves as general office staff for approximately 6 hours per week, and at the Somerby Retirement Center she serves as a fitness and wellness coordinator for elderly residents for 15 hours per week.
6. Each of Amy Kovach's current positions allow her to help individuals with their fitness and well-being and, while not financially lucrative, allow her to continue with her goals in helping her community.
7. When not working, Amy Kovach devotes herself to raising our three daughters aged 17, 12 and 9.

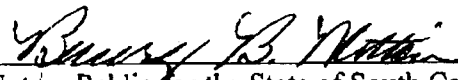
8. The sum total of gross monthly income from Amy Kovach's three part-time positions is less than \$1,000 per month before expenses, taxes and insurance. On average, her net earnings amount to approximately \$850 per month.
9. Amy Kovach has attempted to obtain additional employment but has been unsuccessful due to her criminal conviction and the extreme negative media attention surrounding it. I do not anticipate that she will regain full-time employment at a rate commensurate with her educational background at any time in the near future.
10. At least one of Amy Kovach's current employers was contacted by an unidentified individual asking that she be terminated from her employment due to her actions during the 2012 school bond referendum. This action was typical of the negative attacks our family has faced and was a continuation of the on-line vitriol exhibited against my wife on social media websites throughout the criminal investigation. It is difficult to put into words how distressful it has been for Amy to have gone from being a hard-working, law-abiding mother, wife and public servant to being the subject of a criminal prosecution. Nothing in her life prepared her for public opprobrium and humiliation that she has experienced, even to the point of being likened to a "vicious dog" by the Circuit Judge hearing her guilty plea and that of her former supervisor.
11. Due to the criminal prosecution and the subsequent fines, attorney fees and court costs, our family's savings have been depleted and significant debts have been incurred.
12. Contrary to the negative portrayal of my wife in the media and court record, she is a generous and loving person who acted at the behest and instruction of the Berkeley County School District at all times. Furthermore, she was recruited for employment by the district in 2011 and made a positive contribution to the education of the children of Berkeley County through her work on the Stuff the Bus School Supply drives and her coordination of communication efforts for the district. I have communicated with district employees who speak very highly of my wife's work at the district and miss working with her.
13. Prior to her experience of being prosecuted, Amy Kovach volunteered extensively in the non-profit community and served as the president of the Education Foundation; won the 2011 "Behind the Scenes Hero" Award from the Trident United Way; was awarded the 2009 Metanoia Volunteer of the Year Award and generally tried to promote good in her community in any way possible.
14. Within one month of filing this lawsuit, Amy instructed her attorney to dismiss all parties from the suit and, by November 22, 2015 we were informed that all dismissals had been accomplished with the exception of Defendant, Joshua Whitley, who had refused dismissal.
15. At no time prior to the November, 2015 instruction to counsel to dismiss the action was Amy Kovach or I informed that any defendant intended to pursue sanctions against Amy Kovach.

16. Amy Kovach requires no further deterrence in pursuing any further lawsuits in this matter as the subsequent threats to her freedom incurred after filing this case are sufficient to deter any further actions. She is simply attempting to put her life back together for the benefit of herself and her family.
17. I am offering this affidavit in lieu of asking Amy to testify on her own behalf because I daily observe the extreme stress that this whole matter places upon her and consequently, my family. I am sincerely concerned about her physical and mental health, and for this reason I have asked her current counsel to accept this affidavit from me (based upon my personal knowledge) rather than require Amy to provide testimony or a sworn affidavit.

Further Affiant sayeth not.


CHRISTOPHER M. KOVACH

Sworn to before me this
 day of JANUARY, 2017


Notary Public for the State of South Carolina
My Commission Expires: 3/30/21

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY) COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)

STATE,)

v.)

AMY KOVACH)

DEFENDANT.)

TRANSCRIPT OF RECORD
14-GS-08-266
15-GS-08-1073

August 28, 2015
Monks Corner, South Carolina

B E F O R E :

THE HONORABLE W. JEFFREY YOUNG, JUDGE

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

S. CREIGHTON WATERS, ESQ.
Assistant Solicitor

JERRY N. THEOS, ESQ.
Attorney for Defendant

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter
Typed for Melissa W. Singletary

001084

INDEX

	Page
Calling of the case	3
Questioning of Ms. Kovach	5
Facts given by Mr. Waters	8
Remarks by Mr. Theos	35
Remarks by Mr. Stoney	52
Sentence of the Court	55

EXHIBITS**STATE'S**

No.	Description	I.D./EVD.
1	Referendum Do's and Don'ts	3/3
2	Still video photos (15 pages)	3/3
3	Estimate of \$5300	22/22

1 (WHEREUPON, State Exhibits Nos. 1 and 2
2 were marked for identification and
3 admitted into evidence.)

4 MR. WATERS: The State calls the case of
5 State versus Amy Kovach. There are five
6 indictments. That's 2014-GS-08-266, 2014-1403,
7 2015-1072, 1073, and 1074. Ms. Kovach is present
8 with her counsel Jerry Theos. It's my understanding
9 that we're here today and Mr. Kovach intends to
10 enter a guilty plea. And in return the State is nol
11 prossing the two forgery indictments, that being,
12 1403 and 1074, as well as the perjury indictment
13 that's 1075. The defendant will be pleading as
14 indicted to the global common law misconduct in
15 office offense which covers and incorporates all of
16 the conduct that have been charged at issue, as well
17 as the original ethics indictments for use of
18 government funds to influence an election.

19 THE COURT: So let me get this straight,
20 there's just two indictments that she's pleading
21 guilty to.

22 MR. WATERS: That's correct, Your Honor.

23 THE COURT: Mr. Theos, you represent
24 Ms. Amy Sue Kovach under indictment 2014-GS-08-266
25 and 2015-GS-08-1073; is that correct?

1 MR. THEOS: That's correct, Judge.

2 THE COURT: Have you had an opportunity to
3 explain to her the charges contained in the
4 indictment, the possible punishment which she faces,
5 and her constitutional rights?

6 MR. THEOS: I have in great detail.

7 THE COURT: You think she's understood
8 what you told her?

9 MR. THEOS: Completely, Judge.

10 THE COURT: And does she intend to plead
11 guilty or not guilty?

12 MR. THEOS: She does to the two
13 indictments Mr. Waters referenced as to misdemeanor
14 indictments.

15 THE COURT: Do you agree with her
16 decision?

17 MR. THEOS: I agree with her decision.

18 THE COURT: Based upon your investigation
19 of the facts and the circumstances concerning all
20 the issues in this case, do you believe she's making
21 the right decision?

22 MR. THEOS: I believe she's making the
23 right decision and the decision that is in her best
24 interest as well.

25 THE COURT: Do you believe if this case

1 were to go to trial that there would be a
2 substantial likelihood that she'd be found guilty
3 beyond a reasonable doubt?

4 MR. THEOS: I believe that there is, there
5 would be a substantial likelihood.

6 THE COURT: Please place Ms. Kovach under
7 oath.

8 THE CLERK: Please raise your right hand.
9 WHEREUPON,

10 AMY KOVACH,
11 having been duly sworn by the Clerk, testified
12 as follows:

13 THE COURT: And I need for you to speak
14 up. We've got a court reporter who needs to hear
15 what you're saying. Ms. Kovach, it's my
16 understanding that you're wanting to plead guilty
17 today, but there's some questions I need to ask you
18 to make sure that you're entering into this plea
19 freely, voluntarily, knowingly and intelligently.
20 The first question I have is, are you under the
21 influence of alcohol or drugs today?

22 THE DEFENDANT: No, sir.

23 THE COURT: Are you taking any medication
24 that would cloud your judgment?

25 THE DEFENDANT: No, sir.

1 THE COURT: Are you aware of any physical,
2 emotional, or nervous conditions that would keep you
3 from understanding what's happening in this
4 courtroom today?

5 THE DEFENDANT: No, sir.

6 THE COURT: Now it's my understanding that
7 you want to plead guilty to these two indictments,
8 and I'm gonna read each one of them. The first one
9 is 2015-GS-08-1073, and the charge is misconduct in
10 office. And the indictment reads that: "Amy Kovach
11 did in Berkeley County from on or about January 1st,
12 2012, to on or about November 30th, 2013, while
13 serving as director of communications and community
14 relations for the Berkeley County school district
15 did willfully and unlawfully commit misconduct in
16 her public office by acts or issues of malfeasance,
17 malfeasance and misfeasance and nonfeasance in
18 breach of her duties to the public including her
19 duty of good faith, honesty, and accountability, to
20 wit, Amy Kovach, continuously used public resources
21 and time to influence the outcome of a bond
22 referendum while covering up her actions with
23 dishonesty. This was done in violation of the
24 common law of the State of South Carolina." Is
25 what's stated in this indictment the truth?

1 THE DEFENDANT: Yes, sir. Yes, sir.

2 THE COURT: The earlier indictment
3 2014-GS-08-266, it charges use of public funds to
4 influence election reads as follows: "That Amy
5 Kovach did in Berkeley County on or about the period
6 between August 1st, 2012 and November 6, 2012, use
7 and authorize the use of public funds, property, or
8 time to influence the outcome of an election, to
9 wit, while employed as communications director by
10 the Berkeley County school district. Amy Kovach did
11 use public funds to pay for the creation of a
12 campaign video and production of other campaign
13 material to draft and disseminate speeches during
14 her public employment intended to persuade the
15 voting public and did perform various other acts
16 using public resources and time, all of which
17 promoted and supported a yes vote as to the school
18 bond referendum held on November 6, 2012 and all of
19 which was in violation of Section 8-13-1346 of the
20 South Carolina Code of Laws as amended against the
21 peace and dignity of the State and contrary to the
22 statute in such case made and provided." Is what's
23 stated in this indictment the truth?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Solicitor Waters.

1 MR. WATERS: Yes, sir, Your Honor. As the
2 indictments state, Ms. Kovach is the communications
3 director for the Berkeley County school district,
4 and this case arises out of a 2012 bond referendum
5 for some two hundred million dollars roughly for the
6 schools. But I want to start by saying very clearly
7 that this case has nothing to do with whether or not
8 the bond referendum was a good idea; nor, is this a
9 case of a school official who got overzealous and
10 unknowingly overstepped the line. This case is
11 about someone who intentionally and knowingly broke
12 the law and broke the ethics act. And that ethics
13 act rule that Your Honor just read of course,
14 governs the fair operation of elections and it
15 provides that a government employee cannot use
16 government time and resources to influence the
17 outcome of an election. And the reason for that is,
18 to insure that both sides are on a level playing
19 field and to insure that the power of the
20 government, that taxpayer's money is not, the thumb
21 is not a one side of the scale or the other. And
22 while a governmental agency to provide information
23 all day long, they can't go from that into the realm
24 of advocacy and that's prohibited by the statute.
25 This case came to us, as many cases do,

1 from a complaint from a private citizen, and often
2 these types of cases come that way. But ultimately
3 this office is not the one, the office of the
4 Attorney General is not the one to investigate
5 anything; we refer that to SLED who does their
6 investigation. And I do want to acknowledge SLED
7 Agent Ryan Kelly who is here today who is the lead
8 investigator, as well as Jimmy Bagnal, investigator
9 with the Ethics Commission who are the two
10 investigators that worked on this case. And they do
11 their investigation and then they provide that
12 information to the prosecuting office and we make
13 our decision based on that information.

14 And at this point I want to acknowledge my
15 cocounsel and my partner Brian Petrano, as well as
16 staff attorney Johnny James who did a lot of work on
17 this case, as well as Allen Meyer who used to be
18 with our office. But how do we make a decision on
19 this case? I think I told Your Honor at the last
20 hearing that when we're looking at these types of
21 cases, how do we decide where something is just
22 purely a civil event or where it moves into the
23 criminal. And over the years in doing these type of
24 cases we've developed sort of a three step, and the
25 first thing we look at is knowledge of the law.

1 We're looking for somebody who knows the law because
2 we're not going to charge someone criminally who
3 overstepped a line that they didn't know was there.
4 And secondly, we're looking for intentional
5 violations of that law. And then finally we're
6 looking for some evidence of criminal intent which
7 comes as Your Honor is familiar with and a motive
8 that can come with lies, it can come with coverups,
9 misrepresentations that show that the person knew
10 what they were doing was wrong and against the law.
11 We don't charge people for innocent mistakes and
12 mere inadvertence. So the two counts that Your
13 Honor has, again, is the global misconduct conduct
14 in office, which again encompasses all the conduct
15 that was charged and then the underlying ethics act
16 count as well.

17 And in talking about the three steps that
18 I just referred to, the first thing, of course, is
19 knowledge of the law. And in this particular case
20 we have ample evidence that Ms. Kovach was aware of
21 these ethics act rules, and we know that in part
22 from the fact that in the months leading up to the
23 referendum they distributed, and indeed Ms. Kovach
24 herself distributed, a referendum do's and don't's
25 sheet which I've had marked as a Court exhibit for

1 this particular proceeding I'll hand up to Your
2 Honor. I, of course, provided a copy to defense
3 counsel. And they had this prepared by a law firm.
4 They sent out to all employees to advise them of
5 this law, 1346, which is one of the counts that
6 Ms. Kovach is pleading to. And in that particular
7 Do's and Don't's document it says, this law is
8 strictly enforced, you can't influence an election.
9 And they define that as telling people how to vote
10 yes or no, or soliciting support or opposition for
11 one side or the other in the bond referendum. And
12 then on the side there's actually a little check
13 list of things you can't do. It says you can't
14 print things with government resources and on
15 government time. You can't send emails on county
16 time. You can't use county email accounts and
17 county equipment to send emails in advocacy. You
18 can't organize rallies. You can't promote support
19 for or against using government resources and time;
20 and as the facts in this case show, Ms. Kovach did
21 all of those. And the evidence of that, the
22 evidence comes primarily from the emails of
23 Ms. Kovach herself. She would say things like,
24 well, I don't want to end up in Columbia before the
25 Ethics Commission, and on at least two occasions

1 told vendors who had submitted for payment to the
2 District for items that were clearly campaign items,
3 she told them you've got to take off the invoice
4 reference to the campaign 'cause I can't pay it if
5 it's got that on there. So she's very well aware of
6 the law. And again, much of the evidence here comes
7 from the district's own records, okay, that's where
8 this, where this case was discovered and was made.
9 It's in the district's own emails. It's in their
10 own records. It's in the information on the
11 District's own servers. It's in the records of the
12 District's own finance department and procurement
13 office. So that's the first prong which is
14 knowledge of the law, and we had ample evidence that
15 Ms. Kovach with aware of these rules.

16 So the second prong, of course, is whether
17 there are intentional violations of that law. And
18 initially I just want to go through a few of the
19 miscellaneous offenses that we were able to discover
20 in the evidence, and there are multiple emails
21 throughout August and September 2012 where she was
22 writing pro-referendum scripts for individuals to
23 give at various community meetings, not just
24 information, but blatant advocacy. There are
25 multiple million emails where she — and this starts

1 in July of 2012 through September of 2012, at least
2 five, where it relates to her having her secretary
3 print Yes for Schools with a campaign logo print
4 fliers, stickers and other paraphernalia on the
5 government copiers and government colored copiers
6 and that sort of thing. There are emails and
7 witness statements that talk about using the
8 government, the District warehouse, to store pallets
9 and yard signs for the campaign. There are emails
10 where she talks about putting a trailer or a
11 portable classroom on tour to generate support
12 because of the, in particularly on Daniel Island, to
13 create the sort of fear of the dreaded trailer as
14 she put it in the email. And then, of course, there
15 was organizing Yes for Schools events and indeed
16 getting school children sort of as window dressing
17 for some of those events. So this is not just an
18 isolated event. This is a continued and a long
19 standing course of conduct.

20 But those miscellaneous items that I just
21 mentioned are not really the main points. The main
22 points that really crystalize this case are payment
23 for a campaign video, as well as payment for
24 campaign signs for kids to hold.

25 THE COURT: How much was the campaign

1 video?

2 MR. WATERS: The campaign video ultimately
3 was 5300 dollars, and I'll get to the details of how
4 that was paid for in a moment but that was the
5 ultimate amount that was paid. Additionally, there
6 was roughly 300-dollars. I think it was
7 294-dollars, excuse me, \$259.20 that was used to pay
8 for campaign signs; and those signs, or at least one
9 of those signs were used for school children to hold
10 up in the campaign video as they shouted say Yes for
11 Schools. But that's really the focus that I want to
12 talk about.

13 And before I get to the rest of that, I
14 kind of want to talk a little bit about prong three,
15 about criminal intent and the motive. And what was
16 the motive here? Well, again, her emails show a
17 couple of things as to motive and the first thing is
18 is that she felt that her own career and Doctor
19 Rodney Thompson's career would be advanced by, and
20 by a success in this referendum. On 8/13/12 she
21 wrote that Mr. Thompson, or Doctor Thompson, was
22 very personally invested in this and knows the
23 length of his term as superintendent very much
24 depends on this referendum. And on 9/17/12, that's
25 right before she started to put together this

1 campaign video, she noted in an email that this
2 referendum is the ultimate test of her ability to
3 succeed or fail. And the second aspect of the
4 motive was, is that she was very frustrated by the
5 campaign committee itself. She initially was in
6 control even writing in July of 2012 that the
7 campaign is being run internally from my district
8 desk, from my desk. But ultimately, the campaign
9 committee individual started to assert themselves,
10 and she would frequently criticize them by saying
11 sarcastically finally the committee is taking a
12 role, there's no one who will take a lead. And she
13 would complain about -- in September 30th, 2012, she
14 complain about poor leadership from the chamber as
15 she called it, and stated to Doctor Thompson that we
16 can win this but we're gonna have to pull out every
17 trick in the book. And then finally on August 8th,
18 2012, she's complaining that the campaign committee
19 has marginalized her and Doctor Thompson, that they
20 told her that it's not their campaign, it's our
21 campaign, and that there are to have no involvement
22 and she said that their strategy is broken and we're
23 losing momentum. So she felt that this campaign was
24 necessary for their career, but also felt that she
25 had lost control, and she was very frustrated with

1 the, with the direction the campaign was taking.

2 Additionally, she was aware that the
3 campaign was not flushed with cash. So it is in
4 that context that we look and under those
5 circumstances that Amy Kovach decided to use
6 District funds to make a Yes for Schools campaign
7 video.

8 Now she claimed in her statement to the
9 press, she claimed in her statement to SLED, that
10 she was just making a district marketing video, that
11 she was just giving the campaign separate and unused
12 excess footage and that the campaign essentially had
13 requested this and asked for this. And she claimed
14 in her statements that the signs from Nelson
15 Printing were wanted by the campaign, and she just
16 paid for and then prepared a invoice for them to
17 reimburse her. But the campaign workers deny that
18 they had anything to do or knowledge of this
19 particular video, and her own emails in the
20 investigation itself confirm that.

21 So Your Honor, the first thing is, and I'm
22 gonna hand up, and we've marked this as a Court's
23 exhibit, and I'm gonna give you two copies. One is
24 marked as a Court's exhibit because it has stills of
25 the children that were used in the campaign video.

1 The one we have marked for the Court for it to be in
2 the file we've attempted to blur the images of those
3 children's identities, but I've handed you up one
4 and, of course, provided to defense counsel which is
5 not blurred so that you can review it. But in 9/12,
6 on 9/12/2012 she sends an email to Nelson Printing
7 asking them for foam core signs and banners that are
8 going to be held by students; and these are Yes for
9 Schools banners. And again, there's been some who
10 have said that that's all this case is about; but as
11 Your Honor has already described and we'll describe
12 further, this case is much broader than just that
13 invoice for 259-dollars. So she gets and pays for
14 the Yes for Schools banners to be held by the
15 students and the next thing she does is contact Go
16 To Team video and particular, a videographer by the
17 name of Jason Bennett. And her emails and Jason
18 Bennett's emails are very interesting in as much as,
19 in particular Mr. Bennett emails after his meeting
20 with Ms. Kovach, and he says, I just met with Amy
21 Kovach, she's going to need two videos, one video is
22 a specific support for the vote video and the other
23 using the same content will be a re-edit for general
24 purposes. She says the cost for the project is
25 4800-dollars but we need to split it into two

1 estimates of 2400 and the reason for that is, is her
2 budgetary permissions, she's only able to write
3 checks up to 2500-dollars without having to go to
4 committee. So that right there refutes exactly what
5 Amy Kovach told the press until SLED clearly the
6 understanding was, we're making two videos, we're
7 making a campaign video, and he was expressly asked
8 to structure those transactions or we call it
9 smurfing transactions so that would come under her
10 2,400-dollar limit. As we will see under the
11 procurement code, if she's going to spend more than
12 2500-dollars she has to get three bids and she has
13 to choose the lowest bid. So Jason Bennett then
14 provides the estimate, and this is on page two of
15 the document that I just handed up. But it has on
16 the two estimates that are smurfed, that are
17 structured, it has on there the first ones have
18 support for the vote on it. And her secretary, Ms.
19 Kovach's secretary says, I thought we couldn't pay
20 for anything with the bond referendum. So they get
21 that fixed, and ultimately sends two more estimates.
22 Mr. Bennett sends two more estimates that are
23 exactly the same except they've removed any
24 reference that is for support for the vote. So even
25 Mr. Bennett, when he sent the estimate it was just

1 for support for the vote; that was the primary
2 project. And again, the same thing happens on
3 October 3rd with Nelson Printing when they sent
4 their invoice it has Yes for Schools signs on it and
5 she emails back Nelson Printing and says, you got to
6 change Yes for Schools do phone for signs 'cause I
7 can't pay it like the way that you've written it.
8 So on September 19th Ms. Kovach goes ahead and pays
9 Go To Team 2,500-dollars with her District P card,
10 her procurement card, her District credit card, and
11 then she arranges for the shooting, for the shooting
12 of the video and gets some classes and some school
13 children available. And on 9/21/2012, on
14 September 21st the video is shot. And Your Honor,
15 in that document I provided to you I provided stills
16 of that particular video, and the only difference
17 between the campaign video that was the initial one
18 produced in the subsequent District video is that
19 the campaign video contains an extra 44 seconds of
20 various children and we provided those shots,
21 various children either in groups or by themselves
22 either holding up a Yes for Schools banner or saying
23 Yes for Schools or say Yes for Schools. The school
24 children, of course, were used as props in this
25 political ad. And some of them are very, very young

1 and one on page 11, and you can tell they can't
2 really tell what's going on with what they're being
3 asked to do. So the shooting is taking place on
4 September 21st. She's already paid half the bill on
5 September 19th, but she runs into a problem. And
6 the problem is, as I said, she can't spend more than
7 2500 without going through the procurement code
8 which requires three bids and selection of the
9 lowest bid. And she writes the finance person,
10 well, don't worry about it, I had them split it into
11 two invoices, one for shooting and one for editing,
12 and the finance people say you can't do that. You
13 can't do that, you can't structure it like that,
14 we're gonna have to do that. And they say hold off
15 on any commitments until you get the three bids.
16 Well, she's already paid for it, half of it, and
17 she's already shot the video so what does she do at
18 that point. Well, she promptly then starts to
19 generate sham estimates. Even though she's already
20 paid for it, the video has already been shot, she
21 sent out emails to various vendors — these vendors
22 have no idea they're wasting their time — and says,
23 hey, I've got this project coming up, I need an
24 estimate. And so she starts to generate those
25 various sham estimates starting on September 26.

1 She does that on September 26. That same day she
2 gets the campaign video from Jason Bennett. And in
3 that, the email where she acknowledges getting that,
4 she says, I need you to take the District logo off
5 of the campaign version that has Yes for Schools on
6 it because we don't want to be accused of
7 advocating. So she tells him that right then and
8 there, you got to take that off of there. So, even
9 though she was told by the financial department that
10 you can't smurf these transactions and told to hold
11 off, she goes ahead and generates these sham
12 estimates and then on October 1st Pat pays the rest
13 of the money, or actually asks Jason Bennett, I need
14 you to wait until after October 1st to bill the
15 other 2500, okay. So they run the second payment of
16 2500 on October 8 and then they run the final
17 payment of \$300 on October 9 to keep it underneath
18 that 2500 limit, even though she's been told by
19 finance what needs to happen. So on October 5th she
20 receives an estimate from a vendor who, again,
21 doesn't know they're wasting their time. "Dear Ms.
22 Kovach, this is our estimate to you for this
23 project," that's already happened. And then on
24 October 9th there's a board meeting where a board
25 member, a Donna Marino, raises questions about the

1 video, about hearing about a video that might have
2 been done with school funds or something to that
3 effect. And within a couple of days Ms. Kovach is
4 contacting these vendors saying or contacting
5 vendors saying, hey, I really need to get that
6 estimate in, I've got a meeting set up to make a
7 decision on it and I need you to get that estimate
8 in. But the reality is, is that she needed to get
9 that estimate in because some public light was being
10 shine on it and the paperwork needed, finance was
11 requesting, needed to be turned in. So she's gotten
12 the sham estimates from the other two vendors; but
13 the problem is, is that she can't turn in the
14 estimates from Go To Team because the ones that she
15 got were smurfed, they were split into two. To st
16 that time she manufactures a false and fictitious
17 document. And how do we know that? Your Honor, if
18 you look at the exhibit that we've provided, or
19 excuse me — I thought I had it in front of me. Oh,
20 here it is. Your Honor, I apologize. I'm gonna get
21 this marked as Court's 3.

22 (Court's Exhibit Number 3 was marked
23 and made a part of the record.)

24 MR. WATERS: So she turns in that
25 particular estimate for 5300-dollars as the estimate

1 for the procurement code from Go To Team. And in
2 reviewing a number of those documents and
3 Mr. Petrano was going through those and ultimately
4 looked at that one; and as we looked at it, we
5 noticed that the text in the middle is kind of
6 eschewed down to the side and it's in a different
7 font than the rest of the document and that document
8 is printed with an accounting software. And we
9 realized that the accounting software couldn't print
10 that document; there's no way for it to print it.
11 It just could not do that. It could not change the
12 font like that. It cannot change the numbering like
13 that. And we also realized that the text in the
14 middle to the 5300-dollars is in the default font
15 for Word and Outlook that you normally would have.
16 And so what it appears to, what appears to have been
17 done there is that somebody took the original
18 estimate, added up to the 5300-dollars, and scotch
19 taped that on there, and then ran it through the
20 copier. And the other thing we are able tell as
21 well is that the logo is washed out which also
22 indicated that it was washed through a copier.
23 Additionally, if you look at the text of that
24 particular document it was as if someone was copying
25 the text from the original two estimates and didn't

1 get the text right. It says postproduction
2 addition, whereas, the original one said
3 postproduction editing. Postproduction addition
4 doesn't make any sense. It says two days of
5 shooting with a camera man and high definition
6 camera and audio gear, and the original one said
7 high definition camera and audio gear. High
8 definition camera and audio gear is not a thing. So
9 we went to the vendor, to Go To Team, and we said is
10 this your estimate, is this your document, and they
11 said, no, that's not ours, we couldn't make that if
12 we wanted to, our software won't do it. So
13 ultimately, she submitted this false and fictitious
14 document, again, to cover up what had already been
15 done and that was the payment of this campaign
16 video.

17 And just real quick, I know in this
18 particular case our motives have been questioned to
19 some extent. And I think this is a valid point to
20 show that when we look at cases like this and we
21 realize that we have a case where it appears as
22 someone had intentionally and knowingly violated the
23 law; but like in other cases that we've had recently
24 our motives get questioned, our integrity gets
25 questioned, sand gets thrown in our face. But the

1 problem was, was that not only do we know we had a
2 valid case but the more we looked, the more we
3 found. And if, because people throw sand in our
4 face we were to just slink away, (a) we would not be
5 doing our job. But secondly, that would become M.O,
6 all you'd have to do is just throw sand in the face
7 of the Attorney General's Office and SLED and they
8 will slink away. And if that were case, then none
9 of these cases would ever get prosecuted, and we
10 wouldn't be doing our duty and we wouldn't be doing
11 our job. The reality was, is that the more we
12 looked, the more we continued to find.

13 So, ultimately these allegations were
14 brought to our attention, and SLED goes to the
15 District and said, we'd like a copy of that campaign
16 video and they're like, what video, we don't have a
17 video. And so the District doesn't have it. And we
18 go to the campaign and they're saying, well, we
19 never had any, we never had it, we never had any
20 involvement with this. And we go to the
21 videographer, Bennett. He says, I don't have a copy
22 of it. And so we finally go to the owner and low
23 and behold, finally they find a backup copy
24 somewhere on a server. So we get that video, we see
25 what's on the video, we read the emails as to how it

1 was created, and we know at that point we've got
2 something we're gonna have to deal with here, we've
3 got a case of somebody intentionally violating the
4 law.

5 Ms. Kovach says in her interviews that she
6 gave this video to the campaign and it was at their
7 request. And again, they say, we had nothing to do
8 with this and we've never seen it and we never had
9 it. So SLED interviews Ms. Kovach again on
10 November 22nd, 2013, and asks her about paying
11 Nelson Printing for those Yes For School signs that
12 were held in the video; and the ones where she said
13 earlier when she paid the invoice, she said, well, I
14 can't pay this unless you take Yes for Schools out
15 of the invoice. And Ms. Kovach says, well, I
16 prepared an invoice dated October 2nd, 2012, for the
17 campaign to reimburse the District and I'll send it
18 to you. And of course, we receive it on about
19 November 25th, 2013, three days after that SLED
20 interview. But the problem is, is again, her
21 secretary says, I don't recall ever seeing that
22 document at the time, I don't recall ever seeing
23 that invoice. The Campaign says, I don't recall
24 ever seeing that invoice. And as we looked at the
25 District servers that document does not appear until

1 November 25th, 2013, even though it's dated
2 October 2nd, 2012 at the appropriate time during the
3 campaign. And indeed, we were able to find a backup
4 of Ms. Kovach's server from February of 2013, and
5 that document was not on that backup either, but it
6 did show up in November of 2013 after she was being
7 interviewed by SLED. So that is the second false
8 and fictitious document that was alleged in the
9 original charges that we presented.

10 So she ultimately at that particular, at
11 that particular interview on November 22nd, 2013,
12 she gives SLED a detailed timeline about the video;
13 and she says, well, I started getting estimates
14 before the shoot in early September. She says, I
15 picked the lowest of the estimates as I'm required
16 to. She says, that I made sure that the
17 videographer knew that they, that the campaign is
18 only to get unused excess footage. I made sure
19 that, myself, that I looked at it, that footage in
20 those two individual videos was completely separate
21 and distinct and that I verified that myself. And
22 none of that is true at all. The campaign video
23 came first, and the only difference between the
24 campaign video and the subsequent District video is
25 that the District video just doesn't have all the

1 kids yelling Yes for Schools in it. Other than that
2 it's the same exact video, same exact footage, same
3 music, same everything.

4 So ultimately, Your Honor, she knew the
5 law. She was in control of this campaign. She knew
6 this was good for her career but she got frustrated
7 because it wasn't going the way that she wanted and
8 so she knowingly broke the law. She used government
9 resources to advocate for the Yes for Schools
10 campaign, and then she engaged in a cover up and in
11 lies a misrepresentation of both during and after in
12 order to cover up what she had done. And that's the
13 factual basis, not only for the misconduct in
14 office, for using her government funds to advocate
15 for the campaign and then covering up with
16 dishonesty, as well as underlying substantive
17 offense of using governmental resources to advocate
18 a campaign.

19 THE COURT: Ms. Kovach, you agree with the
20 facts as stated by the attorney general?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Tell me in your own words what
23 you did that broke the law.

24 THE DEFENDANT: I did my job at the
25 discretion of the leadership of the school district

1 with the leading counsel and the leadership of
2 district as expected of me and filled my, fulfilled
3 all of my obligations to those purposes at their
4 discretion.

5 THE COURT: So you're telling me you did
6 nothing wrong?

7 MR. THEOS: Your Honor, if I may.

8 THE COURT: Yes, sir.

9 (Attorney and defendant confer.)

10 THE COURT: If you want to plead guilty in
11 front of me, then you're gonna have to tell me in
12 your words what you did that was — if you don't
13 think you broke the law, then we're not here for a
14 plea. We will proceed to try this case on the 21st
15 of September. If you're here to plead guilty then
16 you're gonna tell me what you did that broke the
17 law.

18 THE DEFENDANT: In doing my job as
19 directed I violated the law that I am guilty to.

20 THE COURT: How did you violate the law?
21 Did you lie? Did you use resources that you
22 shouldn't have? What did you do?

23 THE DEFENDANT: By using resources to
24 promote school district and its agenda of passing
25 the referendum.

1 THE COURT: Are you, in fact, guilty of
2 misconduct in office?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Are you, in fact, guilty of
5 using public funds to influence an election?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And you understand that I
8 think each of these carries up to a ten year
9 sentence; is that correct?

10 MR. WATERS: No, sir, the misconduct is a
11 common law misdemeanor. It's 0 to ten years, Your
12 Honor. Your Honor, the ethics act offense is up to
13 one year and/or a fine up to five hundred percent of
14 the amount of anything that should have been
15 reported is how it's written in the statute.

16 THE COURT: And y'all's interpretation of
17 that would be that it would be roughly 5300-dollars?

18 MR. WATERS: 5300-dollars is the amount of
19 the video. The 259-dollars is the signs so if you
20 do five hundred percent of that, somewhat over
21 2600-dollars which is would be the total amount.
22 And let me, I can calculate that exact for you Your
23 Honor if you give me one —

24 THE COURT: Let me go ahead and question
25 her. You understand that I'm not making a

1 recommendation, but I'm fully within my rights to
2 sentence you if I want to run them consecutively to
3 a 11 years in jail and a 26,000-dollar fine, you
4 understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Knowing that, you still want
7 to plead guilty?

8 THE DEFENDANT: Yes, sir.

9 MR. WATERS: Your Honor, that amount would
10 be maximum under the statute under our
11 interpretation would be, for a fine, would be
12 27,796-dollars and that would be five hundred
13 percent of the 5300-dollars for the video, plus the
14 \$259.20 for the signs. Your Honor, just real quick,
15 Mr. Petrano, this doesn't change anything but
16 Mr. Petrano said I had the dates wrong on the
17 backup, and then the subsequent backup, but the
18 reality is the same. There's a backup in October of
19 2012 after all these events and then a subsequent
20 backup in February 14. But the point I was making
21 was valid; I just mixed up the dates.

22 THE COURT: All right, I understand.

23 So Ms. Kovach, you fully understand the
24 charges you're pleading guilty to and the potential
25 consequences of this plea?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You understand that when you
3 plead guilty you're waiving certain constitutional
4 rights. The first right you waive, of course, your
5 right against self-incrimination. In this great
6 country you will never be required to come in and
7 testify against yourself, however, when you plead
8 guilty you're doing that. You understand?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: So you wish to waive your
11 right against self-incrimination and continue with
12 this plea today?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You're also waiving your right
15 to have a jury trial. In a jury trial twelve
16 citizens of Berkeley County would be selected and
17 only after they have heard evidence of your guilt
18 beyond a reasonable doubt that you'd be convicted.
19 During the course of the trial if you decided not to
20 testify, then I would explain to the jurors they
21 couldn't hold that against you. Further, Mr. Theos
22 could artfully cross-examine the witnesses presented
23 by the State, could call witnesses on your behalf,
24 and could raise legal defenses that could possibly
25 result in you being exonerated. When you plead

1 guilty you don't get to ask any questions about the
2 evidence, and the State doesn't have to prove
3 anything. Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: I need for you to speak loud
6 enough for my court reporter to hear you.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And you wish to waive your
9 right to have a jury trial and confront the
10 witnesses against you?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Has anybody threatened you in
13 any way to get you to plead guilty?

14 THE DEFENDANT: No, sir.

15 THE COURT: Has anybody promised you
16 anything to get you to plead guilty?

17 THE DEFENDANT: No, sir.

18 THE COURT: Is the only reason that you're
19 pleading guilty to the use of public funds to
20 influence an election and misconduct in office is
21 because you are actually guilty of those charges?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Are you satisfied with the
24 services of Mr. Theos?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Has he done everything that
2 you asked him to do?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Has he done anything that you
5 wished he had not have done?

6 THE DEFENDANT: No, sir.

7 THE COURT: And do you need anymore time
8 to speak to Mr. Theos?

9 THE DEFENDANT: No, sir.

10 THE COURT: Have you understood all of my
11 questions today?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you have any questions for
14 the Court?

15 THE DEFENDANT: No, sir.

16 THE COURT: And you understand if you
17 change your mind about your decision to plead guilty
18 or the sentence that I give you, you will only have
19 ten days in which to file an appeal?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. Under indictment
22 2014-GS-08-266 charging you with use of public funds
23 to influence an election, how do you, Amy Kovach,
24 plead, guilty or not guilty?

25 THE DEFENDANT: Guilty.

1 THE COURT: Under indictment 2015-GS-08-
2 1073 charging you, Amy Kovach, with misconduct in
3 office, how do you plead, guilty or not guilty?

4 THE DEFENDANT: Guilty.

5 THE COURT: All right. I find there's
6 sufficient factual basis for the plea. I find the
7 defendant has entered into it freely, voluntarily,
8 knowingly. She has had the advice of counsel who
9 she says is well pleased, I will accept the plea.
10 What is her criminal history?

11 MR. WATERS: There is none, Your Honor.

12 THE COURT: Anything further from the
13 State?

14 MR. WATERS: Your Honor, you've heard the
15 facts and circumstances, and we would just ask you
16 to issue a sentence you deem appropriate in your
17 discretion.

18 THE COURT: Mr. Theos.

19 MR. THEOS: Yes, sir, may it please the
20 Court. Judge, Amy is 44 years old. She's born and
21 raised in Ohio. Her mother was a schoolteacher,
22 father was a payroll of cost accountant with a
23 corporation called Brush-Wellman Corporation for 35
24 years and retired. She attended Fremont Cross High
25 School in Michigan, I'm sorry, Ohio. She was

1 student counsel president. She was in the National
2 Honor Society. She was secretary of that society.
3 She was in the marching band. She was the section
4 leader. She was in a multitude of other
5 extracurricular activities and clubs, including
6 student government where she represented the school
7 on a national level and the only representative from
8 that school. She was on the cross country team.
9 She graduated with honors in 1989. Thereafter,
10 Judge, she attended Ohio University in Athens, Ohio.
11 She graduated with a major in journalism and public
12 relations, a minor in economics, with a 3.6 GPA and
13 graduated sum cum laude. She graduated in 1993.
14 Several years later after having two children and
15 when her husband Chris was out of law school she,
16 she worked toward and obtained her Master's in
17 business from Kent State University.

18 Judge, her employment record is impeccable
19 as you heard Mr. Waters she's got no criminal
20 history, not even a traffic citation. She has lived
21 an exemplary life. She has lived a completely clean
22 and appropriate life and contributed immensely to
23 not only to her family in the communities that she's
24 lived in; but she's also done outstanding work for
25 every, for every employer she has ever been engaged

1 an employment with. Her first job out of college,
2 Your Honor, with McDonalds Corporation in Chicago.
3 At the time Chris, whom she had met earlier, Chris
4 was in law school and they decided to marry so in
5 1994 they did that, but she moved to Cleveland from
6 Chicago because of that marriage. At that time she
7 was, because of her credentials and her work
8 history, she was able to secure a good job with the
9 Benefits Group, which is an insurance provider.
10 Throughout the first few years in their marriage
11 especially when Chris was in law school she was the
12 sole breadwinner for family, sole provider for the
13 family. She then went on to work with Avery
14 Dennison Corporation, and at age 35 she was the
15 youngest executive there. And this was 1995, and
16 she was earning in excess of a hundred thousand
17 dollars a year extensively, internationally. She
18 was a valued employee. She did an outstanding job,
19 received numerous rewards, accolades, etc. As I
20 told you in 2005, in 2005 she earned her Masters
21 degree and it was right after, soon after she had
22 her first two daughters. She has three daughters,
23 beautiful daughters, ages 16, 10 and 7 — Leo,
24 Lindsay, and Lacey. Lacey was born a short time
25 after her she attained her Master's degree.

1 Your Honor, in 2008 she and Chris, her
2 husband, and Chris is here in the courtroom seated
3 on the front row. She and her husband made a
4 decision to relocate and that decision was to
5 relocate to the Tri-County area, the Charleston,
6 Berkeley, Dorchester area. She accepted a job with
7 Meadwestvaco and they moved to Daniel Island where
8 they still live. She served as Meadwestvaco's
9 liaison with the Charleston Metro Chamber of
10 Commerce. She was on the board of directors of the
11 education foundation, and that's where, in fact, she
12 met Doctor Thompson. At the time Doctor Thompson
13 was the associate superintendent. He later became
14 the superintendent. In 2008 she left Meadwestvaco
15 — I'm sorry, 2011, Your Honor, she left
16 Meadwestvaco. At the time she was offered multiple
17 other jobs in Seattle, Washington, Knoxville,
18 Tennessee, Cleveland, Ohio. And those jobs, the
19 salary range in those jobs — and I say that not —
20 I say that because she ultimately accepted the job
21 with Berkeley County school district for far less,
22 for far less income; but those jobs she was offered,
23 the salary ranges were 150 to 200,000-dollars. But
24 she and her husband and her family had relocated
25 here. They loved the Tri-County area. They wanted

1 to stay here. They preferred to stay here. And
2 they decided — Chris was working with a law firm —
3 and they decided that whatever it took to stay in
4 this area that they would do. Rather than search
5 out other jobs in the private sector though Amy
6 decided that, offered a position by Doctor Thompson
7 who was then the superintendent for the District,
8 Amy decided that in spite of the salary cut of a
9 hundred thousand dollars plus that she —

10 THE COURT: She's actually done pretty
11 good though 'cause she's been getting paid all along
12 on that video.

13 MR. THEOS: Well, she's been getting paid.
14 To say she's done pretty good otherwise would be a
15 mischaracterization.

16 THE COURT: I mean, she's now pleading
17 guilty telling me she's done these things knowing
18 all along while she's been getting paid by the
19 school district. How long was she getting paid?

20 MR. WATERS: She was indicted initially in
21 September of 2013, I believe that's correct.

22 MR. THEOS: That's not —

23 THE COURT: So she's paid for roughly two
24 years.

25 MR. THEOS: That's in February of 2014,

1 Your Honor, she was indicted.

2 MR. WATERS: I apologize, that's correct,
3 February 11, 2014.

4 THE COURT: So a year-and-a-half she been
5 getting paid for work for the school district
6 knowing she's been guilty of those things.

