

IN THE SUPREME COURT OF FLORIDA

Supreme Court Case No.: SC19-1545

CATHERINE ELIZABETH CZYZ,

Respondent/Appellant,

vs.

THE FLORIDA BAR ASSOCIATION,

Complainant/Appellee.

**APPENDIX (PART II) TO RESPONDENT'S/APPELLANT'S
AMENDED MOTION TO VACATE FINAL JUDGMENT
OF JANUARY 6, 2022**

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APPENDIX (PART II)

1. EXHIBIT "G", DEPOSITION OF JASON L. GUNTER, ESQ.

RESPECTFULLY SUBMITTED,

/s/ Catherine E. Czyz

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I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-courts on January 30, 2023

to:

Shanee L. Hinson, Esq. and

Tiffany Roddenberry, Esq. and

Kevin Cox, Esq. and/or the attorneys listed as counsel of record at this time.

By: ___/s/ *Catherine E. Czyz*_____

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EXHIBIT “G”

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1 Thereupon,

2 JASON L. GUNTER,

3 Deponent, having first been duly sworn, upon his oath,
4 testified as follows:

5 THE WITNESS: I do.

6 DIRECT EXAMINATION

7 BY MR. MERVINE:

8 Q Good morning. Good morning.

9 A Good morning.

10 Q Please state your name for the record.

11 A Jason Gunter.

12 Q And, Mr. Gunter, you were asked to produce
13 documents at this deposition in the Notice of
14 Deposition. Did you produce those documents today?

15 A Yes, I did.

16 Q Okay. May I see the documents, sir?

17 A (Indicating.)

18 Q Thank you very much, sir.

19 A I provided a docket of the pleadings.
20 I didn't print all of them out. I printed out the main
21 ones.

22 Q Okay. Very nice. Thank you, sir. Okay.

23 MR. ATWOOD: Mr. Mervine, if you could just
24 put on the record what your -- you haven't entered
25 an appearance in the matter, so if you could

1 represent what your status is and -- in the case
2 here, I'd appreciate that.

3 MR. MERVINE: Certainly, Mr. Atwood. Let this
4 be a notice to the parties and the Court that I'm
5 entering an appearance -- a limited appearance to
6 appear today on behalf of The Czyz Law Firm and
7 Ms. Czyz to represent her during this deposition.
8 The limited appearance will terminate at the end of
9 the deposition, and there may be subsequent
10 employment; but at this time it will terminate at
11 the end of the deposition, and Ms. Czyz has been
12 notified of the same.

13 BY MR. MERVINE:

14 Q Okay. Mr. Gunter, have you been deposed
15 before?

16 A Yes.

17 Q How many times?

18 A Twice.

19 Q In your entire life?

20 A Yes. In my entire life? I think three times
21 or maybe -- maybe four, give or take.

22 Q And how many of those depositions were in
23 Title VII cases?

24 A None.

25 Q How many of those depositions were in

1 malpractice cases?

2 A None.

3 Q So this is your first time being deposed for a
4 malpractice case?

5 A Yes.

6 Q Have you testified in malpractice cases in the
7 past?

8 A No.

9 Q So this would be your first time testifying in
10 a malpractice case?

11 A Yes.

12 Q Have you testified -- or excuse me. Have you
13 represented clients in Title VII cases?

14 A Yes.

15 Q How many clients have you represented in
16 Title VII cases?

17 A A hundred plus.

18 Q And when is the last time you represented one
19 of those clients?

20 A I have ongoing, as we speak currently.

21 Q Okay. How many times have you been -- have
22 you been selected as an expert witness in a malpractice
23 case?

24 A None.

25 Q Okay. And how many times have you served as

1 an expert witness in Title VII cases?

2 A None.

3 Q So this would be your first time serving as an
4 expert witness in a Title VII case?

5 A I consider this to be a malpractice case, not
6 a Title VII case, so --

7 Q Okay.

8 A But to answer your question, this would be my
9 first time serving as an expert witness in a case of
10 this nature.

11 Q So you have no experience testifying as an
12 expert -- excuse me.

13 You have no experience testifying as an expert
14 witness in malpractice -- legal malpractice cases?

15 A No.

16 Q Have you been paid for your testimony in
17 this -- in this case?

18 A No.

19 Q Do you anticipate being paid?

20 A No.

21 Q Do you anticipate receiving a referral fee?

22 A No.

23 Q Did you refer Ms. -- how do we pronounce her
24 name?

25 MS. CZYZ: Neitzelt.

1 Q Did you refer Mr. Neitzelt to Mr. Atwood or
2 the Henderson law firm?

3 A No. I believe she had already somehow
4 contacted him independently.

5 Q Okay. What is your current occupation,
6 Mr. Gunter?

7 A I'm a lawyer.

8 Q And what area of practices -- or excuse me.
9 What areas of law do you practice?

10 A Labor and employment, and personal injury.

11 Q And what percentage of your practice is
12 personal injury?

13 A I'm going to guesstimate. I think -- it
14 depends on you -- whether you quantify it as dollars or
15 amount, but somewhere between 10 and 30 percent. I'm
16 not really sure.

17 Q Okay. Ten and 30 percent of your practice is
18 personal injury cases?

19 A Give or take. I think I put something on my
20 expert interrogatories. I'll defer to that, or I saw
21 something -- it's about -- it's about right. It varies.

22 Q And that is a number of cases, right, not
23 dollar amount?

24 A I haven't really quantified it, to be honest
25 with you.

1 Q Okay. So it's just a rough estimate, not
2 sure?

3 A Right.

4 Q What does the other 70 percent of your
5 practice consist of?

6 A Labor and employment.

7 Q Where did you go to high school, Mr. Gunter?

8 A Cape Coral High School.

9 Q Okay. Did you -- how about undergraduate
10 studies, where were those done at?

11 A Barry University.

12 Q And what was your undergraduate degree in?

13 A Bachelor in Professional Studies.

14 Q I'm sorry, in?

15 A Bachelor in Professional Studies.

16 Q Oh, Professional Studies.

17 Okay. Did you graduate with honors or have
18 any special academic notoriety?

19 A Not in undergrad, no.

20 Q Okay. And how about graduate studies, have
21 you engaged in any graduate studies?

22 A Law school.

23 Q Okay. Any other graduate studies?

24 A No.

25 Q Okay. Which school did you go to?

1 A Nova.

2 Q Okay. And how long ago did you go there?

3 A I graduated in 1998, December, so I -- I took
4 the bar -- I believe it was in April of -- actually,
5 I took the bar in April of '98, and I believe
6 I graduated in December of '97.

7 Q Okay. And did you graduate with honors?

8 A I graduated magna cum laude.

9 Q And where -- and were you on any law reviews?

10 A Yes. I was the editor of the law review.

11 Q Okay. How about -- were you on any trial team
12 or moot court?

13 A I received the highest grade for both pretrial
14 and for trial practice, book award, and I took both
15 those classes.

16 Q Okay. Were you in -- have you ever been
17 admitted to any legal honor society?

18 A I received the Florida Bar Scholarship for
19 Labor and Employment Law. Other than that -- and law
20 review, that was --

21 Q And when did you receive that scholarship from
22 the Florida Bar for Labor and Employment Law?

23 A Upon graduating from law school, for academic
24 excellence in that area.

25 Q Okay. Are you currently a member of any civic

1 organizations?

2 A Not that I can think of.

3 Q Is that a candid answer, sir?

4 A What do you mean, "civic organizations"?

5 Q Fraternal orders, clubs, associations, you
6 know, Lions Club, Freemasons, anything like that?

7 A Not any of those that you mentioned. I'm a
8 member of the Florida Bar and the Lee County Bar.
9 That's all that I can think of.

10 Q And those bar associations, are you -- the
11 local bar associations, are you a member of those?

12 A Yes.

13 Q Okay. Any other clubs or associations?

14 A Not in the way that -- you've given those
15 examples, that I can think of.

16 Q Well, tell me. What way -- what way do you
17 mean, then?

18 A I did. I'm just answering those examples.
19 I'm not -- there's no -- there's no clubs or
20 organizations that I can think of other than the local
21 bar associations that I'm really involved in.

22 Q Okay. Were any of the parties in this case,
23 including the plaintiff or the defendant, in your social
24 networks prior to this action being filed?

25 A No.

1 Q And do you understand what I mean by "social
2 networks"?

3 A Did I know Ms. Neitzelt or Ms. Czyz?

4 Q Okay, yeah. Or how about anyone in their
5 immediate families?

6 A No, not that I know of.

7 Q How about Ms. Neitzelt's current husband?

8 A No.

9 Q How about her current husband's father?

10 A No.

11 Q Okay. Are you aware of Ms. Czyz's --
12 Ms. Catherine Czyz's credentials?

13 A Somewhat.

14 Q Okay. What do you know -- what do you know
15 about her credentials as of today?

16 A She's a member of the Florida Bar, she's been
17 practicing for some time, and that she's from over on
18 the east coast. That's really all that I know.

19 Q And when you say, "practicing for some time,"
20 how long -- to your knowledge, today, how long has she
21 been practicing?

22 A I'm not sure, as we sit here. I looked at one
23 point in time, but --

24 Q You're unaware of the extent of Ms. Czyz's
25 experience?

1 A As we sit here today -- I looked at one point
2 in time, I believe, probably through her website or some
3 other sources, but as we sit here today specifically,
4 no.

5 Q Okay. Do you know where Ms. Czyz studied law?

6 A No.

7 Q Do you know where she studied her
8 undergraduate studies?

9 A Not as we sit here today, no.

10 Q Okay. Are you aware that Ms. Czyz studied at
11 an Ivy League school?

12 A No.

13 Q Okay. After you graduated law school, what
14 was your first job?

15 A I worked for -- it was called Alley &
16 Alley/Ford & Harrison. It's now called Ford & Harrison.
17 It's a labor and employment defense firm.

18 Q And how long did you work there?

19 A I worked there for about a year before
20 starting my own firm.

21 Q Okay. And what year did you start your --
22 your own firm?

23 A I want to say officially in about 2000.

24 Q And why did you leave that first job?

25 A To start my own firm.

1 Q Okay. What was the reason for your
2 separation? Was it voluntary? Involuntary?

3 A Voluntary, to start my own firm.

4 Q Did you leave -- you left on good terms?

5 A Yes.

6 Q Okay. What's the name of your current law
7 firm?

8 A The name of my current law firm is Jason L.
9 Gunter, P.A., and does business as Gunter Firm.

10 Q And was that the firm you opened after your
11 first job?

12 A Similar. It was, like, the Law Office of
13 Jason L. Gunter, P.A. I had partners in between, but it
14 was very similar.

15 Q And what were the names of those -- how many
16 partners have you had?

17 A Only two. There was -- I had a law firm
18 called Webb, Gunter & Scarmozzino.

19 Q Okay. And what were the full names of your
20 partners?

21 A Dennis Webb and Jim Scarmozzino.

22 Q And, to your knowledge, did either of those
23 people -- excuse me.

24 What year was that, that you worked with those
25 gentlemen?

1 A Well, we were -- we were partners. That
2 partnership was probably, I'm guesstimating, around 2007
3 to 2010, give or take.