7 MR. THEOS: Your Honor, a lot has happened
8 during that time frame that has affected, that
9 affected her decision as to whether or not to enter
10 a guilty plea or not, outside forces that were
11 beyond her control; but personal, professional, as
12 well as legal issues associated with the case. And
13 I now you're relatively new in the case, but there
14 was a decision related to legal issues that was
15 rendered in December of 2013 by Judge Young — I'm
16 sorry, 2014, by Judge Young, the other Judge Young,
17 roger Young.

18 THE COURT: The younger judge.

19 MR. THEOS: Roger Young. The other judge
20 and slightly younger Judge Young, and as well as
21 additional indictments. So all of those things
22 certainly played into the decision, the delay in the
23 decision, and I certainly would ask the Court not to
24 hold that against Ms. Kovach in anyway. As you
25 know, clients, certainly defendants in criminal

1 cases, they should listen to their lawyer and they
2 should comply with their lawyer's advice and
3 recommendations. And in light of these other
4 factors, in particular the indictments that continue
5 to come that you're aware of, as well as these
6 outside issues that were beyond her control, the
7 decision was delayed to some extent. But again,
8 Your Honor, she's here entering this guilty plea
9 freely and voluntarily as we said and she's
10 accepting full responsibility for it so I want to
11 make sure that that above all else is clear to the
12 Court.

13 Your Honor, in May of 2011 at the request
14 of Doctor Thompson she was, she accepted a job offer
15 with Berkeley County school district; and that job
16 offer, that job was interim coordinator of, interim
17 coordinator of community relations. It was, it
18 wasn't a part-time position per se, but it was a 35
19 hour per week position. It was a one year, a one
20 year job. The contract called for her to, her
21 position to end at the end of June of 2012, so she
22 hadn't planned on remaining on with the school
23 district. However, the person, the director of
24 communications at the time or I believe the title
25 was public information officer, that that person

1 resigned. With that resignation she was offered the
2 position of director of communications for Berkeley
3 County school district. She accepted it because she
4 believed that it was important to work for the
5 school district, important to give back to the
6 community, important to, especially since her
7 children were all in the public school system.
8 Again, it was — pay wasn't the issue. She resigned
9 herself to the fact she was going to make a lot less
10 than she could in the private sector; but again, she
11 wanted, she enjoyed work she had done on a part-time
12 basis on that contract for a year, and she wanted to
13 continue on.

14 Your Honor, not to make any excuses
15 whatsoever and please don't misconstrue this as an
16 excuse; but when Ms. Kovach was hired as the
17 director of communications, one of the things that
18 was told to her was that they really wanted her to
19 focus on this referendum that had not yet been based
20 places on the ballot but that was one of their, that
21 was to be one of her primary areas of focus and
22 concentration. In and of itself that's not, that
23 didn't create any problems and didn't create any
24 potential for impropriety so to speak; but what
25 happened is, she was asked to do more than that.

1 She was also asked to be on and be actively involved
2 with the actual campaign itself so within the school
3 district she was working, she was working on the
4 referendum with certain boundaries as you read and
5 as Mr. Waters indicated; but she was also wearing a
6 second hat, and that hat was of a person integrally
7 involved with the campaign. Unfortunately, with
8 that dual role and the wearing of two hats as you've
9 heard a great deal about in our last hearing from
10 the AG as well as for me, there's an inherent
11 conflict. I would like to think, Your Honor, that
12 we would not be here at all if she wasn't asked to
13 do both of those things. Again, I don't offer that
14 as an excuse and Ms. Kovach does not, does not blame
15 her situation and her predicament on that, on the
16 wearing of those two hats. But what's began as the
17 35, 35 hour per week job of evolved into a 60 to 80
18 hour per week dual job and dual role. And as
19 Mr. Waters said, at some point she was, she was not
20 only handling her job as a public relations and
21 director of communications; but she was ostensibly
22 running, in essence, running the campaign as well
23 and reporting those things. Now again, we don't
24 offer that as an excuse but that's where this
25 conduct arose, this misconduct arose. It was in an

1 effort, it was in an effort to fulfill both rolls.
2 Did she cross the line? She's entered a guilty plea
3 to it, Your Honor, she crossed that line. Was that
4 the initial intent? The initial intent was to do
5 her job and then to fulfill both roles; but in her
6 zeal and aggressiveness to do both things to her
7 fullest extent, the line was crossed and she's
8 admitted that and she's testified responsibility for
9 it.

10 You've heard and we've all heard in rare
11 cases and the AG office has prosecuted cases
12 involving misconduct in office regarding ethics
13 violations; and we all know that the common thread
14 in those cases is one thing, it's greed, and money.
15 That's the common thread. Ms. Kovach did not
16 receive a penny for any of this. There was no
17 embezzlement. There was no misappropriation to for
18 personal gain of any funds. I understand —

19 THE COURT: Well, the personal gain of
20 doing this well and continuing on with her job and
21 getting promotion of —

22 MR. THEOS: Well, there were no promotions
23 Your Honor. She didn't receive any promotions. And
24 you are right though, the satisfaction of being I
25 guess judged by, judged by the outcome of the

1 referendum and whether she did her job well. But
2 that's — regardless of the misconduct that's how
3 she's functioned all her life was to do the job as
4 best she could and not necessarily to receive
5 accolades and commendations, just the satisfaction
6 of knowing she did whenever job well. That said,
7 again, she's here acknowledging her responsibility
8 accepting responsibility for crossing that line and
9 doing those things that have brought her before you.

10 But I wanted to make clear that, as we all
11 know, these cases normally — and I don't know that
12 I've ever seen a case that didn't involve money with
13 these sorts of violations. To the contrary, Your
14 Honor, for the last almost three years now because
15 this investigation began long ago and the ballot was
16 voted on in 2012, the investigation began soon
17 thereafter. Since that time Ms. Kovach has — it's
18 been very difficult for her and her family. Again,
19 understanding that she's entered a guilty plea,
20 accepted responsibility for those actions,
21 nonetheless, Your Honor, it's been torturous for her
22 and her family. She's been condemned. She's been
23 an outcast in the community. She has been, her
24 children have been accosted in school. They have
25 been ridiculed by fellow classmates that her mother

1 was going to prison, that she's a criminal. She's
2 been accosted in grocery stores by people she
3 doesn't know. She's been threatened. I can't, I
4 can't fully explain the impact that it's had on her
5 and her family. Again, that is no excuse for what
6 happened, but there has been suffering. There has
7 been, there has been punishment exacted upon her
8 based — even though she had not entered a guilty
9 plea or not been found guilty, there was a
10 presumption of guilt, as we all know tends to
11 happen, especially when something is reported as
12 often as this was. And at last count, excluding
13 what may be reported today or tomorrow, I believe it
14 was up to somewhere in the neighborhood of 26 or 27
15 articles in our local newspaper, not to mention
16 what's been on television so she's been the subject
17 of great scrutiny and public condemnation, Your
18 Honor, and it's taken a toll.

19 But what I will say about Amy, Your Honor,
20 is that nonetheless she's continued to contribute to
21 the community. Now she hasn't talked about remorse.
22 She hasn't apologized in the public arena; and I
23 take, I take the blame or the credit for that. I
24 mean, we just don't allow our clients to say
25 anything of course, and she's honored that. But

1 what she's done is much more significant than
2 claiming to be remorseful, claiming to be
3 apologetic. She's demonstrated remorse. She's
4 demonstrated rehabilitation. She's demonstrated her
5 desire to do good deeds. And I'm gonna, if I may,
6 I'll read to you what she's done since she's been
7 let — she's suspended with pay but she can't, can't
8 find work. In fact, some of the work that she was
9 volunteering to do, those companies, those entities,
10 told her that they just didn't feel comfortable with
11 it because charges were pending against her. So
12 even when she's begun to do things without pay it's
13 had an impact on her. And as Your Honor knows it
14 will continue to have an impact on her with these,
15 with these pleas. But Your Honor, she's taught yoga
16 and self-esteem classes to disadvantaged children.
17 She's taught free yoga classes. All this is free of
18 course, she hasn't received any compensation.
19 Classes to Berkeley County teachers and staff every
20 Monday evening in Goose Creek. She's taught
21 community yoga classes in Charleston. She's
22 volunteered with the Hanahan marching band Booster
23 Club and she currently serves as its president. She
24 volunteered, she's volunteered two weeks this summer
25 of this past year at the Coastal Carolina fair on

1 behalf of the Marching Band Booster club. This
2 summer she provided breakfast at her own expense to
3 the marching band when they were in summer camp.
4 She's taught yoga classes to the Hanahan Marching
5 Band. She's very involved in her church. She was
6 involved in church before; this is not new found
7 religion. And she's continued to be very involved.
8 She's got the support of all of her fellow church
9 members, the support of her family of course, and
10 those friends, those true friends that have remained
11 close with her throughout that have been very
12 supportive.

13 Your Honor, we — there are a few people
14 here but we could have filled this courtroom with
15 people; but as is Ms. Kovach's nature, she didn't
16 want that. Her desire was to come in here, accept
17 responsibility, enter these guilty pleas, not put
18 her friends and her family members beyond her
19 husband to, I guess to the ordeal of having to
20 witness this because we had — I can't tell you how
21 many offers of people to come in here and speak on
22 her behalf; but again, I credit her that she did not
23 want to impose on those folks. She did not think it
24 was fair, so to speak.

25 Your Honor, she's here without any history

1 of any impropriety whatsoever, criminal or
2 otherwise. She's never been disciplined in any way
3 by any employer she's had, any school she's
4 attended. She's lived an exemplary life. This
5 blemish, this blemish, this misconduct will
6 create — blemish is an understatement. It will
7 create a mark on her, on her history, on her resume,
8 on her life that is really cannot be erased; and so
9 there will be a continued a lifelong effect of this.

10 You know, Judge, most of these cases that
11 we read about, these sorts of cases in which people
12 have actually benefited financially like the
13 politicians and the other governmental employees,
14 their sentences are, their sentences are
15 probationary sentences. I would ask you to consider
16 something a little unusual because, because of the
17 fact that there was no personal, financial, or
18 monetary gain. And Your Honor may not be inclined
19 to do it, but I think under the circumstances given...
20 not just the nature of this matter and the lack of
21 gain and her history, clean, very clean history, is
22 that you consider a fine only, rather than
23 probation. I know you might not be inclined to do
24 that, but I don't believe a probationary sentence
25 would serve any purpose other than punishment

1 itself. And you may believe that that's warranted
2 under the circumstances and we certainly, we
3 certainly defer to your —

4 THE COURT: I imagine some people think
5 she ought get another year.

6 MR. THEOS: Well, you know Judge, you say
7 that, but I at this time that anybody feels that
8 way, I really do. I haven't interviewed anybody but
9 I would be absolutely shocked if anybody thought she
10 should receive a sentence of incarceration. We
11 would ask you to consider a fine only, and I've
12 never stood before a Court and asked for just a fine
13 only; but I think under the circumstances it's
14 certainly, it's certainly justified. Whether you
15 agree with it or not, it may be a different matter.

16 I would take issue with the amount of
17 money that the State contends is at issue. The
18 259-dollars was paid so although it was an initial
19 loss, it was paid. The 5300-dollars, even in the
20 State's, in the State's case, and not just in
21 Ms. Kovach's case but as attested to in grand jury
22 proceedings in Doctor Thompson's case, even from the
23 State's investigators that there were two videos.
24 One was a campaign video. One was a promotional
25 video for the District. The total price was

1 5300-dollars, and the testimony before the State
2 grand jury was that it was a two-for-one deal. So I
3 would ask you to, meaning that was the cost, she
4 just, you received two videos for the price of one.
5 So if you feel that that should be factored into the
6 setting of a fine I would ask you to consider it on
7 a fifty percent basis because there was a second
8 video that was produced, and certainly the School
9 District received the benefit of that promotional
10 video.

11 And the other thing I would say, Your
12 Honor, and it doesn't change the facts related to
13 the second video; but the second video, the only
14 time it was aired, it was aired at principal
15 meeting. Their monthly principals meetings and the
16 principals attend the meeting and some other staff
17 members, and I think some board members attend as
18 well. But that campaign video Ms. Kovach showed at
19 the, at that principals meeting. That's the only
20 time it was ever aired. It was not aired as a
21 commercial or at any other time.

22 So Your Honor, in closing I would just
23 again urge you to fashion a sentence that's fair,
24 that's reasonable considering all the facts and
25 circumstances, and also factors into very

1 prominently her history, her lack of any sort of
2 impropriety prior, prior to this, and also factor
3 into what the future holds for her because, again,
4 this will in and of itself without any sentence from
5 the Court, this in and of itself will have a
6 significant impact on her future employability as
7 well as her future reputation in the community. I
8 wish it weren't so; unfortunately it will be.

9 Your Honor, Randall Stoney is present.
10 Randall is a partner in a law firm in Charleston,
11 Barnwell Whaley firm; and he is, he'd like to
12 address the Court, Your Honor. He's — he probably
13 wouldn't tell you this, but he is a, he's the former
14 deputy solicitor here in Berkeley County. That was
15 years ago and but, he's the employer, one of the
16 partners that employs Chris Kovach who is
17 Ms. Kovach's husband.

18 THE COURT: Come forward.

19 MR. STONEY: Thank you, Your Honor, may it
20 please the Court. I appreciate the opportunity and
21 certainly sorry to be here under these
22 circumstances. As Jerry has said, Chris works with
23 us at Barnwell Whaley. He and I have had
24 opportunity to work together very closely on several
25 cases. And I cannot say enough good things about

1 not on Chris's work product but Chris as a person
2 and Amy and their family. I have not been involved
3 in this case other than vicariously in hearing what
4 is going on and watching it affect Chris and Amy;
5 and I can tell you unequivocally that they have
6 suffered terribly over the last two years that this
7 thing has been pending. This is the sort of thing
8 that is a nightmare for people like this, Your
9 Honor. They're honorable people. They love their
10 family; they love each other. They're active in the
11 community. And I certainly understand the State's
12 position and I've heard what they said and I've
13 heard what Jerry said; but I just, I just ask the
14 Court to consider that. And certainly your position
15 in imposing sentence is a difficult one; but I can
16 think of no better circumstance than to be lenient
17 and to have mercy on these people because, as I say,
18 this thing has been devastating. It's been
19 something that they've lived with constantly. It's
20 been in the press and, as I say, I have, I
21 personally witnessed the effect that it's had on
22 these people. And so I just thank you for your
23 time.

24 THE COURT: Thank you.

25 MR. STONEY: And appreciate your

1 consideration.

2 THE COURT: Thank you. Anyone else like
3 to say anything?

4 MR. THEOS: No, sir.

5 THE COURT: Anything further, Mr. Theos?

6 MR. THEOS: No, sir.

7 THE COURT: Mr. Waters.

8 MR. WATERS: Your Honor, just very
9 briefly, and I appreciate the Defense's
10 presentation. I just wanted to reiterate rather
11 than just take, you know, issues with little minor
12 things here and there and I know Your Honor has
13 already heard lot in this case; but you know, we had
14 these do's and don'ts right here. It's very clear.
15 There's plenty of things that a person in this
16 position could do legally, and they actually had
17 training. In fact, Amy was the one, Ms. Kovach was
18 the one that wrote on the company email about
19 training they had on May of 2012 about it. It talks
20 about that line between advocacy and just providing
21 information. And that's not getting overzealous
22 when you take your P card, your District card, and
23 start buying campaign materials with it and then,
24 you know, engaging in misrepresentations and telling
25 people to change logos or to change invoices, to

1 remove logos, to forging documents, to all sorts of
2 things like that. And I just, I just want to make
3 sure that you were clear that that's the kind of
4 conduct that the State has presented today.

5 THE COURT: All right.

6 MR. WATERS: Thank you, Your Honor.

7 THE COURT: What I'm gonna do is we're
8 gonna take a 15 minute recess. I'm gonna look over
9 some of this. We'll take a 15 minute recess and
10 come back and I'll give you the sentence of
11 Ms. Kovach.

12 (WHEREUPON, a recess was taken from the
13 proceedings.)

14 THE COURT: All right, I've considered the
15 presentations given by the attorney general and
16 Mr. Theos; and even in my limited exposure to this
17 case was started a month ago, what I see here is
18 lies, lies, and lies. Ms. Kovach from what I see
19 ignored every warning sign that was available to
20 her. Again, she lied to every opportunity reading
21 one's emails somebody warned her that this was not
22 the right thing to do. The email says all fixed.
23 Well, it's not all fixed. Her actions included,
24 again, lies, fabrication of document, and at every
25 opportunity she chose deceit over the truth. The

1 public servants have the duty and the obligation to
2 not just be good as the rest of the public, but to
3 behave better. Thank God most public servants do
4 that, and most of them serve very proudly. But
5 Ms. Kovach has not upheld her position and tried to
6 sway the will of the public who hired her in her
7 position to try to sway an election, and I take that
8 very seriously.

9 And I also look at her past history. She
10 has not had any type of criminal history and I'm not
11 sure that a jail sentence would serve needs for
12 justice for anyone in this case. The sentence of
13 the Court, please stand, under indictment 2015 —
14 2014-GS-08-266, under use of public funds to
15 influence election, the sentence is that you be
16 committed to the State Department of Corrections for
17 a period of one year and that you pay a fine of
18 25,000-dollars. That is suspended upon your paying
19 a 25,000-dollar fine and serving two years
20 probation. On the indictment 2015-GS-08-1073, on
21 the charge of misconduct in office, the sentence is
22 that you be committed to the State Department of
23 Corrections for a period of five years, and that is
24 suspended upon two years probation. These sentences
25 shall run concurrently. Thank you.

1 MR. THEOS: Your Honor, with respect to
2 that fine, you haven't indicated how that will be
3 paid.

4 THE COURT: She may pay it however they
5 work it out during her probationary period. It
6 needs to be paid during those two years that she's
7 on probation.

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10 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *
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1 STATE OF SOUTH CAROLINA)
2) Court of General Sessions
3 COUNTY OF BERKELEY) Case No. 2015-GS-08-01073
4)
5 STATE OF SOUTH CAROLINA)
6)
7 vs.) Transcript of Record
8)
9 AMY KOVACH,)
10)
11 Defendant.)
12)
13 DATE: February 8, 2016
14)
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9 B E F O R E:

10 The Honorable W. Jeffrey Young
11

12 A P P E A R A N C E:

13 S. CREIGHTON WATERS and BRIAN T. PETRANO
14 Attorneys for the State

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INDEX

EXHIBITS

	Exhibit	Description	Identification	Evidence
1				
2				
3	S-1	8/28/15 Plea Transcript	4	
4	State's Exh. No. 1B	Facebook Records	4	
5	State's Exh. 1C	SLED Interview with Amy Kovach	4	
6	S-2	Probation Terms	4	
7	State's Exh. 2B	Defendant's Affidavit	4	
8	State's Exh. 3	All e-mails	4	
9	State's Exh. 7	E-Mail chain and price estimate from Go To Team	4	
10	State's Exh. 7B	Invoice dated 9/12/12	4	
11	State's Exh. 7C	Law Enforcements' Statements	4	
12	State's Exh. 7D	Video	4	
13	State's Exh. 37B	District Files	4	
14	State's Exh. 37C	E-mail dated 10/10/12 and 10/8/12	4	
15	State's Exh. 42	Search warrant dated 12/6/13 and Affidavit	4	
16	State's Exh. 42B	Search Warrant signed 5/12/15	5	
17	State's Exh. 42C	Search Warrant dated 7/28/15	5	
18	State's	Network Folder	5	

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1	Exh. 50		
2	State's	July 2013 estimates	5
	Exh. 51		
3	State's	Facebook Records	5
4	Exh. 53		
5	State's	E-mails regarding video	5
	Exh. 56		
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1 (State's Exhibit No. 1, August 28, 2015, Transcript
2 of Record, was marked for identification.)

3 (State's Exhibit No. 1B, Facebook Records, was
4 marked for identification.)

5 (State's Exhibit No. 1C, SLED Interview with Amy
6 Kovach, was marked for identification.)

7 (State's Exhibit No. 2A, Probation Terms, was
8 marked for identification.)

9 (State's Exhibit No. 2B, Defendant's Affidavit, was
10 marked for identification.)

11 (State's Exhibit No. 3, all e-mails, was marked for
12 identification.)

13 (State's Exhibit No. 7, E-Mail chain and price
14 estimate from Go To Team, was marked for identification.)

15 (State's Exhibit 7B, Invoice dated 9/12/12, was
16 marked for identification.)

17 (State's Exhibit 7C, law enforcement statements,
18 was marked for identification.)

19 (State's Exhibit 7D, Video, was marked for
20 identification.)

21 (State's Exhibit 37B, District files, was marked
22 for identification.)

23 (State's Exhibit 37C, E-mail dated 10/10/12 and
24 10/8/12, was marked for identification.)

25 (State's Exhibit 42, Search warrant dated 12/6/13

1 and Affidavit, was marked for identification.),

2 (State's Exhibit 42B, Search Warrant signed
3 5/12/15, was marked for identification.)

4 (State's Exhibit 42C, Search Warrant dated 7/28/15,
5 was marked for identification.)

6 (State's Exhibit 50, Network folder, was marked for
7 identification.)

8 (State's Exhibit 51, July 2013 estimates, was
9 marked for identification.)

10 (State's Exhibit 53, Facebook records, was marked
11 for identification.)

12 (State's Exhibit 56, E-mails regarding video, was
13 marked for identification.)

14 MR. WATERS: We are here today on a rule to show
15 cause that Your Honor signed on November 20th, 2015, in the
16 matter of Ms. Amy Kovach.

17 As Your Honor recalls, Ms. Kovach pled guilty before
18 Your Honor on August 28th, 2015. She pled guilty to
19 misconduct in office, an ethics act offense. And during that
20 particular plea, she ultimately, in questioning by Your
21 Honor, agreed to the truth of the allegations and to a very
22 extensive factual basis that was set forward by the State.

23 Since that time, since her plea, she subsequently
24 signed an affidavit as part of a grievance procedure which
25 materially contradicted the matters to which she admitted at

1 the guilty plea, indeed, which are supported by the
2 overwhelming evidence in this case.

3 And, Your Honor, we have, in fact, marked a number
4 of exhibits, pre-marked a number of exhibits that support the
5 truth of the factual allegations to which she ultimately pled
6 guilty.

7 She also filed a lawsuit that called into question
8 the integrity of this process and called into question the
9 integrity of the actors in this particular process.

10 So at that point, the State filed a petition with
11 Your Honor to see whether or not Ms. Kovach should be held in
12 contempt, whether she should be held in direct contempt for
13 essentially lying to Your Honor during the guilty plea or
14 whether she should be held in constructive contempt for
15 making a mockery of her solemn plea of guilty and of the
16 criminal justice system with her conduct and actions after
17 that particular plea.

18 Again, it's the State's position that she did not
19 lie to Your Honor, because, again, that is consistent with
20 the overwhelming evidence. And we are prepared to go through
21 that again with Your Honor today with the supporting
22 documentation and witnesses, if need be. However, because
23 her statements do call into question the integrity of this
24 process, we thought it was important that we file this
25 petition and that there be a hearing before Your Honor so you

1 can address those particular claims.

2 So that's just kind of to set the table. I do
3 believe the defense probably has something they would like to
4 address before we proceed.

5 MR. SAVAGE: Good morning, Judge.

6 THE COURT: Good morning, Mr. Savage.

7 MR. SAVAGE: You remember Amy Kovach?

8 THE COURT: I do.

9 MR. SAVAGE: And Donald McCune, who works in my
10 office, and Cheryl Savage, who also works with me.

11 We appreciate this opportunity. But, Judge, we're a
12 little disappointed that we are here today. And for the
13 reasons that we are here attributable to Ms. Kovach, we
14 humbly apologize to this Court and we ask this Court to
15 forgive us.

16 Before we get into that, I did want to say that this
17 rule that was served on us in late December, we filed a
18 notice of appearance December 30th. Your Honor was gracious
19 enough to give us a continuance from the original court date
20 of January 4th. During that time, we had used that time to
21 thoroughly investigate this matter.

22 We submit to the jurisdiction of this court in
23 accord with the order of this Court setting this hearing for
24 today in Charleston. So we don't have any objection to that
25 at all.

1 But, Judge, during that time period, that month or
2 so that we had to investigate this case, we found some pretty
3 horrible situations occurred, both prior to the sentencing
4 hearing that Your Honor held in Berkeley County, as well as
5 post-sentencing matters involving members of the legal
6 profession. It is clear from our analysis that the time that
7 a civil suit was filed, no due diligence, none, was
8 performed.

9 The advice given to Ms. Kovach for her affidavit and
10 her filing of the civil case was done without a clear
11 understanding of what the attorney general had alleged and
12 the statements that the attorney general made at the
13 sentencing hearing and the statements even that Ms. Kovach
14 made to Your Honor in Berkeley County.

15 Once it was discovered that the transcript of the
16 proceeding had not even been read prior to the filing, it
17 wasn't even prepared prior to the filing of the civil suit,
18 Ms. Kovach withdrew, and we believe perjured herself from any
19 misstatement she had made in the context of the civil suit.
20 That civil suit has been withdrawn, as we understand it, in
21 all respects except for a counter-suit with one of the
22 individuals involved.

23 THE COURT: But on her side, it's been withdrawn
24 with prejudice?

25 MR. SAVAGE: That is correct. It was done.

1 immediately and brought to the attention of the attorneys
2 involved that the civil suit was inconsistent with the
3 matters that were addressed by this Court at the sentencing
4 hearing. So for that, Ms. Kovach extends her humble
5 apologies to this Court with the explanation that she did
6 what she did on the advice of counsel, who we believe may
7 have advised Ms. Kovach not to perform due diligence that's
8 required in one case instead of filing an action in this
9 courtroom.

10 Ms. Kovach, please.

11 THE COURT: Good morning.

12 MR. SAVAGE: You've heard the statements I've
13 offered to the Court.

14 MS. KOVACH: Yes, sir.

15 MR. SAVAGE: Will you repeat those in a way that
16 comes from your heart?

17 THE COURT: Before you do, please place her under
18 oath.

19 (Whereupon, Amy Kovach is sworn.)

20 THE CLERK: Please state your full name.

21 THE COURT: We may need to have a microphone. She
22 speaks very softly and we want the Court to hear what she has
23 to say.

24 MR. SAVAGE: Ms. Kovach, you heard the presentation
25 that I made on your behalf to the Court?

1 MS. KOVACH: Yes, sir.

2 THE COURT: Is it true in all respects?

3 MS. KOVACH: Yes, sir.

4 MR. SAVAGE: Will you kindly repeat the analysis
5 that you and Don and I, your husband, have done over the past
6 30 days before the filing of the civil suit?

7 MS. KOVACH: Over the past 30 days of filing the
8 civil suit, we worked with attorney Andy Savage and attorney
9 Don McKuhn to better understand the actions taken by my civil
10 lawyer, Nancy Bloodgood, on my behalf, to better understand
11 the error that she made in filing the suit without having
12 done proper due diligence and without the advantage of having
13 a transcript from the August 28th hearing.

14 MR. SAVAGE: Actually, the error was made by you
15 based on the erroneous legal representation that you had; is
16 that correct? You were the one who filed the suit.

17 MS. KOVACH: I filed the suit at the advice of Nancy
18 Bloodgood, my counsel, yes.

19 THE COURT: Ms. Kovach, you understand that, again,
20 you would have had to have signed the lawsuit; is that
21 correct?

22 MS. KOVACH: Yes, sir.

23 THE COURT: And you signed that lawsuit?

24 MS. KOVACH: Yes, sir.

25 THE COURT: You are now wishing to -- and that

1 lawsuit had information that was contrary to the statements
2 that you made during your plea; is that correct?

3 MR. SAVAGE: Do you understand the question? That
4 the lawsuit contained the information that was inconsistent
5 with what you had said to this Court? I can't answer that
6 for you.

7 MS. KOVACH: The lawsuit had inconsistencies,
8 correct.

9 THE COURT: What you told me on the day of your plea
10 to the criminal charges was the truth; is that correct?

11 MS. KOVACH: That's correct.

12 THE COURT: You are guilty of those charges; is that
13 correct?

14 MS. KOVACH: Yes, sir.

15 THE COURT: Okay. And you've now withdrawn your
16 lawsuit with prejudice; is that correct?

17 MS. KOVACH: Yes, sir.

18 THE COURT: And you will file no further lawsuits on
19 anything involved in this matter; is that correct?

20 MR. SAVAGE: We hadn't discussed that, but I can
21 assure you our firm will not file any.

22 MS. KOVACH: I would have to speak with my husband
23 and determine our --

24 THE COURT: Well, I guess by this, I cannot take --
25 yes, sir.

1 MR. MCCUNE: Can we approach for a moment?

2 THE COURT: Yes.

3 (Whereupon, a bench conference takes place off the
4 record.)

5 MR. SAVAGE: Ms. Kovach understands that she will
6 not aggrieve to this Court. She will not file another
7 lawsuit based on the same factual basis as this one.

8 Is that correct?

9 MS. KOVACH: That's correct.

10 THE COURT: Okay. With this statement, this
11 resolves this matter; is that correct?

12 MR. WATERS: Your Honor, obviously, with her
13 statements sort of renouncing that the allegations that were
14 made, if Your Honor is satisfied, then the State is satisfied
15 that the process has been vindicated.

16 THE COURT: Okay. I've been involved with this case
17 for a long time. And I've seen it come to a crescendo. And
18 I, of all people, thought it was over with in August. I am
19 glad to now know that it is over with. And I will accept her
20 apology to this Court.

21 I understand that you can get bad advice out there.
22 But that, ultimately, it's going to fall on your shoulders,
23 as it always does. You can't always just blame the lawyer
24 because it's your lawsuit. It was your name on the lawsuit.

25 So I'm glad we were able to resolve this without a

1 lengthy hearing today. And so for the purposes of the rule
2 to show cause, this matter is truncated.

3 Thank you. Good luck in the future. Court is
4 adjourned.

5 (Whereupon, the proceedings are adjourned.)

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STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF BERKELEY 2015-CP-08-02380

AMY KOVACH, et al.,	)	
	)	
Plaintiffs,	)	TRANSCRIPT OF RECORD
	)	
-vs-	)	September 16, 2016
	)	
BERKELEY COUNTY SCHOOL	)	Moncks Corner, South Carolina
DISTRICT, et al.,	)	
	)	
Defendants.	)	

B E F O R E:

The Honorable Jean Toal, Judge.

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

M. Dawes Cooke, Jr., Esquire
Attorney for Amy Kovach

Laura Johnson Evans, Esquire
Katie Monoc, Esquire
Mary Barnwell Ramsay, Esquire
Attorneys for Nancy Bloodgood, Esquire

William Howell Morrison, Esquire
Pierce T. MacClennan, Esquire
Attorneys for Karen Whitley

Jeffrey A. Breit, Esquire
Attorney for Joshua Whitley, Esquire

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

1 (September 16, 2016.)

2 THE COURT: These are hearings on the matters
3 involving Amy Kovach against the Berkeley County School
4 District and others, the only remaining defendant in this
5 case being Joshua S. Whitley. It's 2015-CP-08-02380.

6 I've been assigned to hear motions in
7 connection with this matter. All outstanding motions are
8 what I intend to deal with today, and then we will see
9 where the matter goes from there in terms of trial, and
10 if such is to be had, I have been assigned to take this
11 matter to its conclusion.

12 Let me get straight right away about the
13 parties in this thing. I see some captions that various
14 say Joshua Whitley and Karen Whitley, and I see others
15 that simply say Kovach against Whitley and Joshua Whitley
16 against Kovach, so can y'all clarify for me who's left?

17 MR. MORRISON: Good morning, Chief Justice.
18 Howell Morrison for Dr. Karen Whitley.

19 No motions have been heard in my case, to my
20 recollection, ever, so everything goes all the way back
21 to the inception of the case last year.

22 THE COURT: Well, certain matters have been
23 dismissed from the matter, as I understand it, with
24 prejudice, right?

25 MR. MORRISON: They have, and Josh Whitley

1 and Karen Whitley, my client, are here on motions today.
2 The plaintiff contends my client has been properly
3 dismissed and has no procedural right to pursue
4 sanctions. We contest that procedural position so we can
5 argue our sanctions.

6 THE COURT: Okay. I understand.

7 MR. MORRISON: Josh Whitley has counterclaims
8 pending. Karen Whitley does not, and she would be ending
9 her involvement in the case today one way or the other,
10 because she's never filed a counterclaim or cross-claims.

11 THE COURT: I'm not trying to cut you off.
12 I'm just trying to get the posture of who we got, so at
13 the present time until this matter concludes this
14 morning, we have Ms. Kovach, and a notice of appearance
15 has been filed on her behalf by Mr. Dawes Cooke who is
16 here representing -- hey, Mr. Cooke -- so then on the
17 defense side and counterclaiming side, on the defense
18 side, we have Ms. Karen Whitley, and you, Mr. Morrison
19 are representing Dr. Whitley, as I understand.

20 MR. MORRISON: That's correct.

21 THE COURT: She's still involved. And then
22 you got Joshua Whitley?

23 MR. BREIT: Represented by Jeffrey Breit who
24 is here pro hoc vice from the Commonwealth of Virginia.

25 THE COURT: Have I heard that? Or is that --

1 MR. BREIT: That's already been done.

2 THE COURT: That's been done so, Mr. Breit is
3 before the Court, and then, Mr. Whitley, you're here as a
4 defendant and also a co-counsel in the matter, because
5 you're doing some filings yourself, right?

6 MR. WHITLEY: Yes, ma'am, Your Honor.

7 THE COURT: All right. Now, on the
8 counterclaims involved, the counterclaims against Kovach,
9 correct?

10 MR. WHITLEY: Yes, ma'am.

11 THE COURT: And are they simply requesting
12 sanctions against Attorney Bloodgood or a counterclaim
13 against her as well?

14 MR. BREIT: There are sanction motions, Your
15 Honor, against both counsel and Plaintiff Kovach, and
16 there's a counterclaim only against Kovach.

17 THE COURT: So sanctions motions -- in
18 connection with the sanctions motion, we have Ms. Kovach
19 here represented by Mr. Cooke, and then we have Attorney
20 Nancy Bloodgood. Ms. Bloodgood is present in the
21 courtroom, and she is represented by --

22 MS. MONOC: Katie Monoc, Your Honor. Mary
23 Ramsay and Laura Evens are with Smith Moore Leatherwood
24 as well.

25 THE COURT: Thank you.

1 Now, let's get together exactly what motions
2 we're going to be hearing today, and I will -- on behalf
3 of Karen Whitley, what motions or other pleadings,
4 Mr. Morrison?

5 MR. MORRISON: Your Honor, there are a number
6 of motions that have been filed.

7 THE COURT: Right. I just want to know the
8 ones you're going to proceed on today. There is no sense
9 in redoing the wheel. The dismissal of this action
10 covers a lot of ground, so I want to look at things we're
11 going to actively pursue here.

12 MR. MORRISON: I will tell you the ones that
13 will be decided by today's argument at some point. Karen
14 Whitley's notice of motion to strike the stipulation of
15 dismissal, which was -- and these are not necessarily in
16 chronological order, but that motion is dated December 4,
17 2015; her motion to dismiss, which is dated November 9,
18 2015; her motion for Rule 11 sanctions dated November 9,
19 2015.

20 THE COURT: And that motion is a motion for
21 sanctions against who?

22 MR. MORRISON: Originally it was filed only
23 against Ms. Bloodgood, and later it was supplemented
24 after the rule to show cause hearing to be directed also
25 against Ms. Kovach. Defendant Karen Whitley's amended

1 motion for sanctions, and that's what I just referenced,
2 against plaintiff and plaintiff's counsel. That is dated
3 February 23rd, 2016, and then the rest are just briefs
4 and supplemental briefs by -- on behalf of Karen Whitley,
5 Your Honor.

6 THE COURT: Very good. That's Karen Whitley.
7 Now, Mr. Breit on behalf of Josh Whitley.

8 MR. BREIT: We have motions under Rule 11 for
9 sanctions against Ms. Bloodgood and Ms. Kovach, which are
10 pending and we are going to argue today. There is
11 tangentially, Your Honor, a motion to dismiss
12 Ms. Kovach's lawsuit against Mr. Whitley. It was
13 represented at the show cause hearing in February of this
14 year that Mr. Whitley's -- Mrs. Kovach's lawsuit against
15 Mr. Whitley had been dismissed with prejudice. That is
16 not, in fact, the case. We wish to have it dismissed
17 today.

18 THE COURT: You wish to --

19 MR. BREIT: Have her lawsuit against
20 Mr. Whitley, which is still pending, be dismissed as
21 well. There was a representation, Your Honor, that in
22 February it had been dismissed with prejudice. It's
23 still on the record.

24 THE COURT: Are you pursuing counterclaims?

25 MR. BREIT: Counterclaims are being pursued,

1 but they're not on for today's docket for motion.

2 THE COURT: You got a motion for sanctions,
3 and then you got a motion to dismiss the Kovach actions?

4 MR. BREIT: The original complaint by
5 Ms. Kovach against Mr. Whitley.

6 THE COURT: And then you have an answer in
7 counterclaim.

8 MR. BREIT: Which is pending and will be
9 continued after today's date, depending on the Court's
10 ruling, but that is still pending. There is no motion to
11 dismiss it, as we understand it. It won't be argued
12 today, anything about the counterclaim.

13 THE COURT: Well, you don't know what's going
14 to be argued today yet, Mr. Breit. I'm trying to line up
15 what I think is going to be argued.

16 MR. BREIT: I agree. There's not been
17 motions, that I know of, filed for today.

18 THE COURT: Well, there's a motion to dismiss
19 the Kovach action, and that's alive and well and may be
20 argued, maybe not.

21 MR. BREIT: Yes, sir.

22 THE COURT: Now, Ms. Kovach has what motions,
23 Mr. Cooke?

24 MR. COOKE: The only motion that I'm aware of
25 that's pending for Ms. Kovach was Nancy Bloodgood filed a

1 motion to dismiss counterclaims against Josh Whitley.

2 THE COURT: And then you've got a filing
3 opposing the granting of sanctions in the main complaint,
4 right?

5 MR. COOKE: Yes, Your Honor.

6 THE COURT: All right. And, finally, with
7 respect to Attorney Bloodgood, Ms. Monoc?

8 MS. MONOC: We're just here to defend her on
9 the motions for sanctions, and her position is that Karen
10 Whitley was already dismissed upon service of the
11 voluntary dismissal under 41(a) on November 24, 2015.

12 THE COURT: How about the dismissal of
13 counterclaim by Whitley? Will you be offering any
14 arguments in that regard?

15 MS. MONOC: I believe Mr. Cooke will.

16 THE COURT: All right.

17 MS. MONOC: On behalf of Ms. Kovach.

18 THE COURT: Very good. All right.

19 Most of these arguments revolve around the
20 motion for sanctions. It seems to me the way to start
21 this thing is to talk about -- rather than the underlying
22 lawsuit, to talk about the sanctions, and so I'm going to
23 begin to hear motions for sanctions, and, really, the
24 moving party there is Mr. Whitley, so I'll hear from
25 Mr. Whitley, unless you have some other order --

1 MR. MORRISON: May we ask, Your Honor, may it
2 please the Court: Karen Whitley's sanction motion, we
3 believe, is a little simpler, and what we would propose
4 to do is let her proceed first, if the Court permits, and
5 get that behind us because there's only a single cause of
6 action that is alleged against her for civil conspiracy,
7 and we think it's a cleaner, easier motion to deal with
8 it because it only has one cause of action that --

9 THE COURT: Well, I mean, the motion for
10 sanctions is what you're asking.

11 MR. MORRISON: Yes, yes.

12 THE COURT: Are you also asking that I hear
13 the motion with respect to the complaint itself?

14 MR. MORRISON: Yes. For Dr. Whitley to have
15 standing to move for sanctions, she --

16 THE COURT: She's going to have to still be a
17 party to these proceedings.

18 MR. MORRISON: That's right, so that's
19 necessarily involved here, but that is, in our view, and
20 I don't think there is any factual dispute, that is a
21 pretty simple, clean issue there.

22 THE COURT: All right. Well, we'll begin
23 with the motion to strike the stipulation of dismissal,
24 and you can lead from that into your argument for the
25 motion for sanctions, and then we'll just let the other

1 side reply to both of those things and that's how we will
2 begin, Mr. Morrison.

3 Does that suit everybody else?

4 MR. MORRISON: Thank you, Your Honor.

5 THE COURT: Very good. You may proceed.

6 MR. MORRISON: Thank you, Your Honor.

7 The issue procedurally as to whether
8 Dr. Whitely is properly before the Court on the sanctions
9 motion, Your Honor, boils down to some pretty simple
10 facts, or procedural matters.

11 The complaint was filed on October 15, 2015.
12 She was one of several defendants but was only named in
13 the civil conspiracy cause of action at the end. She
14 retained my firm. I filed on her behalf -- well, let me
15 say, she was served a few weeks later. I filed on her
16 behalf on November 16, 2015 a Rule 12(b)6 motion to
17 dismiss and a motion for sanctions versus Ms. Bloodgood
18 only. The motion to dismiss, the Rule 12 motion to
19 dismiss --

20 THE COURT: Wait a minute. Don't let me get
21 ahead of myself. She files a 12(b)6 and sanctions and
22 what else?

23 MR. MORRISON: It was -- I only made the
24 point that the sanctions motion, the original sanctions
25 motion, was only against Ms. Bloodgood.

1 THE COURT: Right. What else was filed --
2 what I'm getting at is this: She files a complaint
3 October the 15th, 20 --

4 MR. MORRISON: That's correct.

5 THE COURT: Kovach files a claim October 15,
6 2015, is served some time thereafter. When did you file
7 the motion for 12(b)6 dismissal and sanctions?

8 MR. MORRISON: A timely motion on 11/16/15.

9 THE COURT: And -- all right. Did you file
10 any answer?

11 MR. MORRISON: No, I did not, but I did do
12 this: I filed with the 12(b)6 motion to dismiss as an
13 exhibit a copy of the guilty plea transcript of Amy
14 Kovach, hereby bringing the motion to dismiss within the
15 purview of Rule 56 by virtue of the last sentence of Rule
16 12(b)6 providing that when extraneous factual matter is
17 included with the 12(b)6 motion to the extent the Court
18 considers it, it converts the motion into a summary
19 judgment.

20 THE COURT: Well, the Court has to convert
21 it, but I agree with you. That hasn't been ruled upon
22 yet, of course.

23 MR. MORRISON: No, it has not. On the 23rd
24 of November, Kovach began the process of trying to
25 dismiss, trying to get rid of the case. She filed a

1 stipulation of dismissal, which was named a stipulation
2 of dismissal, but, of course, it was not a stipulation.

3 THE COURT: When did she file this?

4 MR. MORRISON: 11/23.

5 THE COURT: Stipulation of dismissal?

6 MR. MORRISON: As to my client, Karen
7 Whitley. It was named on its face a stipulation, but it
8 was not a stipulation. It did not have any other parties
9 sign with it, let alone all the parties.

10 It now is being treated by the plaintiff as
11 if it were always intended to be a Rule
12 41(a)1(a) voluntary dismissal, rather than a subpart
13 (b) stipulation of dismissal, although it was filed as a
14 stipulation. It was served on me, representing Karen
15 Whitley, on December 1st.

16 That same morning, before the afternoon mail,
17 I filed an answer on Karen Whitley's behalf, but I
18 believe that's irrelevant. All the procedural issues
19 relative to Karen Whitley's being before this Court,
20 whether or not she is dismissed, all hinge on the fact
21 that before any dismissal effort took place, she filed a
22 dismissal motion with an extensive memorandum in support
23 with a transcript from the guilty plea and she filed her
24 motion for sanctions.

25 When the Attorney General -- I mean, the

1 close background to these events was that during this
2 period, the Attorney General caught wind of what was
3 going on and came back to Judge Jeffrey Young with a rule
4 to show cause for criminal contempt against Amy Kovach,
5 and the water got very hot at that point. And that
6 transcript's in the record several times, but there was a
7 big flurry of activity on the part of Ms. Kovach through
8 Ms. Bloodgood, her lawyer, to try to get this case
9 dismissed before more damage was done to any number of
10 people.

11 As the Court is probably aware from the
12 briefs, when Ms. Kovach appeared at the rule to show
13 cause hearing back before Judge Young, who had been the
14 judge who had taken and accepted her prior guilty plea,
15 Ms. Kovach was represented by new criminal defense
16 attorney, at that point Andy Savage, and came forward,
17 fell on her sword, or impaled her lawyer on her sword,
18 whatever it was.

19 She blamed her attorney under oath for an
20 error in the filings of the affidavit she had filed
21 through Ms. Bloodgood with the Berkeley County School
22 District for her employment complaint and the complaint
23 in this case, which largely mirror each other in their
24 allegations, and she and Mr. Savage told Judge Young that
25 this was a terrible misjudgment, an error, that no due

1 diligence was done, should never have been filed.

2 They will not re-file it, and they were
3 dismissing it in the complaint, dismissing it with
4 prejudice, and Deputy Assistant Attorney General
5 Creighton Waters who had prosecuted the case who is in
6 the courtroom today informed Judge Young that the State
7 was satisfied with this outcome and would withdraw its
8 rule to show cause. And Judge Young admonished
9 Ms. Kovach that she played a role in this as well. It
10 was her signed complaint, and that rule to show cause was
11 dismissed.

12 But the point is that it was the filing of
13 the rule to show cause that led to the flurry to get
14 everybody dismissed. My client had incurred fees, had
15 taken the lead on pushing for the dismissal of this case
16 through me, and she believed she would be unfairly
17 prejudiced to be swept away by a poorly drafted -- not
18 particularly relevant, but a confusing attempt to dismiss
19 her without prejudice, which would never have been
20 acceptable to her in any event, and still is not, and
21 that's a big point.

22 This purported stipulation of dismissal was
23 without prejudice as to my client, and so she stands
24 before the Court here today. There are oral
25 representations that meant to be with prejudice or

1 something, but she stands before here today, still in
2 this case, having incurred fees to get rid of this case,
3 having filed in very timely fashion a dismissal motion
4 and the sanctions motion and wanting both her sanctions
5 heard and the case against her dismissed properly with
6 prejudice.

7 THE COURT: Well, I'll tell you, she doesn't
8 have any objection; the only reason she wants to keep
9 this case alive right now is so she can get sanctions,
10 right?

11 MR. MORRISON: That's correct, Your Honor.

12 THE COURT: I mean, having it dismissed with
13 prejudice is otherwise what she wants, right?

14 MR. MORRISON: That's correct. And, Your
15 Honor, as to the merits, it's also fairly simple as to
16 Dr. Whitley. The single cause of action against her, as
17 I mentioned a couple times, is only the civil conspiracy
18 claim. The civil conspiracy claim, the clear, absolute
19 gravamen of the complaint against Dr. Whitley, the
20 conspiracy claim, is that she and others worked to call
21 to the attention of the prosecuting authorities the
22 criminal activity of Amy Kovach, the plaintiff, and
23 assist in that effort by enlisting the help of the
24 Berkeley County Republican Party.

25 The allegation is -- these allegations are in

1 paragraph 159 or thereabouts of the complaint, but we
2 have to catch our breath at this point. The allegation
3 is that Dr. Whitley helped call attention to the criminal
4 activity of Amy Kovach. She subsequently pled guilty.
5 There's no allegation that this is different kinds of
6 crimes arising out of different facts or nucleus of facts
7 or anything like that.

8 There's lots of quibbling in these briefs
9 about fine points of what she pled to and what she didn't
10 plead to, but the point as to Karen Whitley is simple:
11 She was not subject to a claim, a civil claim, for
12 conspiracy for calling to the attention of the
13 prosecuting authorities -- which she denies doing, we're
14 talking argument here -- but if she had done it, she was
15 absolutely protected by the judicial privilege.

16 She was absolutely protected by principles of
17 estoppel, judicial estoppel, because Amy Kovach had pled
18 under oath to these crimes, working for the Berkeley
19 County School District, as Your Honor is well aware, the
20 guilty plea meets the level of proof beyond a reasonable
21 doubt. The civil claims are a lesser level, but she had
22 pled beyond a reasonable doubt to an extensive factual
23 predicate laid before Judge Young by Mr. Waters, Deputy
24 Attorney General Waters.

25 She had answered the judge directly that the

1 factual presentation by Mr. Waters was true, that she was
2 guilty. There has been, as I said before, some quibbling
3 about -- and this comes up, this inevitably comes up when
4 someone has the poor judgment to attempt to file a civil
5 case to collect money damages after pleading guilty or
6 being convicted in a criminal matter against people
7 involved in her prosecution.

8 That is what this civil complaint is about.
9 This is an inherently perilous thing that Amy Kovach did
10 with the representation of Nancy Bloodgood from the
11 beginning. She purported to assert civil claims against
12 enough third parties to cause -- she's denying then and
13 she still denies, according to the most recent filings we
14 received yesterday, that she is still guilty of these
15 things. She has lots of explanations of why she pled
16 guilty, pressure, public pressure.

17 She consistently tries to declare that she
18 was the subject of selective prosecution or abuse of
19 prosecution. You've seen all these things, but the point
20 Karen Whitley is relatively simple. The other
21 allegations in the civil conspiracy claim against Karen
22 Whitley, if they are allegations, I would call them
23 probably averments, but there are three or four
24 paragraphs in the civil conspiracy claim related to Karen
25 Whitley, and they allege that Karen exchanged multiple

1 e-mails with her son Josh at some unstated time about
2 police at her home; therefore, Amy Kovach accused Karen
3 Whitley of using property of the Berkeley School District
4 to correspond on personal e-mails with her son Josh,
5 bearing in mind that there is no allegation that these
6 e-mails had anything to do with influencing, wrongly
7 influencing, a bond referendum or wrongly spending money
8 of the school district to influence the vote.

9 That's what the allegations of the crimes
10 were against Amy Kovach, but they throw into the
11 conspiracy claim the ongoing theme by Amy Kovach, which
12 was she was singled out by the attorney general,
13 selective prosecution because Karen Whitley was not
14 prosecuted, but the thing she accuses -- she lays out, as
15 an example of a decision not to prosecute, is not a crime
16 anyway. It's not a crime to have a personal e-mail
17 that's not affected by such matters as influencing a bond
18 referendum.

19 THE COURT: Could that averment to be read to
20 accuse your client of spending district money on personal
21 e-mails, not necessarily in connection with the bond
22 referendum?

23 MR. MORRISON: I suppose if you could
24 monetize the value of an e-mail, theoretically it's
25 possible, but one of the things in this record is what

1 the deputy attorney general made clear to Judge Young.
2 He explained to Judge Young that the AG's office has a
3 series of protocols and criteria.

4 THE COURT: I recall that quite well. I read
5 it in detail, along with the side-by-side comparison of
6 what was said at the plea and what was said in the
7 pleadings or what was said in the affidavit in connection
8 with the opposition to the grievance, or pursuant to
9 grievance, so I'm aware of all those protocols and so
10 forth that were elucidated.

11 MR. MORRISON: And there are some other very
12 important points that -- we've been in this thing for a
13 while, and we've been trying to get a hearing like this
14 for ten or eleven months, and it's over-briefed and I'm
15 guilty of it, but --

16 THE COURT: I have been copied the same thing
17 a lot of times. Many trees have been killed.

18 MR. MORRISON: But there is a very
19 interesting exhibit that was filed yesterday that came
20 out of the sealed exhibits yesterday that was an
21 attachment No. 5 to Ms. Bloodgood's affidavit, that
22 attachment 5 that Creighton Waters wrote at the request
23 of the Berkeley County School District where they asked
24 him to explain to them what Amy Kovach did. What the
25 deputy attorney general wrote was a very detailed

1 presentation of facts.

2 THE COURT: I'm aware of that.

3 MR. MORRISON: With exhibits cited.

4 THE COURT: Right, and this brief -- that's
5 interesting but, of course, we've seen what is the first
6 cousin to it. He later converted those analyses to a
7 very detailed analysis of the various averments and
8 various recitations by Ms. Kovach and then elucidated the
9 material covered in that letter in terms of charges that
10 were made against Ms. Kovach.

11 MR. MORRISON: My real point there is -- and
12 this has gotten past me for a year, but Ms. Bloodgood had
13 that letter. She was forced by Berkeley County School
14 District to request it through FOIA, but she got it in
15 early October, and it's in her hourly billing records.
16 She got it before she filed the complaint in this matter
17 so that at the time she filed the complaint, this is
18 vitally important, she not only had in hand the sworn
19 guilty plea of Ms. Kovach with those details that are in
20 there, but she also had in hand Mr. Waters's letter to
21 Berkeley County School District, which specifies the
22 exact proof. That letter is --

23 THE COURT: I follow where you're going, that
24 she had a good deal of knowledge that would have, you
25 contend, advised her to tell the client not to file it.

1 MR. MORRISON: Yes.

2 THE COURT: I understand.

3 MR. MORRISON: And, of course, I believe, and
4 I don't want to put words in their mouth, but I think
5 their position is, Ms. Bloodgood's position is, that she
6 pled around specific direct clear admissions by
7 Ms. Kovach, under oath. It's a little unusual to try to
8 read it, but I don't believe there's any merit in that
9 position. I do not believe --

10 THE COURT: Well, we're going to hear from
11 them. It's not going make a difference to their ability
12 to make the argument as they see fit.

13 MR. MORRISON: I'm happy to answer any
14 questions the Court has about Ms. Whitley. The
15 allegations against her of civil conspiracy were thinner
16 than paper, and the essence of them was she worked to
17 have Ms. Kovach prosecuted.

18 Well, yes, if she did that, yes, she had
19 every right to do it, and there's even case law that
20 we've cited, I think it's South Carolina, a citizen
21 should be commended for that.

22 Thank you, Your Honor.

23 THE COURT: Thank you, Mr. Morrison.

24 Now, all right. The question is how to
25 proceed, whether we go back and forth and back and forth

1 and, Ms. Monoc, I'm going to ask you whether you can
2 tolerate having them all speak and then you speak to
3 everything. I'm going to ask Mr. Cooke the same thing.

4 MR. COOKE: Yes, Your Honor, if that's more
5 efficient.

6 THE COURT: I think it might be a more
7 efficient way to do it, and then -- y'all are smart
8 enough to -- and I hope I am; I'll try -- to sort out
9 who's saying what, but I believe you might want to have a
10 global response to these matters.

11 Very good. Well, with that understanding,
12 Mr. Breit, we will go ahead with you now on behalf of
13 Josh Whitley, and, Mr. Whitley, that doesn't preclude
14 you. You are also counsel in this matter, even though
15 you're also the lawyer, but I understand Mr. Breit is
16 trying to hold you back, but y'all may divide this matter
17 as you may see fit, is what I'm simply saying.

18 MR. WHITLEY: Your Honor, thank you. You
19 know I like to argue, but he tells me I'm not allowed.

20 THE COURT: That old injunction is well
21 heeded, so go ahead, Mr. Breit.

22 MR. BREIT: Thank you, Your Honor. I
23 understand that the Court has read every page that we've
24 given you, and I apologize for that, so I'm going to
25 highlight that which I think is important to Josh

1 Whitley.

2 Josh found out about this lawsuit against him
3 when a reporter called him. He had not been served. The
4 reporter received the lawsuit from another reporter, and
5 that reporter received it by e-mail from Ms. Bloodgood.

6 Ms. Bloodgood was clever enough, after
7 sending the lawsuit, to not respond on the record to the
8 reporter, which might expose her to defamation. She used
9 her pen instead. The hearing before Judge Jeffrey Young
10 sets out fairly clearly that Ms. Kovach lies, lies, and
11 then lies again. That's the judge's words. Where given
12 an opportunity to talk about it, she chose deceit over
13 the truth at every juncture.

14 The attorney general, Waters, who was here
15 outlined in detail between pages 8 and 28 of the guilty
16 plea the facts and circumstances outlining all of Ms.
17 Kovach's deeds. What's disturbing in reading the 8 to 28
18 pages is that the Attorney General finishes on page 28,
19 reciting not only that there had been crimes committed
20 using public funds but that there had been altered
21 documents, a coverup once she was caught, and then
22 e-mails posted, backdated on to a computer system to try
23 to cover her crimes.

24 All of those allegations are in those 20
25 pages of the of the deputy attorney general's recitation

1 of those facts, and Judge Young says, to the defendant on
2 the same page where the attorney general is finishing, Do
3 you agree to the facts as stated by the attorney general?

4 And her answer, under oath, is yes. Now they
5 parse out, in an attempt to say that their guilty plea is
6 only related to the misuse of funds, when, in fact, it
7 was a negotiated plea where the facts were stipulated to
8 and the deputy attorney general, who is free to speak on
9 his behalf, reduced those charges for a plea, but that
10 the facts were, in fact, correct and directly contradict
11 50 of the paragraphs in the complaint filed by
12 Ms. Kovach.

13 The main reason, Your Honor, that I flew here
14 from Virginia as Josh's former professor is because of my
15 concerns that even this morning, as I Googled Josh
16 Whitley's name and school board, the first thing that
17 shows up on Google is Josh Whitley accused of a
18 conspiracy.

19 I can't wipe that slate. I can't clear that
20 slate. Josh is going to have to live with that on the
21 Internet, and this is a woman who knew and who her
22 attorney knew, through any kind of due diligence, that
23 most of her underlying facts are false, and just as an
24 example, in paragraph 83, she says no public funds were
25 used by the plaintiff. She says that in the new

1 complaint against Mr. Whitley, and not 30 days before, 45
2 days before she pled guilty to that very fact.

3 But what is more disturbing than the fact
4 that Josh cannot scrub the Internet of this allegation
5 and only this Court can do that, is Ms. Kovach's lies
6 were then handed to the person who could have stopped it
7 from becoming a public embarrassment and a defamation of
8 Josh, and that was her attorney. The attorney's pen in
9 this case is twice as dangerous as Ms. Kovach's lies
10 because she has a higher duty as a lawyer. She has an
11 ethical duty.

12 Rule 11 requires her to do due diligence, and
13 she had a transcript which she said she had. She had a
14 seven-page letter from the Attorney General, and despite
15 all of those facts, she then took the time with her pen
16 to defame seven other people who are not parties to this
17 case.

18 THE COURT: Let's be sure we're all on the
19 right track here, Mr. Breit. We're talking about
20 sanctions against Ms. Bloodgood now, and those sanctions
21 relate to her duties as an attorney under Rule 11.

22 MR. BREIT: Yes, Your Honor.

23 THE COURT: We are not talking about a
24 defamation suit here, are we not?

25 MR. BREIT: Correct.

1 THE COURT: I know you didn't want to
2 imply -- I got enough legal issues to determine the laws
3 and the rules you cited. What we're talking about here,
4 of course, and I just make this clear so we'll know
5 exactly how we're proceeding, attorneys can aver all
6 kinds of things that on that on their face would be very
7 defamatory in a complaint on behalf of their client in
8 connection with the client's perceived claim against the
9 defendant, and that does not subject the attorney to a
10 claim for defamation, even if those facts turn out not to
11 be correct.

12 You are making a different claim here, as I
13 understand it. You are making a claim that the attorney
14 had information that came from the mouth of the plaintiff
15 that should have been taken into account more and that
16 the failure to do so resulted in the putting forth of a
17 complaint with matters that were clearly not true, as you
18 see it, and that that constituted a violation of Rule 11.

19 Is that fair?

20 MR. BREIT: That is perfectly fair. That's
21 exactly what we're talking about, but as an example of
22 the lawyer's failure, she accuses the special agent of
23 manufacturing evidence. She accuses a special agent of
24 taking false testimony in her allegation that she pled
25 guilty of. She accuses the attorney general of lying, of

1 putting up false information before a grand jury, the
2 very things that she pled guilty to, and they cannot, in
3 this pleading, whether Ms. Bloodgood wishes to or not,
4 claim that it's fair game.

5 It's not fair game if due diligence is
6 followed, and she reads a transcript where the deputy
7 attorney general, who cites the work of the special
8 agent, this special agent is going to have to face
9 questioning for the rest of his career. Have you been
10 accused of manufacturing evidence?

11 That is the lawyer's due diligence. It's not
12 proper. Whether it's actionable or not or defamation is
13 another issue, but the allegations were clear on their
14 face to be false, based on the letter of the attorney
15 general and the factual recitation which Defendant Kovach
16 agreed to as proper facts, and, still, Ms. Bloodgood used
17 the facts that she had and accuses both of them of
18 improper conduct to the very thing that she pled guilty
19 to, a state senator and his wife accused of criminal
20 conduct in a pleading with no facts whatsoever.

21 I'm not talking about defamation, we're
22 talking about Senator Groomes's right to be able to
23 defend himself, the lawyer throwing things --

24 THE COURT: Well, now, in this case, again,
25 we are not directly dealing with any claim that the

1 attorney general may have, that Senator Groomes may have,
2 his wife may have against Ms. Kovach or Ms. Bloodgood.

3 What we are dealing with is whether or not a
4 complaint was filed that was known to be without factual
5 foundation and therefore violated Rule 11. That's where
6 we are right now. I don't mean to slash it so fine.

7 MR. BREIT: I'm a bit passionate, and I don't
8 mean to go off track.

9 THE COURT: I understand that. Of course,
10 you're arguing on behalf of your client, and it's not
11 good to deliberately put things in any kind of pleading
12 that aren't true, and that's what you're saying was done
13 here.

14 MR. BREIT: Correct.

15 THE COURT: I'm not saying that it was or was
16 not, but that is the reason why you are elucidating these
17 facts here. I just want to make sure I'm not being asked
18 to also award any kind of relief to anybody other than
19 the parties before me here.

20 MR. BREIT: And I apologize. It's clear that
21 we're not asking for relief; however, the facts alleged
22 at this complaint --

23 THE COURT: Are utterly untrue, as far as
24 you --

25 MR. BREIT: Completely and utterly untrue,

1 and the guilty plea, the estoppel guilty plea of
2 Ms. Kovach clearly tells a lawyer, I have 20 pages from
3 the attorney general of a guilty plea where you agree
4 that the facts are correct. You say that, under oath.

5 How can you now let me, your lawyer, file
6 these pleadings unless, of course, the lawyer chose to do
7 it for headlines, and that's my point. Bad motives by
8 this attorney are the reason that we are here. The
9 headline that she wanted, she got, and she e-mailed it to
10 the reporter. She wouldn't talk to the reporter because
11 she knew she would be exposing herself to something more
12 than a sanctions motion. She let the lawsuit speak for
13 itself, was her quote to the reporter.

14 My point is that after she pleads guilty, she
15 then files suits and comes up on a show cause in February
16 of 2016 and says, look, I perjured myself, page 8 of that
17 transcript. I misrepresented. I'm really sorry, but my
18 lawyer is the one who allowed me to get into this
19 position because she did no due diligence.

20 And so now, then yesterday, a new pleading by
21 Ms. Kovach through counsel was, well, I didn't really
22 plead guilty to any of that stuff. I didn't agree to the
23 recitation of the facts by the deputy attorney general,
24 yet she admitted that she had, in fact, thought those
25 were correct facts and she told the judge, I'm pleading

1 guilty because I am, in fact, guilty of these crimes.
2 Yesterday, I'm pleading guilty to protect myself and my
3 health, and she's not here today to explain it to us.

4 She cannot have it both ways. In this case,
5 three different ways with three different lawyers with
6 three different claims, but the lawyer with the pen is
7 the one that can cause the most damage and has the
8 ability to stop it. And that's what we believe is the
9 gravamen of our sanctions motion against Ms. Bloodgood
10 because she knew -- she didn't reasonably know, she
11 actually knew from the documents in her hand that what
12 she was going to allege in a pleading was, in fact,
13 false.

14 THE COURT: Let me stop you there, Mr. Breit.
15 I think I understand that claim very well. I went back
16 and looked at every case we had in South Carolina that's
17 talked about sanctions against parties. In fact, I wrote
18 one of those opinions, the Russell case, that did
19 sanction a party for -- after the truth came out, not
20 stopping her lawsuit, but continuing on with it, is what
21 it boiled down to, and that is some of what you have been
22 discussing now.

23 What is very unusual about this is the
24 sanctions request for the attorney. Do y'all have cases
25 that you believe target in on that aspect of it?

1 MR. BREIT: Your Honor, I don't have cases,
2 but I believe the rules are quite clear about it.

3 THE COURT: No question about it, and, of
4 course, in South Carolina, we just have the HIPAA act,
5 but I'm sure that issue has been dealt with extensively
6 around the country, and I've done a little bit of
7 looking, but that is one thing that I just asked you to
8 give some thought to.

9 Obviously, we're probably going to have some
10 briefings and submissions, and that is one thing that
11 would be helpful, is you've got a broader perspective of
12 someone that teaches on a national level.

13 MR. BREIT: I'm happy to provide the Court
14 those cases.

15 MR. MORRISON: Your Honor, we did cite the ex
16 parte George Gregory case from '08. I believe that was
17 against the attorney.

18 THE COURT: Yes. I think that's the one
19 we've got, isn't it?

20 MR. MORRISON: I think that's it.

21 THE COURT: And, of course, this factual
22 scenario, my belief is, from just the little bit of
23 looking that I've done, is a factual scenario more
24 similar to this one is out there in some of the other
25 states. It just would be helpful to the Court in your

1 research, and, of course, by Ms. Monoc's and Mr. Cooke's
2 if we could cover the landscape of that part of the
3 hearing.

4 MR. BREIT: Your Honor, you'll find it
5 shocking, I believe, I found it shocking, I argued on
6 Monday of this week for sanctions on an issue where a law
7 firm had been regularly sanctioned by multiple courts
8 around the country in defending a particular automaker
9 for discovery abuses and alleging things in the
10 pleadings, so I unfortunately already have that part of
11 the brief here in South Carolina.

12 THE COURT: And that --

13 MR. BREIT: And I have those for you, if you
14 need them.

15 THE COURT: And that's what I ran up against,
16 is a lot of cases that talk about discovery abuse and
17 other things and sanctions against attorneys in that
18 regard. It just would be interesting to me to see if
19 we've got one that deals with this very interesting
20 situation we've got here, where the sanctions are being
21 asked in connection with the filing of the suit itself in
22 the face of other activity in the criminal matter. I've
23 just got to believe that's happened before, but I've not
24 so far been able to find it.

25 MR. BREIT: I don't want to belabor the

1 point, but let me close with this, Your Honor: This
2 whole mess started when Mr. Whitley believed something
3 about the school board referendum and the FOI request.
4 Doing those requests, it became clear that there had been
5 misuse of government property. That information was
6 turned over to the attorney general's office and SLED did
7 an investigation which did blossom into a number of other
8 crimes and other indictments.

9 The very suspicions that Mr. Whitley had
10 turned out, unfortunately, to be true, and, so far, one
11 defendant has pled guilty to the crimes as alleged of the
12 attorney general. What a twist of our laws if the man
13 that brought it to the attention of the authorities could
14 now be subject to a lawsuit for uncovering the very crime
15 that was admitted.

16 That, Your Honor, is why I believe sanctions
17 are critical here, to clear Mr. Whitley's name as well as
18 to punish both parties, jointly and severally, for
19 putting us in this position for these allegations.

20 THE COURT: Thank you, sir.

21 MR. BREIT: Thank you.

22 THE COURT: Now, I believe that completes our
23 presentation on the part of those seeking sanctions.

24 MR. MORRISON: Correct.

25 THE COURT: Now, Ms. Monoc, for you.

1 MS. MONOC: Thank you, Your Honor. May it
2 please the Court: Would you like me to take this in the
3 order of Mr. Morrison? Would you like for us to address
4 the 41 dismissal, or is that a moot point?

5 THE COURT: I think that goes to whether or
6 not Dr. Whitley has the standing to pursue the motion she
7 pursued, so I think I would cover the Rule 41 matter.
8 Mr. Morrison has covered that, in effect, in his
9 presentation, so I certainly -- but you proceed in the
10 order that you feel most comfortable with.

11 MS. MONOC: That's fine, Your Honor. I'll be
12 very brief, and I just did want to hit that point and
13 then we'll move on to the sanctions, but our position on
14 the motion to strike is consistent with the plain
15 language of the rule, which is that under Rule 41,
16 voluntary dismissal, an action may be dismissed by a
17 plaintiff without order of the Court by filing and
18 serving a notice of dismissal at any time before service
19 by the adverse party of an answer or motion for summary
20 judgment, whichever occurs first.

21 The voluntary dismissal was dropped in the
22 mail on November the 24th, 2015 before an answer was
23 filed, and therefore we think that his motion to strike
24 should be denied.

25 THE COURT: All right. Your notice of

1 dismissal is dated November the 24th.

2 MS. MONOC: I think it was signed on the
3 23rd, if my memory is right, and it was dropped in the
4 mail on the 24th.

5 THE COURT: What does the receipt of service
6 say? It says it's a certificate of mailing?

7 MR. MORRISON: No.

8 THE COURT: Mr. Morrison, I know you're
9 enthusiastic of your client. This is her swing at the
10 bat. You won't be disadvantaged.

11 MR. MORRISON: My apologies, Ms. Monoc and
12 Chief Justice.

13 THE COURT: Ms. Monoc? I'll tell you what,
14 your let your crack assistants run that little detail for
15 you. I'm trying to figure out whether -- I know that
16 there's a filing, and the filing is when?

17 MS. MONOC: The filing is November 23rd,
18 2015.

19 THE COURT: The stamp on the front of your
20 what --

21 MS. MONOC: Of the voluntary dismissal, and
22 it's captioned stipulation of dismissal without
23 prejudice, but, in essence, it's a voluntary dismissal.

24 THE COURT: It's a stipulation of dismissal.
25 Of course, the contention is made that's not the way you

1 do a voluntary dismissal. You've got to have permission
2 of all the parties to stipulate. You want to do a bond
3 for dismissal, it's a different section of the rule to do
4 that.

5 MS. MONOC: I think the caption was just
6 improperly -- I think it's a clerical error on our part.
7 The body says pursuant to 41(a)1.

8 THE COURT: And do you contend that is
9 actually the proper section of the rule to be using?

10 MS. MONOC: Yes, Your Honor, 41(a)1(a), to be
11 specific.

12 THE COURT: And what does it say, pursuant to
13 41(a)1 says what?

14 MS. MONOC: It says pursuant to 41(a)1 of the
15 South Carolina Rules of Civil Procedure say pursuant to
16 Rule 41(a)1 of the South Carolina Rules of Civil
17 Procedure, Plaintiff Amy Kovach hereby voluntarily
18 dismisses all claims asserted or that might have been
19 asserted in this action without prejudice.

20 THE COURT: And that -- what's the stamp from
21 this clerk's office on the front of it?

22 MS. MONOC: November the 23rd.

23 THE COURT: November the 23rd? At what time?

24 MS. MONOC: 4:43.

25 THE COURT: All right. And then when was --

1 the answer of Dr. Whitley, when was it filed with the
2 clerk's office?

3 MS. MONOC: I have it December 1st.

4 THE COURT: It was filed December 1st.

5 MS. MONOC: At 9:48 a.m.

6 THE COURT: And so it's your contention it's
7 essentially that these filing dates control, and that
8 although it was a misnomer in caption, the body of the
9 document dismisses with -- does it dismiss with prejudice
10 or does it just dismiss?

11 MS. MONOC: It's dismissed without prejudice
12 pursuant to the rule.

13 THE COURT: And, of course, his position is a
14 dismissal without prejudice, even if it preceded his
15 filing, is not enough to withdraw her from the action,
16 that she's still got the ability to make the filing she's
17 made.

18 What do you say to that?

19 MS. MONOC: We disagree.

20 THE COURT: Why?

21 MS. MONOC: Because it was dismissed, and I
22 think that -- I would have to talk to Nancy about this,
23 but I think you would have dismissed it with prejudice.
24 For anyone who asked, several of the parties were
25 dismissed with prejudice because they contacted her or --

1 I'm not sure exactly what happened, but I know that some
2 parties were dismissed with prejudice, and I think that
3 was definitely something that could have happened, but we
4 have cited some case law from the Fourth Circuit in our
5 memorandum of law that says that a dismissal under Rule
6 41 without prejudice is as if the case was never filed,
7 and the citation for that is 395 F.3d 477, Fourth
8 Circuit, 2005.

9 THE COURT: Give me the last part of that?

10 MS. MONOC: 395 F.3d at 477, pages 480 to
11 481.

12 THE COURT: That basically concludes your
13 presentation on the dismissal matter?

14 MS. MONOC: Yes, Your Honor.

15 THE COURT: Very good. You may proceed.

16 MS. MONOC: Thank you so much.

17 Your Honor, we've heard a lot about a lot
18 today, and I want to just take this time to bring it back
19 to the standard and talk about what Ms. Bloodgood did,
20 what she certified when she signed the complaint on
21 October 14th, 2015.

22 As Your Honor knows, when an attorney signs a
23 complaint, she is certifying four things: She's
24 certifying that she read the pleading; she's certifying
25 that she has good grounds and that the facts may warrant

1 a claim; she's certifying that she's not filing it to
2 injure or harass the other side; and she is certifying
3 that she has a proper motive in that the purpose is to
4 adjudicate the claim on the merits and it's not
5 frivolous.

6 As Your Honor knows, the statute also
7 provides that there is a standard of the preponderance of
8 the evidence, so it's our position that the Whitley
9 defendants have a burden today to show that by a
10 preponderance of the evidence that Nancy didn't do those
11 things on October the 14th, 2015 when she signed the
12 paper, and we don't think that they have met their burden
13 and we don't think they can meet their burden because she
14 did all of those things that she certified to when she
15 signed her name on October the 14th as evidenced by the
16 400 page affidavit that we've provided to everyone by
17 now.

18 But before we get too far ahead, there are a
19 couple of important dates, because this was an
20 abbreviated action in a lot of ways. As I mentioned, the
21 most important date is October 14th because that's when
22 she signed the complaint, so the question is, what did
23 she know? What was her motive? What was her purpose on
24 October the 14th? Within the time allotted, Mr. Whitley
25 filed a 259 page answer in counterclaim and a third party

1 complaint on November the 3rd, and he also filed an 89
2 page motion to dismiss and an 86 page motion for
3 sanctions without contemplation of Rule 11.

4 And without having answered, as we've
5 discussed, Ms. Whitley filed her motions for sanctions,
6 also without an attorney conference, on November the
7 16th. The complaint was voluntarily dismissed as to all
8 of the parties except for Josh Whitley because his
9 attorney wrote Nancy on November the 25th refusing a
10 dismissal unless there were attorney's fees paid, but
11 Karen Whitley's dismissal was effective on service on
12 November 24th, 2015.

13 So the life cycle of this civil action, as to
14 all of the defendants, including Dr. Whitley, was about a
15 month and a half, and it would have been the same for
16 Mr. Whitley but for his desire to keep it alive.

17 THE COURT: Let me ask you something in that
18 regard, and, of course, there is a sea of papers here,
19 but I have now tried to read every piece of them, and in
20 some of the submissions that have now been exchanged with
21 counsel on behalf of Ms. Bloodgood and her affidavit,
22 there information that there was some back and forth
23 between the parties early on about dismissing this suit
24 and that Mr. Whitley was interested in dismissing the
25 suit.

1 It sounds like a bunch of the parties kind of
2 went back and forth about the desire to dismiss this
3 suit. What happened in that regard, as far as you are
4 concerned? I mean, why didn't that bear fruit?

5 MS. MONOC: Because he wrote back and said
6 that -- in response, she mailed him the stipulation of
7 dismissal, and my understanding is that they wrote her
8 back and said --

9 THE COURT: I'm not talking about the -- I
10 haven't even gotten to the stipulation of dismissal.
11 There's some material in this paper that suggests before
12 that was done and hearts hardened that there was some
13 discussion about trying to get this suit withdrawn or
14 dismissed before his answer was actually filed. This all
15 happened in a very compressed time period, but what
16 happened with that?

17 MS. MONOC: I think that you're referring to
18 the discussion that Ms. Bloodgood and Mr. Morrison had
19 where he talked to her and said, Don't serve this.

20 THE COURT: Yes.

21 MS. MONOC: My client is a good person and
22 they'll dispute what happened in that meeting, so after
23 that meeting, Ms. Bloodgood went and talked to her client
24 and they had a reliable witness who saw Mrs. --
25 Dr. Whitley go into Ms. Kovach's locked office six months

1 after her leave with a sheet of paper and leave the
2 office without a sheet of paper, right before forgery
3 charges were presented against Ms. Kovach, and because
4 they had a reliable witness, and, you know, of course,
5 the matter never got to discovery so nobody -- that
6 wasn't presented out in the open when you're identifying
7 witnesses and things to support your claim, but I think
8 that the feeling was that there were good grounds to
9 support the elements of civil conspiracy, and, you know,
10 the client decided to proceed.

11 THE COURT: All right.

12 MS. MONOC: So I think that's what happened.

13 THE COURT: I've interrupted your argument.
14 Go ahead.

15 MS. MONOC: No, you're fine. The next to
16 talk about is the rule to show cause hearing, which was
17 four months after the complaint was filed but two months
18 after the complaint was dismissed as to all parties,
19 except as to Mr. Whitley, and then the last thing to talk
20 about is now.

21 This case has been alive for about 11 months,
22 almost a year. There are counterclaims, but there's been
23 no discovery, no prosecution of the claims, of the
24 counterclaims, and, you know, it's my understanding
25 that -- you know, I got involved in August, and so all of

1 our filings have been since then. It's my understanding
2 that this matter was delayed twice by Mr. Whitley over
3 the course of the year, so there's been a vigorous
4 effort, you know, to keep this thing alive as it relates
5 to sanctions and punishment, but to my knowledge, there
6 hasn't been any discovery or prosecution of any of the
7 merits of the counterclaim, so I just wanted to bring
8 that up.

9 THE COURT: Well, that could hardly take
10 place until we get these motions to strike and all the
11 rest of that -- does that bear on anything that has to do
12 with the entitlement of either of the Whitleys or both of
13 sanctions against you all?

14 MS. MONOC: Well, only inasmuch as this is a
15 sanctions hearing based on the frivolous proceedings act
16 and Rule 11, and I think that the motives of everyone is
17 in question at this point as to why things are being
18 filed with the Court.

19 THE COURT: Right, but essentially what they
20 do is base their motions on some very specific documents
21 that were -- the most important of which are documents
22 under oath, and if you put aside all of the other e-mails
23 and correspondence back and forth and he said/she said
24 sort of things about who did what, you got a plea in
25 August of last year and a hearing in February of this

1 year, both under oath, where the -- and a filing in
2 connection -- on the affidavit filed in connection with a
3 grievance before the Berkeley County School Board, and
4 those documents have been submitted by all of you, and
5 they form the basis of the complaint of your opposing
6 counsel, that both the plaintiff and the attorney should
7 be sanctioned because the contention is that those
8 documents make it clear that the averments of this
9 complaint are contradictory in many ways to the plea that
10 was taken and the admissions made in the plea and the
11 rule to show cause hearings and the admissions made
12 therein by Ms. Bloodgood's client.

13 Now, the admissions of February don't bear as
14 much on it because they are well after the complaint is
15 filed, but the admissions in the plea, in August, which,
16 of course, that transcript was seen, deep consultation
17 was made with Ms. Kovach, with Mr. Theos, her attorney,
18 and so forth.

19 So Ms. Bloodgood had a lot of knowledge, and,
20 essentially, what opposing counsel is claiming is all
21 that knowledge, if taken into consideration, would have
22 dictated that there was an improper suit to have been
23 filed, a frivolous suit to have been filed, and Ms.
24 Bloodgood violated the rule by filing it. That's what I
25 think we need to concentrate on.

1 MS. MONOC: Sure. I would be happy to --
2 could I have the chart, please? I was making those other
3 points because that is a matter in equity, and I just
4 think those are equitable considerations.

5 THE COURT: I agree. Completely.

6 MS. MONOC: What we've done is -- I can tell
7 you've studied Mr. Whitley's chart. We've studied
8 Mr. Whitley's chart, and I have created our own chart
9 that shows the allegations in the complaint that he has a
10 problem with, the excerpts from the transcript with the
11 attorney general's argument. I've removed Mr. Whitley's
12 arguments that are within there, and I've just isolated
13 it as to the attorney general's argument, and then I've
14 got a column that has Ms. Bloodgood's response from her
15 affidavit explaining her reasoning and, you know, kind of
16 reconciling the two.

17 THE COURT: Very good. That would be very
18 helpful.

19 MS. MONOC: May I hand that up? Thank you.

20 To bring it back to the standard, the statute
21 does a great job. It really tracks the analysis for us.
22 Under section (A) (4) (a), An attorney may be sanctioned
23 for filing a frivolous pleading if the person has not
24 read it, if a reasonable attorney in the same
25 circumstances would believe that under the facts her

1 claim was clearly not warranted under existing law, and
2 that a good faith or reasonable argument did not exist
3 for the extension, modification, or reversal of existing
4 law; a reasonable attorney presented with the same
5 circumstances would believe that the initiation of the
6 cause of action was intended merely to harass or injure
7 the other party, or a reasonable attorney presented with
8 the same circumstances would believe the pleading is
9 frivolous, interposed for merely delay, or merely brought
10 for any purpose other than securing proper discovery,
11 joinder of parties, or adjudication of the claim upon
12 which the proceedings are based.

13 I think that that's the section they're
14 focussing on, correct? That's the section that y'all
15 contend this motion is on? Correct?

16 MR. MORRISON: I would say sub (2) and (4).

17 MS. MONOC: That it's not reasonably
18 supported by the facts? Okay. So let's go over that
19 too. That's great: Making frivolous arguments that a
20 reasonable attorney would believe are not reasonably
21 supported by the facts or making frivolous arguments that
22 a reasonable attorney would believe were not warranted
23 under the existing law or if there was no good faith
24 argument that exists for the extension, modification, or
25 reversal of existing law.

1 We do not think that they have demonstrated
2 by the preponderance of the evidence that these are
3 without good grounds. There are good grounds. They're
4 relying on the attorney general's argument in the
5 transcript. So, as Your Honor knows, there are 20 pages
6 of attorney general arguments where Ms. Kovach says she
7 agreed, and then the judge asks her to state in her own
8 words what she is pleading guilty to. That's what we
9 understood to be the plea.

10 It was difficult for Nancy and several other
11 reasonable attorneys I talked to about this matter to
12 understand what is attorney general argument and what are
13 facts in the circumstances. After reading the
14 transcript -- as you know, we've provided the affidavit
15 of Lucy Sanders, and she's Ms. Bloodgood's law partner.
16 She took four pages of notes. On the day that the
17 transcript was mailed to Nancy, e-mailed to Nancy, Lucy
18 Sanders had a phone call with Jerry Theos and took four
19 pages of notes --

20 THE COURT: Right. I've reviewed them.

21 MS. MONOC: -- with changes in the complaint,
22 and she made those changes in the original complaint.
23 Now, in the original draft of the complaint, there were
24 additional causes of action that she didn't think were
25 supported by good grounds, and she took those out. As it

1 relates to the civil conspiracy claim, which is that two
2 or more people intend to injure another to cause harm,
3 she believed that those elements were met in good faith.

4 As demonstrated by her 400-page affidavit,
5 there were boxes of documents that she reviewed and
6 researched. She sought out additional information. She
7 consulted. She revised. I believe she met the standard
8 of having good grounds to support the three elements
9 required by civil conspiracy cause of action.

10 The Whitley defendants also have to show by a
11 preponderance of the evidence this was filed for the
12 purposes of harassment or to injure them and that it was
13 filed for a reason other than adjudicating the merits,
14 and as Nancy's affidavit states, this was filed for the
15 adjudication of the merits. She never knew the Whitleys
16 except by what she had read in the press. She had no
17 reason to harass them, no reason to injure them, and I
18 don't think that there was any proof to the contrary.

19 We've talked a little bit about ex parte
20 Gregory, and that sets the standard in certain cases.
21 It's sort of -- you know, it's a heightened standard of
22 due diligence, and this isn't the type of case that Ex
23 Parte Gregory describes, but I think Ms. Bloodgood did
24 meet the standard in Ex Parte Gregory. And while we're
25 talking about duties here, I think that we all have our

1 duties under Rule 11, and we also have a duty to mitigate
2 our damages, and I think that filing hundreds and
3 hundreds and hundreds of pages with the Clerk of Court
4 within a month and a half's time is not mitigating
5 damages.