4 Q So 2007, 2010, and then you changed the
5 organization, just the way the business was organized,
6 to a P.A. in around 2010?

7 A No. I decided that I wanted to go back and
8 open up my own firm --

9 Q Oh, okay.

10 A -- as a solo again.

11 Q Okay. And are you board certified in
12 anything?

13 A Labor and employment law.

14 Q Okay. And when did you receive that
15 certification?

16 A I don't know. It's been years.

17 Q Would it be fair to say that you received it
18 around 2004?

19 A Probably.

20 Q Okay. Is there any --

21 A That's what the records show. It's been
22 years, though. One of the first groups, I think.

23 Q And do certifications require any
24 recertification?

25 A Yes.

1 Q Okay. How often do you have to recertify?

2 A Every five years.

3 Q Okay. When's the last time that you did your
4 recertification?

5 A Relatively recent. I don't know when, but it
6 was relatively recent.

7 Q Okay. And what is involved in the
8 certification process?

9 A Certification process involves -- first of
10 all, you have to demonstrate substantial involvement in
11 labor and employment law. So it involves an analysis of
12 all of your past work to demonstrate substantial
13 involvement, and then it involves a peer review process,
14 and then it involves an examination.

15 Q And does that examination cover all of the
16 nuances of Title VII practice?

17 A I don't know about all of it. It covers
18 discrimination.

19 Q Okay. And I think we established, just so I'm
20 clear and the record's clear, that you have no
21 experience as a legal malpractice attorney, correct?

22 A As a legal malpractice expert, your question
23 was.

24 Q Okay. Well, do you have any experience as a
25 legal malpractice attorney?

1 A Yes.

2 Q Okay. And how many cases have you undertaken
3 as a legal malpractice attorney?

4 A One. One, that I can think of.

5 Q And when was that?

6 A Eight, ten years ago, I'm guessing.

7 Q And what was the underlying cause of action?

8 A Whistleblower.

9 Q Okay. And I think you said about 70 percent
10 of your practice now is Title VII employment law,
11 correct?

12 A No. It's employment law, labor and employment
13 law.

14 Q Okay.

15 A And I don't know whether it's exactly
16 70 percent. It's that percentage that is not personal
17 injury, whatever that percentage is.

18 Q Okay.

19 A A substantial amount of my practice that -- is
20 labor and employment law, as we sit here today.

21 Q Okay. And do you have between one and five
22 labor and employment cases in your practice currently,
23 active cases?

24 A Oh, yeah.

25 Q Okay. Do you know the exact number of cases

1 that you have?

2 A Not as we sit here today, no, I do not, but
3 it's many.

4 Q Okay. On your website you hold yourself out
5 as almost exclusively personal injury.

6 A There's -- there's actually two -- there's
7 actually another link at the top. There is personal
8 injury, and if you click at the top there's a sister
9 cite, and that's the employment law aspect.

10 Q Okay. All right. Thank you for clarifying
11 that.

12 A Sure.

13 Q Do you recall when you filed your last
14 Title VII case for your clients?

15 A Filed? No. And don't forget, you know, that
16 there's a state law, Chapter 760, which is comparative,
17 so usually -- no, but I don't -- as we sit here today,
18 I don't recall the --

19 Q Okay.

20 A -- when I last filed one.

21 Q And I guess -- I mean, we don't know how many
22 Title VII cases you've got, but what percentage would
23 you say are pending in federal court versus state court?

24 A I don't know. When you say, "Title VII," I'm
25 just going to assume, like, discrimination, just all

1 types, if that's okay.

2 Q Okay. Could you find out how many Title VII
3 cases that you're currently working on?

4 A I suppose, yeah.

5 Q Certainly. I mean, as an attorney of record
6 in those cases, you clearly have the files, right?

7 A Well, yeah, but, I mean, you're talking about
8 the ones that are filed, you or I could go on and look
9 and see the nature of those claims.

10 Q Sure. You could find out how many active
11 files you have in employment law, correct?

12 A Yes.

13 Q How long would it take you to find out?

14 A Not long.

15 Q Okay. And are you willing to provide that
16 information to Ms. Czyz within three days after this
17 deposition?

18 A Well, it -- I would --

19 MR. ATWOOD: Objection.

20 MR. MERVINE: Sure.

21 THE WITNESS: I would prefer that that all
22 just go through proper requests for production and
23 give me time to object or not, if that's okay --

24 MR. MERVINE: Certainly. Thank you, sir.

25 THE WITNESS: -- depending on how it's

1 requested and what is requested.

2 MR. MERVINE: And, Mr. Atwood, did you want to
3 add something to that objection? I mean, I know
4 you don't have to, but did you want to -- just form
5 of the question, pretty much?

6 MR. ATWOOD: No. It's just inappropriate to
7 ask for production of documents in a deposition.
8 If she wants the documents, then she can -- then
9 she can -- then she can do it.

10 MR. MERVINE: Sure, but if they -- if they
11 exist and we don't have them, we can find out if
12 they exist, can't we?

13 MR. ATWOOD: Certainly, you can ask questions
14 in a deposition.

15 MR. MERVINE: Thank you, sir.

16 BY MR. MERVINE:

17 Q And I'm sorry if that was -- if that felt
18 inappropriate. Please don't take my demeanor to be
19 personal or anything, because, you know, it's not where
20 I'm going with anything, guys.

21 Let's see here. Mr. Gunter, what counties
22 does your practice operate in?

23 A Well, my office is in Lee County, and the bulk
24 of our work comes from Lee County and Collier County,
25 with some in surrounding areas.

1 Q Okay. And do you have active cases in several
2 Florida counties?

3 A Well, I -- as I said, my office is in Lee
4 County. The majority of my cases are from Lee County
5 and Collier County, but there are some in surrounding
6 areas, so --

7 Q And how many employees does the Gunter law
8 firm have?

9 A Currently, four.

10 Q Four. Okay. And what are their job titles?

11 A Attorney and paralegal and client relations.

12 Q Okay. And so are there two attorneys in the
13 Gunter law firm?

14 A Myself and the other attorney.

15 Q Okay. And what's the name of the other
16 attorney?

17 A Conor, C-O-N-O-R, Foley.

18 Q Okay. And does Conor focus exclusively on any
19 particular area of practice?

20 A Same as me.

21 Q He handles both personal injury and Title VII
22 cases?

23 A Yes, same as me. Same as me.

24 Q And when we say, "Title VII," I mean, I hope
25 it's just understood that we're including also the

1 Florida Statute, you know, that protects --

2 A I'm including all employment law, is what I'm
3 saying, yeah.

4 Q Thank you, sir.

5 Okay. Are all of the employees full-time over
6 there?

7 A Yes.

8 Q Okay. And do you -- now, when you draft your
9 pleadings for your clients, do your secretaries or
10 paralegals assist with that drafting?

11 A Ordinarily in my firm, if they do, it's just
12 to put together the initial skeleton of the pleading.
13 The attorneys generally will draft the pleadings.

14 Q Okay. And how about a review of documents,
15 you know, due diligence for your cases, do they assist
16 with that task also?

17 A Ordinarily, no. That's an attorney's -- when
18 we're -- when it comes to pleadings, ordinarily the
19 attorneys will do that, unless it's just basic
20 pleadings.

21 Q Is due diligence required in employment and
22 labor cases to determine if there's a viable claim?

23 A Yes.

24 Q Okay. And what does that entail?

25 A It entails whatever is necessary in terms of

1 meeting with the client, doing any necessary research
2 or -- or analysis of the underlying cases to make sure
3 that you understand the legal elements of the case, all
4 of the facts. In short, that's what it entails,
5 everything that is necessary to do that so that you can
6 communicate with the client and decide what your role is
7 going to be, and the client can make an informed
8 decision.

9 Q And does that include a review of documents
10 provided to you by the client?

11 A Yes.

12 Q Does that include any handwritten or typed
13 notes that the client might provide you?

14 A Yes.

15 Q Now, is it -- is it possible that an
16 employment and labor complaint could get lengthy --
17 lengthy depending upon the causes of action uncovered as
18 issues?

19 A The legal complaint itself, you're talking
20 about?

21 Q Sure.

22 A Yes.

23 Q Sure. And on average -- actually, we're not
24 going to go there. Okay. We covered that.

25 And do you know how many cases your office has

1 currently as personal injury cases? Do you know the
2 number?

3 A I don't know offhand, David.

4 Q Okay. Are you -- and I -- I mean, I guess
5 this is kind of obvious, but are you soliciting -- are
6 you soliciting Title VII -- or employment and labor
7 cases currently? I mean, through your sister website,
8 it's probably a yes, but --

9 A I mean, I market for them and I accept them.
10 I would say that for sure.

11 MR. MERVINE: Okay. Thank you. And just give
12 me a moment, guys.

13 THE WITNESS: Okay.

14 (Discussion off the record between counsel.)

15 BY MR. MERVINE:

16 Q Mr. Gunter, I'm going to pass you a document
17 right now. I mean, it's been premarked for
18 identification as --

19 MS. CZYZ: Well, you can mark it as 1,
20 I guess.

21 MR. MERVINE: Yeah, I guess. Here we go.
22 Premarked for identification as Defendant's
23 Exhibit 1.

24 (Exhibit 1 was marked for identification.)

25 BY MR. MERVINE:

1 Q Do you recognize this document?

2 MR. MERVINE: Oh, Mr. Atwood, sorry about that
3 (indicating).

4 THE WITNESS: I mean, I see that it's a
5 witness list in this case.

6 BY MR. MERVINE:

7 Q Yes. And -- and are there any expert
8 witnesses listed on that document?

9 A Yes.

10 Q Okay. And who is listed as an expert witness
11 on that?

12 A Myself.

13 Q Are there any other experts listed on there?

14 A Not that I see --

15 Q Okay.

16 A -- unless I'm missing something.

17 Q What expertise do you intend to bring to the
18 case? What are you going to -- I mean, are you planning
19 on testifying to -- well, go ahead and tell me. What do
20 you -- how are you an expert here? What are you an
21 expert in?

22 A Well, I'll tell you. If asked, I'm going to
23 offer my opinions on the standard of care in a Title VII
24 case, or a discrimination case. And, if asked, my
25 opinions are that the -- that Ms. Czyz fell below the

1 standard of care in her handling of this case, and that
2 she also breached her fiduciary duty to the client by
3 excessively billing the client in conjunction with that
4 standard of care. So those are the -- those are the
5 primary areas where I will be offering opinions.

6 Q Okay. And when you say that her
7 representation fell below the standard of care, how so?

8 A Well, I guess I'll start from the beginning.
9 In her accepting representation and assessing of the
10 case, it's my opinion that the case, she should -- she
11 knew or should have known that the case did not have any
12 merit or viability to succeed, and she should have
13 advised and communicated with the client regarding those
14 opinions that she should have formed early on, which
15 could have been done in the context of an attorney
16 acting as an adviser or counselor, and then not pursued
17 those claims or charged the excessive fees that she did;
18 and that that analysis should have been ongoing and
19 communicated to the client so that the client could make
20 informed decisions about their representation. And, had
21 that occurred, that the attorney would not have charged
22 the excessive fees that were charged in this case, and
23 what happened in this case would not have happened.