6 And, Your Honor, we would ask that
7 Ms. Bloodgood's attorney's fees be considered, and we
8 have an affidavit to support our attorney's fees, that if
9 any award is going to be issued on attorneys' fees we
10 would respectfully request Ms. Bloodgood's fees be
11 considered, because, frankly, this motion was done
12 without contemplation of Rule 11, and we're all here
13 today, you know, for that rule, notwithstanding the
14 purpose of that rule, so we would ask Your Honor take
15 that into consideration.

16 Thank you.

17 THE COURT: Very good. I think we now turn
18 to Mr. Cooke. Mr. Cooke?

19 MR. COOKE: Thank you, Your Honor. May it
20 please the Court: First, it's been observed that
21 Ms. Kovach is not here. Her husband, Chris Kovach, is
22 here with me.

23 At the risk of being melodramatic, this has
24 been a very difficult process for her. She's a wife and
25 mother of three children. She's never been in any

1 trouble or anything close to trouble before in her life,
2 and so she stands by her sworn testimony.

3 My instructions are do not cite Mr. Waters
4 down there because if it comes down her to getting
5 sanctions or going to jail, she'll take sanctions, but,
6 with all due respect, she is not trying to wriggle out of
7 her guilty plea. In our brief we filed yesterday, it
8 says she at all times was doing what her superiors
9 expected and told her to do, what she thought she was
10 supposed to do, yet when she learned it was a crime to
11 use public resources to promote a bond referendum, she
12 pleaded guilty to that crime because she had done that.

13 You've seen quoted many times the long
14 presentation that Mr. Waters made during the guilty plea.
15 What you have not heard is what the judge specifically
16 asked Ms. Kovach. It said, Ms. Kovach, you agree with
17 the facts as stated by the attorney general?

18 Yes, sir.

19 This is on page 28 and 29.

20 Tell me in your own words what you did that
21 broke the law?

22 The defendant: I did my job at the
23 discretion of the leadership of the school district, with
24 the leading counsel and the leadership of district as
25 expected of me and fulfilled all of my obligations to

1 those purposes at my discretion.

2 The Court: So you're telling me you did
3 nothing wrong?

4 Mr. Theos: Your Honor, if I may --

5 The Court: Yes, sir?

6 The attorney and defendant confer.

7 The Court: If you want to plead guilty in
8 front of me, then you're going to have to tell me in your
9 words what you did that was -- if you don't think you
10 broke the law, then we're not here for a plea. We'll
11 proceed to try this case on the 21st of September. If
12 you're here to plead guilty, then you're going to tell me
13 what you did that broke the law.

14 The defendant: In doing my job as directed,
15 I violated the law that I am guilty to.

16 The Court: How did you violate the law? Did
17 you lie? Did you use resources that you shouldn't have?
18 What did you do?

19 Answer: By using resources to promote school
20 district and its agenda of passing the referendum.

21 The Court: Are you in fact guilty of
22 misconduct in office?

23 The defendant: Yes, sir.

24 The Court: Are you in fact guilty of using
25 public funds to influence an election?

1 Answer: Yes, sir.

2 And you understand that I think each of these
3 carries up to a ten-year sentence; is that correct?

4 And then there's a discussion that ensues
5 about what the actual penalties are. So to the extent
6 that anything that I say here or have said in the brief
7 contradicts that sworn testimony either in that hearing
8 or in the rule to show cause, that controls.

9 THE COURT: Well, Mr. Cooke, you hit right on
10 the nub of what separates the two parties in this matter.
11 The defendant, under the judge's question, when he
12 finally says you got to specifically admit guilt or I'm
13 not going to take the plea, she said, In doing my job as
14 directed, I violated the law.

15 That's not what she was indicted for. She
16 was indicted for violating the law, and she has continued
17 to qualify her admission of guilt by somehow throwing the
18 responsibility on others and saying, I was directed to do
19 certain things, or, in this matter, My lawyer told me to
20 do certain things, and that's the separation that we are
21 in right now.

22 And I really need to hear from you about
23 that, because the impact of the charts that have been
24 drawn, and I'm going to pay a lot of attention to Ms.
25 Monoc's chart, because that's what we're dealing with

1 here, is did Ms. Kovach, knowing that she had pled guilty
2 to misconduct in office and to another violation and what
3 the elements of those violations included, and those were
4 made quite clear, the factual predicate, did she still
5 try to give herself some wiggle room, as you put it, by
6 not really admitting what her plea of guilty admits?

7 Help me out with that, because that's why
8 they're bringing these motions for sanctions. They say
9 she never should have brought this lawsuit. She
10 apparently, at another point in time, when the rule to
11 show cause was brought and, again, charts were made of
12 what she pled to, so what she tried to say, I didn't
13 really admit to a lot of that. A lot of what he said was
14 argument.

15 But Mr. Waters, in this plea, said, These are
16 the facts as we aver them, and that whole recitation of
17 his is his factual presentation, as is often done by a
18 solicitor. Instead of slicing and dicing, I think she
19 attempted to do that at one time, she said, Yes, sir,
20 when the judge said, Are you admitting to the facts,
21 tried to qualify and he wouldn't let her.

22 So where are we in that?

23 MR. COOKE: If I may, and that was a
24 complicated question with a complicated answer.

25 THE COURT: I know. I'm sorry for putting so

1 many qualifiers on it.

2 MR. COOKE: As you know, and I think we have
3 included this in our brief, her attorney moved to dismiss
4 the indictment saying we don't even think a referendum is
5 the type of election that there are criminal penalties
6 for trying to influence, and the judge denied that.

7 THE COURT: Of course, we've got other cases
8 where -- the Florence case and others where school
9 district officials have been brought to the bar of
10 justice on criminal charges for using school resources,
11 or district resources, to get involved in these bond
12 referendums that seem to be a lot of activity every time
13 elections come around.

14 MR. COOKE: Right. So as we see it, Your
15 Honor, it was something, not a defense to the criminal
16 charge, for her to say, I was doing what I thought I was
17 supposed to be doing and my boss encouraged it.

18 I don't think that's a defense.

19 THE COURT: But you can't say, Well, it's not
20 a defense. I will admit it purposes of a criminal
21 charge, but I'm going to kind of cross my fingers a
22 little bit on the civil side because I'm really mad at
23 these people for what I've had to go through, so I'm
24 going to bring a civil action.

25 MR. COOKE: I think that would have been the

1 subject of a vigorous legal argument, had the case
2 proceeded, and that is --

3 THE COURT: Well, but she knocked that out of
4 consideration when in February with another lawyer, other
5 than her original criminal defense lawyer, in response to
6 a rule to show cause in the criminal matter, appeared in
7 front of Judge Duncan and basically threw Ms. Bloodgood
8 under the bus by saying, Somebody else made me do this.
9 It's not really me. I don't admit to all of this.
10 Somebody else made me do it, and, again, that's why we're
11 here.

12 MR. COOKE: If I can address that, I believe
13 what she said at that hearing was that, My now attorney,
14 Mr. Savage and his staff, have enlightened me about the
15 lack of due diligence that my civil attorney did, and so
16 that was an ill-advised lawsuit.

17 THE COURT: But the diligence was -- I mean,
18 the Kovaches were champing at the bit to bring this
19 lawsuit, and they wanted to sue a lot more people than
20 were ultimately sued. All right. I mean, there were
21 communications and e-mails. She suddenly gets a lawsuit,
22 and, boy, I'm going to tell you, instead of it being the
23 opening of a file, it dominates everything in the office
24 for a good long time.

25 These folks want to move forward, want to sue

1 everybody. If somebody else says something ugly in the
2 paper, oh, they've added their name to the list of
3 defendants. So a whole lot of activity, very intense
4 activity, generates from the Kovaches, who really want
5 to -- you've indicated she's pled guilty. She's lost a
6 job. She's still really mad, so she wants to bring a
7 lawsuit and bring the people she thinks harassed and
8 tortured her into court, and I can understand that.

9 I mean, she suffered through a tough thing,
10 but she's brought this lawsuit now, and Bloodgood sits
11 there asking all kinds of questions, making -- spending a
12 lot of time trying to research this thing, but it's the
13 Kovaches who say, you know, They made us do this, and the
14 attorney general was -- did wrong and so forth and so on.

15 I mean, is any of this the result of her not
16 being willing to finally say, Hey, I did it. I committed
17 this conduct. I misused funds. It was for personal
18 advantage and so forth, or is she going to continue to
19 try to kind of read between Scylla and Charybdis?

20 MR. COOKE: I think she, by necessity, has to
21 read between Scylla and Charybdis, but I believe in an
22 aboveboard way. Now, this personal gain thing, I don't
23 do criminal law, but I am astounded that it could be
24 considered personal gain.

25 THE COURT: She pled guilty to a charge that

1 carries with it the charge it was done for personal gain,
2 and the attorney general made it clear that personal gain
3 he was talking about was her advancement in the school
4 district, by being very successful at being the central
5 person in this bond referendum.

6 MR. COOKE: Right.

7 THE COURT: So that's -- I mean, personal
8 gain is not just receiving money.

9 MR. COOKE: Well, that's it, but by doing a
10 good job, you are seeking personal gain, so I guess --

11 THE COURT: Yes, you are, if you do it in a
12 way that violates the law.

13 MR. COOKE: She pleaded guilty to that.

14 THE COURT: Yes, sir.

15 MR. COOKE: And I think what we have learned
16 since that hearing with Andy Savage is that Nancy
17 Bloodgood did a lot more due diligence than it appeared,
18 at least to Mr. Savage, that she had done. We've seen
19 and Ms. Kovach waived her attorney-client privilege so
20 that Ms. Bloodgood could disclose --

21 THE COURT: Well, I mean, you knew along --
22 maybe the other side didn't know, but Ms. Kovach knew
23 because she was copied on everything. She knew exactly
24 everything Ms. Bloodgood was doing, all the intense
25 conversations, the e-mails, hours that were spent on

1 research. She knew all that, even if Mr. Savage did not
2 know it. Ms. Kovach knew all of it.

3 MR. COOKE: She did, and she didn't withhold
4 any of it from Ms. Bloodgood. The transcript of her
5 guilty plea and all the soliloquy that went with that was
6 available, so the question, the legal question that was
7 presented, was given all that, could there still have
8 been a conspiracy against me by these folks?

9 And, interestingly, to this day, I haven't
10 seen an affidavit or anything that denies the allegations
11 that were made specifically against the Whitleys, about
12 what their participation was, and so I think it's --

13 THE COURT: Well, do you contend that it is a
14 legitimate subject for a conspiracy civil lawsuit if
15 folks look at a course of conduct, think it's criminal,
16 and ask the attorney general to pursue that?

17 MR. COOKE: Well, when you put it that way,
18 no.

19 THE COURT: Well, then what was the factual
20 predicate for the conspiracy?

21 MR. COOKE: The factual predicate was that
22 they were inciting an investigation, that they were using
23 her as a way of getting at the district superintendent as
24 a way of attacking the bond referendum, and, essentially,
25 she was a pawn. I think that's how I read that

1 conspiracy, and that even though they did ultimately
2 happen upon a violation of the ethics law, the complaint
3 alleges that they were trying to her and get to the
4 district superintendent and injury them.

5 THE COURT: So if they have a bad motive, a
6 thing done illegally could turn out to be a conspiracy?
7 I think that is kind of what I'm hearing you arguing.

8 MR. COOKE: That's essentially what the
9 complaint alleges, and I think that --

10 THE COURT: And I haven't looked into
11 conspiracy law enough to know whether that's going to get
12 you over the finish line or not, but I thought that's
13 kind of what was being said here, is that, hey, it's
14 legal for people to look at criminal conduct that they
15 think may be criminal and report it to the authorities,
16 but if they do it with the motive of trying to harm
17 somebody, in this case caused by -- the superintendent
18 did not behave towards Mr. Whitley's mom as he thought
19 they ought to, then that's a criminal conspiracy, or
20 that's a civil conspiracy.

21 MR. COOKE: You could have an abuse of
22 process. Even though the person is guilty as sin, if
23 you're using a process for an improper purpose, that
24 could be tort. So had I been defending that case, had
25 Ms. Kovach not agreed to dismiss it within a month and a

1 half, there would have been probably a 12(b)6 motion and
2 a very rigorous debate about whether discovery could
3 conceivably uncover facts that could support --

4 THE COURT: Mr. Morrison filed one very
5 promptly, a 12(b)6.

6 MR. COOKE: He did, he did. So I think
7 that's exactly where we come back to. All we've been
8 arguing about is the extent of Ms. Kovach's guilt of the
9 crime. In other words, did she just inadvertently spend
10 money to support this referendum, or did she try to cover
11 it up or did she forge documents, but --

12 THE COURT: And, of course, the recitation of
13 Mr. Waters was that she did a lot of deliberate things,
14 including consult with the finance people, split bills so
15 that they could get under certain limitations, and that
16 was quite knowing on her part.

17 MR. COOKE: Right.

18 THE COURT: But that is a violation of both
19 the ethics act and of other requirements of office
20 constituting misconduct.

21 MR. COOKE: Right, but Ms. Bloodgood made a
22 legal judgment that did not make or break the claim
23 against the school district or against the Whitleys for
24 their conspiracy, and I think that was a valid legal
25 judgment to make. It may not have won the day in the

1 end, but I don't believe it's a Rule 11 violation to make
2 that judgment. Given these facts and given what we
3 might -- what we reasonably believe we might discover in
4 discovery, can we still claim, in the face of having
5 pleaded guilty to a crime, that these folks for ill
6 reasons and bad motive set out to hurt my career, my
7 life, my livelihood, and so forth, and that states a
8 valid conspiracy claim.

9 THE COURT: Now, let me ask you this
10 technical question: Do we have to, in effect, have a
11 trial within a trial of this thing in order to decide the
12 issue of sanctions? That is to say, do we have to go
13 further now, or should the Court go further and explore
14 more thoroughly the legitimacy of the averments in the
15 civil lawsuit, either through the vehicle of
16 Mr. Morrison's motion for -- motion to dismiss or also
17 could be converted into a 56, given all the material? Do
18 we have to make that step first before we can decide
19 whether sanctions are warranted?

20 MR. COOKE: I think you do. You know, this
21 case -- the posture of this is case is unusual. Usually
22 sanctions come at a post-trial motion after there has
23 been a trial or disposition on the merits of the case, so
24 the Judge can sit there and say, You know, you accused
25 this person of A, B, and C, and that's all been disproven

1 and therefore I find that you are frivolous and should be
2 sanctioned. We don't have that in this case. Ms. Kovach
3 ran up the white flag as soon as she was threatened.

4 THE COURT: The posture of that white flag,
5 as the opposing counsel projected, is that a
6 determination was made on the record, both in the guilty
7 plea and in the sanctions hearing, so that you, in
8 effect, had a full ventilation, under oath, of the facts
9 that were the predicate for the bringing of this lawsuit.
10 So they say that, in effect, the trial within the trial
11 has already taken place.

12 MR. COOKE: Right.

13 THE COURT: What do you say to that?

14 MR. COOKE: Well, I say that could be true.
15 If the Court looks at those facts, and I believe
16 Ms. Kovach has stuck with everything she swore to under
17 oath, and if the Court says, as a matter of law, there is
18 no possible viable cause of action she could assert
19 against these folks for civil conspiracy, then the Court
20 would have to consider whether that was a Rule 11
21 violation.

22 I submit to you that that was a valid legal
23 judgment, that there was at least a colorable and
24 arguable claim that could be followed through discovery,
25 and Ms. Bloodgood exercised her good professional

1 judgment to indemnify that claim could be asserted.

2 THE COURT: Mr. Cooke, what do you remember
3 as the posture of this thing technically from the
4 standpoint of award for sanctions? Sanctions have been
5 requested. I think there's a counterclaim and attorneys'
6 fees have also been requested, but in a sense, the
7 sanction also asks for those types of damages as well.

8 It kind of goes into other assessments for
9 claims, of course, but there has really been no
10 submission of information other than the claim to support
11 a monetary figure with respect to damages. Does the
12 claim fail for that reason, or what is your position on
13 that?

14 MR. COOKE: I think if you were to award
15 damages, you could probably tell Mr. Morrison to submit
16 an affidavit. I'm not going to be so technical to say
17 you can't hold the record open for that, but I will say
18 this: I don't think they're entitled to anything that
19 they have incurred after Ms. Kovach tried to dismiss the
20 lawsuit. I don't think they get -- and they probably
21 spent many, many times as much in attorneys' fees
22 developing the sanctions motion and pursuing the
23 counterclaim.

24 I don't think we should have to pay them for
25 the counterclaim. If you read the counterclaim, it's

1 multiple pages of -- I can't imagine the work that went
2 into creating that counterclaim, but I don't believe
3 anybody should be responsible for that. So I think the
4 Court should look and see what fees were unavoidably
5 incurred in that month and a half that this lawsuit was
6 pending when Mr. Kovach ran up the white flag.

7 THE COURT: With respect to the counterclaim
8 of Mr. Whitley, do you think those these pleadings are
9 viable? Do you think Mr. Whitley can pursue with them?
10 What is your position on that, at this time?

11 MR. COOKE: I could be wrong. I think he
12 filed that before there was a dismissal, and we do have a
13 motion to dismiss on the merits of those counterclaims,
14 so, procedurally, I would concede that I don't believe
15 that our intent to dismiss the case in chief necessarily
16 includes the counterclaim.

17 THE COURT: All right, sir. And as far as
18 you're concerned, your motion to dismiss the answer -- I
19 mean, dismiss the matter, even in light of the answer, is
20 pending and viable?

21 MR. COOKE: Yes, Your Honor.

22 THE COURT: All right. Very good. Thank
23 you, Mr. Cooke.

24 Any reply, Mr. Morrison?

25 MR. CREIGHTON: Your Honor, is it okay if I

1 address the Court? I know it's procedurally --

2 THE COURT: Mr. Waters, let me tell you
3 something: I'm going to save you from yourself. Your
4 material has been submitted as evidence in this case, and
5 I believe I know well what your position would be.

6 I have the highest of respect for you and
7 your investigatory colleague as I do for the reputations
8 of Senator Groomes and his wife and others that have been
9 mentioned here in terms of their good faith, and I just
10 don't believe that's going to be necessary.

11 And I do believe that having someone who's
12 not actively involved in the civil part of this matter
13 but who is simply a witness would not be appropriate at
14 this time. I think the parties pretty well got the drift
15 from me I was not going to take any testimony today but,
16 rather, try to deal with these things as motions on the
17 law and on the record as it's been submitted, and, of
18 course, that record includes for you a very fulsome
19 defense of the office and yourself in connection with the
20 submissions that we have received and done far.

21 MR. CREIGHTON: I appreciate that, Your
22 Honor. If you have any questions, I would be happy to
23 answer them.

24 THE COURT: I believe the better course would
25 be for me to do it as I'm doing it.

1 MR. CREIGHTON: Thank you.

2 THE COURT: And I might say, you know, in
3 connection with Dr. Whitley's assertions about her bona
4 fides, with respect to Senator Groomes and his wife,
5 we've got some very fulsome submissions in the record
6 that explain completely the legitimacy of their conduct,
7 and I regard those as being filed without any
8 disagreement by anybody. So I don't feel discontented
9 that we're not having a factual hearing. I think these
10 matters can very directly be addressed by the very
11 fulsome record we do have on all sides.

12 And I say to Ms. Bloodgood and Ms. Kovach,
13 you all have submitted very voluminous material
14 indicating your contentions of your bona fides in this
15 activity, so I think all parties are covered and
16 protected in that regard.

17 MR. CREIGHTON: Thank you, Judge.

18 THE COURT: Yes, sir. Now, Mr. Morrison?

19 MR. MORRISON: Briefly, in rebuttal, on the
20 procedural issue affecting Karen Whitley, I want to
21 distinguish Dr. Whitley because some things do require
22 her situation be distinguished, especially general talk
23 about the conspiracy claim.

24 The allegations against Dr. Whitley of
25 conspiracy are limited. Not all these allegations are

1 directed at her, the averments in that cause of action --

2 THE COURT: I agree. I just went back and
3 looked at the complaint itself, and I agree with you
4 completely.

5 MR. MORRISON: And three of them deal with
6 this irrelevancy in use of e-mail to communicate with
7 Josh, and then the two that allege that she provided
8 false statements with these other defendants, several are
9 alleged on information and belief, including paragraph
10 160 about providing false statements to SLED and the
11 attorney general.

12 Now, Jerry Theos defended Amy Kovach for at
13 least 18 months, an elaborate, detailed, aggressive
14 defense, and I am confident they had every bit of paper
15 that the law permits a criminal defense attorney to
16 secure from the prosecuting attorney. There's no
17 suggestion about what this alleged or information about
18 false statement to the AG is, and I believe it would be
19 covered by the principle of judicial estoppel anyway.
20 Prosecutorial privilege would cover it, but I just want to
21 make the point to the Court that the conspiracy
22 allegations are limited to Dr. Whitley.

23 As to -- jumping back for a moment to the
24 procedural questions, Your Honor, directed to Ms. Monoc,
25 she didn't get to answering the question about when

1 service was made on the purported stipulation of
2 dismissal. We don't know for sure because there was no
3 certificate of service.

4 So this document that they say was so
5 obviously intended to be a voluntary dismissal under Rule
6 41(a)1 subpart (a) is not so easily discerned because
7 they don't put subpart (a) or (b). You asked that
8 question too. They don't designate subpart, and it also
9 was a document that was -- we would hang up on -- even if
10 it were procedurally handled correctly, we would
11 absolutely have objected to it because it was without
12 prejudice, or offered without prejudice.

13 The business, Your Honor, about -- Mr. Cooke
14 argues about all the time, Ms. Bloodgood has spent
15 preparing the complaint; therefore, it was an exercise in
16 her attorney's judgment, I believe the point here is it
17 that this was an indefensible judgment, and it was a
18 judgment, a good faith judgment, and I don't know
19 Ms. Bloodgood's motives and I'm not interested. I don't
20 think that's an issue before the Court.

21 The issue is, can an attorney argue judgment
22 in defense of filing this complaint when she's holding on
23 to the established facts that she was holding on to in
24 the form of the guilty plea and the letter that
25 Mr. Waters submitted the BCDS? The law is clear -- I

1 don't think anybody said that today. The law is clear an
2 attorney can't sit back passively and accept the
3 representations of her client when there are readily
4 available ways to use due diligence to ascertain whether
5 the client's representations are accurate or false, and
6 that's what this situation was.

7 Last, there were readily obtainable
8 documented facts that Ms. Bloodgood had in her hand,
9 irrespective of the slant and the spin that Ms. Kovach
10 put on her ongoing qualifications and denial about her
11 guilt in fact. Her guilt in fact was established at that
12 plea, and it's elaborate and detailed and locked in and
13 there's no quibbling it away and there is no pleading
14 around it. There's no pleading around it.

15 If you were to take a first year law student
16 and say, I want to show you what judicial estoppel is,
17 this would be a garden variety obvious example. Here's
18 what a lawyer -- here's how a lawyer steps into an
19 absolute problem. Take a client like Amy Kovach, who has
20 just finished pleading guilty, the ink is not dry on the
21 document, and tell her you'll handle a civil case against
22 all these people she claims got her prosecuted, and Karen
23 Whitley is -- yes, we moved aggressively to have these
24 cases dismissed, but she is -- what this position is now
25 of the plaintiffs is we found out pretty quickly this was

1 a bad idea that we had. After all, the AG was back in
2 Court in front of Judge Young saying, This is criminal
3 contempt for per injury.

4 That's what it was, and we have definitely
5 shoved this thing into reverse. Let's shut it all down.
6 Go ahead. No harm here. Well, you know, there is harm.
7 Karen Whitley had to hire a lawyer. Her name is in the
8 paper as being an alleged conspirator. Her name is
9 presumably on the Internet too, I don't know, but she had
10 to pay money out of her pocket. It is absolutely within
11 this Court's discretion to allow us to seek these
12 damages.

13 It is absolutely in the Court's discretion,
14 these sanctions, and one other thing Mr. Cooke said.
15 It's also wrong under the law. The law on sanctions is
16 clear that the attorneys' fees expended in an effort to
17 recover sanctions are also recoverable as damages for
18 sanctions, and the only other question that Your Honor
19 had that I wanted to respond to briefly, because of that
20 law I mentioned, we haven't submitted an affidavit of
21 attorneys' fees yet because this thing is not over to us,
22 and I'm still charging my client for this. It's part of
23 it.

24 If and when the Court says, Give me an
25 affidavit of your attorney's fees to consider for

1 sanctions, that is when we think it is appropriate to
2 submit such a thing for the Court.

3 THE COURT: Understood. Thank you. Mr.
4 Breit?

5 MR. BREIT: I'm going to be even briefer, if
6 I can. Counsel for Ms. Bloodgood said, and I think it's
7 important, we read the recitation by the attorney general
8 between pages 8 and 28, and we didn't know exactly what
9 it meant, and yet they filed a lawsuit.

10 Did they call the special agent to ask? Did
11 they call the attorney general and ask anything about the
12 facts which Mr. Kovach said are all true? They did not.
13 That's due diligence.

14 Ms. Bloodgood has submitted Exhibit No. 6,
15 which is the Bates stamped 17, 18, and 19. Her counsel
16 says the only thing important for purposes of sanctions
17 about Ms. Bloodgood is what did she do before she signed
18 that pleading on October 14th? Both Dr. Whitley and Josh
19 Whitley strongly object to her submitting her hours
20 proving due diligence while blacking out, the critical
21 week before the filing, of who she was talking to to
22 prove her due diligence.

23 Was it someone from the attorney general's
24 office? Was it someone chasing down the facts? I don't
25 think you get to claim due diligence and then black out

1 who you're talking to to prove your case, so I would ask
2 the Court in considering any of her affidavits that this
3 Court demand her to give to the Court and to counsel the
4 unredacted hours of who she was she speaking to to show
5 that her case was clear.

6 Let's talk about mitigation of damages. How
7 much time and effort is appropriate to try to return your
8 name, which Mr. Whitley now faces on the Internet? I
9 don't think there is an amount. He has spent a lot of
10 time with my office, with our lawyers, answering this
11 lawsuit, seeking sanctions and counterclaiming to clear
12 his name. It took as much time as it would ever take to
13 try to clear someone's name, but they think that after
14 they -- she offers to dismiss the suit, it should end.

15 Mr. Whitley, every year since this lawsuit
16 was filed, has to fill out an insurance application as
17 all of us lawyers have to do, sadly. One of the
18 questions is, Have you been sued? Do you have cases
19 pending?

20 Mr. Whitley still has a case pending against
21 him. They told the Court in February that it was
22 dismissed with prejudice. We're asking the Court to
23 dismiss it with prejudice today. They want it dismissed
24 on their terms. We don't want it dismissed on their
25 terms. We want Mr. Whitley to be able to tell anyone who

1 asks, That suit is over with, with prejudice, as she said
2 to the Court, but it's still dangles out there.

3 And so we don't apologize for a second for
4 the amount of time and effort, and I do apologize for the
5 amount of paper, and I thank the Court for taking what
6 must have been a very difficult late task of reading all
7 of this. Thank you.

8 We've been involved with this for a
9 year-and-a-half, but that's what a vigorous defense is to
10 clear your name. Ms. Kovach hides behind her lawyer.
11 Her lawyer hides behind Ms. Kovach. That's what this
12 really is about. That's not what the Court says is
13 appropriate on a Rule 11 sanction. You can't both say,
14 It's the other guy's fault. I don't have to worry about
15 whatever I did to hurt this man or this woman or anyone
16 else I've said in this lawsuit. She told me it was true;
17 I thought it was true.

18 If she had any questions about that guilty
19 plea, if she had questions about what the attorney
20 general said were the facts of this case, 45 of these
21 paragraphs against Mr. Whitley wouldn't be in the
22 complaint. At least 45 of them are outright lies based
23 on the recitation of the facts by the attorney general
24 and by the guilty plea and her own admissions out of her
25 own mouth. No lawyer should be allowed to do that and

1 say, Oh, it's just a pleading. They speak for
2 themselves. I did my work.

3 That's not enough, Your Honor, and we think
4 both of them should be sanctioned, and we ask the Court's
5 permission to submit an affidavit for our time and hours.
6 And if the Court wishes a brief on the very narrow issue
7 if a person pleads to a crime and then seeks a civil suit
8 are there cases out there where lawyers have been brought
9 into the sanctions, I'll be happy to address that as
10 well.

11 THE COURT: Very good. Now, one thing you
12 said was -- I hope -- I want to pursue whether it's just
13 a rhetorical flourish or whether it's something I should
14 go and act on today. You said today you want the suit
15 dismissed against Josh Whitley with prejudice.

16 MR. BREIT: That was not rhetorical, Your
17 Honor. They wish to do it. They want to do it on their
18 terms.

19 THE COURT: I assume you're asking me for the
20 same thing, Mr. Morrison?

21 MR. MORRISON: Yes, Your Honor, holding open
22 the opportunity for the Court to rule.

23 THE COURT: It would be held open because I
24 would have to determine whether a viable -- or a motion
25 for sanctions was brought before the suit was dismissed,

1 but you asked me that now. The dismissal now can't have
2 any effect on what you put in front of me. I'll still
3 have to decide it, but you asked me today that these
4 matters be dismissed as to your clients.

5 MR. MORRISON: With prejudice.

6 THE COURT: With prejudice, and Ms. Monoc,
7 what do you say to that?

8 MS. MONOC: I'm going to defer to Mr. Cooke
9 since he's now counsel for Mrs. Kovach.

10 THE COURT: What do you have to say to that?
11 And if you feel like you're being caught unawares, we'll
12 let you reserve that for a future time.

13 MR. COOKE: I think she said she was going to
14 dismiss them with prejudice.

15 THE COURT: That's kind of what I thought
16 too.

17 MR. COOKE: Unless Ms. Bloodgood tells me
18 otherwise, I don't see any reason for that not to happen.

19 THE COURT: Obviously I'm going to take the
20 whole thing under advisement, but I'll take that --

21 MR. MORRISON: It was clear in the show cause
22 hearing that she represented to Judge Young, as did
23 Mr. Savage.

24 MS. EVANS: Your Honor, that was actually
25 Andy Savage.

1 THE COURT: Let me see if I can cut through
2 this. Don't feel like Ms. Bloodgood has been drawn into
3 that. She was the one thrown under the bus, on that one,
4 as I recall it. What you're saying is the lawyer
5 represented her at that rule to show cause hearing
6 represented on her behalf that she wanted to dismiss the
7 whole thing against everybody with prejudice?

8 MR. MORRISON: Yes.

9 THE COURT: Very good. That's what I
10 understood you to be saying. Let's talk about some
11 timelines here. I'm not a girl that likes to keep these
12 things open forever and ever in terms of receiving things
13 so we can move on with life, if possible. So my thinking
14 is -- let's talk about what we're going to get from it
15 and then a time frame.

16 What I would like to receive is a well
17 thought out proposed order from each of you on these
18 motions. I would also like to receive some research with
19 respect to the targeted matter about the lawyer's
20 responsibility in the bringing of a civil complaint which
21 arises out of the client's plea to a criminal matter.

22 The Court's got the Gregory case, but it's
23 not quite the dimension as is present in this one, and
24 probably the only thing I could find -- by that time I'm
25 so tired of reading this transcript and everything last

1 night because I didn't pursue it. There are some cases
2 in the federal arena that involve some of these
3 complicated civil case and criminal responsibility in
4 some of these big financial cases, the hedge fund cases
5 and there is even a little bit of research that delves
6 back into the old Enron cases, but I did not run it down
7 and I might have been running after a rabbit, I don't
8 know, but we've got some really good lawyers in this.
9 Y'all could see if you could find something that
10 elucidates that.

11 I think I understand a lot more clearly what
12 client's responsibilities are and what the landscape is
13 there than I do what the lawyer's responsibility,
14 independent of that, is, and particularly in a case like
15 this where there's been a full constellation of -- or
16 full exploration of criminal liability of the client who
17 then brings the lawsuit. There's got to be something out
18 there, and, as I say, I thought I was getting close that
19 night, but I decided it would be better to be awake this
20 morning.

21 I appreciate the presentations that were
22 made. My heart goes out to everybody in this
23 controversy. This is a sad, sad situation that is a no
24 win for anybody, and I feel sorry for the community of
25 Berkeley that this has gotten to where it's gotten and

1 for all involved, including the attorney general and
2 others involved, and I just hope that we can pretty
3 quickly bring this to a close. It might make everybody
4 happy that's involved, but my aim is going to try to
5 bring some closure to this matter if I can.

6 That's what Roger Young said when he stuck me
7 with this. He said, Jean, this is a sticky wicket. Can
8 you take it?

9 I said, Yeah, I'll give it my best shot, so
10 I'll do so.

11 Thank you very much. Now, timing. I'm
12 thinking I would like to receive proposed orders and
13 research, independent of each other, within 15 days, and
14 then I would give you another ten to respond to each
15 other's filings. Is that going to completely break the
16 bank or can we do that? I think you all have spent so
17 much time with this and it's so fresh in your mind that
18 might work for you.

19 MR. MORRISON: That's helpful, Your Honor.

20 THE COURT: Now, what I'm going to do -- I
21 will get a form four up, and it will simply say the
22 matter is under advisement and that submitted proposed
23 orders with briefs will be filed and exchanged within ten
24 days, or 15 days. Didn't I say 15 days? And that
25 responses will be exchanged in five with another ten.

1 MR. MORRISON: Could we have a stipulation as
2 to dismissal?

3 THE COURT: I'm going to take -- it's not a
4 stipulation so much as it is -- you all have requested
5 and they say -- and Ms. Kovach's lawyer says he thinks
6 that's what she's already done, and whatever is done I'll
7 make part of the orders that I pass in this matter,
8 because I think what I'm going to have to do is say
9 something about what survives and so forth in that
10 regard.

11 So don't you worry about having to put
12 anything on the record, Mr. Morrison. I'll take care of
13 that in the order, and if I do it wrong, y'all will ask
14 me to reconsider.

15 MR. MORRISON: Thank you, Your Honor.

16

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(Whereupon, the proceedings were concluded.)

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25

State of South Carolina	)	Court of Common Pleas
	)	Ninth Judicial Circuit
County of Berkeley	)	Case No. 2015-CP-08-02380
	)	
Amy Kovach,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
Joshua Whitley and	)	
Karen Whitley,	)	
	)	
Defendants.	)	
	)	

January 17, 2017
Charleston, South Carolina

B E F O R E:

The Honorable Jean Toal, Judge

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

Dawes Cooke, Esquire
Attorney for the Plaintiff Amy Kovach

Katie Monoc, Esquire
Attorney for Nancy Bloodgood

Jeffrey Breit, Esquire
Attorney for the Defendant Joshua Whitley

Howell Morrison, Esquire
Attorney for the Defendant Karen Whitley

Krystal J. Smith
Court Reporter

001233

I N D E X

WITNESS/DESCRIPTION

PAGE NUMBER

Motion to Reconsider..... 5

Motion for Sanctions..... 57

Court Reporter Certification..... 123

1 JANUARY 17, 201

2 (WHEREUPON, the proceedings began at 9:23 a.m.)

3 THE COURT: I think all are present here. Am I right?
4 On all sides so that -- all right.

5 This hearing is commenced to consider the award of
6 attorney's fees and other sanctions in connection with the
7 matter of Kovach against Whitley and others, 2015-CP-08-2380,
8 a Berkeley County case in Common Pleas being heard today in
9 Charleston County.

10 This Court issued an order on October 21st, 2016,
11 disposing of the merits of this matter and, in addition, the
12 Court ordered that attorney's fees be -- the award of
13 attorney's fees was appropriate and deferred hearing on the
14 matter of motions for sanctions by way of award of attorney's
15 fees and costs and any other sanctions that might be
16 appropriate under both the civil -- the Frivolous Action Act,
17 15-36-10, and under Rule 11 of the South Carolina Rules of
18 Civil Procedure.

19 So we're convened here today for that purpose and I
20 really -- I really think it's up to the moving party to
21 proceed; so we will turn to the moving party. Mr. Whitley,
22 how do you wish to proceed?

23 MR. BREIT: Mr. Breit.

24 THE COURT: Mr. Breit?

25 MR. BREIT: Speaking for Mr. Whitley. Your Honor, it's

1 my understanding -- and correct me if I'm wrong because I know
2 you will direct us where you would like us to go. We have the
3 motions for sanctions, which I think we're going to hear
4 first. I know there was a lot of brief writing on the motion
5 for reconsideration.

6 Do you wish me to start in one direction or the other?
7 On sanctions, I'm happy to begin, but the reconsideration
8 briefs took up a lot of space. The Court hasn't really
9 mentioned that.

10 THE COURT: All right. That's a good point, Mr. Breit.
11 And perhaps it is better first to go on and deal with the
12 motion for reconsideration if -- Ms. Monoc, are you prepared
13 to deal with that first?

14 MS. MONOC: Yes, Your Honor.

15 THE COURT: Very good.

16 MS. MONOC: We would like to just rely on our filing, but
17 to the extent that the new decision on *Pee Dee* came out around
18 the same time as our motion to reconsider, I just wanted to
19 point out that there were, you know, two general principles
20 that I read from that case that I think apply to this case.

21 And that is, first, that the decision of whether to
22 impose sanctions is a collateral issue and not ruling on the
23 merits, and that case also pointed out that the question for
24 the Court is whether an attorney has abused the judicial
25 process and, if so, what sanctions are appropriate. And it

1 is, again, our position that Ms. Bloodgood has not abused the
2 process. Thank you.

3 THE COURT: That's kind of a good lead-in to the motion
4 in opposition to the position that has been espoused by Mr.
5 Breit and others in the request for sanctions, but let me be
6 clear before we proceed.

7 With respect to reconsideration itself, rather than the
8 *Hampton v. Pee Dee* standard for the awarding of sanctions, are
9 there any other positions you want to take with respect to the
10 merits of the substantive order?

11 MS. MONOC: No, Your Honor. It's all -- it should -- I
12 think we covered it sufficiently in our brief.

13 THE COURT: Very good. Mr. Cooke?

14 MR. COOKE: Thank you, Your Honor. First of all, we --
15 as we said in our motion that we filed, we claim the grounds
16 that Ms. Bloodgood asserts, but in addition to that, I would
17 like to make a factual point and then a legal point with
18 regard to our request for reconsideration.

19 The factual point goes to the --

20 THE COURT: Just one moment here. Now, we've got someone
21 else coming in. Have you got a seat? No. All right. Mr.
22 Whitley, there are a couple of seats here, one here and one
23 here. Why don't you guys pull them up and move them to the
24 back?

25 (WHEREUPON, there was a pause in the proceedings, after

1 which the proceedings resumed as follows.)

2 THE COURT: Sorry, Mr. Cooke.

3 MR. COOKE: That's all right. I'm going to re-yield the
4 floor for just a minute. Ms. Monoc has an additional point
5 that she'd like to mention.

6 THE COURT: All right.

7 MS. MONOC: I'm so sorry. I apologize. Just one last
8 point is that to the extent that the order created new law, we
9 would respectfully request that it be applied prospectively
10 and not retroactively. Thank you.

11 THE COURT: Tell me a little bit more about how you
12 believe it creates new law, Ms. Monoc.

13 MS. MONOC: With respect to the standard on civil
14 conspiracy, we think that it could raise the pleading standard
15 because we believe that the pleading appropriately alleged an
16 intent to harm. And so to the extent that some of the
17 allegations might be stricken, if there are additional
18 allegations that would be required to show harm, we think that
19 that would in some ways raise the pleading standard on civil
20 conspiracy.

21 And also, given the nature of a civil conspiracy claim
22 where much of that relies on what can be discoverable, we
23 think that it does create new law because the current law
24 doesn't really recognize that civil conspiracy claims, you
25 know, require discovery to show the nature and extent of the

1 conspiracy.

2 In addition to that --

3 THE COURT: So the first thing is civil conspiracy
4 requires discovery, and you say that was denied or not
5 allowed?

6 MS. MONOC: Well, if the pleading as alleged did not show
7 the sufficient harm, then it would require additional and
8 heightened pleading for civil conspiracy.

9 THE COURT: What do you do with the line of cases that
10 deals with an indictment and a guilty plea and its impact, if
11 any, on the allegations of civil conspiracy?

12 MS. MONOC: As I read those cases, they were expressly
13 limited to the 1983 context, and they are distinguished within
14 our brief.

15 THE COURT: I know you say that 1983 is different, but I
16 wonder -- well, expound on that just a little bit more.

17 MS. MONOC: Sure. The -- I believe in those cases that
18 the indictment itself was a -- an element in the cause of
19 action, whereas here, you know, we think that it's completely
20 separate and apart. Causes of action -- allegations about the
21 torts of third parties are not necessarily encompassed in the
22 indictment.

23 THE COURT: When the -- let's go back to how the civil
24 conspiracy is alleged. Are you -- are you taking the position
25 that if you haven't fully alleged everything factually that

1 you need to allege about civil conspiracy that the -- you have
2 the right to further discovery in order to get that? I don't
3 exactly understand the -- the context of that.

4 MS. MONOC: Sure. Well, over the course of the -- I
5 think that there were allegations and we expected discovery to
6 confirm that prior to the time that Ms. Kovach pled guilty to
7 the misdemeanors that the defendants intimidated her coworkers
8 and threatened persons who expressed support for Ms. Kovach,
9 and had a private entity, the Berkeley County Republican
10 Party, pass a resolution against her.

11 And over the usual course of litigation, she further
12 expected to discover that these defendants took these actions
13 to harm her so that her employment status went from paid to
14 unpaid leave so that she would be terminated and so that the
15 school district would stop paying her attorney's fees.

16 THE COURT: When you plead guilty to a misconduct in
17 office that deals with your employment, how is it then viable
18 to pursue a civil conspiracy and a request for damages because
19 of the action of alleged third parties if you have already
20 pled guilty to averments that encompass all of the conduct
21 that was the subject of this kind of third-party disputation?

22 MS. MONOC: Sure. And I think, Your Honor, that gets to
23 the crux of the argument that this creates new law is that
24 there is an existing law that we found that demonstrates this
25 principle of law.