24 Additional breaches of the standard of care
25 were -- even though I am of the opinion all of the

1 claims were without merit, to say the least, Ms. Czyz
2 did not include national origin, discrimination -- or
3 national origin allegations in the charge of
4 discrimination, and therefore those were waived when she
5 filed the complaint in circuit court. So that was an
6 additional breach of the standard of care.

7 There were claims of retaliation asserted in
8 the complaint in court, but there was no facts or
9 evidence to support that anybody had engaged in
10 protected activity. Ms. Czyz had filed the complaint in
11 state court but included a Title VII claim, and an
12 attorney knew or should have known that that would be
13 removed to a federal court based on federal question
14 jurisdiction. And she was not licensed to practice in
15 the federal court, and that led to a whole second series
16 of problems, which was she advised that it was improper
17 to remove it because she was not licensed there. That
18 was improper. And then she drafted a complaint for
19 Ms. -- I'll use the word Erin to -- to file a motion --
20 a -- without -- without informing the Court that she had
21 drafted the complaint, but a motion for sanctions and
22 some other -- some other motions within there.
23 Ultimately she withdrew from the case, and the client
24 was left hanging in federal court with a baseless case.

25 So, in general, those are, you know, some of

1 the opinions, in addition to the billing itself, which
2 is -- it was not warranted and is grossly excessive. So
3 my -- my opinions are under that umbrella. If you want
4 to ask me any follow-up, I'll be glad to do so.

5 Q Now, you said that based on the pleadings in
6 the underlying case with Ms. Czyz and Ms. -- the current
7 plaintiff, you said there was no merit to that -- to
8 those claims.

9 Now, how do you know there was no merit to
10 them?

11 A Well, the -- we'll start with there was a
12 claim for sex discrimination, which sex discrimination
13 is discriminating against an individual based on the
14 terms and conditions of their employment where they
15 suffered adverse employment action because of their sex.
16 So generally one would have to have a male who was
17 terminated, and there -- you know, there would have to
18 be a -- in this case the allegations were in the
19 charge -- and I'm paraphrasing here, but I'll do it
20 anyway -- that Ms. Neitzelt was a blonde, voluptuous
21 woman who was of wealth and wore a diamond ring and
22 those types of things.

23 Any reasonable attorney really with just a
24 moderate amount of research, whether they were a labor
25 and employment lawyer or not, would come to the

1 conclusion that that's just not legally actionable as a
2 sex discrimination claim. So that was one. There was
3 just no -- no basis whatsoever for that either in the
4 charge or in the -- in the complaint.

5 The other basis was national origin, which
6 I guess if you're saying somehow -- and I believe it
7 was -- there was something in the complaint about
8 Northern Italian or something like that. There was
9 really no evidence to support that at all, but it wasn't
10 included in the charge. And any attorney knew or should
11 have known, if you don't include it in the charge, you
12 waive -- the applicable statute of limitations will
13 expire, and you will waive that right to assert that in
14 court.

15 That never happened, but that was just another
16 act of negligence, in my opinion, but that would have
17 been baseless. Retaliation under -- under Title VII, or
18 760, which is a comparative state law, you have to
19 demonstrate that you engaged in protected activity.
20 And, just looking at the allegations, there was no
21 protected activity here that would be legally
22 actionable.

23 In addition to that, the client was still an
24 at-will employee. She -- she ended up resigning her
25 employment, which presents a whole 'nother set of

1 problems in terms of what you have to prove, and it was
2 just impossible. And all of that should have been
3 determined under the scope of an attorney as an adviser
4 in a very short, reasonable amount of time and
5 communicated with the client.

6 Q Okay. And how -- how did this -- the present
7 plaintiff in this action, Ms. Erin, as we've been
8 calling her, how did she find your office?

9 A Either referral or the Internet. I'm not
10 sure, Dave. But I -- so I -- because it could have come
11 from multiple sources. So I believe she -- I believe it
12 was from a referral from maybe another malpractice
13 attorney or something who she had spoken with, but it
14 may have also been independently, you know, from calling
15 me, but --

16 Q Do you keep --

17 A So I don't know as we sit here.

18 Q My apologies.

19 Do you keep records of who refers you cases?

20 A In some instances, but if the call -- it just
21 depends who -- anybody can answer the call. If I -- I'm
22 the worst. If I answer the phone, I'm not good about
23 it. It depends who answers the phone and what they
24 write down in some instances, but I could possibly track
25 down -- it seems to me that this was referred by an

1 attorney, but I'll have to see if I can track that down.

2 Q Okay. And do you -- did you pay a referral
3 fee in that case and for that referral?

4 A No.

5 Q Okay. And how certain are you that you could
6 track that information down?

7 A If there -- if it's there, I'm pretty positive
8 I could find it out.

9 Q Okay. And you said --

10 A I believe it was Bob Burkett who does kind of
11 a bunch of things, and one of his areas is malpractice,
12 but I would have to confirm that. That's just my
13 memory.

14 Q Okay. And did -- when you -- how much -- or
15 on what -- on what basis were you to be compensated in
16 your contract with Ms. Erin?

17 A A flat fee of \$1500.

18 Q Okay. And did you review the case before
19 accepting that retainer?

20 A Yes.

21 Q Okay. And did you believe it was --

22 A It wasn't a retainer. It was a flat fee.

23 Q Okay. Oh, it was a flat fee.

24 In your contract, did it provide for an hourly
25 rate if the case should become contested or --

1 A No. My contract spelled out the scope of my
2 engagement.

3 Q Okay. And why did -- why were you so certain
4 that a flat fee was appropriate in this case?

5 A It was just what I agreed to and what she
6 accepted based on the scope of what I was going to be
7 doing and had done. Erin had called and spoken with
8 somebody at my office originally. And, you know, when
9 we -- here it's not really a case that we're necessarily
10 going to accept because of the circumstances, but
11 I think she called back in somewhat of a desperation
12 situation. She was stuck in federal court. As
13 I learned more about it, I wanted to help this
14 individual, even though I -- as I looked into it more,
15 I felt that what had occurred with her was very
16 egregious.

17 So I was going to have to sort of drop
18 everything that I was doing and -- and, you know, sort
19 of strategize -- talk to her and -- you know, about her
20 claims. And at that point in time she still had some
21 hope and belief that her claims were meritorious, even
22 though they clearly just were, you know, not. And --
23 and so I had to, you know, do that, and then I had to
24 strategize on how to best handle the case for her and
25 then execute.

1 Q So you didn't believe her claims were
2 meritorious?

3 A No.

4 Q Did you pursue a settlement of her case?

5 A Nuisance value, yes. I got her authority to
6 settle for nothing, if necessary, but anything above
7 nothing was acceptable.

8 Q And what did the case ultimately settle for?

9 A I think it was \$2500.

10 Q And what happened with those funds?

11 A They were given to the client.

12 Q Okay.

13 A By the -- the School Board just made a check
14 directly out to her.

15 Q And what -- what -- on what basis did you
16 represent to the school in order to get them to agree to
17 a settlement?

18 A Can you explain?

19 Q Well, if it's -- how did you get the school to
20 settle a nonmeritorious claim?

21 A Transparency. Just called up the attorney and
22 told him that I was here to see if I could assist the
23 client. And he was already aware of the situation that
24 occurred in the federal pleadings in that he was dealing
25 with the client, and it was nuisance value, so he agreed

1 to pay it.

2 Q Uh-huh. And how certain were you that that
3 attorney was going to accept a settlement offer?

4 A Not certain.

5 Q Did you know that attorney prior to speaking
6 with him?

7 A That may have been the first time I had dealt
8 with him. I may have dealt with him on one other
9 matter.

10 Q Did you have any mutual --

11 A His firm definitely.

12 Q Did you have mutual connections or mutual
13 social networks?

14 A Not really. Just -- just colleagues or
15 attorneys probably.

16 Q Did you speak to any of your colleagues with
17 regard to settling this case with that -- that attorney?

18 A No.

19 Q And do you know of any complaint against Lee
20 County Schools by any tall blonde women, any other
21 complaints that exist with those particular facts?

22 A Not with facts that are comparable to the
23 facts that were alleged in the amended complaint filed
24 in the underlying case here, no.

25 Q Okay. And in the same vein as that, you don't

1 know of any claims against Lee County Schools from tall
2 blonde women claiming national origin discrimination
3 based upon their looks or, you know, their national
4 origin? No -- no claims?

5 A I don't know -- I don't know of any claims of
6 what you described, no.

7 Q Okay. So if a tall blonde plaintiff walks in
8 alleging discrimination -- well, actually, you know
9 what, I'm going to withdraw that.

10 How about, what was it specifically about her
11 case that made you feel that it was not meritorious?

12 A I think I've already answered that.

13 Q Okay. And how did you answer that?

14 A Well, when I went over the issues about sex
15 discrimination and national origin discrimination and my
16 opinions on those.

17 Q Okay.

18 A Not to be smart. I'm just saying --

19 Q No.

20 A -- I think I did.

21 Q By all means.

22 A I'll just defer to those answers.

23 Q Anything goes. How about -- okay.

24 And on that -- those cases, you're saying it's
25 not meritorious because of this body of knowledge that

1 you have, right?

2 A Well, it's not meritorious because of the
3 existing law, all of it, and it's my opinion that it's
4 not meritorious because of my knowledge of that existing
5 law. But it would -- you know, even though I am a
6 specialist, and even though somebody, if they're not a
7 specialist, it's my opinion that you should consult with
8 a specialist if you're -- if you're not a specialist,
9 and I consider it to be a specialty area, an attorney
10 who did any amount -- even a nonspecialist, an attorney
11 who did a modicum amount of analysis and research would
12 quickly come to the conclusion that you should advise
13 the client in such a way that they can make an informed
14 decision; and that would be that this case should not be
15 pursued, and compensation should not be charged beyond
16 that of just an attorney acting as an adviser, as a
17 consultant to -- to advise that person.

18 So that's my opinion.

19 Q Okay. Is it possible for a tall blonde female
20 to assert a claim based on race, discrimination based on
21 race?

22 A You're saying, "discrimination based on race,"
23 just so you know, so, yes, that -- anything's possible.

24 Q Is it -- okay.

25 A Asserting a claim is possible in any

1 situation, as we see in this case.

2 Q So is it -- so any plaintiff, you know, has a
3 potentially viable claim?

4 A Well, no, a plaintiff doesn't have a
5 potentially viable claim. Any plaintiff might be able
6 to assert a claim, even if it is frivolous.

7 If an attorney does so on behalf of a
8 plaintiff, there could be repercussions for that, and
9 they have responsibilities and duties, you know, to
10 protect that client and not to do so.

11 Q Okay. Do black people have a case for
12 discrimination based on their looks?

13 A I don't understand what you mean by that.

14 Q Let me go -- I mean, would black people have a
15 case for discrimination -- a viable -- had this
16 plaintiff, Ms. Erin, been a black plaintiff, do you
17 think her case would have been stronger?

18 A I don't know. I mean, it's just a complete
19 hypothetical situation. I have no idea. There was no
20 race allegation alleged here.

21 Q Well, you're an expert, right?

22 A Yes.

23 Q And you can engage in hypotheticals?

24 A Well, give me the hypothetical, and all of it.
25 Go ahead.

1 Q Okay. Had the plaintiff been black, would she
2 have had a more viable claim?

3 A No.

4 MR. MERVINE: Just a moment.

5 (Discussion off the record between counsel.)

6 BY MR. MERVINE:

7 Q In the case law -- in the case law, are there
8 ever -- excuse me -- the employment and labor case law,
9 to your knowledge, has there ever been an instance of
10 secret meetings or meetings being held without the
11 knowledge of the plaintiff?

12 A I don't know.

13 Q Okay.

14 A I'm sure there is, but there -- secret -- I
15 mean, secretly does the employer have meetings without
16 the knowledge of the plaintiff ever?

17 Q Sure. Employer, employee, associates of
18 either the business, law firm, or agency, having
19 meetings with regard to the plaintiff outside of the
20 normal Human Resource channels for the purposes of
21 discrimination.

22 A I don't understand the question.

23 Q Okay. To your knowledge, in the case law,
24 have -- has there ever been an instance of a plaintiff
25 alleging that there was a conspiracy of the associates

1 within their organization to discriminate against them?

2 A I don't know. You'd have to -- I have no
3 idea. There's so much case law out there. I'm sure
4 there's those types of scenarios that occur or there's
5 allegations with those types of scenarios --

6 Q Okay.

7 A -- where people say that there's meetings or
8 people are scrutinizing them, whatever it is. There's
9 all different types of actual scenarios that exist in
10 the realm of the case law and labor employment.

11 Q When's the last time you read a case on labor
12 and employment law?

13 A A day or so ago.

14 Q What was the style of that case?

15 A Oh, I don't know. I can't remember.

16 Q You can't remember?

17 A Just generalized legal research in an area.

18 Q Can't remember what you read two -- two days
19 ago -- two days ago?

20 A It was something procedurally in that
21 particular case that was having to do with standards for
22 restrictive covenants, in that particular case, was the
23 last case that I read.

24 Q And that was -- and what was the rule of law
25 on that case?

1 A The rule of law that -- it was that a
2 confidentiality agreement and a nonsolicitation
3 agreement and a noncompete agreement are all restraints
4 on trade into Florida under 542.335. Not that exciting,
5 but that was the scenario.

6 Q Okay.

7 A While I'm thinking about it, I did want to --
8 I have a couple of additional opinions on -- that I --
9 the -- it was also a breach of the standard of care and,
10 you know, nonmeritorious to bring individual claims
11 against Rachel Gould. There's no individual liability
12 under Title VII or 760. And there were claims for
13 intentional infliction of emotional distress, which was
14 nonmeritorious and not viable. And, in my estimation,
15 the claims for libel and slander and those types of
16 claims that were in the complaint were not viable
17 either. And there was a claim for, I believe, breach of
18 contract relating to some type of employment policy,
19 which also, in my opinion, was not viable.

20 I just wanted to add those.

21 Q So do you have a -- what's your relationship
22 with this Ms. Gould?

23 A I have no relationship with her.

24 Q Okay.

25 A She's a -- she's a named defendant, as far as

1 I could tell, in the amended complaint.

2 Q Okay.

3 A I didn't mean to throw you off track there.

4 Q No, no.

5 A I just didn't want to forget about that.

6 Q Yeah, it's good that you didn't. Yeah, how
7 about, let's see, the --

8 Okay. So when you interviewed Ms. Erin, the
9 current plaintiff, did she express to you that she
10 believed others had been making defamatory statements
11 against her?

12 A I don't know that we -- I mean, that may have
13 come up, those types of -- in the conversation, but
14 I don't specifically recall whether there was a
15 discussion that -- specifically like you described. We
16 talked about the complaint as alleged in the overall
17 allegations, and she told me the story, but I don't know
18 to what level of detail there was those discussions.

19 Q But she did express some concern about
20 negative statements being made by others regarding her
21 person?

22 A I don't know about the way you've described
23 it, but negative things that were occurring to her, or
24 she felt that were occurring to her, which were
25 workplace things that had happened.

1 And I do want to add that I don't believe
2 there was -- and under the tort claims, which would have
3 been intentional infliction of emotional distress, in
4 the -- in the -- I believe the libel claims as well,
5 there was not a presuit notice under 768, the tort
6 statute either. So those would have been also dismissed
7 for those reasons as well.

8 Q Okay. Are you an expert in libel practice?

9 A No.

10 Q Do you hold yourself out as an expert in libel
11 practice?

12 A No.

13 Q Slander?

14 A No.

15 Q Emotional -- intentional or unintentional
16 infliction of emotional distress?

17 A There's only intentional, but no.

18 Q So you're -- is there? No, I'm just -- so --

19 A I don't.

20 Q Excuse me. Yeah, forgive me for that.

21 Okay. So --

22 A But I am familiar -- I am familiar with those
23 causes of action, and I've seen them come up, and I've
24 brought them and I've defended them. So I'm familiar
25 with them, and I'm also familiar with presuit notice to

1 governmental entities.

2 Q But you're not board certified in any of those
3 areas of law?

4 A There is no board certification in those
5 areas.

6 Q What about civil?

7 A Civil trials?

8 Q Yeah, that's more procedural probably.

9 A Right.

10 Q All right. And how about -- and how many
11 libel cases have you either been a plaintiff's attorney
12 or a defense attorney on?

13 A Oh, I -- I couldn't tell you, Dave. A handful
14 over the years. They come up either as collateral
15 causes of action that I'm defending or that may be in
16 some cases I brought. Generally, in the employment
17 context, there's a privilege in the sense that -- when
18 you're making comments, so they're -- they are -- even
19 when there is a meritorious one, they're difficult.

20 Q Okay. So how many hours would you say that
21 you've spent on, you know, libel claims in your
22 practice?

23 A I'd be speculating. If there's one --

24 Q Less than --

25 A "Less than" -- go ahead.

1 Q Less than ten?

2 A No. I've seen much more than that over the
3 years.

4 Q Okay.

5 A Because, you know, there are some cases where
6 there might -- it might be a significant amount of an
7 allegation, so -- and I've had some cases that
8 specifically involve defamation claims.

9 Q Okay. In the present case, are you claiming
10 to be an expert with regard to any claims other than the
11 employment and labor claims?

12 A I've been identified as an expert and will
13 offer expert opinions on where I'm asked and where the
14 Court, you know, allows me to offer those opinions. And
15 those opinions are going to be what I've expressed
16 today, if I'm asked, which will be all of the areas and
17 underlying causes of action.

18 Q Sure. And those -- but the scope of those
19 opinions should be limited to the areas in which you're
20 actually an expert?

21 A No. My opinion, the scope of those -- I'm an
22 expert in -- I'm being retained as an expert to testify
23 on the standard of care. This is a malpractice case,
24 and so I will do that, if I'm asked, and I think those
25 opinions are going to be -- cover the umbrella of all of

1 the claims that are asserted in the complaint and all of
2 the actions and activities that have occurred, you know,
3 in this case.

4 Q How many libel cases do you currently have in
5 your practice?

6 A I don't know that we have any, but -- I don't
7 know the answer to that for sure, because we have so
8 many cases going on. There could be a -- there could be
9 one or two. I don't know, though.

10 Q Okay. Could you find out?

11 A Sure, I could.

12 Q You know what, we'll go through all three of
13 them first. How about that?

14 Do you have any defamation cases or slander
15 cases?

16 A Well, when I -- when I use the word -- let's
17 just, first, so we have one word, let's just use -- if
18 we can, just use the word defamation to include that
19 whole umbrella.

20 Q Okay. So defamation, libel, and we can call
21 it torts. I mean, you know -- I mean, I guess
22 technically, you know, these are -- these are, you know,
23 the tort cases, the slander, defamation, and the --
24 slander, defamation, libel, and this infliction of
25 emotional distress?

1 A I have -- I have intentional tort cases, yes,
2 like we've described, for sure.

3 Q Okay. How many do you have regarding
4 infliction of emotional distress, currently?

5 A Well, I don't generally bring them, because,
6 as you probably know, they are -- there is a very, very,
7 very high standard, and --

8 Q Okay.

9 A -- even in the most egregious cases, that
10 standard -- you know, we know from the moment we get out
11 of law school that it's very, very difficult to satisfy.
12 And when you look at the case law on that, it is more
13 apparent.

14 There are things like throwing dead bodies of
15 family members on -- you know, those are the examples
16 that we are all familiar with. So I have never, I don't
17 think, brought one of those claims, but I end up
18 defending them here and there. So I may have one or two
19 in my litigation pleadings that I'd be defending.

20 Q Okay. So you have very limited experience
21 with regard to these tort claims and defamation, libel,
22 and then infliction of emotional distress?

23 A I might -- actually, no. I'd say I have a
24 good amount of experience in those claims.

25 Q "Good amount of experience." And what is that

1 experience?

2 A That means understanding the elements, that
3 means defending them, motions to dismiss, debating them
4 in court. That's what I would consider --

5 Q How many times have you done that in the last
6 year?

7 A Last year? Just in the last year?

8 Q Sure.

9 A Two or three, I believe.

10 Q Okay. And what were those cases? What were
11 the causes of action?

12 A Motion to dismiss, you know, the complaint
13 filed, intentional infliction of emotional distress;
14 motion to dismiss; argument in front of the Court. They
15 tried to reallege it; motion to dismiss; argument in
16 front of the Court; all of the review and analysis and
17 motion writing up to that point in time; taking of the
18 depositions on those elements to try to, you know,
19 attack or negate what is -- what is legally required,
20 and then that's -- with that particular cause of action.

21 The other ones that we're talking about,
22 defamation and libel, I don't know that I've got any
23 that I can think of in litigation right now. I may or
24 may not, or in nonlitigation even where they're either
25 early stages or evaluation.

1 But I have definitely had those. And either
2 through analysis, demand, settlement or litigation,
3 I have what I would consider substantial experience in
4 coming to understand defamation and other intentional
5 torts.

6 Q Sure. And have you taken any continuing
7 learning education with regard to the torts of
8 defamation, slander, or infliction of emotional
9 distress --

10 A No.

11 Q -- ever in your career?

12 A No. I mean, it would just be in -- those
13 would generally just be parts of --

14 Q Okay. And do you hold yourself out as a
15 practitioner for the torts of slander, infliction of
16 emotional distress or libel?