1 So that's why we would ask that it would be applied
2 prospectively, but to wipe out any additional actions that
3 took place years earlier by third parties which led to an
4 independent intent to harm her outside of the scope of the
5 criminal and in addition to what was happening on the criminal
6 front, we think that there -- we haven't found law that says
7 that you can't have a cause of action to address those alleged
8 torts.

9 THE COURT: I understand that you -- the argument in the
10 negative that you haven't found anything that allows it, but
11 what about present law allows it in your estimation?

12 MS. MONOC: We haven't found anything to that extent
13 either.

14 THE COURT: Exactly. I mean the -- this particular
15 factual scenario you contend has not played out before in this
16 state?

17 MS. MONOC: Yes, Your Honor.

18 THE COURT: All right. And that is the basis of the
19 allegation I take it that new law has been made here?

20 MS. MONOC: Yes, Your Honor. That's one piece and then
21 there are a couple of other pieces just to the extent that it
22 expanded the counsel's responsibility under Gregory.

23 THE COURT: All right. You want to elucidate that a
24 little bit?

25 MS. MONOC: Sure. Gregory just was expressly limited in

1 its footnote to a fact pattern that is not present here. I'd
2 be happy to find it.

3 THE COURT: I'm very familiar with the George Gregory
4 case, but what I'm not fully understanding is the notion that
5 somehow that the only factual scenario that can play out with
6 Gregory is one that was the exact fact pattern in Gregory.
7 There are legal principles established. What about that
8 footnote in your opinion limits the application of the
9 principles enunciated in Gregory to the facts of that case?

10 MS. MONOC: Yes. Thank you, Your Honor. It's --
11 footnote 3 says our conclusion that an attorney must conduct a
12 reasonable investigation beyond what is related to the
13 attorney by his client is limited to the situation where a
14 client is alleging conversion against his or her former -- his
15 or her former attorney for misappropriation of client funds or
16 legal malpractice.

17 THE COURT: All right. And you're saying that therefore
18 these principles with regard to the reasonableness of
19 investigation or the failure to investigate is limited only to
20 conversion and embezzlement cases?

21 MS. MONOC: Based on this footnote, that's how we read
22 it.

23 THE COURT: All right. I understand your argument. I
24 must say that I -- I've got questions as to whether that
25 footnote about that factual scenario isn't more engaged

1 towards conversion and embezzlement cases and how they arise
2 than -- it wouldn't make much sense to me to say that all the
3 law about responsibility for reasonable investigation as
4 enunciated in Rule 11 and in the *Gregory* case come down to
5 something being limited only to conversion and embezzlement
6 cases.

7 All right. Is there any state that follows that approach
8 to the Rules of Civil Procedure?

9 MS. MONOC: Your Honor, I'm not sure. We were really
10 just relying on the plain language of the order and that's
11 what we worked with.

12 THE COURT: I understand. I understand. All right.
13 Anything else?

14 MS. MONOC: No, Your Honor. Thank you so much.

15 THE COURT: Mr. Cooke, now that Ms. Monoc has completed
16 her arguments, go right ahead.

17 MR. COOKE: And I'll incorporate all of that too.

18 THE COURT: Sure.

19 MR. COOKE: As a starting point, but we have a couple of
20 additional points that to some extent may be more specific to
21 Ms. Kovach, but I think to an extent would apply to counsel as
22 well.

23 The overriding factual finding this Court made about Amy
24 Kovach was that she pleaded guilty to everything that was
25 charged against her and admitted to all the facts and then

1 contradicted all of those facts in the complaint she brought
2 against the defendants in this case, and that's embodied
3 pretty much in paragraphs 7 and 16 of the Court's order.
4 Paragraph 17 is where it goes through and it says that at the
5 guilty plea the State recited all the facts. Ms. Kovach told
6 the Court under oath that she agreed with the facts as stated
7 by the attorney general. And it goes on and summarizes all
8 the things she pleaded to.

9 And then on page 16, it says nevertheless on October 15,
10 2015, Ms. Kovach through her attorney filed the incident civil
11 action against the BCSD, Mr. Whitley, Scott Merino, Dr.
12 Whitley, Terry Hardesty, and the Berkeley County Republican
13 Party LLC. The complaint was 30 pages in length and continues
14 with the simple theme contained in Ms. Kovach's affidavit that
15 she was not, in fact, guilty of the crimes to which she pled
16 guilty, that others were to blame for her conduct.

17 That -- that conflates several different ideas, which all
18 taken together created the incorrect conclusion that Ms.
19 Kovach was duplicitous in her factual allegations that she
20 made in this complaint. And I would like to parse those
21 briefly if I may.

22 First of all, she does blame others. That's true, but
23 that's --

24 THE COURT: She does what now?

25 MR. COOKE: She does blame others for -- for her being in

1 the position she's in. She said at her guilty plea that she
2 was doing what she thought her supervisors, her superiors,
3 expected her to do. We understand that that doesn't exonerate
4 her from the criminal --

5 THE COURT: And in fact, the judge in the original plea
6 would not let her plead. He broke the plea down and she
7 initially asserted that she was simply doing what she thought
8 best and that others were responsible for directing her. He
9 would not let her plead when that was the formulation of her
10 admission.

11 MR. COOKE: Exactly. The fact that somebody told me to
12 do it doesn't mean that I'm exonerated from doing it, but we
13 all -- we all understand that. But -- and I would like to
14 divert for just a moment and refresh the Court's recollection
15 as to exactly what she testified to that day.

16 Immediately after she was asked -- on page 28 of her
17 guilty plea -- Ms. Kovach, you agree with the facts as stated
18 by the attorney general?

19 Yes, sir.

20 Okay. Then he says tell me in your own words what you
21 did that broke the law.

22 I did my job.

23 She's under oath now.

24 I did my job at the discretion of the leadership of the
25 school district with the leading counsel and the leadership of

1 district as expected of me and filled my -- fulfilled all of
2 my obligations to those purposes at their discretion.

3 The Court -- and this is what Your Honor is referring to.
4 So you're telling me you did nothing wrong?

5 Mr. Theos, her attorney: Your Honor, if I may?

6 The Court: Yes, sir.

7 And then they confer.

8 The Court: If you want to plead guilty in front of me,
9 then you're going to have to tell me in your words what you
10 did that was -- if you don't think you broke the law, then
11 we're not here for a plea. We will proceed to try this case
12 on the 21st of September. If you're here to plead guilty, then
13 you're going to tell me what you did that broke the law.

14 The Defendant: In doing my job as directed, I violated
15 the law that I'm guilty to.

16 So she didn't recant what she had said. She elaborated
17 and said in doing my job as directed, I violated the law as I
18 am guilty -- as I am guilty to.

19 The Court: How did you violate the law? Did you lie?
20 Did you use resources that you shouldn't have? What did you
21 do?

22 She says by using resources to promote the school
23 district and its agenda of passing the referendum.

24 The Court: You are, in fact, guilty of misconduct in
25 office?

1 Yes, sir.

2 The Court: Are you, in fact, guilty of using public
3 funds to influence an election?

4 Yes, sir.

5 And you understand that I think each of these carries up
6 to a 10-year sentence; is that correct?

7 And then there was a discussion about potential
8 sentences.

9 So, Your Honor, yes, she pleaded guilty. Yes, Ms.
10 Bloodgood had that transcript, but reasonable minds can read
11 that transcript and differ as to whether she has admitted to
12 forgery, fraud, lying, all of the other things that were in
13 the -- in the -- the introduction that Mr. Waters gave leading
14 up to that because when she was specifically asked what did
15 you do, she admitted to the misuse of public funds to promote
16 the referendum, and that's what -- that -- those are the
17 elements of misuse of funds to affect an election and
18 misconduct in office.

19 So there's --

20 THE COURT: Well, what are you saying? She ultimately
21 pled guilty and admitted that she was guilty and that she had
22 violated the law, and are you saying that she did it with some
23 kind of moral reservation that she violated the law but at the
24 direction of others? Is that the qualifier that you think
25 gives her the ability to move forward with a lawsuit?

1 MR. COOKE: No. That's what -- that takes me to my next
2 point. This is the legal point.

3 I believe that this Court vilified her, if I can use that
4 word, for being duplicitous in what she told the Court versus
5 what she filed in her lawsuit, and I submit that she did not.
6 If you look at her complaint, her complaint does not admit to
7 the other things that were charged against her, the cover-up
8 and the -- and the forgeries and those things, but she does
9 admit that she was guilty of these offenses.

10 Her lawsuit against these defendants was based on how
11 they got there. Now, the legal question that this Court has
12 to -- has to resolve is, is there even a colorable basis that
13 somebody who has been found guilty or pleaded guilty to a
14 crime could bring a civil action against somebody else based
15 on --

16 THE COURT: Well, she was bringing a civil action
17 against, first of all, the district that she worked for.

18 MR. COOKE: That's right.

19 THE COURT: And then she was also bringing a civil action
20 against a district employee and then other third parties that
21 she said falsely accused her.

22 MR. COOKE: That's true.

23 THE COURT: Or conspired against her by politically
24 taking positions against her; right?

25 MR. COOKE: Those are two different things. Falsely

1 accusing and --

2 THE COURT: What was the falsity that was --

3 MR. COOKE: No, she didn't. That's what I'm saying.
4 Your Honor just said she accused them of falsely accusing her.
5 No, she didn't. That's not the basis of her conspiracy claim
6 against these defendants. It was using the criminal process
7 to gain an ulterior purpose. In this case, it was to get her
8 out of the position -- out of her position and ultimately to
9 get to her -- her superiors. And --

10 THE COURT: Well, what -- what right would she have had
11 to be in her position if she admits that she committed
12 misconduct in office? That's the conundrum that the Court is
13 wrestling with about this case.

14 I'm sorry that she believes she's been vilified. Quite
15 frankly, what the Court did was to go down the averments made
16 by the State at the time of her guilty plea and compare them
17 to what she then alleged in her complaint, using the material
18 that was put into evidence by the attorney general when the
19 matter was reopened for a possible allegation and pursuit by
20 the Court for perjury.

21 It seems to me that you must look at both of those things
22 to make a determination as to whether there was a viable,
23 under any stretch of the imagination, civil conspiracy suit
24 that could have flowed -- that could stand in the light of her
25 (a) admissions under oath and (b) the subsequent hearing in

1 which she really did go much more into an approach of blaming
2 others.

3 At the first plea, it was just blaming the school
4 district, saying she worked at their discretion, but she
5 really made it very full-blown in the next hearing when she
6 blamed her attorneys and then said -- but she was wrong to
7 bring the lawsuit. It should be completely dismissed and so
8 forth. Completely disavowed the lawsuit.

9 Now, how in the light of all of that, can it continue to
10 be claimed on her behalf that she had any viable suit for
11 criminal conspiracy?

12 MR. COOKE: I'd like to split that into three parts, if I
13 may.

14 First of all, there's the suit against the school
15 district, which is not technically before the Court because
16 they're not moving for sanctions, but I think it's influenced
17 the Court's view of Ms. Kovach's interactions. So let me --
18 let me address that.

19 Judge Rawl gave an affidavit saying that, despite these
20 charges against her, she was acting in good faith. And I
21 believe that there is an eye of the needle that can be
22 threaded where you could have been guilty of a criminal
23 offense, but if you were put up to it and encouraged to do it
24 by your bosses, they may be ill situated to terminate you.

25 So that -- that's -- that's the basis of her claims, I

1 believe, against -- against the school district. She dropped
2 that claim, but she -- and that was the -- that was the claim
3 was that, okay, I was guilty. I did spend -- I did spend \$800
4 on supplies to support the school campaign. I'm guilty of
5 that. I didn't know it was a crime, but I'm guilty of it and
6 I violated -- violated that provision.

7 But I was told by the school board that that was part of
8 my job. I was encouraged to be more aggressive promoting the
9 school bond referendum, and so that's why I don't think these
10 folks should be allowed to fire me. And that was the same
11 reason she gave why she they should be required to continue to
12 pay her legal fees. That -- that argument I can easily see
13 where the Court would just say, well, you're just splitting
14 that hair too fine. I'm not going to let you do that.

15 But it's at least -- there's at least a world where those
16 things can coexist. You could have been guilty of committing
17 a crime, but the circumstances might make it unfair for you to
18 be terminated for that. So that's that. That's the one
19 piece.

20 Now, let's talk about the conspiracy. Unless did you
21 have a question about that?

22 THE COURT: Yes. In this concept of employment which
23 lies at the heart of her claim of civil conspiracy and the
24 damages she say flow -- says flow therefrom, have you got any
25 authority that stands for the proposition that that needle can

1 be threaded in that way? That is you're complete guilty and
2 affirm that plea of guilty in a subsequent proceeding in order
3 to avoid conviction for perjury and yet have the concept that
4 you could viably file a suit for wrongful discharge and/or
5 conspiracy to have you discharged?

6 MR. COOKE: I would say that had she pleaded guilty to
7 these other charges, the morally turpitude -- the moral
8 turpitude of perjury, forgery, the cover-ups, I can't imagine
9 a situation where you keep your job if you have been found
10 guilty of those things.

11 THE COURT: But she pled guilty to misconduct in office,
12 and the office is the object of that plea. It was her
13 position with the school district and she pled guilty to
14 committing a criminal act as an employee of the school
15 district.

16 In what -- is there some case or authority that could
17 support the concept that having admitted to committing a crime
18 as a public official in the office you could also claim that
19 you have been wrongfully discharged and conspired against by
20 the people who accused you of that?

21 MR. COOKE: Well, I might -- I might let Ms. Bloodgood
22 address that, but I'll tell you speaking for Ms. Kovach that
23 from where she sat, she was entitled to believe that an
24 excellent employment attorney could find that world where
25 because of the unique circumstances where her bosses had

1 expected her and made it clear to her that her actions were
2 what they expected her to do --

3 THE COURT: Well, her bosses were wrong if, in fact, they
4 said that. Then she pled guilty to misconduct and now she's
5 saying I -- I, before Ms. Bloodgood ever got involved,
6 admitted my guilt and yet I can say, oh, but Ms. Bloodgood
7 told me to bring this lawsuit and I have the right to rely on
8 her despite the fact that I know I pled guilty and,
9 subsequently when I was threatened with perjury, I renewed the
10 plea that I had committed misconduct in office.

11 MR. COOKE: Could I allow them to address that specific
12 question because I don't want to talk some more about it, but
13 the specific question of what authority is there that would
14 allow somebody who had committed a criminal offense in office
15 to nevertheless have employment?

16 THE COURT: Certainly, it can happen that way, but I do
17 -- I can't help but be a little concerned that it is again the
18 exhibition of trying to throw it off on someone else. Let
19 them make the argument that there's some legitimacy and then
20 you'll kind of hide behind that, but at the same time to avoid
21 a perjury charge she said this is a baseless lawsuit. I am
22 dismissing it. I admit under oath that I had no right to
23 bring this lawsuit, but nevertheless it's the fault of -- it
24 was the fault of my bosses at the school district; now it's
25 the fault of my attorney.

1 MR. COOKE: Well, let me --

2 THE COURT: That is -- that concerns me from a logical
3 standpoint and I hunt for any kind of litigation in which this
4 kind of fact pattern plays out.

5 MR. COOKE: Well, let me address that too because I think
6 that's a complete mischaracterization of what Ms. Kovach has
7 actually done. Her attorney, Andy Savage, got up at the rule
8 to show cause hearing and he said we've dismissed the action.
9 We're dismissing the action and he said something to the
10 effect that Ms. Bloodgood didn't do her due diligence.

11 Well, I'll tell you speaking as -- as an attorney and a
12 civil litigator, I've been very impressed by the amount of
13 research and work that Ms. Bloodgood did do, and Mr. Savage
14 may not have known that at the time, but we've seen affidavits
15 from Ms. Bloodgood where she said she spent 37 hours
16 investigating. She spoke to witnesses. She read the
17 transcripts. So I will leave it for this Court to determine
18 whether she exercised due diligence.

19 But speaking for Ms. Kovach, her position is that I -- I
20 did rely on -- on counsel for whether the facts that I have
21 laid out and the facts that have been made available
22 potentially create a viable cause of action.

23 And now if I may address -- if I may address the
24 conspiracy claim against -- against these folks.

25 Now, Ms. Kovach didn't choose which cause of action to

1 bring, but I will tell this Court that the legal world is full
2 of cases where people who have been guilty as sin, who have
3 been convicted, who have -- who have -- who have pleaded
4 guilty have nevertheless been allowed to bring civil lawsuits
5 against those people who brought about the criminal
6 prosecution.

7 And I go back to cases cited in our brief of Haring
8 against Prosise, the United States Supreme Court, 1983. The
9 plaintiff in that case was guilty as sin of drug manufacturing
10 and nevertheless -- and he pleaded guilty to that, but
11 nevertheless, he was allowed to bring a 1983 action against
12 the law enforcement personnel who had illegally conducted a
13 search.

14 And evidently, despite the illegality of that search, he
15 was still able to plead guilty and was guilty and was probably
16 serving his debt to society in prison somewhere, but
17 nevertheless, the Court said his guilt or innocence was not an
18 element of his claim against these defendants. And therefore,
19 his having pleaded guilty does not collaterally estop him or
20 otherwise estop him or bind him to the elements of that.

21 And so change the focus now to these defendants. Whether
22 Ms. Kovach was guilty of having used public funds to promote
23 the school bond referendum is nowhere pleaded in her complaint
24 as an element of the cause of action against the defendants.
25 Her guilt of that offense is assumed and presumed and

1 accepted.

2 Nevertheless, you could have -- you could have an abuse
3 of process case. There are legion -- legion situations where
4 somebody is guilty of the offense and is -- should have been
5 prosecuted, is prosecuted, is either convicted or pleads
6 guilty and is being punished for that. Nevertheless, those
7 who procure that prosecution could possibly be liable civilly
8 for abusing process because if they use the process for an
9 illegitimate purpose, then they could be civilly liable even
10 if you were guilty, even if the process itself was -- was the
11 right one.

12 You know, you go back to the old bad check days where if
13 -- if somebody wrote you a bad check and you -- and you
14 threatened criminal prosecution against them, you're guilty of
15 abuse of process even though they were guilty as sin of that
16 offense.

17 THE COURT: And what was the illegitimate purpose for
18 which the activities of the party defendants? What was the
19 illegitimate purpose engaged in?

20 MR. COOKE: The allegation of the complaint is that it
21 was for political purposes. That -- that she was a pawn.
22 Those aren't the exact words that's used, but she was a pawn
23 in a political battle over the operation of the Berkeley
24 County School District and that the -- the end objective was
25 to have her removed from her position and ultimately by

1 extension to get at the people above her as a -- as a
2 political move. And so --

3 THE COURT: Well, I mean labeling it in that way is -- I
4 hear what is being said, but what was the illegal or
5 illegitimate purpose that is encompassed by the use of the
6 term political? Because you've got Ms. Kovach, who pled.
7 You've got her superior, who has also now pled guilty, as I
8 understand.

9 MR. COOKE: Right.

10 THE COURT: So what -- if the end in sight was to, for
11 political purposes, expose what was done and what was pled to,
12 wherein lies the illegitimate or illegal purpose?

13 Normally, the illegitimate or illegal purpose is either
14 the illegal act itself, such as in the Supreme Court case you
15 quoted where police misconduct was the illegitimate conduct,
16 or it's the attempt to gain some collateral, financial
17 advantage or whatnot. This was an accusation that she had
18 committed misconduct in office.

19 MR. COOKE: Well, taking off of what Ms. Monoc said, they
20 had expected that through discovery they would learn that the
21 Berkeley County Republican Party had resolved -- and we know
22 that. We know this part. They resolved to push for her
23 prosecution and --

24 THE COURT: And again, what would that add to the mix in
25 terms of illegal conduct? Is there something illegal about

1 that?

2 MR. COOKE: No, but if it was -- but if it was done not
3 for the purpose of enforcing this law -- and remember, we're
4 talking about \$800 that was spent.

5 THE COURT: Well, I understand that is your concept of
6 what she pled guilty to. The plea is something the Court
7 addressed in here and my findings were not limited to that. I
8 know you consider that those findings are too broad.

9 MR. COOKE: I just submit that reasonable minds could
10 differ and that that argues against sanctions being imposed
11 for bad-faith litigation.

12 THE COURT: Yes, sir.

13 MR. COOKE: And so Your Honor could be right and I
14 certainly think that a reasonable person could construe it
15 that way, but a reasonable person I believe -- the part that I
16 read to Your Honor this morning, a reasonable person -- a
17 reasonable attorney could look at that and say she's not
18 admitting to all this skullduggery. She is admitting to
19 having spent a small -- a relatively small amount of public
20 funds to promote the school bond referendum.

21 THE COURT: Well, she didn't admit to any of the
22 averments made in the guilty plea in the complaint at all.
23 That is one of the factors that opposing counsel points to
24 most vigorously in pointing to -- in arguing that the suit is
25 frivolous and that the suit is not reasonably broad.

1 So it's not looked at as some kind of plus for Ms.
2 Kovach. It's looked at as a failure to acknowledge that much
3 of the factual averments in the complaint conflict with the
4 plea that was made in the criminal matter.

5 MR. COOKE: Well, but -- but what Your Honor said was
6 that -- excuse me for a minute. Let me find one paragraph for
7 you.

8 THE COURT: Where are you?

9 MR. COOKE: I'm looking at the complaint, paragraph 82.
10 And there is a reference there to the plaintiff, that she had
11 been indicted.

12 THE COURT: Paragraph 82?

13 MR. COOKE: 82 of her complaint.

14 THE COURT: Oh, of the complaint.

15 MR. COOKE: The complaint, right.

16 THE COURT: All right.

17 MR. COOKE: So -- so she -- so she does -- so she does
18 refer to the -- to the criminal prosecution, but more
19 importantly, Your Honor's order finds essentially that in her
20 complaint she denies everything, and she does not deny
21 everything. She denies -- she denies the allegations that she
22 did not plead guilty to, but she does not deny the use of the
23 public funds to influence an election or misconduct in office.
24 And so --

25 THE COURT: And so --

1 MR. COOKE: That's it.

2 THE COURT: -- going back to the plea that was made to
3 begin with, it continues to be your contention that her
4 language at the end after the Court first refused to take her
5 plea and then finally took her plea somehow is not an
6 admission to everything that was cited by the attorney
7 general?

8 MR. COOKE: I'm saying that a reasonable attorney and a
9 reasonable litigant could well take that position because of
10 exactly what she said when she was asked specifically what did
11 you do. And if you want to plead guilty in front of me,
12 you've got to tell me how you broke the law. And so, yes,
13 Your Honor, that's exactly what I'm saying.

14 THE COURT: All right.

15 MR. COOKE: And it -- believe me, she's not looking to
16 recant her guilty plea. She's paid her \$25,000 and served her
17 probation. She doesn't want to reopen that at all and I'm
18 just saying that when she brought this and the transcript came
19 to Ms. Bloodgood and she did her investigation, a reasonable
20 attorney and thus a reasonable litigant could conclude that I
21 could have a cause of action here based on the fact that I
22 pleaded guilty to a narrow offense and not all of these other
23 things and, even though I'm guilty, I believe that the
24 defendants in this case had ulterior reasons. They were not
25 simply trying to save the county and the school district \$800

1 or vindicate that breach of the law. They were trying to
2 achieve a much larger purpose.

3 THE COURT: And what was the larger purpose?

4 MR. COOKE: Well, to gain control of the school district
5 and to -- and also to defeat the -- to help to defeat the bond
6 referendum, which they opposed.

7 THE COURT: All right. I know nobody is going to make
8 some kind of sideways comments while I'm hearing from Mr.
9 Cooke, am I?

10 MR. BREIT: It was to Josh. I apologize, Your Honor.

11 THE COURT: All right.

12 MR. BREIT: To each other.

13 THE COURT: Mr. Whitley.

14 MR. BREIT: I apologize.

15 THE COURT: All right. We have a small courtroom here
16 and we sure don't want to in any way make any kind of *sotto*
17 *voce* comments. So I hope you will cooperate with me about
18 that.

19 MR. WHITLEY: Of course, Your Honor.

20 THE COURT: I'm sorry and I hope you will apologize to
21 Mr. Cooke.

22 MR. WHITLEY: I'm sorry.

23 MR. COOKE: I was not distracted, Your Honor.

24 THE COURT: All right, sir.

25 MR. COOKE: I've been there myself. So -- so -- so to go

1 back and specifically answer Your Honor's question what was
2 the -- what was the claim of the ulterior purpose or ulterior
3 motive. I believe that was -- the allegation was that there
4 was at least in part a retaliation for her part in the bond
5 referendum, which the defendants allegedly opposed, and to
6 attack her employment status.

7 And that there may have been larger political purposes,
8 but as far as Ms. Kovach was concerned, she wasn't much
9 concerned about the political implications. She was concerned
10 about her -- her personal employment situation. That was why
11 she went to an employment attorney.

12 So the last point I made -- and this is where I'm not
13 throwing Ms. Bloodgood under the bus. I'm not hiding behind
14 her, but there is an additional level of insulation. And I
15 make the point that Rule 11 ought to be considered protection
16 for Ms. Kovach or insulation for Ms. Kovach because when her
17 attorney signs the pleadings, her attorney is certifying that
18 she has brought her threshold judgment to bear and believes
19 that the facts that are alleged in the complaint can arguably
20 give rise to a cause of action and a recovery, either under
21 existing law or under a reasonable extension of existing law,
22 and that a litigant is entitled to rely upon that.

23 The cases in which this Court has relied upon and which
24 the litigant himself has been sanctioned are cases where
25 there's been extraordinarily contumacious behavior on their

1 part and -- and abusive conduct, in addition to simply
2 bringing a lawsuit that turned out not to be meritorious.

3 Ms. Kovach decided to drop the suit within 30 days after
4 filing and we'll talk about that a little bit more when we
5 talk about the amounts, but it lacks -- it lacks the -- the
6 pervasive, repetitive, "never say die" attitude that most of
7 the people that we find that have been sanctioned have been
8 going on, and I submit that that's missing.

9 And that's important for another reason. I've already
10 had this order cited to me by at least one or -- at least one
11 other attorney essentially for the proposition that loser pays
12 basically.

13 And this Court and our courts should encourage people to
14 constantly reassess their case. I remember Hermit King one
15 time saying it's a poor general who doesn't daily reassess his
16 position.

17 And I think it would be harmful to everybody, to the
18 entire bar and to the judiciary, if we created an implicit
19 rule that once you have filed that complaint, you're stuck
20 with it and you'd better see it through to the bitter end and
21 hope you win or settle or somehow get out of this dispute. If
22 you won't unilaterally drop this case, you're going to be
23 subject to sanctions because that's going to be taken as an
24 admission that this was a frivolous lawsuit.

25 In this case, there's been no discovery. None of the

1 allegations of the complaint have been disproved and some of
2 the critical ones haven't even been denied. And so, Your
3 Honor, with all due respect, I would ask that the Court
4 reconsider its order imposing sanctions on Ms. Kovach.

5 THE COURT: Thank you, Mr. Cooke. All right. Mr. Breit,
6 on the reconsideration matter.

7 MR. BREIT: And I think we can probably move from
8 reconsideration to my point as to sanctions as well. That's
9 the plan that I would be starting immediately after that
10 reconsideration into --

11 THE COURT: That's correct.

12 MR. BREIT: And I may blur that line.

13 THE COURT: But I'll be frank with you. I would
14 appreciate it if you would focus at least. I don't think you
15 need to go on at great length because a lot has been filed
16 about your position about reconsideration and very eloquently
17 so, just as the filings have been made by opposing counsel.

18 But I don't want you to try to bootstrap the
19 reconsideration into the sanctions because I do think those
20 are very different things with different considerations.

21 MR. BREIT: And stop me when I start to blur. I'll do my
22 very best to address reconsideration first, Your Honor.

23 The reconsideration, as I hear it, is we have a viable
24 conspiracy complaint and, therefore, we should not be
25 sanctioned. Her conspiracy complaint comes in Count IV of the

1 complaint. The Court in its opinion in October on pages 15
2 and 16 outlined the facts of a conspiracy.

3 Mr. Cooke is doing a very good job of trying to walk a
4 very thin semantic line. One of the problems the Court and
5 now Mr. Whitley and Dr. Whitley has faced is that Ms. Kovach
6 has had now four separate attorneys: first criminal lawyer,
7 second criminal lawyer, and now a civil lawyer, as well as Ms.
8 Bloodgood, who filed her employment case.

9 Each of the four attorneys has tried to play semantic
10 games with Ms. Kovach's plea and, every time I've heard the
11 other side talk about what she actually pled guilty to or not
12 pled guilty to for purposes of the conspiracy, they leave out
13 the fact that the attorney for the Commonwealth -- or for the
14 State -- I apologize. I lost my geographic boundaries.

15 On page 28 of the original plea: Do you agree with the
16 facts stated by the attorney general? And on line -- on line
17 19, the answer was very clearly yes.

18 The facts as outlined by the attorney general were for
19 five separate charges: misconduct in office, criminal use of
20 public funds to influence an election, two counts of forgery,
21 and one count of perjury. Those five separate counts were
22 wrapped into a plea deal, but the facts as outlined by the
23 attorney general could not have been clearer as to all of the
24 things that she had done wrong and that she was forced to
25 admit that she had done wrong.

1 The purpose of the February hearing in 2016 where she was
2 brought up on a show cause where the judge -- Judge Young was
3 very upset based on the fact that she -- he had accused her of
4 so many lies in the initial hearing that she was now trying to
5 get out of the factual recitation by the attorney general as
6 evidenced by her lawsuit against Mr. Whitley and Dr. Whitley.

7 Now with new counsel, she was asked once again about the
8 factual recitation and again she said I am guilty one by one
9 of every one of those things mentioned in the original
10 criminal charges against me. She then has told the Court in
11 her own words in February of 2016 that she has dismissed --
12 not will. She has dismissed the complaint against Mr. Whitley
13 with prejudice.

14 As we sit here today, Your Honor, Mr. Whitley's case is
15 still pending. They have not offered to dismiss it with
16 prejudice, as they said they had already done, and the case is
17 still alive.

18 But Count IV of the complaint for conspiracy --

19 THE COURT: Let me stop you right there with Mr.
20 Whitley's case. I understand that Mr. Whitley's case cannot
21 be dismissed unilaterally by them because he imposed an answer
22 and he has contended that the case must go on until he
23 consents to its dismissal.

24 So I'd love to have a little clarification about that
25 because all these cases ought to go away. It troubles me that

1 I was not able to simply dismiss it myself when we dealt with
2 the merits in the order I did issue, but the contention is
3 that it cannot be dismissed because of the imposition of an
4 answer prior to the time she tried to unilaterally dismiss
5 with prejudice.

6 MR. BREIT: She did not try to dismiss it with prejudice.
7 That's the problem. She wanted to dismiss it without
8 prejudice initially, and what Mr. Whitley has been always
9 willing to do is to do exactly what they say they did in
10 February, dismiss this case with prejudice. I'm not dropping
11 my counterclaim, but you have to dismiss this underlying case
12 with prejudice.

13 Now we know from their pleadings, that were filed late in
14 this case a week ago, that the reason that they haven't
15 dismissed it with prejudice is because their new legal
16 position is this Court does not have right to sanction them
17 because this case is still alive.

18 So rather than send us a dismissal with prejudice, which
19 they told the Court they did in February, they want the case
20 to be alive enough because of their interpretation of the
21 rules saying you can't give sanctions unless the case has been
22 found and finished in the favor of Mr. Whitley. So again,
23 this is exactly the problem with this case all along.

24 THE COURT: Well, if you really want the case dismissed
25 with prejudice, why doesn't he go on and drop his counterclaim

1 too? He's going to get whatever he's going to get in the
2 hearing that we're in now about, Mr. Breit.

3 MR. BREIT: And we would. And if --

4 THE COURT: All right. This lady is going to -- if I'm
5 being asked to make some kind of award here, but you can hold
6 your hand behind a rock and behind your hand, then I haven't
7 ended the controversy and that would be a very problematic
8 thing for me.

9 MR. BREIT: Your Honor, we have offered to them more than
10 once that we would drop our counterclaim if they dismiss their
11 case with prejudice, but we want our sanctions motions for the
12 frivolous filing to be heard.

13 THE COURT: Well, it's being heard now.

14 MR. BREIT: And so our counterclaim is only alive because
15 there is still no dismissal with prejudice. In fact, they've
16 offered twice we will dismiss it, but we're not going to
17 dismiss it with prejudice.

18 THE COURT: Well --

19 MR. BREIT: We're willing to drop it.

20 THE COURT: We're going to get to the bottom of that
21 before this hearing is over and I don't care what happens.
22 We're going to try to accomplish the dismissal of all these
23 matters --

24 MR. BREIT: Clearly not.

25 THE COURT: -- and the resolution of all of these matters

1 in the context of this proceeding. So --

2 MR. BREIT: Perfect. And that's what we would want.

3 THE COURT: All right.

4 MR. BREIT: So Count IV of the complaint has never --
5 that's what's great about having four different lawyers come
6 in to represent Ms. Kovach.

7 They're claiming all of these potential claims that they
8 may have under the umbrella of a conspiracy in Count IV, none
9 of which are in Count IV. The only allegations, as the Court
10 does indicate on page 15 and 16 of the opinion, about her
11 employment is that they were getting people to talk bad about
12 her. There isn't any allegation that we were trying to get
13 her fired. I would think that when you commit perjury and
14 forgery while in the course and scope of your employment, you
15 probably will get fired. So none of the conspiracy
16 allegations in Count IV have any of the arguments that any of
17 the three attorneys have made. They don't even exist.

18 And so for purposes of reconsideration --

19 THE COURT: Well, how about the rest of the complaint,
20 Mr. Breit? I mean are there -- are any allegations in the
21 complaint? And I'm asking.

22 MR. BREIT: There's one. Mr. Whitley went into the
23 attorney general's office with a packet of information
24 thinking that she had committed a crime against the school
25 board. That was what he did and what Ms. Kovach says. Mr.

1 Whitley even admits to his conspiracy by going to the attorney
2 general's office. And he will tell you right now, yes, he
3 did. Aafter he got his Freedom of Information Act request and
4 found that she and her boss had, in fact, committed a crime,
5 he took that packet to the attorney general. He interviewed
6 with SLED. His mother interviewed with SLED and a bunch of
7 other witnesses and, lo and behold, five indictments, all of
8 which she is guilty factually to, even though they were
9 packaged into a plea.

10 And so when we're talking about reconsideration, there is
11 no illegitimate purposes in this complaint. If there was some
12 allegation later even that we would've amended it after
13 discovery to show that there was a political purpose to change
14 the school board or some other reason, I still -- that doesn't
15 amount to an illegitimate purpose, but that's not even alleged
16 in this case. Her only one fact in Count IV is getting other
17 people to talk bad about her.

18 In our last hearing, we heard that Dr. Whitley -- her
19 allegations of conspiracy are she walked into an office with a
20 piece of paper -- that was Mrs. Kovach's office -- and she
21 left the office empty-handed. That was the full extent of the
22 conspiracy of Dr. Whitley. The only reason Dr. Whitley is in
23 this case -- and this is the purpose of our sanctions -- was
24 to try to put pressure on Mr. Whitley to drop his
25 investigation, drop his case. She's here as a victim of

1 happening to be his mother, which we talked about on the drive
2 over here.

3 And that's the only reason. And this whole conspiracy is
4 built on nothing. It's vapor. And so for purposes of the
5 reconsideration, I want to make sure I don't crossover.

6 The last point that I would make as to this conspiracy
7 and which I will make again on the next motion is why this is
8 so bothersome to me as a lawyer. And I do plaintiff's work,
9 Your Honor, and have done for 37 years. And so I understand
10 Mr. Cooke's attempt to say that this will chill the doors for
11 people who file suit to get into the courthouse. I disagree
12 completely. The rule from this Court is going to be if you're
13 going to file suit, don't have bad purposes for it.

14 But on page 21 of Ms. Bloodgood's brief on footnote 16,
15 what constitutes Kovach's plea is disputed. So here we are
16 how many years later and Ms. Bloodgood is still not willing to
17 understand or appreciate the Court's order and two different
18 hearings before Judge Young that what she was pleading guilty
19 to was, in fact, everything that was alleged by the attorney
20 general. They still won't admit it, and that's why I don't
21 think we have Ms. Kovach here. We've seen Ms. Kovach on the
22 streets this week. She can't even file an affidavit? We
23 don't have a doctor's slip saying that she has some reason.

24 THE COURT: Well, that's not anything I'm going to
25 consider. This is -- it's up to her to decide whether to

1 attend this hearing or whether to have her attorneys represent
2 her. So I don't know that that's --

3 MR. BREIT: I understand that, but there was an affidavit
4 filed by her husband, and one of the factual allegations in
5 that was completely and totally false and it should be pointed
6 out to the Court now or in this next motion while I'm still on
7 the line. I'll tell you one of his lines in his affidavit is
8 she has never spoken publicly about this event or badmouthed
9 anyone.

10 I have a TV report where she walked out of the criminal
11 hearing with her husband standing right beside her, who filed
12 the affidavit, badmouthing everybody under the sun, denying
13 that she was guilty, that this was all put up and none of this
14 is true. This is five minutes after the guilty plea.

15 And so having someone else file an affidavit as your
16 spouse who happens to be a lawyer, that's fine, and I'm not
17 objecting to that. The fact that it's late is a separate
18 procedural issue.

19 But the point of the matter is they still don't believe
20 what they did. They still don't want to admit that there's a
21 guilty plea. They still want to allege that it's a conspiracy
22 when there is no conspiracy, in fact, alleged, which is why
23 Your Honor sanctioned both her and her attorney.

24 Her attorney, in fact, in our argument next will be the
25 primary person who could have stopped it all. One of the

1 attorneys had said look, you can't do this, here's what you've
2 said, here's what the attorney general said, and that's why
3 it's not a conspiracy.

4 I'll sit until we --

5 THE COURT: Very good.

6 MR. BREIT: Thank you.

7 THE COURT: I certainly want to turn to you, Ms. Monoc,
8 and to you, Mr. Cooke, to let you explain if you'd like.

9 MR. MORRISON: Your Honor --

10 THE COURT: Well, Mr. Morrison, now, you're on the same
11 side as --

12 MR. MORRISON: Yeah. And I -- I won't be speaking.
13 Thank you.

14 THE COURT: All right, sir. Yes. Now, wait a minute.
15 Mr. Breit was advancing arguments on behalf of Mr. Whitley and
16 you're now going to be advancing arguments on behalf of Ms.
17 Whitley; right?

18 MR. MORRISON: Yes, Your Honor.

19 THE COURT: All right.

20 MR. MORRISON: Thank you. Just briefly, I want to make
21 sure the record is clear that we do not want to pass over
22 procedural issues. The Kovach reconsideration motion was
23 filed grossly late last Friday, four or five days ago, a
24 couple of months late. It cannot be construed in our view as
25 a Rule 60 motion that would permit it more time for filing and

1 we object to its filing.

2 As to the Bloodgood motion, Your Honor, my colleague, Mr.
3 Breit, I think just now put his finger on it. They still
4 don't want to admit guilt and they're still contending that
5 they had a live potential civil conspiracy action out here
6 that they could have pursued.

7 I now feel like I'm completely vindicated by insisting on
8 the dismissal with prejudice, which did not come from Amy
9 Kovach and her attorney as to Dr. Whitley until October after
10 -- shortly after or at your first hearing because the essence
11 of the arguments from both of these parties now is we didn't
12 really -- Ms. Kovach didn't really plead guilty altogether to
13 everything that the attorney general suggested she was
14 admitting because she had some kind of viable intent defense
15 if she had chosen in the circuit -- in the criminal action
16 because everything she did was condoned and encouraged by her
17 superiors, but that's what they're saying.

18 The fact of the matter is, of course, that they didn't
19 assert that defense, they didn't fight the criminal charge,
20 she pled guilty to the common-law charges, and it was very
21 clear in the record that the assistant attorney general made
22 the point more than once that the common-law misconduct in
23 office charge to which Ms. Kovach was pleading guilty
24 encompassed the facts that also gave rise to the perjury and
25 her forgery charge. That from the State's perspective, those

1 bad acts that were being dropped or dismissed as part of the
2 guilty plea that the State was making the specific point that
3 those bad acts were wrapped up into her common-law misconduct
4 in office guilty plea charge.

5 Now, they would split the hairs here. They would say,
6 well, Ms. Kovach conditioned and qualified her guilty plea.
7 She carved out something from her guilty plea, although that's
8 never stated at the hearing. Her lawyer is sitting there.
9 Her lawyer never says Ms. Kovach, Your Honor, Judge Young, to
10 be clear, is pleading only to two counts and never has agreed
11 that the facts underlying the other three felony counts that
12 she's guilty of those. He never says anything like that. He
13 makes his client admit to the full factual predicate laid out
14 in great detail by Deputy Attorney General Creighton Waters.

15 But now we hear more of the same thing. If we -- and
16 this is kind of hard to follow. If we just had time to do
17 discovery, we could have put flesh on the bones of our
18 conspiracy claim against the Whitleys. Well, the reason there
19 was no discovery is because they dismissed their charge. They
20 had to dismiss their charge for all of the reasons we are here
21 on now.

22 Those charges in the civil case -- and I say charges. I
23 don't want to confuse the matter. They dismissed their civil
24 claims altogether and the reason they did it -- and we've left
25 out part of the context here that's important. This civil

1 complaint put together by Ms. Kovach and Ms. Bloodgood was so
2 over-the-top and sensationalized with all these allegations
3 you will recall against scurrilous criminal activity by the
4 attorney general, by SLED, everybody else they could draw in.
5 It ruins all these people. It was a headline-grabbing
6 complaint for the purpose of trying to turn around the public
7 perception about Ms. Kovach. That's why that complaint was so
8 over-the-top. It was a headline grabber.

9 And then when they were confronted by the contempt
10 charge, well, sorry, that was a mistake. We're dismissing the
11 whole thing. That must be Ms. Bloodgood's fault. That must
12 be Ms. Kovach's fault. Well, you know, they were together in
13 this.

14 And so the complaint was dismissed, but -- but we're not
15 going to dismiss with prejudice because that will expose us to
16 these sanctions. That's what that's about. And we're still
17 fighting that battle.