17 A I am a practitioner in the -- for me, in
18 particular, as I have developed my litigation practice
19 over the years, I'm capable of handling anything in the
20 labor and employment context. And if that includes
21 allegations that we're talking about, then I'm -- I'm
22 very capable of handling those allegations. I could
23 handle those claims in or out of the labor and
24 employment context, quite frankly.

25 Q And how often do those sorts of claims come up

1 in your practice?

2 A Which ones?

3 Q The tort claims. How often do you have to
4 handle them?

5 A Frequently.

6 Q And when you say, "frequently," do you mean --
7 could you put a percentage on that?

8 A No.

9 Q Okay. And do your -- on your website, or on
10 any materials that promote your law office, do you hold
11 yourself out as a practitioner of slander, libel or
12 intentional infliction of emotional distress?

13 A We -- I think we just probably use the words
14 labor and employment law. We don't really --

15 Q Certainly you focus --

16 A Right.

17 Q Yeah, certainly. But you do specifically hold
18 yourself out for personal injury?

19 A Well, I -- I advertise personal injury, and
20 I do that, yes.

21 Q Okay. And compared to the -- you know, those
22 other -- the other torts, you know, defamation, slander
23 and libel, how much more personal injury do you do?

24 A Again, I -- I put those -- those things that
25 we're talking about under the umbrella of my labor and

1 employment practice. So whatever I previously conveyed
2 to you, whatever that split is --

3 Q Okay.

4 A You know, and that split varies. If I settle,
5 you know, whatever personal injury case I might have
6 going on -- I may just have large ones going on that
7 could be -- so if I settle those, then it may be, you
8 know, 95 percent. Then if I have more, it could go --
9 so that -- whatever that split is, though, anything that
10 is a tort generally of any sort is under that -- I put
11 it under that umbrella of labor and employment law, if
12 that makes sense.

13 Q Sure. And in your labor and employment
14 practice, how often do you represent plaintiffs versus
15 defendants?

16 A Oh, man. That's a good question. That also
17 varies. I'd have to say 60 -- again, I'll defer it. If
18 I answered this in interrogatories, I'll kind of defer
19 to whatever those are, but I'll just say 60 percent
20 maybe plaintiffs, and the remainder -- again, it depends
21 if you're breaking it up on compensation or cases, but
22 I'm just going to guesstimate for you. About 60 percent
23 plaintiff and 40 percent defense maybe, give or take.

24 Q Do you sometimes assert those -- those tort
25 claims of slander, defamation, or -- I mean, well,

1 slander, defamation, libel, any tort claims as
2 collateral claims in your petitions in the event that
3 discovery uncovers some other viable claim potentially,
4 rather than the employment claim which is the crux of
5 the action? I mean, I can shorten that up too. I'm
6 sorry if that -- you know, if you want me to rephrase
7 that, go ahead and --

8 A Well, to answer your question, I don't bring
9 claims to discover claims. That's inappropriate. What
10 I -- if somebody has a defamation claim, I evaluate it.
11 I can tell you generally, because of what is legally
12 required, especially in the labor and employment
13 context, it's going -- there's going to be privilege
14 issues on top of all of the normal elements of
15 defamation or slander or whatever it is that are going
16 to be challenging in and of itself. So it would have to
17 be -- it's generally the ideal situation where I have a
18 postemployment defamatory comment outside the employment
19 context that has somehow occurred. And if I have
20 evidence of that in a statement and it's truly
21 defamatory, and then I have -- I don't have to prove
22 damages. I'm seeking general damages because it's
23 defamation per se. None of this was in this case
24 that -- that we're here, but -- so those are the types
25 of things that I would be looking for if I was the

1 plaintiff's attorney.

2 Most of the ones that I -- so -- and those are
3 far and few between because of the reasons I just
4 explained. I've defended some where they've been
5 brought in various --

6 Q Okay.

7 A -- scenarios.

8 Q Now, we talked a little bit about the -- you
9 said that there were excessive fees in the underlying
10 case?

11 A Uh-huh.

12 Q Is there anything in particular that stuck out
13 to you as being excessive, or was it just the bill in
14 totality? What was excessive about the fee?

15 A So the bill in its totality, there were,
16 I believe, \$43,335 in billing between charges of,
17 I believe, 41,000 and some change may have been paid
18 between the initial engagement in -- I think it was --
19 and I'm guesstimating -- around April of 2016 through
20 November of '16. So that bill for that scope of
21 engagement, which was the EEOC charge and the drafting
22 of the complaint and the filing of the complaint, was,
23 on its face, even without anything -- looking at
24 anything more grossly excessive and unreasonable, and,
25 in my opinion, a violation of bar rules as well. The --

1 so that's the bill itself.

2 The time entries and the individual time
3 entries were also both grossly excessive and -- and had
4 their own set of problems, but -- so all of the above.

5 It's also my opinion that because the original
6 scope of representation should have been limited only to
7 that of an initial advice and counseling to determine
8 that there was -- you allow the client to make an
9 informed decision and to not pursue these claims in
10 litigation, that everything beyond that initial scope of
11 engagement was also excessive.

12 But then on the individual time entries,
13 there's -- all have their own set of problems for me,
14 and they're excessive in and of themselves. I would
15 agree with the ones -- there are some in the underlying
16 complaint in this action that have been called out, and
17 I would -- I would certainly agree with those.

18 There were -- there was a \$6,000 retainer
19 taken up front, but there was also a cost retainer
20 taken, cost advance retainer. I don't know, and
21 I don't -- I don't know whether that cost advance
22 retainer was put in a trust account or not, but there
23 were cost charges for -- I believe for pens and paper
24 and a hole punch along the way somewhere, all of which
25 is highly inappropriate, and both a violation of

1 fiduciary duty, a breach of the agreement between the
2 attorney and client and that trusting relationship, as
3 well as a violation of bar rules.

4 Q And what was the amount of those -- those
5 costs that you just described? Can you recall, I mean,
6 the hole punch and --

7 A I don't know the amount of the individual
8 ones, but, you know, we don't charge for hole punches or
9 staplers or pens or anything like that, and that's --
10 that's per se inappropriate. So --

11 Q Sure.

12 A I don't know the individual charges, though,
13 Dave, to -- as we --

14 Q Were there any costs that you -- I mean,
15 that -- that you noticed that were clearly, I mean,
16 excessive or, I mean, something that was large --
17 I mean, those sound like small charges. I mean, not to
18 minimize, you know, something like that, but they sound
19 small.

20 Were there any other misappropriations other
21 than maybe paper, pens, and a hole punch?

22 A Yeah. I mean, all of them, in my opinion,
23 probably, but the -- the only costs that would really be
24 necessary or would be whatever hard -- again, my opinion
25 is that the scope of the engagement should not have ever

1 went to a represented -- representative capacity because
2 of the futility of where it would end up and the amount
3 that would be charged to the client; but the -- the --
4 there was, I think, \$800 in scanning costs that were
5 grossly excessive for a file. But as I sit here today,
6 you know, I felt that really all of the costs were --
7 and if the costs -- if the costs -- \$1500 cost retainer
8 wasn't placed in a trust account, I -- you know, and it
9 wasn't a trust account, it would be my opinion that that
10 would be a further breach of the standard of care, a
11 further breach of the contract, a further breach of
12 fiduciary duty, and also a violation of our rules. And
13 if there was any interest or anything like that charged
14 as well, that would -- that would be a violation.

15 But they were all, in my opinion -- to answer
16 your question, they were all -- all excessive.

17 Q Okay. And going back to this -- back to the
18 original action here and the merit of the action --

19 A Uh-huh.

20 Q -- what was your impression of Ms. Erin's
21 mental health when you first met her?

22 A I did not detect anything about her mental
23 health myself at all. I just -- my impression of this
24 individual was that it was what it was; that they had an
25 attorney that they were led down a pathway that they

1 should not have been led down, and that they were now in
2 federal court and had expended 40-plus thousand dollars
3 and were, you know, abandoned in federal court and
4 needed help. So she was distraught, and justifiably so,
5 in my opinion, but I did not detect anything as far as
6 her -- her mental health myself.

7 Q Did she ever describe to you -- did she ever
8 describe to you that she felt Ms. Rachel Gould was
9 responsible for some of her emotional issues?

10 A I don't know specifically that. We talked
11 about some of the facts, and I saw the pleadings, but
12 I don't think she -- I don't think that we really --
13 I don't know the answer to that. I don't remember.

14 Q When you reviewed the pleadings, did you talk
15 to her about the slander claim that was designated in
16 those pleadings?

17 A I talked to her about all of the claims --

18 Q Okay.

19 A -- all of the facts in the claims, but
20 I could -- I could -- I could -- you know, upon looking
21 at the claims and doing some -- some analysis to -- I --
22 in talking to her, I came to the opinion that they were
23 nonmeritorious.

24 Q Okay. And how much time did you spend
25 investigating the claims with Ms. Erin?

1 A Well, I mean, from the time that she called
2 and the conversations and then, you know, going through
3 the underlying pleadings and doing all that, I want to
4 say seven hours maybe, give or take. I didn't keep
5 track of my time because I -- I just started doing it
6 really just to help somebody. It's not somebody that
7 I had time for. It's something that would normally be a
8 red flag in our industry. We usually don't get involved
9 in cases that are in litigation, but when I sort of
10 found out, I didn't want this person to -- leave
11 hanging. So between the initial -- whenever the initial
12 conversations were and my review, I'm guessing five to
13 seven hours maybe --

14 Q Uh-huh.

15 A -- give or take.

16 Q And did Ms. Erin deliver to you any documents
17 to assess her claim with --

18 A Yeah. Yes, there were -- there were -- yeah,
19 I reviewed documents.

20 Q Okay. How many documents would you say she
21 brought to you, estimating? I mean, obviously you
22 didn't count every one, but were there hundreds?
23 Thousands?

24 A No, no, no, no, no. My analysis primarily
25 consisted of discussions with her, review of the

1 pleadings, and then ultimately when, as a member of the
2 bar -- I noticed that one of my fellow members of the
3 bar, what had occurred, it also kind of evolved into
4 seeing if I could point her in the right direction to --
5 to get her out of the mess that she was in.

6 So the majority of my analysis consisted of
7 reviewing the underlying pleadings, talking to her,
8 reviewing the -- and then eventually reviewing some of
9 the underlying materials between Ms. Czyz and her, their
10 relationship, and then sort of strategically figuring
11 out the best way to get her some nuisance value and get
12 out -- get this case out of federal court.

13 Q Okay. And part of the procedure, one of the
14 conditions precedent to bringing a Title VII or an
15 employment labor case on the federal level would be
16 filing a notice or a claim with the EEOC, right?

17 A A charge of discrimination.

18 Q Okay. And do those ever get -- what happens
19 when the EEOC receives that charge?

20 A When they receive that charge?

21 Q Sure. I mean, from the perspective of the
22 attorney, the plaintiff's attorney.

23 A Well, when they -- they receive it and they
24 process it, I guess I would say.

25 Q And do they send a response?

1 A They process it, and then -- the answer to
2 your question is generally -- when you say, "a
3 response," do you mean a -- evidence indicating that the
4 charge has been filed?

5 Q Sure. How about, you know, a notice that
6 they've received the claim, then maybe subsequent
7 notices, a determination --

8 A Yeah, they communicate with you. I don't know
9 that they're the best about notifying you that they
10 received the complaint -- the complaint. You generally
11 will have to send in, you know, follow-up or send in an
12 envelope and say, Will you include a copy of the stamped
13 charge?

14 Sometimes they do, sometimes they don't, but
15 they do -- they're supposed to communicate with the
16 charging party and/or their attorney regarding material
17 events that happen in the underlying process.

18 Q And do they provide any dispositive
19 documentation with regard to the claim as far as their
20 agency is concerned, for instance, you know, a notice
21 saying, Sorry, we think that your claim is bogus?

22 Any dispositive?

23 A Well, in this case I think they just issued a
24 right to sue.

25 Q Okay. And when -- did they ever issue

1 anything else?

2 A I think they -- I think that was -- basically
3 they had the claim, and then I think the next thing that
4 they eventually did was issue the right to sue, which is
5 basically saying, You have 90 days to file in federal
6 court under federal law.

7 Q Okay. And what do they base that
8 determination on?

9 A Well, they can issue a right to sue at the
10 conclusion of their investigation; they can issue a
11 right to sue on the request of the claimant; they can
12 issue a right to sue; they can look at the charge and
13 say, This -- that there's really -- we don't see this as
14 having something that we want to in any way prioritize,
15 and they can issue it quicker; they can -- there's a
16 number of things that, I'm sure, internally they can
17 prioritize charges according to their policy; but
18 I don't know how the right to sue ended up being issued
19 in this case in November, to be honest with you, but
20 I know that it -- or whenever it was, I want to say
21 November, but it was issued. So I don't know whether it
22 was requested or the EEOC just did it.

23 Q And as an attorney who practices in employment
24 and labor law, if you receive a right to sue, what would
25 your next steps be?

1 A It would be to further analyze with the client
2 and determine whether or not I -- with the appropriate
3 jurisdiction of that Court, whether it was in my
4 client's best interests to bring that court in -- that
5 claim in state court under Chapter 760 Florida Statutes
6 or federal court.

7 And I would know that if I -- you know, a
8 right to sue is only with respect to a Title VII claim.
9 Under 760 you have to wait for the expiration of 180
10 days, in which case you have the right to bring a claim
11 under 760 only in -- in state court. So in some cases
12 your right to sue can actually expire, which bars that
13 right to sue, and you can -- but you would still have
14 your 760 claim.

15 So if my strategy ends up being that I'm
16 recommending to the client that we remain in state court
17 for strategic reasons, I'll have that client sign a
18 waiver of Title VII claims and I'll let that statute of
19 limitations expire after I've double-checked everything
20 to make sure that it's correct and -- or in some cases
21 where government -- you know, it just depends, but some
22 cases I may pursue a Title VII claim just -- or a
23 federal claim. It just depends.

24 Q So in order to preserve the claim, you would
25 have to file within the -- the respective time periods,

1 be it statute of limitations or some other period of
2 time that's relevant to the case?

3 A Under Title VII, you -- you would need to file
4 your -- your claim within 90 days of the receipt of the
5 right to sue, under Title VII. Under 760, you would
6 not. You would have four years from date of the adverse
7 action.

8 Q Okay. But in order to -- okay. And if you
9 filed that Title VII came [sic] -- or excuse me -- that
10 Title VII claim -- if you filed that Title VII claim in
11 the state court, would it be preserved?

12 A Yes. Yes, it would be preserved.

13 Q Okay. And if -- if you don't file the claim,
14 that's it; the client could potentially lose their right
15 to sue, right?

16 A If you don't file that claim and the 90 days
17 expires, then that claim is going to be barred.

18 Q Okay. And have Title VII cases been heard in
19 the state courts?

20 A Yes.

21 Q Okay. And the state courts make decisions on
22 those cases, right?

23 A The -- I mean, the state court has concurring
24 jurisdiction. So the state court -- if somebody brings
25 a Title VII claim in state court, and it's not removed,

1 then the state court can hear it, sure.

2 Q Sure. And it might be a good idea to keep it
3 in state court, especially if, you know, say one of
4 those other state causes of action are more relevant,
5 right?

6 A The causes of action are going to be largely
7 the same in terms of the proof, and you're not going to
8 be able to get duplicative damages, so, in my opinion,
9 there would not be much of a -- if I wanted to stay out
10 of federal court, I would never --

11 Q Sure.

12 A -- I would never bring a Title VII claim in
13 state court, because then I would know that if I did,
14 then any attorney is going to immediately remove that
15 claim -- the whole case to federal court.

16 Q And was the instant -- the underlying case
17 here immediately removed to federal court?

18 A Yes, it was.

19 Q How soon after the pleadings were filed; do
20 you recall?

21 A I don't know the exact timeline, but, you
22 know, within the timeline for removal, which I think is
23 30 days.

24 Q Okay. Do they always get removed from state
25 court?

1 A Not always, but the -- the vast majority of
2 the time for sure.

3 Q Okay. But it's possible that they could stay
4 in state court and be prosecuted there?

5 A Highly unlikely. And if you're suing a
6 governmental entity, virtually zilch because of, you
7 know, that's just the way that it works.

8 Q Okay.

9 A And if you -- so it's highly unlikely.
10 I would say 0 percent chance against a government
11 entity.

12 Q And --

13 A That's just based on my experience, is all.

14 Q Okay. How about -- have you ever heard of
15 legal malpractice insurance fraud?

16 A No.

17 Q No? Have you -- have you heard of insurance
18 fraud generally?

19 A Sure.

20 Q Okay. Just give me a moment, everyone. Thank
21 you.

22 A Sure. No problem.

23 Q Sorry about the flipping through here.

24 A No problem.

25 Q When you were in settlement negotiations for

1 the underlying case, who -- who made the initial offer
2 in settlement of \$2,800?

3 A I believe I did, but it was just in the
4 context of a straightforward conversation of a nuisance
5 value settlement. So it would have been myself. He
6 would not have just made that.

7 Q Why \$2800?

8 A I think it was -- I don't know what the amount
9 was. Was it 2800, or was it 2500?

10 Q (Indicating.)

11 A Whatever it was, I don't know. It was
12 nuisance value. Like I said, I had the authority and --
13 and I would have settled the case for nothing, and
14 that's what I recommended to my client, and she agreed
15 with that recommendation.

16 Q Prior to settlement of the case, did you think
17 that you might become a witness in a malpractice action
18 against Ms. Czyz?

19 A No.

20 Q Did you, upon reviewing the case -- well --

21 A I mean, I -- I don't know whether I thought
22 about it. I know that, you know, that -- the particular
23 way you've described it, I'm sure that I knew that what
24 had occurred was certainly -- I'll use the word
25 malpractice or a breach of the standard of care, as well

1 as potential, for sure, bar violations; but -- and
2 I know that, you know, she or -- at some point in time
3 would have wanted me, if necessary, to provide my --
4 both my opinions and my information as I'm doing here
5 today regarding what had transpired. So I guess in that
6 regard I -- you know, obviously I'm an attorney who's
7 been around a while. I know that could happen in a case
8 like this, so -- but whether -- that's about all I can
9 say.

10 Q And you -- you presume to identify -- when did
11 you -- did you -- did you encourage Ms. Erin to file a
12 bar complaint against Ms. Czyz?

13 A I told her that, you know, she could file a
14 bar complaint, yes.

15 Q And --

16 A But she was already -- by the time even, by
17 the way, she had talked to me, it seemed like she had
18 talked to some other attorneys who had both -- and
19 I don't know who they were, but these were before me,
20 who had both talked to her about the claim and -- and
21 all of the issues going on in the case, so -- but, yes,
22 I did, to answer your question.

23 Q Okay. And did you also encourage her to --

24 A When --

25 Q I'm sorry. Did you want to add something? Go

1 on.

2 A No. That's -- that's -- you're right. Go
3 ahead.

4 Q Okay. Did you -- did you encourage her to
5 file a malpractice action against Ms. Czyz?

6 A No.

7 Q Okay. Well, I mean, I guess, why didn't you
8 make the referral at that time?

9 A I mean, it just really -- I -- it was such a
10 mess of a situation, I thought, you know, given the
11 context of -- I just didn't -- it really wasn't where we
12 went at that time. So I don't know whether that
13 discussion was had. It wasn't something that I was
14 going to do within the scope of my engagement.

15 The reason I'm here today is because -- for
16 two reasons: Number one is because I'm glad to tell,
17 you know, the story about what had happened factually,
18 and because I think I also have expert opinions to -- to
19 offer. But I didn't -- she -- she certainly had that
20 right, if she wanted to, but she had -- she was out some
21 \$41,000 of her -- her -- you know, I'm sure she was, you
22 know, very low on funds and a number of things as well.
23 So she eventually made those decisions after our
24 relationship had concluded.

25 Q And how did you know that she was low on

1 funds?

2 A She told me, I believe. And I -- I believe
3 I understood that, that it didn't take a -- it didn't
4 take a rocket scientist. I mean, she had -- she was a
5 person that appeared to be of -- you know, I don't know
6 what her means were, but she had spent \$41,000 of her
7 money and in a very short period of time. And that was
8 my impression, that this person did not and should
9 not -- or could not and should not continue to spend any
10 additional money other than she -- what she absolutely
11 would have to.

12 Q Okay. So she spent about 40-something
13 thousand dollars?

14 A Uh-huh.

15 Q What indication did she give you that she was
16 short of funds? That sounds like a person who's got
17 plenty of money.

18 A This is just my -- this is just my -- I don't
19 know -- want to use the word -- my understanding from
20 the conversation, that she was -- whatever money she
21 had, that she was tapped out.

22 Q Okay. Do you know her net worth?

23 A No.

24 Q Is she married?

25 A I believe she is.

1 Q Okay. Do you know who she's married to?

2 A No, not really.

3 Q Do you know her net worth?

4 A No.

5 Q Would it surprise you if she had a net worth
6 of over a million dollars?

7 A I wouldn't know one way or the other.

8 Q Do you -- did she disclose to you -- did the
9 plaintiff, Ms. Erin, disclose to you how she knows
10 Ms. Czyz?

11 A I understood that they knew each other from --
12 and I've read -- I understood this at the time, and
13 I also read in the pleadings that they under -- that
14 they knew each other from -- I want to say high school.
15 I'm going -- or something, some past relationship.

16 Q Okay. And did you know any of these people
17 from that long ago?

18 A No.

19 Q Okay. And do you know why -- how she selected
20 Ms. Czyz to represent her in the employment and labor
21 action, or why she selected Ms. Czyz, how or why?

22 A My memory is it had something to do with, you
23 know, she knew her from that relationship.

24 Q Okay. And she --

25 A A prior relationship of some sort.

1 Q And she found you through that other -- that
2 referring attorney?

3 A Yeah, I believe so. Some people find me
4 sometimes independently because of the Internet. So
5 I will get calls where there's a referral, and then she
6 had called a couple times, so it could have been a
7 combination, but yes.