18 But my friend, Mr. Cooke, is splitting the hair that's
19 already been split and it's -- and it's way beyond reason and
20 logic, and Mr. Breit is exactly right. They still don't admit
21 that she was guilty. They still would argue that she has
22 potentially viable civil conspiracy claims and that we are all
23 here dragging them through the mud.

24 THE COURT: Well, is there any scenario under which, in
25 your view, she would have legitimate civil conspiracy claims,

1 even with the plea that she made?

2 MR. MORRISON: No, Your Honor. I do not believe she
3 could. I mean nothing appears in her complaint that could
4 drive around, steer around somehow what she pled guilty to. I
5 mean what vehicle -- what vehicle --

6 THE COURT: She -- she contends that there is an ulterior
7 political motive to affect the affairs of the school district
8 and Ms. Kovach as an employee of the school district that
9 drove the prosecution of her criminally, and that these
10 various folks participated in the -- using the prosecution as
11 a vehicle for affecting change in the district, and that's
12 what she's essentially suing for in civil conspiracy. Is
13 there anything --

14 MR. MORRISON: I can answer that.

15 THE COURT: -- scenario under which that would be a
16 legitimate lawsuit in your opinion? It certainly has been the
17 case and Mr. Cooke argues this element, but the law books are
18 filled with cases in which criminal charges are made and pled
19 to and yet civil suits are filed contesting the ulterior
20 motive behind the criminal prosecutions.

21 MR. MORRISON: May I ask you a question, Your Honor? For
22 my perspective is this. It makes no difference what the
23 subjective motives of the report of an admitted crime happened
24 to be if the crime was there, the crime was prosecuted, the
25 crime was admitted.

1 They would argue Karen Whitley was professionally jealous
2 of the job that Amy Kovach got from Rodney Thompson, and Karen
3 wanted to undermine Ms. Kovach and/or Mr. Thompson, both of
4 whom are now admitted criminals, and that Joshua -- the rest
5 of it is Joshua had political motives to make this a big deal
6 that would help his public standing. It would -- whatever,
7 his political motives.

8 The motives of Dr. Whitley and Josh Whitley are rendered
9 absolutely irrelevant by the guilty pleas. The fact of the
10 matter is that they -- or he at least unearthed a crime with
11 hard work, brought the crime -- the evidence of the crime to
12 the attorney general. The attorney general investigated it in
13 depth, submitted the facts to the grand jury. The grand jury
14 indicted Ms. Kovach. Ms. Kovach admitted to the crimes.

15 It makes absolutely no difference if Karen Whitley didn't
16 like Amy Kovach or did like Amy Kovach. It makes absolutely
17 no difference if Josh Whitley knew the whole time he was doing
18 this that if he was right about these crimes and if it were
19 reported in the papers this way and it all came out that Karen
20 Whitley -- I mean that Ms. Kovach would be convicted that his
21 political standing would be enhanced. So what? It happens
22 all the time.

23 She pled guilty to an elaborate presentation and now she
24 would go against what she said under oath twice. Twice, at
25 both hearings, the plea and the contempt.

1 And the Bloodgood motion even goes so far as to suggest
2 that Your Honor should -- should decide that the Creighton
3 Waters formal letter to the BCSD is incompetent as notice to
4 Ms. Bloodgood in advance of filing a civil complaint, is
5 incompetent as evidence that she shouldn't be held to have any
6 knowledge of the extensive documentation of the proof of the
7 specific crimes that Attorney General Waters put in a formal
8 and detailed and elaborate letter to the Berkeley County
9 School District at their formal request.

10 And yet, out of the same mouth, they would argue that
11 they can rely on Judge Rawls' letter early in this matter
12 where he said he thought that Ms. Kovach was acting in good
13 faith, and his letter specifically says based on the
14 information now in our possession.

15 Well, they said that. I don't know what they knew early
16 on. He could easily have seen good faith, but they don't want
17 the Court to hold Ms. Bloodgood to have to consider what
18 Waters put in that elaborate letter. They want to blow that
19 off and it's in -- it's in Ms. Bloodgood's affidavit. In this
20 affidavit --

21 THE COURT: Well, let me say this, Mr. Morrison. I
22 detect a little movement over to the sanctions portion of this
23 argument rather than reconsideration.

24 MR. MORRISON: And I -- I want to make the final -- the
25 final Rule 59(e) point, procedural point, which is none of

1 this argument raised by Ms. Kovach or Ms. Bloodgood meets the
2 standards of Rule 59(e). Up to the extent they asked the
3 Court to specifically rule on something the Court didn't
4 mention in the order, obviously that's a proper Rule 59(e)
5 motion giving this Court the right to explain a ruling on a
6 point that they have overlooked. We don't argue with that as
7 a procedural matter.

8 The rest of this is rehash of the argument that was made
9 at the hearing. This is not proper and most of my response is
10 unnecessary for purposes of Rule 59(e). I just want to put
11 that point on the record.

12 THE COURT: Thank you, Mr. Morrison. Now, we turn to Ms.
13 Monoc and you.

14 MS. MONOC: Thank you, Your Honor. I've got a lot; so
15 I'll do my best to hit the top points.

16 First, I think it might be useful to look at the order,
17 paragraphs 29 and 30, because we have been talking a lot about
18 the dismissal with prejudice, and that brings up the important
19 point that I think these points in the order specifically
20 misstate the facts.

21 In paragraph 29, it says shortly after the hearing on the
22 rule to show cause, which everyone will recall was in
23 February, the order then says Ms. Kovach and Ms. Bloodgood
24 began the process of trying to dismiss the lawsuit against the
25 defendants. And I think it's worth noting that the record is

1 made clear that the dismissals were sought in November of
2 2015. So that's just a specific point that we would ask Your
3 Honor to reconsider and restate.

4 And then in paragraph 30, it says Dr. Whitley and Mrs.
5 Whitley objected to their dismissal, and I think that must've
6 been intended to say Dr. Whitley and Mr. Whitley, but it says
7 they objected to the attempt to dismissals on the grounds they
8 have pending motions for sanctions. The proposed dismissal
9 was without prejudice as to the defendants and, in the case of
10 Mr. Whitley, counterclaims against Mrs. Kovach were pending.

11 The dismissal without prejudice is not the real issue.
12 The other defendants who requested to be dismissed with
13 prejudice, that occurred. In this instance, both of these
14 defendants were demanding attorney's fees. I have several
15 communications from Mr. Morrison to this effect, if Your Honor
16 needs them or would like to see them, but, you know, the real
17 issue was that nobody would stipulate to anything until the
18 attorney's fees were covered one way or another.

19 And so -- and then there was another instance where there
20 was a conference with Judge Young where it was agreed to
21 dismiss with prejudice, but as Your Honor pointed out, a
22 stipulation of dismissal requires everybody to stipulate, and
23 that hasn't occurred. You know, a dismissal with prejudice
24 wasn't like a card that they were holding to keep the suit
25 alive. They just -- they would've stipulated to it, but not

1 in exchange for fees.

2 The next point is that with respect to this talk about
3 not admitting to the guilt, I just wanted to point out
4 paragraph 82 in the complaint, which -- you know, it goes into
5 the indictment and it says expressly which was true. So, you
6 know, again, I just disagree that -- you know, Mr. Cooke
7 explained this very well, but there is -- you know, our
8 position is that notwithstanding an admission of guilt, when
9 people go above and beyond in their actions and intent to
10 harm, then there might be civil liability. That there was a
11 basis to pursue civil liability. And again, the standard
12 under civil -- the frivolous proceedings is whether there was
13 a basis, whether the attorney abused the process.

14 With respect to the conversations about, you know, the
15 argument on the rule to show cause hearing and Judge Young, I
16 just would like to reiterate that the standard for Ms.
17 Bloodgood is based on what she knew at the time that the
18 plaintiffs filed, and that the rule to show cause hearing and
19 what was or wasn't said in the rule to show cause hearing has
20 no impact on Ms. Bloodgood's knowledge at the time the
21 complaint was filed.

22 And with respect to Mr. Waters' letter, our position is
23 that it's not precedential value. So because -- if it's not
24 precedential value, it's something that you consider as
25 somebody else's position, but it wasn't binding law. And, you

1 know, that she considered the expert opinions of Judge Rawl
2 and others just further supports that she believed there was a
3 basis to proceed with the litigation.

4 That's all I have. Thank you, Your Honor.

5 THE COURT: Thank you, Ms. Monoc. Mr. Cooke?

6 MR. COOKE: Thank you, Your Honor. I'm not going to
7 repeat myself, but with regard to the timeliness of our motion
8 for reconsideration, I believe we were instructed to file --

9 THE COURT: Yes.

10 MR. COOKE: -- a motion before the hearing.

11 THE COURT: That's correct. Don't be concerned about
12 that.

13 MR. COOKE: All right.

14 THE COURT: The Court is going to consider all the things
15 that have been filed, whether filed more recently or less
16 recently. I think that -- I looked carefully over
17 communications. I'm familiar to everybody and I think they're
18 invited to file in the way that you did. So there's no
19 problem there.

20 MR. COOKE: And then from the Court's questioning of
21 opposing counsel, I think you at least have heard my position
22 and understand it; so I'm not going to repeat myself.

23 THE COURT: Let me ask you this, Mr. Cooke. With respect
24 to Ms. Kovach, going away from Ms. Bloodgood for a moment, the
25 basic contention of both counsel is that Ms. Kovach has

1 continued to try to get away from what she admitted to in the
2 plea and if she -- if she stayed with what she admitted to in
3 the plea, there would have been no way she could've ever
4 brought the lawsuit. There's no foundation for it.

5 In that connection, they contend that the plea deal was
6 you will admit the averments of all five counts and you will
7 then plead guilty to two counts. Is that a correct summary of
8 what the plea agreement was, as you understand it?

9 MR. COOKE: Your Honor, all I can say is that I've read
10 the same transcript that everybody else in this room has read
11 and I just -- I go back to I think reasonable minds can
12 disagree as to specifically what she was agreeing to. She
13 agreed that she was only required to agree to the elements of
14 the offense.

15 THE COURT: Well, now, she was -- there were two things
16 that had to happen. It was a negotiated plea and in
17 negotiated pleas several things happen, one of which is that a
18 recitation is made of the State's case and you must agree to
19 that recitation, and then you must acknowledge your guilt to
20 the elements of the crimes with which you have determined to
21 plead guilty.

22 So there is a difference between those two things, as I
23 understand it. Do you disagree?

24 MR. COOKE: Well, I don't disagree with that, but I think
25 that what makes this case more ambiguous is that when the

1 judge specifically asked her tell me what you did that made
2 you guilty of these offenses and then she describes in her own
3 words what she did. I did what I was told to do. I spent
4 public money on supporting the campaign.

5 And so I mean we all speak English. We all probably did
6 well in English, but she did say I agree to this recitation,
7 but then when the judge says, well, tell me what you did and
8 she tried to blame it on I was doing my job. He said, well,
9 you're not pleading guilty and then -- then he says, now, tell
10 me specifically what you did, and she in her own words
11 described what she did.

12 But can I -- can I take a different tack for a moment?

13 THE COURT: Sure.

14 MR. COOKE: I don't believe this sanctions motion has to
15 turn on that because let's assume that she was guilty of all
16 of those things. Let's say she pleaded guilty to all of those
17 things. The premise of Ms. Bloodgood's lawsuit was that it
18 doesn't matter. We are suing these folks because they have
19 ulterior motives in bringing about that prosecution, and that
20 could be said equally true if she had pleaded to all five
21 counts rather than just two counts.

22 The premise -- and it's true. She alleges in her
23 complaint that these other charges were bogus and so forth,
24 but that's not germane to the conspiracy claim against these
25 folks. If she had even -- if she had started a complaint I am

1 guilty as sin of forgery, perjury, misconduct in office, and
2 using public funds, but despite all that I believe that the
3 Whitleys procured that prosecution for reasons other than
4 vindicating the law and rather for purposes of their own, they
5 are political purposes to get me out of my position and
6 retaliate against me for promoting this school bond
7 referendum, I believe the layperson going to an experienced
8 attorney could reasonably believe that there could be a cause
9 of action for that.

10 THE COURT: And if there is -- if that is the basis for
11 it, it would be in the recitations of counsel of the civil
12 conspiracy; correct?

13 MR. COOKE: That's probably -- that's probably correct,
14 yes.

15 THE COURT: They contend that the averments of Count IV
16 do not go as far as y'all have gone by reciting a political
17 conspiracy to change the character of the school district and
18 so forth and so on, but rather recite the activities of Josh
19 Whitley and going to the attorney general and the activities
20 of others, some named and some not named, in trying to
21 politically affect her removal.

22 Do you -- do you disagree or do you say that the
23 complaint has got enough in it to allege political retaliation
24 in an attempt to change the composition of the school district
25 and things of that nature?

1 MR. COOKE: I believe that, for the pleading purposes,
2 it's sufficient to state a cause of action for conspiracy. It
3 would have been left to the discovery process and litigation
4 to determine whether they could prove, you know, by a
5 preponderance of the evidence.

6 THE COURT: But, of course, they argue that Ms. Kovach
7 took the step early on of dismissing the lawsuit, which would
8 have prevented discovery.

9 MR. COOKE: Well -- but the Frivolous Sanctions Act
10 specifically differentiates between filing a lawsuit and
11 having your -- your allegations proven to be frivolous. And
12 -- and so it actually recognizes that distinction.

13 I believe, you know, by inference Rule 11 would as well.
14 That you have to look through -- through a different lens and
15 it's a very different case where we drag them through years of
16 litigation and the facts are conclusively proved that
17 everything we said was a lie. This is not the case. This is
18 a case where we just got out of the starting gate.

19 That the law does recognize a potential liability for a
20 civil liability for somebody who procures criminal
21 prosecution, even when the prosecution was successful. I
22 might have called it -- if I were pleading, I might have
23 called it abuse of process in addition to conspiracy, but the
24 law does recognize that and I just respectfully submit that I
25 think that's a defense for Ms. Bloodgood, but it's doubly a

1 defense for Ms. Kovach because she took all the facts,
2 everything to Ms. Bloodgood. Ms. Bloodgood did independent
3 research, quite extensive, and then was willing to sign a Rule
4 11 certificate saying that, in her professional judgment,
5 there was a viable claim.

6 THE COURT: Very good. All right. I think we've heard
7 the reconsideration matter. It's five minutes of eleven.
8 Madam Court Reporter, a little break?

9 THE COURT REPORTER: Yes, please.

10 THE COURT: Let's allow the court reporter and everyone
11 else to take a breather before we go into the sanctions
12 itself. Be back at 11:15, if you would.

13 (WHEREUPON, there was a break in the proceedings from
14 10:47 a.m. until 11:21 a.m., after which the proceedings
15 resumed as follows.)

16 THE COURT: All right. We now proceed to the specific
17 issue of sanctions and their amounts. Mr. Breit?

18 MR. BREIT: Your Honor, I will assume for the sake of
19 this discussion that the Court's order of recent origin will
20 now for the finding of this Court of reasonable costs,
21 reasonable attorney's fees, and sanctions.

22 THE COURT: And I think that's the way to proceed. Mr.
23 Breit, that does not mean that I am going to blow off or fail
24 to give due consideration and careful consideration to some of
25 the excellent points that have been made by both sides in the

1 reconsideration and certain -- focusing on certain parts of
2 the order, both in the findings and in the making of the order
3 itself.

4 But I think judicial economy dictates that for this
5 portion of it we assume that sanctions either under the rule
6 or under the statute or both are the subject of what is to be
7 done and, of course, we start from square one because there
8 are still showings that have to be made before sanctions of
9 any kind are awarded.

10 The Court has found that sanctions are appropriate and we
11 will discuss the amount, but if parties choose to also make
12 some argument about the legitimacy of any sanctions, I will
13 permit it. So I hope I'm being clear and evenhanded about how
14 we're going to approach this part of it.

15 Very good. Yes, sir?

16 MR. BREIT: Your Honor, I think any discussion begins
17 with some understanding of that *ex parte Gregory* and the
18 extent of time and effort required by counsel in this effort.
19 And I believe, based on *ex parte Gregory*, the back half of
20 that opinion, that the Court can consider all of the time that
21 I have spent and my office has spent up to and including
22 today.

23 We have submitted an affidavit on January 11th, 2017, in
24 an effort to parse out the earlier affidavit of time and, as
25 the Court could see, I gave the Court time up until February

1 9, 2016, which would be a total of 204 hours using a rate half
2 of the rate that the federal judge is giving me in New Orleans
3 and my associate's rate less than what the federal judge is
4 giving my associate in the case that I've been spending the
5 last four years on.

6 Even with that, up to only February 9th, 2016, it's
7 \$61,230 and if we include only 50 percent of the time since
8 that date -- the reason I say February 9th I'll get to in a
9 second, but using half of my time after that would be an
10 additional 32. Using all of my time since February 9th until
11 today's date would take me to \$122,000. And I'll represent to
12 the Court although I did not send my receipts, I have about
13 \$4,500 in costs to date.

14 Let's talk about the purpose of these sanctions and
15 violations of Rule 11, as well as in the other law applicable
16 here in South Carolina. And I think the only way I can do
17 that, Judge, is to point out that the guilty plea is where we
18 start.

19 What did she say to a judge after the US attorney --
20 attorney general -- I apologize for the third time on that --
21 the attorney general recited the facts to her and the Court?
22 Without any question, she was saying that she understood the
23 facts as alleged and that those facts as alleged were true.

24 If there was any question by Ms. Bloodgood -- and I don't
25 believe that there could be any question that a reasonable

1 lawyer could find, as this Court has found in its opinion and
2 order, the attorney general's letter to the school board cited
3 piecemeal all of the facts, all of the documents, every little
4 piece of information that they had that was the basis of their
5 five indictments, including perjury, including creating of
6 false documents.

7 And so we go with those two things in the hands of Ms.
8 Bloodgood when her lawyer -- her client comes to her with a
9 clear attempt to clear the record and retaliate against Mr.
10 Whitley and others for getting her in the box of her own
11 making.

12 And I want to point out just the paragraph numbers so the
13 Court can look at those. Of the -- this is the complaint by
14 Ms. Bloodgood. Paragraph 83 alleges that Ms. Kovach did not
15 use public funds to make a movie. No interpretation
16 absolutely possible that that allegation of the complaint
17 could be true. The very specific question was brought up with
18 the Court when reading the indictment and the indictment was
19 Amy Kovach did use public funds to pay for the creation of a
20 campaign video and production of other campaign.

21 The Court asked after reading the indictment: Is what's
22 stated in this indictment the truth?

23 Answer by the defendant: Yes, sir.

24 In paragraph 83, she completely says it's false.

25 Remembering -- and the Court understands this better than

1 me. In a guilty plea where there's a compromise, the attorney
2 general's recitation of facts were the facts that she admitted
3 were true. There were then two indictments that were part of
4 the plea that were read to her and she said yes to those
5 indictments on her guilty plea, package deal.

6 But on this one, she specifically agrees that public
7 funds were used and yet her lawyer, having read that, still
8 puts in paragraph 83 in the complaint.

9 Paragraphs 104, 106, 107, 108 were involving the smurfing
10 and the forgery and creation of a document. She admitted --
11 Ms. Kovach -- that she had done all of those things. That the
12 proof was stated by the attorney general and then recited to
13 the school board in detail how she committed those crimes and
14 smurfing. Yet --

15 THE COURT: And the smurfing is the splitting of the
16 bills --

17 MR. BREIT: The splitting of the bills.

18 THE COURT: -- to get up under the procurement amount?

19 MR. BREIT: Yeah. To keep underneath the line. And not
20 only did she split them, but that she created false documents
21 to do it, part of the perjury. Part of her plea and outlined
22 in excruciating detail with documents to the school board, yet
23 Ms. Bloodgood in all of those counts, 106, -7, -8, -13, and
24 -14 -- 113 and 114 alleges those in her complaint.

25 She alleges in paragraph 112 that the attorney general

1 knew that his presentation to the Court was false. Yet she
2 admitted to the trial judge that what he said was true. Those
3 are just a few of the many parts of the complaint that Ms.
4 Bloodgood chose to add, I guess exercising her judicial right
5 to put anything in a pleading, whether it's defamatory or not.

6 What bothers me for purposes of this sanction that we're
7 asking for today is not only were the allegations read by any
8 reasonable attorney from the plea and from the attorney
9 general's that the complaint was false, that the basis of the
10 complaint was to retaliate, that she threw in the fact that
11 she alleged that Mr. Whitley had committed ethical violations.
12 I put that in my personal career and other lawyers' careers at
13 the very highest part of outrage when someone says that to me.

14 Surely, Ms. Kovach and Ms. Bloodgood can say anything
15 they want in a pleading, but when the pleading itself is found
16 to be false, frivolous, then the Court can take into
17 consideration what was their motive together in filing this
18 complaint and who were they attempting to damage. And by Ms.
19 Bloodgood throwing in a paragraph of unethical conduct, she
20 knew that she was stamping Mr. Whitley with a stamp that is
21 almost impossible to erase in a career of the law.

22 THE COURT: Mr. Breit, let me ask you this question. One
23 of the things -- one of the many voluminous documents that was
24 received by the attorney, Ms. Bloodgood, before the creation
25 and filing of the complaint was an affidavit from Ms. Kovach,

1 along with a number of other materials that Ms. Kovach
2 developed, and there are emails that indicate the transmission
3 of those things to Ms. Bloodgood.

4 And in those affidavits, particularly the big -- what I
5 call the big affidavit that was filed with Berkeley County in
6 connection with her grievance --

7 MR. BREIT: Judge Rawls' affidavit?

8 THE COURT: No, no. Ms. Kovach's affidavit itself is an
9 affidavit by Ms. Kovach that she -- or a factual recitation
10 by Ms. Kovach of her contentions about this case, as I recall
11 it, that itself is a drawing back from the plea, to put it
12 mildly.

13 What impact should or does that have on Ms. Kovach? Ms.
14 Kovach had a lot of things. She had factual material that Ms.
15 Kovach had gave her. She had the plea. She had the
16 transcripts of the plea. She had a whole bunch of other
17 paperwork that was submitted in connection with this matter.

18 MR. BREIT: To Ms. Bloodgood?

19 THE COURT: Ms. Bloodgood.

20 MR. BREIT: Okay.

21 THE COURT: Got it from Ms. Kovach.

22 MR. BREIT: Gotcha.

23 THE COURT: And in terms of the reasonableness of her
24 conduct under the Rule 11 standards or in terms of the
25 frivolous pleading requirements under the statute, doesn't it

1 ameliorate Ms. Bloodgood's conduct to a great extent that
2 these were recitations by the client to her of what the client
3 contended was her conduct and lack of inappropriate conduct in
4 connection with this whole affair?

5 MR. BREIT: This affair -- we wouldn't be here without
6 Ms. Kovach. Okay? Ms. Kovach is the one --

7 THE COURT: Well, there's no question she is the center
8 of it. She is the center of the averments that were made at
9 the time of the plea and the averments that were later made in
10 materials she developed and later in the complaint itself.
11 Ms. Bloodgood had a good deal of material from Ms. Kovach that
12 projected Ms. Kovach's side of the story, so to speak, or her
13 contentions about her conduct.

14 And what my question is in considering what sanctions, if
15 any, under the rule or under the statute should be imposed
16 upon Ms. Bloodgood, does not the client's own assertions, all
17 of them, both the ones made in the plea agreement and the ones
18 made in the voluminous materials that she sent to Ms.
19 Bloodgood, shouldn't -- doesn't that ameliorate Ms.
20 Bloodgood's responsibility in this matter?

21 MR. BREIT: I don't believe it does, Your Honor. Let me
22 explain to you why.

23 As in Gregory, you have a situation where a lawyer has
24 been given outrageous facts of a lawyer's misconduct and, as
25 the Court in Gregory said, the lawyer -- the second lawyer

1 could have picked up the phone and asked the first lawyer,
2 hey, do you have any funds in escrow for this woman because
3 she thinks that you walked off with them. His failure to do
4 that reasonable effort was found to be actionable under Rule
5 11.

6 In this situation, we do -- and it's our -- in his
7 defense, in Gregory was at a statute problem and I was worried
8 that if I didn't file suit, I may be waiving some right she
9 has to this money.

10 In this case, we know that Ms. Kovach pled guilty in
11 August, runs to her lawyer on September of 2015. Ms.
12 Bloodgood gets the criminal complaint -- the criminal
13 transcript before she files. She gets the attorney general's
14 letter before she files. She is told by at least one lawyer
15 you can't file this. This is not true. You're going to get
16 your client in trouble.

17 THE COURT: By the way, that contention continues to be
18 made by y'all that another lawyer told her she shouldn't file
19 this thing. Tell me a little bit about that averment.

20 MR. BREIT: I may have to refer to --

21 MR. MORRISON: I think what -- if I may, Mr. Theos'
22 affidavit is the only one that speaks to that.

23 THE COURT: All right. That is not quite as fierce a
24 projection as I understand have been made at this time. All
25 right.

1 MR. BREIT: But I thought there was more besides Mr.
2 Theos.

3 MR. MORRISON: Well, as I --

4 THE COURT: I know about Theos' affidavit and I see that.
5 He temporizes somewhat on the idea of whether to go forward
6 with a lawsuit.

7 MR. MORRISON: Well -- and there was also -- I went to
8 personally visit Ms. Bloodgood to ask her about it.

9 THE COURT: And this is -- I mean are we talking --

10 MR. MORRISON: This was --

11 THE COURT: Wait a minute, Mr. Morrison. I don't want
12 you to say anything other than something that's in the record.

13 MR. MORRISON: Yes, Your Honor. But it was after she
14 filed the complaint that I went to see her. That's right.
15 Okay.

16 MR. BREIT: So the affidavit is the affidavit and I won't
17 -- I won't sprinkle anything on top of that for purposes of
18 what Ms. Bloodgood knew or didn't know.

19 What I represent to this Court is no statute is anywhere
20 near for purposes of this claim by Ms. Kovach having to be
21 filed with the Court. She has plenty of time to look into the
22 matters if she wanted to, but she didn't.

23 She did take her client's word on face value, but even
24 taking her client's word on face value, if she compared the
25 complaint that she drafted and signed with what she knew to be

1 the actual plea, setting aside the attorney general's
2 recitation of the facts, the plea itself, the complaint is
3 false and she knows it's false when she files it. That at
4 least six of her paragraphs couldn't be true: the smurfing,
5 the video, and then this conspiracy.

6 The ulterior motive is retaliation. That was what Ms.
7 Kovach was doing. There is absolutely no allegations that
8 have been pled by Ms. Kovach that creates any conspiracy now
9 to ulterior motives about the politics or retaliation. That's
10 just not in there. It doesn't exist.

11 And so the question is -- and I'll focus on Ms. Bloodgood
12 because she's the only person who could have stopped a
13 frivolous lawsuit from being filed. Ms. Kovach was mad. She
14 was bitter. She also received \$120,000 in employment money
15 while she sat home. She also received \$350,000 worth of
16 attorney's fees paid for by school board's money. She's still
17 mad, despite all that, and wants to strike out.

18 Lawyers have clients show up all the time wishing to
19 strike out at people that have caused them problems. In this
20 case, we know that Ms. Kovach's problems were self-inflicted
21 problems, but now we get to the lawyers. We have a higher
22 duty. We have a higher burden. That's why we have Rule 11.
23 That's why we have the sanctions that are available for filing
24 frivolous claims. Lawyers have a duty to investigate claims
25 before they strike out like a client would and file suit

1 against a bunch of people like Dr. Whitley, Mr. Whitley, the
2 school board, and others.

3 But in this case, assume that all she did was listen to
4 Ms. Kovach. A reasonable attorney would have said let me go
5 see what else is there -- criminal transcript. Let me talk to
6 the investigating officer. Let me talk to the attorney
7 general You know, how far does -- none of those things were
8 done. It was a complaint that struck at everybody that you
9 can think of and then it was emailed to the press. Mr.
10 Whitley gets a phone call from the press 25 days before he's
11 served saying I got this lawsuit from Ms. Bloodgood, do you
12 want to comment on it? Now that's the headline. Whitley sued
13 from the referendum opposition.

14 And so they continue. As we sit here, in their pleadings
15 now, which is why I think sanctions are so important against
16 the attorney as well as obviously for Ms. Kovach, they still
17 want to deny that the guilty plea says what it says. They
18 still want to claim that, oh, all we were talking about was a
19 conspiracy that if the judge would allow us to do some
20 discovery, we would eventually come up with enough to save
21 ourselves now that we've been caught.

22 They didn't ask for a dismissal of this case officially
23 until after the US attorney brought her back in for sanctions.
24 I wrote a long letter to Ms. Bloodgood before that happened
25 asking to sit down and meet and discuss it and stop this

1 attorney's fees bleeding and stop this complaint. That
2 letter, like others, remains unanswered by phone or by mail.
3 All guns are blazing and we're going to take this on.

4 And so that's why the sanctions are so important in this
5 case. Having spent 37 years filing plaintiff's lawsuits, I
6 for one am afraid of judge's orders that would chill a
7 plaintiff's rights to allege facts of conspiracy or otherwise
8 where they have been harmed.

9 I'm very much aware of that, but that's not the case
10 here. We know Ms. Kovach was bitter. We know from her TV
11 statement, from her -- everything that she's done in this case
12 that she was lying throughout the criminal case. The judge
13 called her out on her lying. The judge at the show cause
14 called her out on her lying.

15 And then Ms. Bloodgood, back at the time when she filed
16 this, did nothing other than said, oh, I read your stuff. I
17 disagree with the interpretation of the guilty plea
18 transcript. I just don't think it says what it says and I
19 think the US attorney -- the attorney general's letter is not
20 a letter that carries the weight of law; so I disregarded it.
21 That's what her counsel just said this morning. That they
22 have the right to disregard the attorney general's letter to
23 the school board because it didn't carry the weight of law.

24 Well, that's not a lawyer's standard when filing a
25 complaint. It sure was pretty detailed. It sure did outline

1 documents, fact, chapter, and verse of every crime Ms. Kovach
2 did. And knowing that, okay, I'll probably lose my employment
3 claim, I'll file the letter for you, which is what Ms.
4 Bloodgood did. She filed a letter to the employment
5 contesting her discharge because, again, she put her --
6 wrapped herself around I was only doing what they told me to
7 say. That's different. Once she filed a complaint, this is
8 Ms. Bloodgood endorsing, supporting, pushing, helping strike
9 out at a bunch of people.

10 THE COURT: Let me -- let me see if I can understand the
11 factual context right here, Mr. Breit, and that's I think
12 where I was going before with some of these questions about
13 the representations Ms. Kovach made.

14 Shortly after she pled, she filed a grievance with the
15 school district contending that she ought not to be fired?

16 MR. BREIT: Through Ms. Bloodgood.

17 THE COURT: Well, she developed a very detailed
18 affidavit, which was what accompanied the filing of the
19 contentions with the school board, and some of it was, as I
20 recall it, done even before Ms. Bloodgood -- Bloodgood got
21 into the case.

22 MR. BREIT: Her gathering of information, yes.

23 THE COURT: Her gathering of information.

24 MR. BREIT: Right.

25 THE COURT: So -- and that -- that affidavit of Ms.

1 Kovach's that was going to be filed in connection with her
2 employment. contentions with the school district was the basis
3 of the attorney general's letter that ended up being the basis
4 of a reconvening of the hearing in front of Judge Duncan about
5 her plea. Am I not correct about that?

6 MR. BREIT: I believe that is correct and I believe that
7 the attorney, Ms. Bloodgood, helped Ms. Kovach, by her own
8 admission, prepare that affidavit.

9 THE COURT: Well --

10 MR. BREIT: She has to get information and she gave it.

11 THE COURT: What -- it's a -- what was the predicate for
12 that was a preparation of -- a detailed preparation of
13 recitation of facts from Ms. Kovach that was going to be used
14 in connection with the school board thing. That is the thing
15 that the attorney general reacted to. Bloodgood took that
16 factual material that had been developed by Ms. Kovach even
17 before Ms. Bloodgood was hired and used that as the factual
18 premise for the complaint she drew, as I understand it.

19 MR. BREIT: But here's the difference and here's why I
20 think it's critical that that line is drawn in the time. When
21 she helps her file an affidavit with Ms. Kovach's box of
22 goodies, she is helping out a client. I am going to help you
23 do this and here's what your affidavit is going to say. What
24 happens after she does that?

25 She gets the criminal transcript and she gets the

1 attorney general's letter showing that Kovach's box of lies
2 are nothing more than a box of lies. The criminal transcript
3 then says, oh, my goodness, you told me you didn't do anything
4 about this referendum and public funds or video. It says here
5 in the criminal transcript that's exactly what you pled guilty
6 to. It says here in the criminal transcript that these are
7 the recitation of facts about your forgery and perjury and all
8 these other things which you admitted are true.

9 At that point in time, a reasonable lawyer has to step
10 back. I understand the letter to the employment. She's
11 worried about timing. She's worried about the woman losing
12 her job. She's got a box of goodies. She files it.

13 But at one point in time -- and I asked the Court this in
14 a -- in a -- not expecting an answer.

15 MR. MORRISON: Rhetorical.

16 MR. BREIT: I think we call that rhetorical. Thank you.

17 Hey, look, I've now been -- and we've all had it.

18 Clients come here and tell you all kinds of things. We do a
19 reasonable investigation and find out that's not true, that
20 didn't happen, it didn't happen on that day and this is the
21 person who didn't do it to you. I can't represent you and I
22 can't file suit.

23 What Ms. Bloodgood did is said I've read your box of
24 goods and I have decided that I read the guilty plea
25 differently and I think the attorney general's letter is

1 nothing because it's just a letter from a letter to a school
2 board responding to your affidavit and I'm just going to
3 discount them all. And then she makes a decision to rely 100
4 percent on her client's lies, to sue Dr. Whitley, Mr. Whitley,
5 the school board, and a bunch of other people. And only when
6 the attorney general says, whoa, whoa, whoa, this is a
7 complete switch to what you said, then the judge says I'm
8 going to do a show cause hearing.

9 And so Ms. Bloodgood had the ability to do a reasonable
10 investigation with all of the time in the world to do any kind
11 of investigation. She did none. She says all these hours I
12 talked to other lawyers, but what about the facts that were
13 clearly not true and then she chose to discount them?

14 Sure, she did some research trying to come up with how to
15 draft the complaint, but any lawyer looking at the complaint
16 would realize I can't say this, this is false, I know it's
17 false. She doesn't do that. She doesn't call the client back
18 and say we're going to trash out 22 paragraphs of this
19 complaint because those are false. She says, no, I'm leaving
20 them all in.

21 And so Mr. Whitley and I and my office have spent the
22 better part of a year and a half fighting these allegations
23 that still exist. We'll get to that dismissal with or without
24 prejudice, but, you know, we're still fighting it. It's still
25 out there and they stand in court today and say, yeah, we

1 still think we have a conspiracy. We still think that we
2 didn't plead guilty to the things that we pled guilty to.

3 And so only the lawyer had the ability to step back, and
4 the lawyer chose to go blindly forward and then blames her
5 client. This isn't my fault. I was just following my
6 client's order, which lawyers can't do, and Ms. Kovach comes
7 in and says, wait a minute, it's not my fault. I had an
8 employment lawyer who told me that everything I said here is
9 good and so it's not my fault, it's her fault. She shouldn't
10 have let me go down this road where I might have been held in
11 contempt and gone to jail.

12 And the Court can't let that happen. It can't let both
13 of them hide behind each other and blame someone else. That's
14 what we would strongly object to and that's what -- that's all
15 they're doing is it's not my fault. Anyone can use the courts
16 to file anything they want because it's protected speech and,
17 in this case, not only was it not protected, it was a lie, and
18 the lawyer using any kind of reasonable testing of the
19 evidence that came in the box would have said we can't do
20 this, I won't do this, I won't be a part of it. And then
21 stand up in a court a year later and say, well, I was just
22 following her advice because that's what she gave me.

23 And so for those reasons, the only way to deter this kind
24 of conduct from Ms. Kovach -- and there are many people out in
25 this public who know what's happened to Ms. Kovach as a result

1 of that. The message is not only to Ms. Kovach, but it's to
2 others and, more importantly, because of your order many
3 people are aware of what happened to the attorney, Bloodgood,
4 in this matter for filing this claim.

5 And the message is not just to her. It's to others. You
6 don't have a blank slate as a lawyer to file frivolous causes
7 of action just because your client wants retaliation. That's
8 not my job when I became a lawyer. I didn't agreed to do that
9 when I became a lawyer and she forgot those principles when
10 she filed suit, struck out, and said I'll just grab as many
11 people as I can, defame as many people as I can because I'm a
12 lawyer and I'm allowed to do that because lawyers can file
13 anything in a pleading and get away with it.

14 And your opinion in October and your opinion today is
15 going to say, no, that's not what we do here. Lawyers are
16 held to a higher standard.

17 THE COURT: Thank you, Mr. Breit. All right. Mr.
18 Morrison?

19 MR. MORRISON: Your Honor, I can't add anything to what
20 my colleague would say on that score. I have -- when we get
21 to the specifics of the issue, I'd like to --

22 THE COURT: Well, I think we're at the specifics --

23 MR. MORRISON: All right.

24 THE COURT: -- or whatever it is you want to say. You
25 know, the purpose of this is to talk about why the sanctions

1 should be imposed and how much they ought to be.

2 MR. MORRISON: All right. For the record, Your Honor, I
3 adopt Mr. Breit's arguments in that regard.

4 I've submitted to the Court a -- and counsel a letter on
5 January 10 about the development as to my client. Much of my
6 client's fees and costs have very recently been reimbursed by
7 the Berkeley County School District, which is an effort we've
8 had ongoing with them for about a year. The upshot of that is
9 that we have taken the position we have no desire for any
10 double recovery of any fees and costs by way of Rule 11 or
11 Frivolous Proceedings Act sanctions.

12 So we have given full credit and applied full credit of
13 the amount that we received from the Berkeley County School
14 District, which is part of a confidential settlement. So I
15 don't have that account in my letter or my affidavit of
16 January 10, but I'll represent to the Court and to counsel, as
17 I have put in my affidavit, that we applied the math of full
18 credit to what would otherwise be the full scope of our fee
19 petition sought by way of sanctions.

20 Applying that credit of the money reimbursed to Dr.
21 Whitley by BCSD, we have reduced the amount of our request for
22 sanctions to the sum total of \$15,000. And --

23 THE COURT: And that is \$10,000 -- \$10,191 in fees and --
24 well, tell me how that's divided up.

25 MR. MORRISON: All right, Your Honor. What we did in

1 that letter of January 10 and the accompanying affidavit is
2 this. We made an effort to separate our fees incurred for the
3 defense from the fees incurred for the pursuit of sanctions,
4 which we understood the Court's request to be.

5 THE COURT: That's right.

6 MR. MORRISON: And we have broken down on page 2 our best
7 effort at that. It's a little difficult because for one thing
8 the Frivolous Proceedings Act is an act that's all about
9 sanctions. It's both a defense and a sanctions-seeking cause
10 of action I would submit to the Court.

11 But my time entries and my associate's time entries all
12 during the progress of this matter we kept in the ordinary and
13 usual manner. They weren't kept with an eye toward breaking
14 this down and so there's a considerable amount of overlap in
15 our time entries whereby we can't exactly say what time was
16 spent on one as to the other.

17 But we could say easily that the time between October 15,
18 2015 -- and this is on page 2 of my letter -- to December 1
19 representing over \$31,800 in fees and costs was time that was
20 spent in the -- in the direct defense of this matter, trying
21 to get a dismissal early on, filing the necessary motions,
22 doing the necessary work.

23 The time between December 2, 2015, and May 19, 2016,
24 approximately six months, we have broken that down and
25 submitted to the Court that 75 percent of that time was spent

1 in the defense of the frivolous action and seeking a
2 dismissal, translating to fees in the amount of approximately
3 \$9,700.

4 Then the third part of the case from August 10, 2016, to
5 the current, we have reversed that and suggested that 25
6 percent of our total billings could properly be attributable
7 to the defense, which comes to approximately 13,400.

8 The total of that that we calculate, that is defense
9 related, is over \$55,000. The rest of our fees, which are
10 considerable, are more directing to the sanctions. But we
11 have -- and the rest of those fees take our sum total of fees
12 and costs well over \$100,000.

13 Applying the credit of reimbursement from the Berkeley
14 County School District and -- and compromising the balance
15 that is unpaid from Mrs. -- Dr. Whitley's fees, we have
16 reduced our demand to a specific undifferentiated amount of
17 \$15,000.

18 And I should say this. This is important. The school
19 district settled with Dr. Whitley in a formal settlement
20 agreement. This was not merely a check saying we are
21 reimbursing your fees and costs in the defense of the Karen
22 Whitley matter because you were an employee and this arose out
23 of your employment with the school district, et cetera, et
24 cetera, under the statute.

25 Dr. Whitley had specific potential claims against the

1 school board, not directly related to this matter, somewhat
2 overlapping, but she settled. And then some of it was
3 considerably overlapping, but she settled other potential
4 claims against the school board and accepted a sum certain by
5 way of undifferentiated reimbursement and settlement money
6 from the Berkeley County School District, but because it was
7 used to pay my fees and not to go into Dr. Whitley's pocket,
8 we have credited the sanctions motion with the full amount of
9 the reimbursement from Berkeley County School District.

10 And so the sum total that we ask by way of sanctions
11 against these parties jointly and separately is a compromise
12 at two or three levels. It's 15,000, which I have not broken
13 down by way of differentiation between seeking to defend Dr.
14 Whitley and pursuing the fees, but it's a highly-compromised
15 amount and it will not -- I want to be clear it will not fully
16 reimburse all the fees that -- and costs that Dr. Whitley has
17 incurred.

18 And the fees and costs left on the table I will say --
19 also, I can say this without breaching confidentiality of the
20 plea -- of the settlement agreement. The fees and costs left
21 on the table and not being sought by Dr. Whitley in this
22 \$15,000 amount are in the five-figure amount. This is not
23 some compromise of \$200.

24 And if the other side prefers and if the Court prefers, I
25 could give precise -- no, I can't. I cannot give the precise

1 amount without demonstrating the specifics of the settlement,
2 but this is a double compromise, as I've explained in my
3 affidavit.