8 MR. MERVINE: Okay. Now, we've been going for
9 about an hour and a half here. Did anybody want to
10 take a quick break, you know, maybe five minutes or
11 something like that --

12 MS. CZYZ: Yeah.

13 THE REPORTER: (Indicating.)

14 MR. MERVINE: -- so we can --

15 THE WITNESS: The court reporter does.

16 MS. CZYZ: Yeah.

17 MR. MERVINE: All right. Awesome.

18 THE WITNESS: How are we doing on time?

19 MR. MERVINE: 10:30.

20 THE WITNESS: No. I mean, like --

21 MR. MERVINE: I think -- I mean -- I mean,
22 unfortunately we're probably going to be here
23 another hour and a half.

24 THE WITNESS: Okay.

25 MR. MERVINE: But, I mean, we'll go and

1 chitter-chat for about five or six minutes.

2 THE WITNESS: That's okay.

3 (A recess was taken from 10:33 a.m. to
4 10:48 a.m.)

5 BY MR. MERVINE:

6 Q Okay. Mr. Gunter, I think we already --
7 I already asked you if you were retained as an expert in
8 this case?

9 A Yes.

10 Q And how much were you paid as a retainer?

11 A I'm doing it on a pro bono basis.

12 Q Do you -- you don't anticipate -- you don't
13 anticipate being paid at all for this case?

14 A No.

15 Q Okay.

16 A Which is why I didn't charge for my time here
17 today as well, because it goes both ways, obviously.

18 Q Bear with me just a moment. I'm going to
19 catch up with myself, because we talked about a lot of
20 things in there. Just a moment.

21 Does Ms. Erin know that you've been retained
22 as an expert in this case?

23 A I believe so, yes.

24 Q Okay. And how did she find out?

25 A I'm sure that her attorney officially informed

1 her.

2 Q Did you -- did you offer to be a pro bono
3 expert in this case before referring her to Mr. Atwood?

4 A Again, I -- you -- I don't know that
5 I referred her to Mr. Atwood originally. I don't --
6 I know that he consulted with her, but I can't say that
7 I referred her to Mr. Atwood; but I was obviously an
8 underlying fact witness, and I was asked and I was
9 willing to provide my opinions as an expert as well,
10 so --

11 Q Okay. And have -- I mean, what we talked
12 about that you -- have you worked with Mr. Atwood in the
13 past as an expert?

14 A No.

15 Q Has Mr. Atwood ever paid you any retainer or
16 referral fee?

17 A No.

18 Q Have you ever paid Mr. Atwood any -- or have
19 you ever received a referral fee from him?

20 A No.

21 Q Okay, yeah. Okay. So what factors go into
22 the reasonableness of an hourly rate?

23 A Well, there's a number of factors from the
24 decisions, the lodestar, so it's the skill and
25 experience of the attorney, the complexity of the case.

1 Whatever the factors are, those are the factors that the
2 court applies to the reasonableness of the hourly rate.

3 Q And did you -- I mean, in your opinion, do you
4 think that the hourly rate charged by Ms. Czyz in the
5 underlying action was reasonable?

6 A Only in the sense that nothing should have
7 been charged at all because of my opinions regarding
8 what the scope of the engagement should have been, but
9 in terms of just the -- whatever it was, 350, you know,
10 that hourly rate, I have no opinion on that.

11 Q Okay. Do you anticipate testifying with
12 regard to the reasonableness of the -- of Ms. Czyz's
13 hourly rate?

14 A If requested, I would, but that's really not
15 the -- from my viewpoint, the -- the -- what this is
16 about. It's more -- from my viewpoint, it's about the
17 inappropriateness and excessiveness of the billing.

18 Q Okay. And, if requested, what would you say?
19 Would you say that the hourly rate is reasonable or
20 unreasonable in this -- under these circumstances?

21 A Well, again, I'd say it's unreasonable in the
22 sense that nothing should have been charged, and I'd
23 probably say it's unreasonable because you're --
24 you're -- you're dealing with an individual with, that
25 appears to me, no experience in this area, so it's the

1 equivalent of somebody who is out of law school; but
2 even then, again, with some basic research, you could
3 come to these same conclusions, I think, eventually.

4 Q Uh-huh.

5 A But I -- I just have no opinion about the
6 hourly rate.

7 Q Sure. Okay. So no opinion about the hourly
8 rate, but the number of hours, you've expressed, is
9 excessive in this case, right?

10 A Yes, for sure.

11 Q And how many hours -- is it possible that a
12 case can require many more -- what is the range of hours
13 required to, you know -- I mean, how many hours were
14 spent on this case, actually? Let me withdraw
15 everything except for that.

16 How many -- do you recall how many hours
17 Ms. Czyz spent on this case?

18 A I don't know the total number of hours as we
19 sit here. Whatever's on the billing records, it totals
20 up, but there was -- so whatever the hours are.

21 If you want to know my opinion on what do
22 I think that the -- the scope and the total number of
23 hours could reasonably have been to counsel and advise
24 the -- the plaintiff such that you could conceivably add
25 value as to where they're at, their future prospects,

1 and that there's, you know, no viable cause of action
2 whatsoever? Three hours, and that would be probably
3 sufficient between your analysis and research, three,
4 four hours maybe. But I think that, you know, if you
5 were experienced, then you could maybe do it in the
6 context of a consultation.

7 Q And based upon Ms. Czyz's level of experience,
8 if she was delivered thousands of documents, would it be
9 reasonable for her to review them in this case?

10 A No. No.

11 Q And why not?

12 A Because you -- you -- you could determine the
13 viability of the causes of action based on the
14 conversations, though. There was a number of documents
15 that were -- that -- as I recall, that were
16 unnecessarily both obtained and reviewed.

17 Q Uh-huh. How do employment and labor law
18 attorneys -- do they normally -- is it -- is it common
19 practice to bill hourly in these sorts of cases?

20 A Well, in discrimination cases, if you're
21 handling a plaintiff's case, I'd say it's more common
22 practice to handle them on a contingency fee basis.

23 Q And when you say, "a contingency fee," you
24 mean based upon the total award without considering the
25 actual hours, attorney's fees incurred by the attorney?

1 A I mean, there's different types of contingency
2 fee contracts, and some of them have a number of things
3 in there, but the contingency fee will generally be a
4 percentage of the recovery or the court-awarded fee,
5 whichever is greater. That would be a typical
6 contingency fee that you might see, and that would be --
7 I'd probably say are typically handled, but there are
8 different scenarios as to how plaintiffs handle cases.
9 And you could handle a plaintiff's case on an hourly
10 basis if that was agreed upon.

11 Q Sure. In an employment and labor law case, is
12 it possible that a cause of action could be supported by
13 information disclosed in a document?

14 A The answer to your question is yes.

15 Q Yeah. So if an attorney was delivered
16 thousands of documents by a client, and there was
17 potentially incriminating information in there, wouldn't
18 it be wise for the attorney to review those documents?

19 A If -- again, depends when the documents are
20 received. If they're delivered simultaneously with the
21 initial assessment and consultation, I would always have
22 a conversation based on my experience to try to analyze
23 based on the facts that are shared with me from that
24 client whether or not they were going to come anywhere
25 close to meeting any of the elements.

1 If it's allegations based on sex, is that a
2 viable claim? Was there an adverse employment action?
3 What is the gender and/or race or ages or whatever it is
4 of others involved? If I quickly assess and determine
5 that those aren't viable, then, no, there's not any
6 reason for me to review thousands of documents. That
7 would -- that would be unnecessary, even if those were
8 delivered at the time of my consultation.

9 If they were delivered subsequent to that,
10 where I have already undertaken representation, and
11 I thought that it was a viable claim, generally
12 information like that, if it's hourly, would be reviewed
13 with due consideration as to their materiality and --
14 and -- and context of the case and how necessary it was,
15 if there was actually a meritorious case. In this case
16 there was not.

17 Q If your client in an employment discrimination
18 law case delivered to you documents and notes, you would
19 review them, though, wouldn't you?

20 A When you say, "documents and notes," yes.

21 Q Okay. And would you review them yourself, or
22 would you delegate that task to someone else in your
23 office?

24 A I would review them.

25 Q And to review a hundred-page document, how

1 long would that take?

2 A I don't know. It depends on the -- the
3 complexity of the document, the information in the
4 document, what the document was. It could be a very
5 short amount of time if you're familiar generally with
6 employment files and documents and you know that only
7 you -- you know or should know that only certain things
8 are going to be material and you can quickly go through
9 that. So an experienced labor and employment lawyer,
10 because we do this regularly, which is -- I could go
11 through a hundred pages of documents and look for
12 material information quickly.

13 Q And how long does it take you to -- would you
14 say, you know, a full-page document typed in 12-point
15 font, you know, the entire page of the -- the front of
16 the page covered with text, one-sided, how long would it
17 take you to read that page, would you say?

18 A I don't know.

19 Q Depending upon how fast you read it, right?
20 You could read it in about, you know, maybe one minute,
21 maybe four minutes?

22 A I don't know. It depends on the materiality
23 of the information, whether you're studying it, whether
24 you're highlighting it, whether you're -- you can
25 quickly look at it and say, Well, this is immaterial,

1 whether there's subheadings, you know, a number of
2 things that we run across.

3 Q And, to your knowledge -- to your knowledge,
4 has the EEOC, anytime you've ever notified them of a
5 claim, have they ever issued anything other than a right
6 to sue?

7 A Yeah, they can issue what's called a cause
8 determination, which means they found reasonable cause.

9 Q Okay. And in this case they issued a right to
10 sue?

11 A That's correct.

12 Q Okay. And as an attorney, would you rely on
13 that?

14 A When you say, rely on it, I don't know what
15 you mean.

16 Q I mean as a prerequisite to filing the claims.

17 A I still don't know what you mean --

18 Q Would you -- do you think that --

19 A -- by "rely" on it.

20 Q Would the EEOC detect that it was not a viable
21 claim based upon the representations made to them?

22 A I still don't think I understand your -- what
23 you're asking. Sorry.

24 Q If you -- that's okay.

25 If you file your -- you know, it's a --

1 A Charge of discrimination.

2 Q -- yeah, charge of discrimination with the
3 EEOC, and they find that there is a right to sue, would
4 you as an attorney decide not to sue? Would you just
5 say, Oh, they're -- do they -- do they assess the
6 viability of a claim, essentially? I mean, what do
7 they --

8 A I, personally, as an attorney, make my
9 decision independently based on my experience.

10 Q And in your experience, have you ever received
11 a right to sue from the EEOC and failed to act upon it
12 or refuse to act upon it?

13 A Sure.

14 Q How many times?

15 A Decline -- you mean decline representation or
16 further representation?

17 Q Yes, sir. Yes, sir.

18 A Yes, I have.

19 Q Okay. And how often does that happen?

20 A Frequently.

21 Q And why would you file the charge of claim
22 with the EEOC in the first place if you didn't think you
23 would represent them?