4 THE COURT: All right. Let me see if I understand.

5 Your letter indicates that out of the total amount that
6 was charged for your defense -- your efforts on behalf of Dr.
7 Whitley, \$55,073.86 could be attributed to, quote/unquote, the
8 defense of this action.

9 MR. MORRISON: That's -- that's correct.

10 THE COURT: That's the rule 11 --

11 MR. MORRISON: That's correct.

12 THE COURT: -- part of this proposition. And you give
13 some percentages there; so, frankly, it would be -- it
14 wouldn't be able to calculate what the total was because you
15 say a hundred percent of it was 31,838.50.

16 MR. MORRISON: Yes. I've broken it down as best I can by
17 the different segments of our --

18 THE COURT: Of time, right.

19 MR. MORRISON: -- segments of our representation.

20 THE COURT: But all these numbers have to do with defense
21 of this action. You have not -- and you indicated that in
22 addition to that there are considerable sums that were billed
23 for what would constitute the pursuit of sanctions; right?

24 MR. MORRISON: Yes, Your Honor.

25 THE COURT: And that is the figure that would be what you

1 would characterize as a five-figure amount?

2 MR. MORRISON: Yes, Your Honor. Well, at the time of our
3 first submittal, my first affidavit on November 2nd, the total
4 -- and this was before the reimbursement of Dr. Whitley by
5 Berkeley County School District. The total fees and costs for
6 the representation were in the sum of 89,000.

7 THE COURT: Right.

8 MR. MORRISON: And so that gives you -- and, of course,
9 it's water over the dam since then.

10 THE COURT: Right. And so you've got -- I take it that
11 the total amount of your bill, whether it was for the defense
12 of this action or for sanctions, was ultimately reimbursed by
13 the school district?

14 MR. MORRISON: Not -- no, Your Honor. The total amount
15 of the bill was definitely not reimbursed by the school
16 district. It was a vastly compromised amount.

17 THE COURT: Well, okay. It was a compromised amount that
18 compromised between what was allocated for your bills and what
19 was allocated for financial damages suffered by Dr. Whitley.
20 Am I right?

21 MR. MORRISON: It was an amount that the school
22 district's attorney and I negotiated as a settlement that was
23 with an eye toward the total amount of the fees incurred by
24 her, but it was not directly tied to it and it was a
25 compromised amount on all sides.

1 THE COURT: I get all that, but you had two components of
2 what you were looking for from the school district by means of
3 financial compensation for the wrongs she suffered at the
4 school district's -- at the hands of a then-employee of the
5 school district; right?

6 MR. MORRISON: Yes, Your Honor.

7 THE COURT: I presume that's the predicate upon which you
8 were able to convince the school district to either reimburse
9 her because their rules and regulations require reimbursement
10 if you suffer legal fees for something that you've done in
11 connection with your normal duties. That was part of their
12 liability to Dr. Whitley, and I assume that there was another
13 part of their liability, which was their derivative or
14 vicarious responsibility for the misdeeds of their employee,
15 Ms. Kovach.

16 And together, those two components covered both financial
17 remuneration to Mr. -- to Dr. Whitley herself, as well as
18 financial remuneration to her that would represent the money
19 she would owe for legal fees. Am I correct about that?

20 MR. MORRISON: Yes. Although --

21 THE COURT: I could go a lot further than this and insist
22 that all this money be on the record. I'm trying to avoid
23 that.

24 MR. MORRISON: I know and I appreciate it. I want to
25 make -- I just want to clarify one piece of that. Wrapped up

1 in the settlement agreement with the school board was a
2 covenant not to sue, by Dr. Whitley, the school board for a
3 couple of other things that are not directly pertinent here,
4 but so it wasn't all merely directly related to the cost of my
5 representation work.

6 THE COURT: I get it. Because the representation of her
7 is one part of it, the legal fees however and whatever for.

8 MR. MORRISON: Yes.

9 THE COURT: But another part of it was some direct
10 compensation to Dr. Whitley; right?

11 MR. MORRISON: Yes. For the cost of her defense and --

12 THE COURT: And for --

13 MR. MORRISON: -- to settle the lawsuit.

14 THE COURT: And as a settlement of her --

15 MR. MORRISON: Yes.

16 THE COURT: -- claims against the district.

17 MR. MORRISON: Yes.

18 THE COURT: That don't have anything to do with the money
19 that is going for her lawyers.

20 MR. MORRISON: That's correct. And notwithstanding that
21 point, she's authorized me to allocate full credit of the
22 settlement amount to her total representation by --

23 THE COURT: Well, that's -- that's all and well and good
24 except since I don't know what her total compensation is or
25 what your total bill is, you know, I don't know how that's

1 going to break down, but as I understand it, the -- the funds
2 that the school district paid -- and I don't know how y'all
3 figured that from a tax point of view, but that's up to y'all.

4 But they represented in part direct remuneration to Dr.
5 Whitley for damages she felt she had suffered from the school
6 district, either because of the vicarious responsibility for
7 their employee or for other reasons indirectly connected with
8 that. So legal fees are a part of what the valuation of the
9 money she got --

10 MR. MORRISON: Yes.

11 THE COURT: -- represented; right?

12 MR. MORRISON: Yes, that's correct.

13 THE COURT: Okay. All right. And what you further are
14 representing to the Court is the max that you are requesting
15 is \$15,000 for defense of the legal action?

16 MR. MORRISON: That's correct.

17 THE COURT: All right. And so what -- what, if anything,
18 are you seeking beyond that?

19 MR. MORRISON: Nothing, unless this goes to an appeal, in
20 which event we will be investigating whether --

21 THE COURT: That's way --

22 MR. MORRISON: That was something. I just don't want to
23 waive that.

24 THE COURT: That's way beyond my pay grade right now.

25 MR. MORRISON: Right.

1 THE COURT: I only deal with things in the trial court.

2 MR. MORRISON: All right. We are seeking nothing more
3 essentially.

4 THE COURT: All right.

5 MR. MORRISON: But I mean that's probably combined
6 sanctions and reimbursement of fees. That's for fees too.

7 THE COURT: And --

8 MR. MORRISON: Exactly what Rule 11 allows.

9 THE COURT: I understand all of that. Very generous on
10 your part. It doesn't exactly comply with what I asked y'all
11 to do, which was to break those things out, but I understand
12 what the figure is and I think I can deal with it. But, you
13 know, what I was trying to do was to get some kind of a
14 differentiation between the Rule 11 part of the equation,
15 which is the defense of the legal action, and the Rule -- and
16 the statutory amount, which is a much more open-ended kind of
17 thing that has to do with sanctions and it can take it into
18 account legal fees, of course.

19 MR. MORRISON: I can represent to the Court based on the
20 total math that I'm aware of that no less than half of that is
21 for defense.

22 THE COURT: Right. I think I understand it. Now, I'm
23 going to go back to Mr. Breit for a minute. Mr. Breit, just
24 so I get numbers clear about exactly what you're asking for,
25 what is the total amount of your request, Mr. Breit, for

1 defense of the legal action?

2 MR. BREIT: I --

3 THE COURT: Rule 11 type.

4 MR. BREIT: Your Honor, I have -- and I'm going to have
5 to back through this as best I can. I have \$125,000 worth of
6 hours at my rate cut in half and that's --

7 THE COURT: That's \$300, as I understand it.

8 MR. BREIT: Correct.

9 THE COURT: All right.

10 MR. BREIT: And my associate's rate reduced as well.
11 From that time period, I would say that almost 100 percent of
12 our time up until February 9th, 204 hours by Mr. Whitley, my
13 associate, and myself, was in defense of -- let me say 90
14 percent of it was in defense of his suit against him.

15 And I would represent to the Court that since that time
16 using the reduced hours of a reduced rate, I have \$60,000
17 worth of time and at least 30 percent of that is related to
18 why we're here in court today.

19 THE COURT: And the rest of it is related to the pursuit
20 of the sanctions?

21 MR. BREIT: No. The rest of that is just the pursuit of
22 the counterclaim. All of it -- I have 93,000 reduced dollars
23 in pursuit of both Rule 11, as well as the sanctions, and I
24 would divide the two of them.

25 THE COURT: And I guess my -- Mr. Breit, my question is

1 this. In terms of the timelines on -- you know, you've got a
2 suit that was brought in August. Well, October I guess is
3 when --

4 MR. BREIT: October, yes.

5 THE COURT: -- I guess it was filed. You've got a suit
6 that -- I guess she was approached in that time period and
7 then the suit was brought in October. Within a month,
8 hesitation is starting to be expressed to pursue that lawsuit
9 and discussions are had about the potential dismissal of the
10 lawsuit.

11 That next February, the reconvened hearing by Judge
12 Duncan is pursued for a rule to show cause.

13 MR. BREIT: Judge Young or Judge Duncan? Judge Young.

14 THE COURT: Judge Young. I keep calling him Duncan.

15 MR. BREIT: February of 2016.

16 THE COURT: Right. Sometime in-between the October
17 filing of that lawsuit and February of the next year, enough
18 had been done for the plaintiff Kovach to feel like she could
19 say to the Court I am dismissing this against everybody.

20 MR. BREIT: With prejudice.

21 THE COURT: Well, I understand the with prejudice. The
22 only reason it wasn't dismissed with prejudice is because you
23 all took the position that they would have to agree to the
24 viability of your counterclaim for damages.

25 MR. BREIT: And actually --

1 THE COURT: And what are now being translated into a
2 discussion of attorney's fees by way of the statute and the
3 rule, but essentially the counterclaim was a counterclaim for
4 the damages that have been suffered by the bringing of this
5 lawsuit; right? By Mr. Whitley?

6 MR. BREIT: There was a counterclaim attached to the
7 answer, but there was immediately filed with the answer a
8 motion for sanctions for the frivolous nature of this lawsuit.

9 THE COURT: I understand all that.

10 MR. BREIT: Our discussions -- I wrote a letter after the
11 suit was filed saying let's sit and discuss this.

12 THE COURT: Right. But the big stumbling block was and
13 continues to be that you wouldn't take a dismissal with
14 prejudice unless it left viable your counterclaim?

15 MR. BREIT: Unless it left viable my motion for
16 sanctions.

17 THE COURT: Your motion for sanctions. Well, the
18 counterclaim was the impediment to -- the counterclaim and the
19 answer were the impediment to her unilateral dismissal with or
20 without prejudice, as I understand it.

21 MR. BREIT: We -- she could have dismissed without
22 prejudice and wanted our agreement to do so. We refused. She
23 wanted -- she asked us to drop everything completely.

24 THE COURT: Right.

25 MR. BREIT: And walk away. We're sorry we defamed you.

1 THE COURT: Right.

2 MR. BREIT: We said no. We said we want our attorney's
3 fees for getting to this point.

4 THE COURT: Got that.

5 MR. BREIT: And we asked for that in a letter and we
6 asked for a sit-down, which was refused.

7 THE COURT: Right.

8 MR. BREIT: And in February, we had the same kind of --
9 we thought the discussion would be -- when her lawyer said
10 it's been dismissed and then the judge asked Ms. Kovach has it
11 been dismissed with prejudice, she said yes. So we again
12 said, no, that hasn't happened yet. Do y'all want to discuss
13 our attorney's fees? Ms. Bloodgood offered a dismissal
14 without prejudice, which we refused again.

15 We're not going to do that. And so we have been pursuing
16 our frivolous action claim since the beginning and continue to
17 today.

18 THE COURT: But the counterclaim has never -- the
19 counterclaim independent of the legal fees has not been a big
20 issue, as I understand it. The --

21 MR. BREIT: Right.

22 THE COURT: The big issue here is the legal fees.

23 MR. BREIT: Correct.

24 THE COURT: So in terms of effort expended, this whole
25 thing has revolved around these legal fees since the guilt --

1 since, at the outside, the guilty plea and the attempt to
2 dismiss everything after that. Am I right?

3 MR. BREIT: Except for the -- this important decision I
4 believe. Kovach still believes that she has --

5 THE COURT: That -- I understand that argument.

6 MR. BREIT: Okay. That's still there. We've been
7 fighting that.

8 THE COURT: That's argument about her responsibility for
9 the legal fees.

10 MR. BREIT: But as well as the attorney. Meaning the
11 attorney has been arguing it.

12 THE COURT: I understand that, but --

13 MR. BREIT: That she's got this viable conspiracy claim
14 that still hasn't been dismissed yet.

15 THE COURT: I understand that, but that has nothing to do
16 with the counterclaims. That has only to do with this dispute
17 about being penalized for having brought a frivolous lawsuit,
18 both under the rules and under the statute. It has nothing to
19 do with any other independent counterclaims, you slandered me,
20 you libeled me, et cetera, et cetera.

21 MR. BREIT: Correct.

22 THE COURT: That --

23 MR. BREIT: That's not any part of what we're here for.

24 THE COURT: Right.

25 MR. BREIT: And that's not even asked for.

1 THE COURT: Right.

2 MR. BREIT: And so unfortunately because of the
3 allegations in the complaint, there had to be a -- I mean all
4 of our work we feel was very much justified in meeting this
5 frivolous complaint. We did the due diligence that Ms.
6 Bloodgood didn't do and we were going to do it in a way that
7 if we proceeded to where we are today that this is a frivolous
8 lawsuit, which we proved based on the Court's order, that we
9 would be entitled to reasonable costs, reasonable attorney's
10 fees, and sanctions against both for what happened.

11 THE COURT: Right.

12 MR. BREIT: Before I forget, footnote 1 of the Bloodgood
13 brief says we don't know whether we're seeking sanctions
14 against Bloodgood and her firm or sanctions are against Ms.
15 Bloodgood only. Both parties would agree that this has
16 nothing to do with her firm. It's her individually and that's
17 what a Rule 11 signed pleading means anyway.

18 And so, yes, all of this has to do with our claim for
19 attorney's fees, and I believe the Court has now asked me to
20 somehow divide the Rule 11 part of that with the sanctions
21 part of that.

22 THE COURT: And I think you've done that. At least I
23 understand your answer to it.

24 MR. BREIT: Yes. I believe that too.

25 THE COURT: I think I can figure it out. Would you agree

1 that one of the crucial things about the determination of the
2 nature of this lawsuit and its viability is the attorney
3 general's letter detailing the disconnect between the
4 averments that were made in the affidavit or the materials
5 that were sent to the school district?

6 Because that's where the attorney general first made his
7 reaction. These materials were sent to the school district
8 and the attorney general said, whoa, these materials -- in
9 answer to an inquiry by the school district, these materials
10 represent something that is at great odds with the plea that
11 was made.

12 MR. BREIT: Let me answer it as best I can understanding
13 that the Court in taking a plea deal isn't going to sit for
14 four hours for recitation of facts. There was a plea
15 agreement and there was the attorney general, chapter and
16 verse for a number of pages, all five crimes in detail enough
17 for the Court to understand this was a compromised and
18 established --

19 THE COURT: I'm not asking about how the attorney general
20 -- I'm asking a little different question.

21 MR. BREIT: No, no. You're asking about a letter.

22 THE COURT: The -- the attorney general made a recitation
23 of the facts. That's very common in pleas. You have --
24 you're accused of five different crimes. There's going to be
25 a plea deal where you only have to plead to two of them, but

1 preceding the taking of the plea, there's a recitation of the
2 facts. And the first thing the judge then does is to ask the
3 defendant whether those facts -- whether the defendant avers
4 or agrees that the facts as recited are true.

5 Then other things happen when you put to the defendant
6 the --

7 MR. BREIT: Under the oath at the plea.

8 THE COURT: -- the plea on the specifics and that's when
9 there was some disconnect that came back.

10 Now, after that, a filing was made with the Beaufort --
11 with the Berkeley County School Board on Ms. Kovach's behalf
12 well before the suit was filed that detailed her version of
13 the facts.

14 MR. BREIT: Right.

15 THE COURT: And said, you know, I should retain my job.
16 It is that recitation that the attorney general then took and
17 developed a chart that compared the recitations that were made
18 with the recitations that were agreed to in the pleadings
19 taken. Isn't that correct?

20 MR. BREIT: Yes. A critical --

21 THE COURT: That is --

22 MR. BREIT: -- document.

23 THE COURT: -- the most crucial document of all, which
24 really wasn't developed by y'all so much as it was by the
25 attorney general. That was the crucial document that under --

1 that undergirds the contention to this good day that this was
2 a frivolous lawsuit. Am I right?

3 MR. BREIT: That is correct. And what my point is for
4 purposes of sanctions against the attorney is that that
5 attorney general document, chart, comparison, together with
6 the criminal transcript now is in her hand and she says I'm
7 going to disregard the chart and the letter from the attorney
8 general because it carries no weight of law and I'm still
9 going to file this lawsuit. That's where she has put herself
10 in the box that we're in today.

11 THE COURT: Thank you, sir. Ms. Monoc, do y'all need a
12 moment to take a breath or can you proceed?

13 MS. MONOC: May I have just one moment, please?

14 THE COURT: What's that?

15 MS. MONOC: Can I have one moment, please?

16 THE COURT: Why certainly.

17 MS. MONOC: Thank you.

18 (WHEREUPON, there was a pause in the proceedings, after
19 which the proceedings resumed as follows.)

20 MS. MONOC: I can proceed. They can look for something.
21 If it's okay, if I can go over our arguments first, and then
22 I'll address some points raised to try to help clear up on
23 this timeline?

24 THE COURT: Great.

25 MS. MONOC: Is that okay?

1 THE COURT: Thank you.

2 MS. MONOC: All right. With respect to damages, Your
3 Honor, in the *Pee Dee* case, it was highlighted that the
4 primary purpose of sanctions against counsel is not to
5 compensate the prevailing party, but to deter future
6 litigation abuse. And we would ask the Court to consider
7 nonmonetary sanctions as appropriate under the circumstances,
8 if Your Honor proceeds with the order as written, and without
9 waiving our other arguments.

10 As set forth under South Carolina Code 15-36-10(g)(3),
11 sanctions can take the form of a directive designed to deter
12 future similar action, and several equities support this
13 conclusion.

14 First, we've heard a lot about duties and we've talked a
15 lot about duties, but we're all in Rule 11 together and I
16 think it's important to note that attorneys, before pursuing
17 sanctions, have a duty to consult one another and go into the
18 specifics of the merits of the situation and try to resolve it
19 before pursuing it through this kind of protracted litigation.

20 Providing you with an example in another matter, without
21 giving any specifics, you know, a complaint was filed. There
22 was publicly available information that was very clear that --
23 you know, that shows that the complaint should not have been
24 filed. I called the other attorney. I went over the
25 specifics with him in great detail.

1 He said I'm going to actually -- I'm going to have to
2 think about this and he took, you know, a good two months to
3 think about it and he conferred with his client and he agreed.
4 You're right. And he dismissed it because when reasonable
5 people come together, you can be reasonable and you can reach
6 a reasonable -- you know, you can -- you can come to an
7 understanding.

8 All of these specifics that we have so heavily litigated
9 over the past couple of months -- none of them -- none of them
10 were brought to Ms. Bloodgood's attention until the pursuit of
11 sanctions, which was, you know, in concert with the answer.

12 And I think it's just important that, you know, had
13 cooler heads prevailed and had there been a chance to sit down
14 and really discuss the merits and, you know, these six
15 paragraphs out of 187 paragraphs that, you know, they contend
16 make the entire lawsuit frivolous -- you know, had those
17 points been specifically brought out, you know, it would've
18 given Ms. Bloodgood an opportunity to reconsider the filing.
19 It would have given her an opportunity to strike those. It
20 would have given her an opportunity to really sit down with
21 Ms. Kovach and, you know, perhaps we wouldn't be here today.

22 The only proof in the record to this effect is from Ms.
23 Bloodgood's affidavit where she avers that a Rule 11
24 conference would've served a useful purpose. So for that
25 equitable reason, I would ask that you would consider

1 nonmonetary sanctions.

2 In addition, as we discussed earlier, we believe that the
3 order --

4 THE COURT: Did either side request such?

5 MS. MONOC: I'm sorry?

6 THE COURT: Did either side request a Rule 11 conference?

7 MS. MONOC: Well, I think it's just required by the
8 statute. The motion was filed without one and, you know, as I
9 read Rule 11, you've either got to have the conference before
10 you file the motion. You know, a Rule 11 conference isn't
11 required before you file a complaint, but it is required
12 before you pursue sanctions. And sanctions are sought --

13 THE COURT: I just wondered what the vehicle would've
14 been. I mean is this the judge's fault for not convening the
15 parties to conference or should the parties have simply
16 conferenced together?

17 MS. MONOC: I think that before they signed their names
18 to the motions for sanctions, they should have initiated a
19 conference with Ms. Bloodgood.

20 THE COURT: And just so I'm clear about a point in time,
21 are you talking about before they filed the counterclaim that
22 asked for sanctions?

23 MS. MONOC: Right. I think that the motions for
24 sanctions by Mr. Whitley were filed on November 3rd, 2015, and
25 Dr. Whitley's sanctions motion was filed on 11/16 of 2015.

1 THE COURT: And you're saying that before they filed that
2 motion for sanctions, they should have initiated a conference
3 with you about --

4 MS. MONOC: With Ms. Bloodgood.

5 THE COURT: Or Ms. Bloodgood regarding the frivolous
6 nature of the lawsuit?

7 MS. MONOC: If the specifics -- the specifics that we
8 talked about, such as the six paragraphs which I would argue
9 should -- you know, would have been subject to a motion to
10 strike if you -- you know, if you've got problems with certain
11 paragraphs, then I think the appropriate vehicle would be a
12 motion to strike.

13 So those types of things and also the affirmative
14 defenses that were discussed so heavily in the order and in
15 the filings leading up to the orders. You know, it's all of
16 these types of things that would get to the merits of it.
17 Those are the things you would talk about. Look, I don't
18 think your claim can proceed because of X, Y, Z.

19 You know, these affirmative defenses are going to prevail
20 and we're going to pursue a motion for sanctions and this is
21 your opportunity to back out before we do that. You know, you
22 bring to your colleague's attention the specific flaws in what
23 they've done and then that person can take a minute, review
24 it, think about it, consider it, confer with their client, and
25 it would avoid this, you know, several-month-long process that

1 we've all been in, you know, perhaps if Rule 11 had been
2 followed by all parties.

3 THE COURT: Well, in terms of the time sequence of this
4 thing, you've got November when the responsive pleadings and
5 counterclaims and motions are filed. And then you've got --
6 now, by that time preceding that, the attorney general's
7 letter was written detailing the comparison between what was
8 said -- what was recited as facts in the plea hearing and what
9 was recited as facts in the affidavit or the factual material
10 presented to the school district, which was very similar to
11 what was in the complaint in a lot of respects in terms of the
12 facts. Am I right?

13 MS. MONOC: I would have to go back and look at the
14 attorney general's letter.

15 THE COURT: But by November after the suit was brought,
16 you had Ms. Kovach's submissions to the school district, the
17 attorney general's reaction to those submissions, the
18 responsive pleadings filed by the defendants, and then at some
19 point in time after that you had the defendant -- I mean the
20 plaintiff hiring another lawyer and appearing before Judge
21 Young in a rule to show cause hearing regarding the impact of
22 this averment she had made in a lawsuit and in her averments
23 before the Court. Am I right?

24 MS. MONOC: Well, you know, I think that the -- if we're
25 going through the timeline, I believe that the attorney

1 general letter predates the grievance. I think that the
2 attorney general letter went to the school board
3 independently, but I'll have to go back and read it to be
4 sure.

5 THE COURT: Well, that's not as important to me as you've
6 got a point in time when there's this squabble with the school
7 district over her filings that say she's still entitled to be
8 employed and the attorney general --

9 MS. MONOC: Yes, Your Honor.

10 THE COURT: -- saying, hey, this is in complete variance
11 with what she said in her plea.

12 MS. MONOC: Uh-huh.

13 THE COURT: Then there's the bringing of the lawsuit
14 after that.

15 MS. MONOC: Uh-huh.

16 THE COURT: Then there's the answer and the counterclaim
17 and the motions, and then -- and that's in November. And by
18 February of the next year, there's been a rule to show cause
19 in front of a judge where she disavows the complaint.

20 MS. MONOC: Right.

21 THE COURT: What I'm trying to figure out is what
22 happened. You know, you have a period of time before where
23 you say, well, consultation should have -- should have been
24 had and, you know, that's a valid point certainly to make.
25 Then what happened between --

1 MS. MONOC: Dismissals were sought. Dismissals were
2 sought.

3 THE COURT: How did y'all do that?

4 MS. MONOC: Voluntary dismissal against Dr. Whitley was
5 filed on 11/23 of 2015, and then with respect to Mr. Whitley,
6 on 11/25/15, he refused the dismissal -- the stipulation of
7 dismissal without a payment of attorney's fees.

8 So as you'll recall from our last hearing where we argued
9 over the validity of the voluntary dismissal, up until your
10 last ruling, Ms. Bloodgood had the position that the voluntary
11 dismissal that was filed against Dr. Whitley in November of
12 last year was a dismissal, but, you know, the Court's order
13 last month ruled on that issue and found that, you know, she
14 wasn't actually dismissed until a hearing.

15 THE COURT: Well, you had that Rule 41 thing that was
16 kind of --

17 MS. MONOC: Yes, Your Honor.

18 THE COURT: -- a bottle of procedural confusion and so
19 forth, but there certainly was an attempt made by Ms.
20 Bloodgood, authorized by plaintiff, Kovach, to attempt a
21 dismissal of the actions by November of 2015, about a week or
22 two after the answers and counterclaims were filed.

23 MS. MONOC: Yes, Your Honor.

24 THE COURT: That's when the -- so there wasn't a
25 consultation between the parties, but there was -- almost as

1 soon as that answer came in saying, hey, this is a frivolous
2 lawsuit and so forth, Kovach attempted to dismiss these suits
3 through the vehicle of her attorney, Bloodgood; right?

4 MS. MONOC: Yes, Your Honor.

5 THE COURT: And the only reason why the suits were not
6 dismissed -- apparently, all the other people were out and
7 they haven't ever pursued anything in this and that's the
8 school board and some other individuals. They were out of the
9 law school -- suit, names taken off of the lawsuit and so
10 forth. So it ended up the only people left were Dr. Whitley
11 and Mr. Whitley; right?

12 MS. MONOC: I think -- on the clerk of court website, I
13 think that Dr. Whitley actually had been taken off after that
14 stipulation of dismissal, you know, if you go onto the
15 website, but, you know, I understand the Court's ruling on
16 that issue. But for our purposes, they did seek to dismiss
17 both of these defendants and with respect to the -- you know,
18 under Rule 41, I think it's automatically without prejudice
19 unless you specify otherwise.

20 THE COURT: And Dr. Whitley did not fuss about being
21 dismissed, but Mr. Whitley did.

22 MS. MONOC: Well, they wanted -- they actually I think
23 filed -- I don't know if they actually filed it or if it was
24 just in the billing records that they drafted it, but I think
25 they filed a motion to strike the stipulation -- or the

1 voluntary dismissal, if I'm correct. We did.

2 MR. MORRISON: Yes. We wanted it with prejudice.

3 THE COURT: So for both Whitleys, the only reason these
4 cases weren't dismissed was because of the dispute about
5 sanctions, which has really boiled down to more than anything
6 else a dispute over the payment of attorney's fees. Am I
7 right?

8 MS. MONOC: Yes.

9 THE COURT: Now, just curious. What kind of
10 consultations, if any, were had about that?

11 MS. MONOC: About?

12 THE COURT: Negotiating the amount of the attorney's
13 fees.

14 MS. MONOC: I don't think -- I don't think -- I'm not
15 sure. I don't -- I don't know that there were.

16 THE COURT: Nothing?

17 MS. MONOC: I think -- I believe that there was something
18 I read at some point that was a communication that was
19 something in the \$100,000 range, but I would have to go back
20 to the file to make sure.

21 THE COURT: But nothing that you were directly involved
22 with?

23 MS. MONOC: I was not. I mean there were settlement --
24 there were, you know, things that are obviously inadmissible
25 that were settlement talks.

1 THE COURT: Yeah. And none of that is in the record and
2 certainly not going to be considered.

3 MS. MONOC: Right.

4 THE COURT: But the bottom line is that there was no --
5 if there were any negotiations or discussions, no compromise
6 was reached about attorney's fees?

7 MS. MONOC: Right, right, right. We -- Ms. Bloodgood and
8 Ms. Kovach were happy to dismiss with prejudice if it wasn't
9 conditioned on the payment of, you know, the anticipated six
10 figures of attorney's fees.

11 THE COURT: So y'all were not willing to pay attorney's
12 fees, they wanted attorney's fees, and that's the basis upon
13 which we moved forward?

14 MS. MONOC: Yes, Your Honor.

15 THE COURT: All right.

16 MS. MONOC: That's my understanding. Another -- the
17 other equitable reason that we think that nonmonetary
18 sanctions would be appropriate is just that -- and I'm not
19 sure -- and forgive me if I already said this, but, you know,
20 based on that argument that new law was created in several
21 ways through the Court's order, we would ask that it be
22 applied prospectively.

23 THE COURT: What do you have in mind when you talk about
24 nonmonetary sanctions? And if you -- if that catches you
25 short, that's not something you need to answer.

1 MS. MONOC: It's okay. It's okay. But I mean everyone
2 in here knows this case has received significant publicity and
3 I think that to the extent any messages needed to be received,
4 they were.

5 THE COURT: You think the message has already been sent
6 and received.

7 MS. MONOC: Sent and received, and I think that if you
8 find that sanctions are appropriate, again that's without
9 waiving any of our other arguments.

10 THE COURT: Sure.

11 MS. MONOC: We still take that as our position, but if
12 Your Honor does believe that Ms. Bloodgood had a lapse in
13 judgment and it was a, you know, misfiling, I think that -- I
14 think that it has been effectively communicated.

15 THE COURT: Exactly. I understand. I understand your
16 position.

17 MS. MONOC: And then -- and this is not to suggest that
18 monetary sanctions be awarded, but to the extent that Your
19 Honor is considering monetary sanctions, I would ask you to
20 limit it to what we believe is reasonable, which is that
21 cutoff date, the date that a Rule 11 conference should've
22 taken place, which, you know, would have been -- - you know,
23 Josh Whitley's motion for sanctions was filed 11/3/15 and Dr.
24 Whitley's was filed 11/16/15.

25 Based on our review of their fees, Josh Whitley's fees at

1 that point were approximately \$33,000 and Dr. Whitley's -- if
2 you reduce it proportionately based on Mr. Morrison's
3 submission last week, that would be about \$6,300.

4 In addition to that, we contend that, you know, the
5 defendants failed to mitigate their damages with this whole
6 dismissal issue. So an alternative cutoff date would be when
7 the voluntary dismissals were sought by Ms. Bloodgood, and
8 those dates would be the date that it was filed against Dr.
9 Whitley, which was November 23rd, 2015, and with the day that
10 Josh -- Joshua Whitley refused the stipulation of dismissal
11 without payment would be the 25th.

12 Also, just with respect to reviewing their attorney's
13 fees, I think -- it's our position that counsel's submission
14 -- their submissions demonstrate, you know, overzealous
15 billing in the defense of the matter. This reached -- you
16 know, this reached the pleading stage. As we know, it did not
17 go into discovery or depositions. You know, there isn't --
18 you know, this case was filed and several weeks later the
19 dismissal was attempted.

20 And the defendants are relying solely on the Waters
21 letter and the guilty plea transcript. So our position would
22 be that Ms. Bloodgood should not be responsible for their
23 subsequent trip to Columbia to meet with the attorney general
24 after the case had been -- after the answer had been, you
25 know, filed or -- you know, once this litigation commenced,

1 then there's, you know, dealings with the attorney general's
2 office, you know, prior to the rule to show cause.

3 Those are things that go above and beyond. You know,
4 they had that information. They had Waters' letter. They had
5 the guilty plea transcript. You know, those are the
6 essentials of their defense and that would be what would be
7 reasonable under the circumstances.

8 And then to the extent that the bills that have never
9 actually been billed, it's our position that that further
10 supports a *de minimis* amount.

11 THE COURT: Thank you, ma'am.

12 MS. MONOC: Would you like me to respond briefly or are
13 we --

14 THE COURT: No. Absolutely.

15 MS. MONOC: All right. Mr. Breit went over the
16 paragraphs that he takes issue with in the complaint. I
17 touched on this briefly, but we think that that would have
18 been appropriately the subject of a motion to strike. And to
19 the extent that they might be subject -- that might be subject
20 to issue preclusion, that comes back to the -- to our position
21 that if issue preclusion may apply to certain paragraphs in
22 the complaint, that shouldn't collaterally estop the entire
23 lawsuit.

24 Let me see what else. I think we've talked about that.
25 The timeline. If I may just check my --

1 THE COURT: Certainly.

2 (WHEREUPON, there was a pause in the proceedings, after
3 which the proceedings resumed as follows.)

4 MS. MONOC: And then just to clarify, the attorney
5 general letter was submitted to the board on August 31st, 2015,
6 which was after Ms. Bloodgood had prepared the grievance. So
7 when the grievance was prepared, she didn't have the benefit
8 of the letter or the transcript, but prior to filing the
9 complaint, she did have the benefit of the transcript and the
10 letter.

11 But again, as South Carolina law maintains, letters by
12 the attorney general aren't precedent. It certainly would be
13 something to consider. We don't think that in and of itself
14 that it creates a reason to say that there's no basis in law
15 or facts for the lawsuit to proceed.

16 MR. COOKE: Thank you, Your Honor.

17 THE COURT: Mr. Cooke?

18 MR. COOKE: Thank you. First of all, we would -- we
19 would incorporate all arguments we made earlier this morning
20 on the motion to reconsider and I would respectfully adopt Ms.
21 Monoc's arguments as well.

22 Let me pause for just a moment to talk about something
23 that briefly came up earlier today and that is Ms. Kovach is
24 not here and she was not here at the last hearing. At the
25 risk of being melodramatic, she cannot come to court. She

1 cannot swear to anything because it seems that every -- that
2 every -- everything she does digs her deeper into the
3 quicksand.

4 Chris Kovach is here. Chris has been a contract attorney
5 for my firm for several years and he's married to Ms. Kovach.
6 That's how I'm involved in this. He has since submitted an
7 affidavit as to her financial ability to pay and as to her
8 decision when to drop the lawsuit.

9 But I would ask the Court to not hold it against her.
10 I'm not going to sit here and ask you to be sympathetic and
11 feel sorry for her. She knows that she got herself in this
12 situation and she's not a political operative. She's a wife
13 and a mother of three children who had what she thought was
14 the dream job. She believed that she was doing the right
15 thing to try to help the -- this bond referendum pass, and she
16 pleaded guilty.

17 Now, the affidavit that Your Honor referred to, I've read
18 it. There is a section from I'd say roughly paragraph 25 to
19 31 where she does protest her innocence of the offenses to
20 which she did not plead guilty.

21 And this goes to Your Honor saying that, well, a guilty
22 plea has two parts and you have to agree to the factual
23 predicate for even the things you're not pleading guilty to
24 and then you have to actually plead guilty to the offenses. I
25 don't know whether she knew that or not. Your Honor has read

1 the transcript, as I have read it, and I can just say once
2 again that reasonable minds can differ as to what acts she
3 actually pleaded guilty to.

4 But I would ask the Court if we could please just stop
5 talking about that because that has nothing whatsoever to do
6 with the conspiracy claim that was brought against the
7 defendants in this case. And I'll go back to something I said
8 earlier today.

9 I said she could have begun the complaint with I am
10 guilty as sin of -- of misconduct in office and using funds to
11 affect an election and forgery and perjury, but I am
12 nevertheless suing these individuals because they conspired to
13 not just to have me prosecuted, as they had every right to do
14 as a -- as a citizen, but to take my job and they wanted my
15 job because of my role in this controversial bond referendum.

16 And according to Ms. Bloodgood, who is an experienced
17 employment attorney, that gives you a colorable cause of
18 action for -- for conspiracy. And that is that they were not
19 just -- that she wanted an opportunity to demonstrate that
20 they were not just trying to vindicate that \$800 that was
21 misspent, but that they were trying to make Ms. Kovach lose
22 her job.

23 And most of this affidavit is devoted to showing why she
24 believed that what she was doing was what she was hired to do.
25 It was not in defense of the criminal charges, but it was her

1 defense of her employment position.

2 And so her position, right or wrong -- and we're not here
3 to argue summary judgment. We're here to argue that not only
4 was that position wrong, but there was no possible set of
5 facts that could have sustained that cause of action.

6 But I submit to Your Honor that it would have been -- it
7 would have been at least conceivable. It wouldn't have been a
8 great case. A lot of lawyers wouldn't have taken this case
9 and the case wouldn't have gotten any better if it turned out
10 that she was pleading guilty to -- to these other offenses as
11 well.

12 But it would not have been the tipping point that says
13 that there could not have been a potential legal claim against
14 those who procured that prosecution, either an abuse of
15 process or a conspiracy claim or something of that -- of that
16 nature.

17 So that -- that's the backdrop by which I would ask the
18 Court to consider whether to sanction Ms. Kovach, who was a
19 person with a problem who went to see a lawyer who was a
20 specialist in the area in which she had that problem and who
21 signed a Rule 11 certificate that there was a viable cause of
22 action. That doesn't mean it's a great case, but it means
23 that it's at least a viable claim based on existing law or a
24 reasonable extension of existing law.

25 As far as the amount of sanctions, if the Court sees fit

1 to award sanctions, it appears undisputed that Ms. Kovach
2 decided to drop this case within a month after filing the
3 lawsuit.

4 Now, from a -- from a public policy standpoint, I would
5 ask this Court to not issue an order that invites a second
6 generation of litigation whenever any litigation is concluded,
7 either by voluntary dismissal or by trial or a summary
8 judgment, because that's what's happened in this case. This
9 case has become more about the sanctions and the retribution
10 and the -- and the payment of who's going to pay legal fees
11 than it was about the defense of the original conspiracy.

12 And I don't believe that that's what Rule 11
13 contemplates. I believe that both Rule 11 and the -- and the
14 Frivolous Civil Procedure -- Proceedings Act were intended to
15 -- to shorten litigation, to streamline litigation, to prevent
16 the multiplication and the perpetuation of litigation.

17 But I would submit to you that from the middle of
18 November when Ms. Kovach announced her intention to not pursue
19 her claims anymore, that from that moment this was all about
20 paying legal fees and not about the defense of the original
21 lawsuit. And for that reason, if the Court is inclined to
22 award monetary fees, I would ask it to only award the fees
23 that were reasonably necessary to file the motion to dismiss
24 and the answer and the counterclaim, and that was it. That
25 was all that they had to do in order to have this case

1 dismissed.

2 Now, there are things that this Court might find
3 troubling. Is it to the attorney general? Why was that? And
4 then this is the attorney general and then the attorney
5 general comes down and makes a motion to hold Ms. Kovach in
6 contempt. And as part of that, she announced that she's
7 dismissed the lawsuit.

8 I would submit to you that that goes beyond that that was
9 done. That that goes beyond the reasonable cost of defending
10 this lawsuit because she agreed within 30 days that she was
11 going to dismiss this lawsuit.

12 The last thing that I would ask the Court to consider is
13 her personal circumstances because, as was pointed out, under
14 the current standard the goal here is not to compensate the
15 opposing parties. The goal here is to deter frivolous,
16 vexatious litigation. And in this case, Ms. Kovach needs no
17 further encouragement to stay as far away from the judicial
18 process as she can possibly stay for the rest of her life.

19 But we did submit an affidavit as to her personal
20 financial situation. She's not a -- she's sporadically
21 employed and people would say underemployed considering her
22 educational level. Her husband -- I know what he makes and
23 it's -- it's not enough to pay the kind of sanctions that are
24 being asked for here. She has paid -- she was ordered to pay
25 and has now paid \$25,000 in sanctions. She has probably

1 incurred --

2 THE COURT: Did that go to the court, Mr. Cooke?

3 MR. COOKE: I believe it did. It went to the court as a
4 fine. And then -- and then she's probably incurred \$40,000 or
5 so in her own legal fees that were not reimbursed. I'm not
6 going to be able to bill her for -- for my services. I know
7 there's no way she can pay. So I would ask the Court to
8 consider those -- those factors when it decides how much
9 punishment she needs in order to be deterred from filing
10 frivolous lawsuits.

11 The breakdown of fees that has been asserted -- I
12 appreciate that and I appreciate the Court's asking them to
13 break down their fees into how much was for defending and how
14 much was for seeking sanctions, but I would submit to you that
15 virtually everything that occurred after the middle of
16 November of 2015 was directly or indirectly related to
17 recovering fees.

18 And I know that under the *in re: Gregory* case, the Court
19 can award that, but again I would submit that that's in a
20 situation where the plaintiff has persisted in a course of
21 vexatious, abusive litigation conduct and then placed the
22 other side in a position where they've got to litigate the
23 recovery of the sanctions.

24 As far as the -- Dr. Whitley's recovery from the school
25 district, I don't think any of that could've been as a result

1 of anything that Amy Kovach did because Amy Kovach was no
2 longer employed by the time she filed the lawsuit against Ms.
3 Whitley. So certainly nothing -- that couldn't be blamed on
4 the school district.

5 So we don't know. I don't know how you have a
6 confidential settlement with the school district, but they've
7 done it somehow. But they've chosen not to explain to the
8 Court what the basis of it was.

9 I would submit to you that if the school district agreed
10 to pay her fees, precisely what they agreed to pay would have
11 been what the Court might properly award against Amy Kovach,
12 and that is the actual cost we are going to pay you, Dr.
13 Whitley, the actual cost of defending yourself for actions
14 that you took while you were a school board employee. We're
15 not going to pay you to go visit with the attorney general or
16 to go bring counterclaims or to pursue your attorney's fees.

17 So I would say even though it was generous they are
18 saying we are only asking for \$15,000, I would submit that the
19 Court might consider that she's been fully compensated toward
20 those fees that are properly assessable against Ms. Kovach.
21 Thank you.

22 THE COURT: Thank you, Mr. Cooke.

23 MR. BREIT: Briefly?

24 THE COURT: Mr. Breit, any reply?

25 MR. BREIT: I want the timeline to be fleshed out a

1 little bit better, Your Honor, because there's a critical fact
2 that will have an effect I believe on the Court's decision-
3 making.

4 This suit was filed in October. We know everything --
5 the Court has given us most of the facts, as has counsel, as
6 to what happened prior to the filing of the suit and what Ms.
7 Bloodgood knew or did not know. She got her headline in the
8 newspaper and then Howell Morrison had the lawsuit in his
9 hand, not served. He went and got it.

10 He went and met with Ms. Bloodgood in person. No service
11 had happened yet. And he said to her these allegations in
12 this complaint are not true and you should think before you
13 allow service to happen in this lawsuit. That was a warning
14 to her that she completely and totally disregarded.

15 And so when service came and now I have responded because
16 I have a copy of the lawsuit and I believe that we responded
17 for sanctions within three days of service, and they hand
18 delivered to Mr. Whitley a motion to dismiss, not with
19 prejudice, but just a motion to dismiss.

20 I wrote Ms. Bloodgood on November 25th and said we would
21 agree to a motion to dismiss with prejudice and we would
22 dismiss our counterclaim, but we want to have our attorney's
23 fees issue discussed. And I invite you -- that I, Jeffrey,
24 will fly to South Carolina and meet with you to discuss it.
25 That letter has never been mentioned, responded to, phone

1 call, email, ever since.

2 Thereafter, the attorney general gets a copy of the
3 complaint and the attorney general immediately moves for a
4 show cause. After the attorney general moved for show cause,
5 Ms. Kovach hired a new attorney so that that attorney wouldn't
6 be placed in a position of having to explain away the guilty
7 plea conversation. And then, again, after that hearing, in
8 February of '16, I requested a motion to dismiss with
9 prejudice as indicated had happened prior to that hearing.

10 Those are the facts and that's why Ms. Bloodgood had an
11 opportunity before service and before we filed a single piece
12 of paper to stop this litigation on its head. Not a dollar
13 spent, not a dollar incurred. She chose to ignore the warning
14 by Mr. Morrison and she chose not to respond to my letter.

15 They keep mentioning Mr. Whitley was procuring the
16 prosecution of Ms. Kovach, that he was responsible for some
17 kind of procurement. And as the Court has indicated, Mr.
18 Whitley did like any citizen in this county had a right to do.
19 I see wrong, I want it investigated, and then the defendant
20 criminal pleads to all of it.

21 Ms. Goodblood [sic.] knew every little fact she needed to
22 know before she filed suit and she knew it immediately after
23 she filed suit when she had the right to stop what's
24 happening. She chose not to do it and Ms. Kovach just went
25 along with the ride. That's why they're both responsible,

1 Your Honor.

2 THE COURT: Mr. Morrison?

3 MR. MORRISON: Briefly, Your Honor. Mr. Breit is
4 correct. I did go through the trouble of making an
5 appointment with Ms. Bloodgood and I took myself in person
6 over to confer with her at her office.

7 I specifically asked her have -- I wondered. I wanted to
8 know about what evidence is out there as to Karen Whitley
9 because I haven't seen anything. I haven't heard of any. She
10 suggested to me there was some and I asked her, with my
11 associate there, well, have you read the guilty plea
12 transcript. She told me -- and this is in my affidavit -- I
13 have it, but I haven't read it yet.

14 And then she said she would consider everything, but she
15 specifically told me that -- and here's the way she put it and
16 this is in my affidavit. That Jerry and Joe, being Jerry
17 Theos and Joe Griffith Jr., criminal defense attorney for
18 Rodney Thompson, the superintendent, had reviewed her draft
19 complaint before it was filed and had encouraged her about it.

20 And so I reject the suggestion totally that we didn't go
21 through the trouble of conferring about this. Now, I didn't
22 tell her I'm going to file a sanctions motion against you. I
23 did not threaten her in any way or by implication. But I did
24 question what she was doing in the face of the specifics of
25 the sworn guilty plea transcript. That to me was baffling.

1 It remains baffling.

2 I would suggest even without the Waters letter to the
3 Berkeley County School District, which I was unaware of when I
4 went to confer with Ms. Bloodgood in person, I would suggest
5 that the guilty plea transcript sworn of itself is enough to
6 wreck this complaint that they have filed, but we've been
7 through all that.

8 You know, the suggestion from Ms. Monoc is, well, you
9 should've filed a motion to strike. You should've
10 remonstrated with opposing counsel and shown opposing counsel
11 the specifics. See, this is wrong. Look at the guilty plea
12 transcript. This is wrong. Look at the guilty plea
13 transcript.

14 I mean she suggested we should hold her hand, spoon feed
15 her about her job, tell her everything she's done wrong. File
16 a motion to strike, which I can represent to the Court the
17 standard answer on every plaintiff's attorney to a motion to
18 strike is I need some discovery to flesh this out, and the
19 standard answer in my experiences from circuit court judges
20 is, well, I'm going to give you some time to have some
21 discovery to flesh it out. That's what happens to motions to
22 strike. They are inherently ineffective.

23 The -- we did what we could and we did everything we
24 should have and -- and what the battle has been since then --
25 I want to be clear about this. The battle has been since then

1 they don't want to dismiss with prejudice because it would
2 bind them potentially to pay sanctions or fees. We have
3 always insisted you have to dismiss us with sanctions.

4 THE COURT: Well, I --

5 MR. MORRISON: I mean with prejudice.

6 THE COURT: It's a chicken and egg situation being fought
7 and nobody would reasonably simply dismiss it with prejudice
8 without resolving the whole controversy. And unfortunately,
9 you all are not able to find some kind of deal to do that, Mr.
10 Morrison, but, you know, I understand what the argument is.
11 But --

12 MR. MORRISON: But the suggestion that is undisputed --
13 and this is what Mr. Cooke said. That the decision was made
14 within a month of the filing to dismiss the case is, of
15 course, true because the very -- the very direct hearing
16 happened on the rule the show cause, which sent a very clear
17 message to the -- to the plaintiff.

18 THE COURT: I think I understand that history very well.

19 MR. MORRISON: And one other minor point. Ms. Monoc
20 suggested that the fees that we have requested, the 15,000, if
21 one were to apply the percentages in our affidavit and
22 submittals to it should be reduced to \$6,300, but the problem
23 is way more than 15,000 were incurred in the first two months
24 when it was strictly defense biased, way over that amount, and
25 I just want to put that to you.

1 THE COURT: All right. All right. I am not prepared to
2 rule from the bench on this, but I will -- I will represent to
3 you that, particularly in light of the imminent appearance of
4 my law clerk's second child, she and I plan to sit down and go
5 over this matter quickly and come to some conclusions.

6 What I will probably do is to give you an outline of what
7 I intend to rule and ask for a proposed order from the
8 prevailing party or parties, and I'm so uncertain about the
9 question of reconsideration as well as sanctions and
10 attorney's fees that I can't tell you exactly who all is going
11 to be drawing what, but we will -- Amelia and I will attempt
12 to get our minds straight about how we want to move forward
13 with this and notify all of you pretty quickly.

14 I will tell you if you feel it is necessary for you to
15 have a transcript of the proceedings today to move forward
16 with a reply to what I direct about orders, I won't be
17 offended by that and we can make some arrangements to get that
18 done. But let's see first exactly what form my deliberations
19 take and then all can decide from there how you wish to
20 proceed in terms of preparing proposed orders.

21 Does that -- am I making sense?

22 MR. BREIT: Perfect.

23 THE COURT: Very good. Thanks very much for the
24 professionalism shown by both parties. This is a tough, tough
25 case in which there are no winners, but I have enormous

1 respect for all of the lawyers involved in that and I want to
2 make sure that those remarks include Ms. Bloodgood and Mr.
3 Kovach.

4 All right. There is a tough, tough dispute between these
5 parties in this litigation, but your lawyers have handled
6 theirselves in my dealings with you with a high degree of
7 professionalism that I respect on all sides and I thank you
8 for it very much. All right.

9 MR. BREIT: Thank you, Your Honor.

10 MS. MONOC: Thank you.

11 (WHEREUPON, the proceedings ended at 1:05 p.m.)

12

13 --- END REQUESTED TRANSCRIPT ---

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JOHN P. FREEMAN
2329 Wilmot Avenue
Columbia, South Carolina 29205-3164

803-254-4667 t
753-9870 f
jfreemanusc@gmail.com

April 22, 2014

The Honorable A. Victor Rawl, Sr.
2835 Preakness Stakes
Charleston, SC 29414

Re: Berkeley County School District

Dear Judge Rawl:

Thank you for calling on me to assist in analyzing a legal issue that needs to be determined by the Berkeley County Board of Education. The issue concerns the Board's obligation to indemnify an employee, Mrs. Amy Kovach, who has been indicted for an alleged violation of S.C. Code § 8-13-1346. In this regard, S.C. Code § 59-17-110 requires that:

In the event that any employee of any school district in South Carolina is prosecuted in any action, civil or criminal, or special proceeding in courts of this State, or of the United States, by reason of any act done or omitted in good faith in the course of his employment, it is made the duty of the school district, when requested in writing by any such public school employee, to appear and defend the action or proceeding in his behalf.

You have advised me that you have diligently investigated the conduct of Mrs. Kovach as outlined in the indictment and have concluded based on your investigation that her conduct constitutes an "act done or omitted in good faith in the course of [her] employment" as provided for in S.C. Code Ann. § 59-17-110. Based on that factual predicate, you have asked me to give you my legal opinion whether the Board is precluded from appearing and defending Mrs. Kovach under the statute simply by virtue of the fact that she has now been indicted.

As you know, I am a recognized expert in the field of entity governance, having taught Business Associations, Corporations, Agency and a host of related courses over a span of the 35 years during which I was a Professor of Law at USC Law School. I have lectured and testified as an expert many times about the duties, rights, and powers of entities and of their board members, officers, and agents. Among other professional activities, I served the South Carolina General Assembly as a reporter on the most recent South Carolina Corporate Code revision project. The

areas for which I was reporter included indemnification of corporate officers and directors. I have in the past advised entities and their board members about indemnification matters.

PROFESSIONAL OPINION

Based on my research and in light of your factual findings, it is my professional opinion that Mrs. Kovach's indictment does not preclude the board from appearing or defending the action in her behalf.

REASONS IN SUPPORT OF OPINION

A prosecutor's attempt to interfere with an indicted employee's indemnity rights smacks of impropriety. A case in point is the Second Circuit's ruling in United States v. Stein, 541 F.3d 130, 157 (2d Cir. 2008). The government there sought to bar accounting firm KPMG from providing legal fees to former employees indicted for tax fraud. That action was held unconstitutional as a deprivation of Sixth Amendment rights. The court explained:

The government conceded at oral argument that it is in the government's interest that every defendant receive the best possible representation he or she can obtain. A company that advances legal fees to employees may stymie prosecutors by affording culpable employees with high-quality representation. But if it is in the government's interest that every defendant receives the best possible representation, it cannot also be in the government's interest to leave defendants naked to their enemies.¹

Furthermore, South Carolina's public policy strongly favors indemnity being extended to employees who have acted within the scope of their employment and in good faith. Thus, under South Carolina corporate law, S.C. Code Ann. § 33-31-851(a), indemnification is allowed in

¹ Here is additional background concerning Stein from Charles D. Weisselberg & Su Li, *Big Law's Sixth Amendment: the Rise of Corporate White-collar Practices in Large U.S. Law Firms*, 53 Ariz. L. Rev. 1221, 1223 (2011):

On July 16, 2007, U.S. District Court Judge Lewis A. Kaplan entered a remarkable order. Federal prosecutors had investigated the giant accounting firm KPMG LLP ("KPMG") for allegedly marketing fraudulent tax shelters. The firm managed to avoid criminal charges, but 16 former partners and employees did not. In United States v. Stein, Judge Kaplan dismissed the indictment against 13 of the 16 individuals, finding that federal prosecutors had unconstitutionally induced KPMG to stop funding their individual defenses. As a result, although these defendants generally had substantial personal assets, they either lost their counsel of first choice (including lawyers from major law firms) or were financially unable to defend their cases as they would have had their legal expenses been entirely advanced or underwritten by KPMG. The court was incensed, calling this "intolerable in a society that holds itself out to the world as a paragon of justice." The Department of Justice . . . challenged the ruling. The defendants and their amici were represented in a closely watched appeal by some of the finest lawyers of the day, including counsel from the nation's largest law firms. On August 28, 2008, the U.S. Court of Appeals for the Second Circuit affirmed, finding that the government had violated the defendants' Sixth Amendment right to counsel.

some cases in favor even of criminally-convicted officers, trustees, employees, or agents. Indemnification is flatly prohibited only where there is an adjudication that the officer, trustee, employee, or agent is liable to the company or where an improper personal benefit was received by the person seeking indemnification. S.C. Code Ann. § 33-31-851(d). See S.C. Code § 33-31-851(c) ("The termination of a proceeding by . . . conviction . . . is not, of itself, determinative that the director did not meet the standard of conduct described in this section."). The corporate law "standard of conduct" set forth in Section 33-31-851(a) requires that the entity be able to conclude the officer, trustee, employee, or agent acted in good faith and reasonably believed his or her conduct was in the entity's best interest. That factual predicate for indemnification in the corporate setting is very similar to the one established by S.C. Code § 59-17-110.

I have reviewed the Attorney General's Opinion dated May 13, 1997, 1997 WL 323769 (S.C.A.G.). That Opinion holds:

[O]ur courts would conclude that a school district may not expend public funds to pay a school board member's or an employee's expenses of representation in criminal proceedings.

As you well know, an Attorney General's Opinion has no force of law. In this case it is wrong. Opinions rendered by the Attorney General do not trump statutory enactments. The 1997 Opinion relies on and reiterates the holding from a 1995 Opinion, that purported to find that "a political subdivision, such as a school district, is without authority to pay an employee's expenses of representation in a criminal proceeding." This opinion is obviously and egregiously wrong because it contradicts the plain language of, S.C. Code § 59-17-110. Again, the statute requires that:

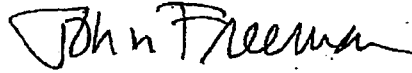
In the event that any employee of any school district in South Carolina is prosecuted in any action, civil or criminal, or special proceeding in courts of this State, or of the United States, by reason of any act done or omitted in good faith in the course of his employment, it is made the duty of the school district, when requested in writing by any such public school employee, to appear and defend the action or proceeding in his behalf.

In this case, an employee is being prosecuted in a criminal proceeding. You have determined, after making a reasonable investigation, that the employee acted in good faith and in the course of her employment. Under these circumstances, it is "the duty" of the school district to provide a defense to the proceeding on her behalf.

I hold the foregoing opinion concerning the Berkeley County Board of Education's duty to provide a defense on behalf of Mrs. Amy Kovach to a reasonable degree of professional certainty as an expert in the field of entity governance and employee indemnification rights.

I am rendering this legal opinion as a public service. No compensation, direct or indirect, in any form or fashion, has been or will be furnished to me in connection with this work.

Sincerely yours,

A handwritten signature in cursive script that reads "John P. Freeman". The signature is written in dark ink and is positioned above the printed name.

John P. Freeman



ALAN WILSON
ATTORNEY GENERAL

August 31, 2015

Jim Hayes, Chairman and all Board Members
Berkeley County School Board
c/o Kathy Mahoney, Esquire
John Reagle, Esquire
Childs and Halligan, PA
PO Box 11367
Columbia, SC 29205
Via Email and US Mail

Re: State v. Amy Kovach

Dear Chairman Hayes and all Board Members,

Through letter of former Board chairman Kent Murray, as well as through written and oral requests of counsel Mahoney and Reagle, this Office has received requests from the School District for assistance in understanding the evidence in the criminal case against Ms. Kovach. Accordingly, I have prepared the following factual basis that was set forth at the plea of Ms. Kovach this past Friday, August 28, 2015. I would also suggest that you perhaps should order a transcript of the pleadings, as Judge Young was careful to ensure that Ms. Kovach admitted she was guilty of the charged crimes on multiple occasions during the plea.

In return for not pressing the two forgery indictments (2014-1403, 2015-1074) and one perjury (2015-1075) indictment, Kovach pled to two charges. First, she pled to the global common law misconduct in office indictment (2015-1073). It is important to note that this global charge covers and incorporates all the conduct at issue as originally charged, including the not pressed indictments. It reads that Defendant "continuously used public resources and time to influence the outcome of a bond referendum, and covered up her actions with dishonesty". Misconduct in office can be a crime of moral turpitude, particularly where it involves misuse of public funds or dishonesty. Matter of Lee, 313 S.C. 142, 437 S.E.2d 85, 86 (1993) ["while the crimes of misconduct in office

Page 1 of 7

... are not always crimes of moral turpitude, they may be depending on the facts as particularized in the indictment"; Ops. S.C. Atty. Gen., June 27, 2005; March 16, 2004.

Second, Ms. Kovach pled to the original ethics indictment for use of government funds to influence an election (2014-286).

As I related at the plea, we have developed over the years a three part test for assessing whether a criminal prosecution is warranted in cases like this one. First, we look to see if the individual had knowledge of the law, as we are typically not going to charge people with Ethics offenses if they did not know or should not have known of the rules. Second, we look for intentional violations of the law, and third we look for some additional evidence of criminal intent – whether it be motive, or acts of lying, misrepresentation, and coverup. All of these are present in the instant case.

As to knowledge of the law, there was the "Referendum Do's and Don'ts" sheet prepared by the McNair firm. In an email dated 8/27/12, Kovach forwarded this very document and noted that there was a training on it with district staff in May of 2012. The sheet says employees are "strictly prohibited" from influencing an election, which it defines as "telling people how to vote – yes or no – or soliciting support or opposition". The sheet has a quick list of "don'ts" that says one cannot print things with government time, cannot send emails on county time, cannot use government computers or emails, cannot organize rallies, and generally cannot promote support for or against the referendum. As set forth at the plea, Ms. Kovach did those things.

Not only was Ms. Kovach familiar with the "Do's and Don'ts" sheet, but the emails discussed at the plea reflect statements such as wanting to avoid being called before the Ethics Commission in Columbia, and avoiding "crossing that very fickle line into advocacy". She also, as will be seen, told vendors on two occasions to remove references to the campaign on invoices because she could not pay them as written.

As to intentional violations of the law, there were first a number of miscellaneous matters detailed at the plea before getting to the meat of the case. There were multiple emails where Kovach was writing pro-referendum scripts for various community members. These occurred throughout August and September 2012. There were multiple emails showing where Kovach was having hundreds of yes 4 schools stickers and flyers printed on government printers and time (7/16/12, 8/22/12, 9/18/12, 9/18/12, 9/28/12). There was authorization for the storage of Yes 4 Schools yard signs at the district warehouse (9/17/12). There was an email where Kovach talked about putting a trailer or "portable" classroom on tour on Daniel Island because "fear of the dreaded trailer is the greatest motivator" (9/8/2012). And, she organized Yes 4 Schools rallies and used children as props (9/17/2012). Thus, the records reflect was not just an

isolated event here or there, but a continued and longstanding course of conduct over the months leading up to the referendum on Election Day in November 2012.

However, the meat of the case detailed at the plea addressed evidence of Ms. Kovach's conduct in arranging for a campaign video to be paid with district funds, as well as paying for campaign signs with district funds to be used in that video. First, though, was evidence of Ms. Kovach's motive that is present in her own emails. They reflect that she felt her own career and her Rodney's Thompson's career would be greatly advanced by winning the referendum. On 8/13/12, she wrote that Dr. Thompson was "very personally invested in this and knows the length of his term as superintendent very much depends on this referendum". And on 9/17/12 – right around the time of the video—she wrote that could not sleep, and that the referendum "is the ultimate test of my ability to succeed or fail".

Additionally, the emails detailed at the plea show Ms. Kovach was frustrated with the direction the campaign was going and the fact that she went from a level of control of the campaign to being marginalized by the campaign committee. On 7/20/12, she wrote that "campaign being run internally from my desk". On 8/9/12, she wrote that it was time for the committee to step up, and complains that everyone is willing to help but no one willing to lead the committee. On 8/27/12, she complained "finally the committee is taking a role". On 9/30/12, she complained about poor leadership from the chamber of commerce, and stated to Dr. Thompson "we can win this but must pull out every trick in the book, and I would walk through fire for you". Finally, on 10/8/12, she complained that campaign had marginalized her and Dr. Thompson, and had told them that it is not their campaign and they are to have no involvement. She further stated her opinion that the campaign's strategy is broken and was losing momentum fast. Finally, Ms. Kovach was aware the campaign was not exactly flush with cash.

It was in this vein that Ms. Kovach decided to make a campaign video with district funds consistent with her idea of how the campaign should be run. Ms. Kovach claimed in her statement to the press, and in her statement to SLED, that she was just making a district marketing video, that she was simply giving the campaign separate and unused excess "b-roll" footage to save time, and that the campaign asked for her to give them this excess footage. She also claimed in her statements that the signs from Nelson Printing were wanted by the campaign, and she prepared an invoice for reimbursement (as if that is somehow OK for the district to intentionally pay for campaign related items on the front end, reimbursement or not). However, the campaign workers denied they had anything to do with or knowledge of either, and Kovach's own emails and the investigation confirm this.

The evidence shows the whole process began on 9/12/12, when Kovach sends an email to Nelson Printing asking for foam core signs and a banner that are "going to

be held by students". That same day, she contacted Go To Team and videographer Jason Bennett about the project. Bennett then emailed a Go To Team staff member with his understanding of his discussion with Kovach, stating that "she is going to need two videos"; "one is a specific support the vote video and the other (using the same content) *will be a readit* used for general purposes" (emphasis added); and the "cost for project in total, which she has agreed to, will total \$4800, but split into two estimates of \$2400". Bennett explained that Kovach told him the reason the estimates needed to be split is for "budgetary permissions", as "[Kovach] is able to write checks up to \$2500 without going to committee".

Thus, the emails detailed at the plea show Kovach specifically and expressly asked Bennett to structure or "smurf" the transactions to avoid the oversight of the procurement code. Ms. Kovach told SLED and the public that she just gave the campaign extra unused and separate footage after the district video, but the email shows that the campaign video was the project, the district video was the extra, and the district video was going to be the same footage (as the district video was just a "readit" of the campaign video).

Emails show that on September 12, 2012, Kovach forwarded to Julie Hedrick a copy of the estimates from Jason Bennett, each for \$2400, and both which reflected that they were for a "support for the vote" video. Hedrick responded on 9/13/12, asking: "I thought as a school district we couldn't pay for anything towards the bond referendum?". Kovach then (by inference as interestingly it appears the original email has been deleted) got Bennett to resend the exact same estimates but with "support for the vote" removed from the description of the project. She emailed Hedrick "Julie, all fixed!". Indeed, the same thing happened on 10/3/12 with the invoice from Nelson Printing for the campaign signs paid for by the district - Kovach emailed them and asks them to change their invoice it from "yes for schools" to "foam core signs", as she cannot pay it as written.

The emails and records discussed at the plea show Kovach then paid Go To Team \$2500 on 9/19/12, and then arranged to get school children to be used in the political advertisement she was producing. Indeed, the only difference between campaign and the subsequently created district video is the campaign video has an additional 44 seconds of Berkeley County schoolchildren told to yell "yes 4 schools", or holding a "yes 4 schools" banner. Other than that the videos are exactly the same, with the same footage and music. Stills from the campaign video were made and introduced as a court's exhibit at the plea hearing.

However, under the District's procurement code, three bids and written quotes are required for purchases over \$2500 from three qualified sources of supply, and the award must be made to the lowest qualified bidder. On 9/25/12, Kovach attempts to tell

the finance department that she does not need to comply because she had the estimates split, but Abrahamson responded that she cannot avoid the requirements of the code like that. Brantley Thomas tells Kovach to "hold off on any commitments" until she got three bids, and then pick the lowest. However, the records show that at this point Kovach has already paid for half of the project, and the video is already shot.

The records, evidence, and emails show Kovach then obtained sham estimates from vendors who had no idea they are wasting their time because the project has already occurred. On 9/28/12 she requests estimates from two vendors for the project. That same day she gets the campaign video from Bennett, telling him that it makes her "heart sing", but asking him to remove the district logo from the "yes 4 schools version", as she does want to be "accused of advocating". On 9/27/12 she requests an estimate from a third vendor. Also, even though she was told by finance that she could not "smurf" transactions, she asks Bennett to hold off running the second \$2500 until after October 1. On 10/1/12, the emails show she told Bennett she is ready to launch the campaign video "for the campaign internally and externally", and verified that he can run the \$2500 payment first, which is her maximum, and then \$300 after that one clears. On 10/8/12 payment of \$2500 clears, and the final \$300 runs on 10/9/12.

On 10/5/13 Kovach received an estimate from a vendor who again does not know its time is being wasted. On 10/9/12 there is a Board meeting where a board member, Donna Marino, first raises issues about a video. Two days later, Kovach is trying to get a final "sham" quote -- telling a vendor falsely that she needs an answer quickly because she has a meeting set up soon on the project. She receives a final quote that day.

Kovach had already completed the video and paid Go To Team in full at this point, but could not turn in the Go To Team estimates with the necessary paperwork as they were split into two bills of \$2400 as the records reflect she was told she cannot do. Plus, the records show the total cost ended up being \$5300, not \$4800 as reflected in the split estimates. Thus, Kovach manufactured a false and fictitious estimate to submit to finance for compliance with the procurement code. The estimate submitted for \$5300, found within the District's records on the project, apparently was made by typing in the text in the description in Word or Outlook, printing it, cutting it out and taping it over description in one of the real estimates, and then taping a blank sheet over the inconsistent \$2400 amount at the bottom to cover it up. The text has typos not found in the original two estimates, referring to the nonsensical "post production/editon" and "high definition camera audio gear" (as opposed to "post production/editing" and "high definition camera and audio gear"). It is also a different font from the rest of the document. The doctored document was then apparently "washed" through a copier, as evidenced by the degrading of the Go To Team logo. Regardless, Go To Team's accounting software used to create the real estimate could not have created the forged

one under any circumstances, and Go To Team staff specifically stated the estimate could not have come from them. The evidence reflects that Abrahamson stated the forged document would have to have come from Kovach or Hedrick, and Hedrick stated it came from Kovach. And of course, Kovach is the only one with the motive and need to turn it in, to cover up violations of the ethics act and the procurement code reflected in the record.

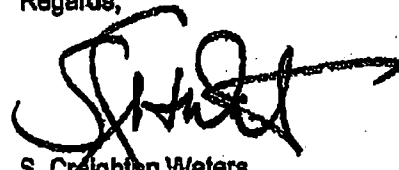
As to the Invoice from Nelson Printing, Kovach was interviewed by SLED on November 22, 2015, during which she stated she had prepared a reimbursement invoice on October 2, 2012 for the campaign to pay for the campaign signs (which, as noted before, were used in the illicit campaign video). However, a review of the district's servers show the document does not show up on the system until November 25, 2013 – three days after SLED interview. Additionally, backups of Kovach's network area show that the document was not present in on October 17, 2012, but was present in February 2014. Additionally, no one else could ever recall seeing this document until its appearance after the SLED interview. This is the factual basis for the second false document created by Kovach to cover up her intentional violations of the ethics act.

Additionally, on November 22, 2013, Kovach gave SLED a detailed timeline she wrote about the video, in which she claimed that she started getting estimates before the shoot, that she picked the lowest of the estimates, that the campaign had asked for the video, that the campaign was just getting excess unused footage from a district shoot, that the videographer was instructed to use separate footage, and that she herself verified the two videos were entirely separate. None of these statements is true based on the emails, evidence, and records detailed at the plea.

This is some of the evidence set forth at the plea as the factual basis showing that the Kovach knew the law's requirements, but knowingly and intentionally broke the law. Her emails show she knew a successful referendum was good for her career and was frustrated with the campaign committee's direction, and she knowingly used government resources to advocate for Yes4Schools, and lied, misrepresented, and fabricated during and after to cover it up. After hearing the factual basis, the judge himself stated that Kovach's actions showed "lies, lies, lies", and that at every turn Ms. Kovach chose deceit over the truth. Moreover, as the case continued to be investigated, we uncovered evidence in other instances where it appears Ms. Kovach altered or created invoices or estimates outside of the bond referendum. Most of the evidence in the case comes from the District's own email and financial records.

Thank you for your attention to this matter, and please do not hesitate to contact me with any questions or concerns.

Regards,



S. Creighton Waters
Assistant Deputy Attorney General



12582

Berkeley County Board of Education

229 E. Main Street, P.O. Box 608 - Moncks Corner, South Carolina 29461 - 843-899-8600

September 16, 2015

Personal and Confidential

Mrs. Amy Kovach
c/o Nancy Bloodgood, Esq.
895 Island Park Drive, Suite 202
Charleston, SC 29492

Dear Mrs. Kovach:

This is to advise you that at its meeting on September 8, 2015, and after review of all information you submitted to the Berkeley County Board of Education ("Board"), the Board voted to terminate your employment with the Berkeley County School District ("District") for cause effective September 8, 2015. Additionally, the Board voted to deny your grievance. As authorized by the Board in its motion to terminate your employment, this letter sets forth the basis for the Board's decision.

On April 21, 2015, you entered into a contract with the Board for the 2015-2016 school year for the position of Director of Communications and Community Relations for the District. (Attachment 1) Critical to serving as Director of Communications and Community Relations are honesty and credibility- both internally with District staff and the Board as well as externally with the community and the District's stakeholders.

At that time, you were under indictment for forgery, among other accusations, to which you had entered a plea of not guilty. Subsequently, the Board took notice of your guilty plea entered in the Circuit Court of South Carolina on August 28, 2015 to indictment 2015-1073. In pleading guilty to this indictment, you admitted that you "continuously used public resources and time to influence the outcome of a bond referendum, and covered up [your] actions with dishonesty." Under Board policy GCN, dishonesty is stated as a ground for immediate dismissal. (Attachment 2)

After your guilty plea to misconduct in office involving dishonesty, the District's Interim Superintendent met with you on September 2, 2015 for at least an hour. During the conference, the Interim Superintendent discussed with you that dishonesty in connection with your employment with the District constitutes grounds for immediate dismissal, and he offered you the opportunity to explain your actions, which you did. Following the Interim Superintendent's meeting with you, he issued a written recommendation to the Board that you be terminated from your employment with the District. (Attachment 3)

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BLOODGOOD 000004

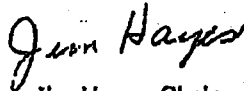
Thereafter, the matter of the termination of your employment came before the Board at its regular meeting on September 8, 2015. Additionally, you filed a grievance contesting the Interim Superintendent's recommendation on September 8, 2015. (Attachment 4) At its meeting on September 8, 2015, the Board considered the grievance materials submitted by your attorney, Nancy Bloodgood, Esq., the recommendation of termination letter submitted by the Interim Superintendent, and took notice of your guilty plea admitting misconduct in office and covering up your actions with dishonesty. Following the Board's consideration in executive session of whether termination of your employment was appropriate under the circumstances, the Board voted 8-0 in public session to terminate your employment for cause in light of your admitted dishonesty.

The Board understands that you now contend you did not act with dishonesty. However, a plea of guilty is a confession of guilt, and as long as a defendant has entered a plea freely and voluntarily, an admission of guilt (in this case to acting with dishonesty) fully and fairly litigates the matter. Accordingly, a defendant who enters a guilty plea may be collaterally estopped and precluded from re-trying the same issue in a subsequent civil proceeding. *Zurcher v. Bilton*, 666 S.E. 2d 224 (S.C. 2008).

You have also asserted that your employment contract does not provide for termination. The Board disagrees. First, your contract states: "[t]he employee also agrees to comply with all district policies, rules, and regulations." Policy GCN plainly provides for termination and dismissal from employment based on dishonesty, in addition to other acts of serious misconduct as determined by the administration. Moreover, state law provides that any employment contract for a definite term may be terminated for just cause. *Shivers v. Harland Co.*, 423 S.E. 2d 105 (S.C. 1992). Misconduct in office involving public funds and dishonesty can be a crime of moral turpitude constituting just cause for termination. *Matter of Lee*, 437 S.E. 2d 85 (S.C. 1993).

Accordingly, in terminating your employment for cause the Board concluded: you acted in connection with your job responsibilities with dishonesty; honesty is an important aspect of your position as Director of Communications and Community Relations; and your contract is immediately terminable for cause based on dishonesty. The Board regrets that its employment relationship with you has ended in this unfortunate manner, and wishes you success as you move forward.

Sincerely yours,



Jim Hayes, Chair
Berkeley County Board of Education

Encl.

001366

BLOODGOOD 000005

**BREIT DRESCHER
IMPREVENTO**

November 25, 2015

Nancy Bloodgood, Esq.
Foster Law Firm, LLC
895 Island Park Drive, Suite 202
Charleston, SC 29492

Re: Amy Kovach v. The Berkeley County School District, et al
Case No. 2015-CP-8-2380
Your File No. 12586

Dear Ms. Bloodgood:

I am in receipt of your assistant's email correspondence to my client, Josh Whitley, to which she attached a proposed Stipulated Order of Dismissal for my signature. In your draft order, you propose that the dismissal be without prejudice and each party bear their own expenses. For obvious reasons, I cannot recommend that my client sign your proposed order.

At the outset, I am surprised that after filing a clearly frivolous lawsuit mirroring an untrue affidavit filed with the Board of Education that has now placed your client in criminal jeopardy (I understand Judge Young has signed a Rule to Show Cause Order to be heard on January 4, 2016), that you would have your assistant send this correspondence without any explanation or even so much as a phone call from you, especially considering the patently false allegations you make in the Complaint. The ethics allegation is particularly bothersome, as (a) it was a misapplication of the ethics rules, (b) it was obviously improperly used as leverage in a civil complaint, and (c) you immediately violated the same rule you complain of in the first post-filing newspaper article by asserting that you had read the criminal sentencing transcript. In other words, the least you could have done was to call me or my client, admit your error, and explain why you, as an officer of the court, filed this lawsuit. Had that occurred, I believe we would have made quick strides to dismiss this case.

As you know, our motion for sanctions arising out of the filing of this suit remains pending. My firm and my client's firm have spent significant hours and resources defending against the spurious factual allegations and claims in your complaint. We believe you had a minimum obligation, before filing this action, to read the sentencing hearing transcript. Further, we understand that neither attorney Joe Griffith nor Jerry Theos approved of your filing of this action and, indeed, advised against it. My client has an outstanding reputation as an attorney and elected official that you tarnished by

Nancy Bloodgood
November 25, 2015
Page 2

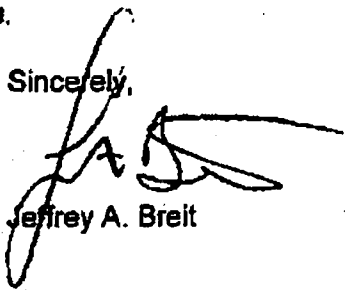
making false allegations in a complaint that you knew would generate significant press coverage. As an officer of the court, you cannot simply file a complaint containing inflammatory allegations that have no evidentiary support and then expect the Defendants to stipulate to a dismissal without the imposition of sanctions. You are responsible for the consequences of filing this frivolous action, which includes the payment of our attorneys' fees.

The dismissal of this action is clearly in your client's best interest, and we are willing to stipulate, with prejudice, to the same, accompanied by the payment of attorneys' fees. It is apparent that there is a significant potential conflict of interest between you and your client which you will need to discuss with her. Your firm cannot make a decision to reject our demand for attorneys' fees without explaining in full to your client that your firm is choosing its best interests over hers.

We request a personal conference with your firm's decision makers to discuss these issues immediately. Please advise within 24 hours whether a representative from your firm will meet with me to discuss this. Please also advise as to whether you have placed your law firm's carrier on notice of our motion for sanctions or whether you or your firm plans to pay the fees.

I look forward to hearing from you.

Sincerely,



Jeffrey A. Breit

JAB/elp



SMYTH WHITLEY, LLC
ATTORNEYS AT LAW

February 8, 2016

VIA EMAIL

Nancy Bloodgood, Esquire
895 Island Park Drive, Suite 202
Daniel Island, SC 29492

RE: Amy Kovach v. The Berkeley County School District, Joshua S. Whitley, Terry Hardesty, Scott Marino, Karen Whitley in her individual capacity, and the Berkeley County Republican Party
Civil Action No.: 2015-CP-08-2380

Dear Ms. Bloodgood:

I was surprised not to see you in court this morning at the criminal contempt hearing of your client Amy Kovach. Ms. Kovach's criminal counsel represented to the Court as a condition of today's contempt hearing that Ms. Kovach had dismissed, **with prejudice**, all Defendants. Of course, this is not true.

The Court appeared emphatic that that condition be met as part of the resolution of her contempt hearing. To date, you have never offered to dismiss me with prejudice, and you have failed to even reply to my offer regarding the same. Mr. McCune, Ms. Kovach's criminal counsel, advised me immediately afterward in the presence of the Assistant Attorney General that Ms. Kovach had unequivocally **directed** you to dismiss all her claims against all parties with prejudice. In fact, Ms. Kovach swore under oath today regarding the same. My expectation is for you to dismiss Kovach's causes of actions with prejudice by the close of business today.

If I have not heard from you at the close of business today, I will contact the Assistant Attorney General, so that he can immediately take it up with the Court. This directive for you to dismiss Kovach's causes of action with prejudice was apparently given months ago and your failure to do so has resulted in additional attorney fees being incurred.

Sincerely,

Joshua S. Whitley
JSW/mlg

cc: Wm. Howell Morrison, Esquire
Jeffrey Breit, Esquire
Don McCune, Esquire

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BREIT DRESCHER
IMPREVENTO

January 11, 2017

Chief Justice Jean Hofer Toal
The Supreme Court of South Carolina
1231 Gervais Street
Columbia, SC 29201

RE: Amy Kovach v. Joshua S. Whitley and Karen Whitley in her individual capacity
Civil Action No.: 2015-CP-08-2380
SW File No.: 20030.0001

Dear Chief Justice Toal:

Per this Court's directive, the following is submitted on the issue of Defendant Joshua S. Whitley's attorneys segregating their billing entries.

First, we object to the segregation of the fees, as this issue was decided in Ex Parte Gregory, 378 S.C. 430, 663 S.E.2d at 52 (2008), wherein the court held that the FCPSA "clearly allows respondent to recover the fees and costs that were incurred in seeking sanctions pursuant to the Act."

Further, Ms. Bloodgood refused to properly dismiss my client, despite Ms. Kovach's representation to Judge Jeffrey Young that all defendants had been dismissed, with prejudice, with no further conditions. *See Exhibit A, Transcript of Contempt Hearing (2/8/16)*. Of course, this was not true. Moreover, Ms. Kovach confirmed, under oath, that the lawsuit had been dismissed with prejudice. *Id.* In point of fact, my client had never been dismissed or had an offer of dismissal with prejudice, and Ms. Bloodgood and Ms. Kovach wholly ignored a reasonable settlement in November of 2015 regarding dismissal that we offered. *See Exhibit B, Breit Letter to Bloodgood*. She never even replied to the offer, much less moved to dismiss my client with prejudice, as Ms. Kovach told Judge Young in February of 2016.

In fact, immediately following the February contempt hearing, we requested that Ms Bloodgood dismiss my client without further delay. *See Exhibit B, Letter to Bloodgood (February 8, 2016)*. She declined and again would not agree to a dismissal with prejudice, as she wanted a condition that we would pay our own attorneys' fees and costs (i.e., no Rule 11 sanctions). Of course, that condition was foreclosed by the representation at the contempt hearing. In fact, Mr. Savage even advised the court that my client's counter claims survived even with their dismissal with prejudice, because the lawsuit was inconsistent with the facts admitted to at the guilty plea hearing. Thus, to segregate these fees, when my client still has not been dismissed with prejudice, is

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improper, especially in light of Ms. Kovach's under oath false representations that the lawsuit had been dismissed.

Nevertheless, to the extent this Court chooses to segregate the billing, February 10, 2016, is likely the most appropriate starting demarcation date, as it is the date of final communication with Ms. Bloodgood on dismissing Mr. Whitley with prejudice following the February 8th hearing where Ms. Kovach advised the criminal court that the case had been dismissed with prejudice. Based on that date, the following would be the total number of hours expended in attempting to have this matter dismissed:

From October 26, 2015 through February 9, 2016:

Jeffrey Breit: 37.5 Hours

Joshua S. Whitley: 56.10 Hours

Billie Leeth: 110.5 Hours

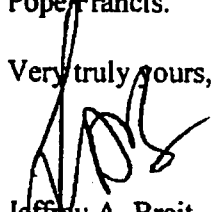
Total: 204.10 Hours

Thus, the hours expended multiplied by the reasonable rate of \$300 per hour equals \$61,230.00. Still, even after February 10, 2016, at least 50 percent of our time should be deemed attributable to the defense of the case, as the case is still pending, and Ms. Kovach and Ms. Bloodgood continue to take the position that they have alleged a legally cognizable claim of civil conspiracy against my client in their Complaint. With that amount of segregation, Ms. Kovach and Ms. Bloodgood would owe \$93,090.00.

Accordingly, we ask the Court to deny the Plaintiff and her counsel's motion to reconsider and to award sanctions appropriately and outlined herein and our previous filings.

We look forward to seeing you next Monday and extend our congratulations on yesterday's announcement regarding the recognition of your service by His Holy Father Pope Francis.

Very truly yours,



Jeffrey A. Breit

JEB/mlg
Enclosures

cc: Nancy Bloodgood, Esquire
Howell Morrison, Esquire
M. Dawes Cook, Jr., Esquire
Kathleen Fowler Monoc, Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
In the Court of Common Pleas for the Ninth Circuit

Jean H. Toal, Circuit Court Judge

Appellate Case No.: 2018-000467

RECEIVED
AUG 15 2018
SC Court of Appeals

Amy Kovach Plaintiff

v.

Joshua S. Whitley and Karen Whitley, in her Individual Capacity, ... Respondents

And

Joshua S. Whitley Defendant/Counterclaimant,

v.

Amy Kovach Plaintiff/Counterclaim Defendant,

And

Joshua S. Whitley Defendant/Third-Party Plaintiff,

v.

Rodney Thompson Third-Party Defendant,

Of Whom Amy Kovach is the Appellant.

CERTIFICATE OF COUNSEL

I hereby certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

BARNWELL WHALEY
PATTERSON & HELMS, LLC

By: M. Dawes Cooke, Jr.
M. Dawes Cooke, Jr. (S.C. Bar No. 1376)
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Charleston, SC 29401
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