24 A Well, you -- so you -- when you engage a
25 client, you're taking in the information. I wouldn't

1 file the charge in the first place if I -- if I didn't
2 feel that there was a meritorious claim to be filed. As
3 you go along, you continue to evaluate, you might get
4 the employer's position statement, whatever, whatever it
5 is; and then at the -- at the end of that, depending on
6 a number of circumstances, the -- the attorney and the
7 client have the right to either agree or not to agree to
8 engage in litigation in order to try to resolve the case
9 or, you know, you may be hoping for a cause
10 determination. So there's a number of factors that come
11 into play.

12 Q Okay. So those initial determinations, when
13 you first meet your client, how many hours would you
14 typically spend with them before filing a charge of
15 claim with the EEOC?

16 A It varies. It varies. But we would typically
17 meet with a client and prepare the charge of
18 discrimination while they are present, in the same
19 meeting.

20 Q And how long might that initial investigation
21 take, between zero hours and how many hours?

22 A The EEOC investigation?

23 Q Well, the initial intake prior to filing the
24 charge of claim, how long might that take, zero hours to
25 how many hours?

1 A Well, prior -- okay. So we have to prepare
2 the charge, and we file it on their behalf. So are we
3 including that or are we not?

4 Q Sure, sure. Let's include that.

5 A Okay. So the initial intake and analysis and
6 preparing of the charge, it could be -- depending on the
7 complexity -- complexity, one to ten hours.

8 Q Okay. So it's possible that you could spend
9 ten hours with a client, receive a right to sue from the
10 EEOC, and then decline representation?

11 A That's possible, sure.

12 Q Okay. And --

13 A Well, not decline representation. Decline
14 to -- you've limited the scope of your engagement
15 already, and you then don't go into litigation.

16 Q Okay. Well, how -- why wouldn't you uncover
17 that the claim was not meritorious before filing the
18 charge of claim?

19 A Well, they're -- it's not -- just not -- it's
20 not that it's -- not meritorious is probably not a good
21 word. It's just that there could be difficulties with
22 proof. There could be demands made for settlement which
23 were unsuccessful. There could be strategies whether
24 you can remain in state court or whether you end up in
25 federal court. There could be damage issues, depending

1 on whether or not they've secured subsequent employment
2 and what are the recoverable damages.

3 So there's just a number of factors that
4 should be -- are and should be considered in both, you
5 know, the underlying claim and the attorney-client
6 relationship in the strategy to ensure that the client
7 is fully advised and -- and it makes sense to go forward
8 or not.

9 Q Okay. And how long does an EEOC -- EEOC
10 investigation typically last when you file the charge of
11 claim?

12 A Well, the -- the -- it depends, but I would
13 say a year plus unless -- a year -- a year plus unless
14 you request the right to sue or they issue the right to
15 sue earlier.

16 Q Okay. And do you --

17 A It's just -- it's just a guesstimate. It
18 varies depending on their staffing levels.

19 Q And do you recall how long it took the EEOC to
20 investigate Ms. Erin's claim?

21 A I don't know about investigate, but I know
22 that they issued a right to sue, you know, sometime
23 around November --

24 Q Okay.

25 A -- give or take. I don't know the exact

1 month, but --

2 Q Okay. And that was about -- approximately one
3 month prior to the termination of Ms. Czyz's
4 representation of the plaintiff?

5 A Ms. Czyz, I understood, terminated her
6 representation officially -- I thought it was in -- you
7 know, when she notified the federal court or some -- or
8 opposing counsel on February 9th, or something like
9 that, of '17. So, you know, it was -- I can tell you
10 that the right to sue was issued at some point in time,
11 you know, before the filing of the complaint, which
12 I believe happened in November of '16, Dave, I'm -- if
13 my dates are correct.

14 Q And, you know, in -- in Ms. Czyz's contract
15 with the plaintiff, you know, it indicated that the
16 plaintiff had 30 days to contest her bills. Is there
17 any indication why the plaintiff didn't have a problem
18 with paying these large sums until so much later on in
19 the representation after the damages were inflated?

20 A There's no indication in the record why she
21 did that, no.

22 Q Just a moment, everyone. Thank you.

23 A Okay. Sure. Sure.

24 Q Do you think Mrs. Erin's damages might have
25 been less if she had timely objected to those invoices?

1 A They would have been less if she stopped
2 paying the invoices, but there were subsequent bills
3 made even after the termination. There was a quantum
4 meruit issue, a bill issued for around, I don't know, 25
5 or \$35,000, some -- a larger amount. So the only way
6 that she would have stopped whatever was occurring is
7 the earlier -- that she could have stopped paying the
8 bills.

9 I don't fault her for that. As attorneys, we
10 have the obligation and responsibility in the position
11 that we have to, you know, not proceed forward and to
12 fully advise the client. So I don't -- I don't blame
13 her for that, but there's no indication that she stopped
14 it. She continued to pay it until she didn't.

15 Q And do you have a -- we did discuss a little
16 bit about your relationship with the Henderson law firm
17 and Mr. Atwood, I think Mr. Atwood in particular. But
18 do you have any particular working relationship with the
19 Henderson law firm?

20 A No. They're usually just opposing counsel on
21 different cases and --

22 Q Okay. Do they make referrals to your office?

23 A Over the years, yes, somebody has made
24 referrals. You know, there's so many attorneys there,
25 I'm sure somebody has made referrals from that law firm.

1 Q Okay. And what sort of cases does the
2 Henderson law firm refer to you?

3 A Labor and employment that they don't handle,
4 like maybe, like, a plaintiff's case --

5 Q Conflicts?

6 A -- or an executive or a conflict, yes.

7 Q Yeah, okay. Do they -- and this is the first
8 time that you've been contacted as an expert by
9 Henderson -- Henderson law firm, right?

10 A Yes.

11 Q How many cases do you receive or how many
12 cases -- let's go ahead. How many cases have you
13 received this year as referrals from the Henderson law
14 firm?

15 A Oh, I don't know if I've received any.
16 I couldn't tell you.

17 Q Okay. So it's not many?

18 A I don't know whether it's -- it's any or
19 whether there's a couple. I just don't know.

20 Q Okay.

21 A Again, there's many attorneys that make it up.
22 So it could just be somebody who calls in, and it could
23 just be the name of an attorney, and it could be
24 somebody who gave the name of a family law attorney and
25 the family law attorney referred the case. And it could

1 be a case that we never -- it could be a potential,
2 somebody that we never even were able to assist beyond
3 just a quick telephone conference, but I couldn't tell
4 you, Dave, as I sit here, whether there's zero or more
5 than that.

6 Q Okay. And if I asked you, you know, I mean --
7 yeah. You're not really sure where all of your
8 referrals come from essentially, is what you're saying,
9 right? You're not --

10 A Well --

11 Q You don't keep tabs of what law firm every
12 lawyer is employed at; is that what you're saying?

13 A Well, I try to tell people to, you know, keep
14 that information. Most of the cases that I get are from
15 my reputation or the Internet or -- that's where most of
16 the cases that I get come from. Then the ones that are
17 referred to me, which, again, sometimes from the time
18 they're referred to me they've already been to me,
19 because they've come from the Internet and the person
20 just doesn't know they were referred to me. You know,
21 we try to make note of that, whether they're a case or
22 not a case so we can at least thank the attorney.

23 Q Okay.

24 A And ordinarily, except in big cases, I don't
25 pay referral fees.

1 Q Okay. Would you say that you make a lot of
2 money with the Henderson law firm?

3 A No.

4 Q Okay. And is there any reason why you didn't
5 want to take this -- or have this deposition taken at
6 your law office today?

7 A No. It's just kind of my own pad.

8 Q Okay. And did you meet Ms. Erin when you did
9 her intake? Did you meet her face-to-face?

10 A I don't recall if we met face-to-face.
11 I think the -- if we did, the vast majority of our
12 conversations were telephone conferences.

13 Q Okay. But you did speak to her over the
14 telephone?

15 A Oh, yeah.

16 Q And how many hours did you spend with her on
17 the telephone?

18 A I think I've answered the total hours.
19 I don't know how -- what would be attributable to the
20 phone calls and the -- how many, that type of thing,
21 Dave.

22 Q Okay. So a total of seven hours --

23 A Well, I think I gave you -- whatever the range
24 I -- previously, I'll defer to that, that there was --

25 Q Okay. And in your telephone conferences with

1 her, did she express a desire to recover any funds from
2 Ms. Czyz?

3 A I don't know in that way, because the initial
4 in-depth part of my duty and analysis was to figure out
5 the existing problem and issue, and so that was what
6 I -- I did. But at some point in time I'm sure that
7 she -- she discussed, and I candidly told her some of my
8 opinions about the case, and she discussed that she
9 was -- wanted to have some remedy. I don't know whether
10 or not it was -- the words "recovering money" or how
11 she -- she articulated it --

12 Q She --

13 A -- but one of them was to -- to file the
14 complaint with the Florida Bar. And I don't know
15 whether or not she -- she may have, you know, do
16 I handle, you know, malpractice and that type of thing?
17 And that wasn't the scope of my engagement. She could
18 have expressed those -- a desire to do something like
19 she's ended up doing here, though.

20 Q And those were -- those were her ideas, right,
21 the malpractice and the Florida Bar complaint?

22 A Well, the Florida Bar complaint, I think she
23 already knew that as an option; but as a lawyer also
24 having a conversation in the context of that, I just
25 would have told her that she can -- she has the right to

1 go to the Florida Bar as a remedy for this, and so she
2 had already intended to do that. She just had a lot on
3 her plate at that time, because the primary thing was to
4 deal with being unrepresented in the court that she was
5 in. But I -- I didn't -- you know, I wasn't really
6 assisting, I guess you'd say, with that. I just
7 referred her to -- for her to handle it.

8 Q Was it sort of like a surprise to you when
9 you -- when you reviewed the situation and -- and she
10 expressed the desire to recover money from her former
11 attorney?

12 A Which situation are you talking about?

13 Q I mean in general. I mean, was this -- when
14 she -- when you had your interview with her and she
15 described to you what had happened --

16 A Uh-huh.

17 Q -- she must have described to you everything
18 with Ms. Czyz, right?

19 A Okay, yes. I mean, she described whatever she
20 described, yes.

21 Q And did she -- yeah.

22 A Was I surprised, you were saying?

23 Q Yeah. I mean, yeah, what --

24 A When I looked -- when I looked at the
25 pleadings and I -- and I got an overall assessment of

1 the facts, and also in -- in the billing and everything,
2 I was -- I would use the word shocked.

3 Q Was the amount what shocked you?

4 A Both the underlying claims, the way they were
5 handled, and the amount all shocked me.

6 Q And did Ms. Erin try to call you again after
7 that initial phone call?

8 A Well, we had more than one initial phone call
9 in the context of what we were trying to do.

10 Q Okay.

11 A You mean after our engagement sort of ended
12 and her case had resolved in federal court?

13 Q During the course of your representation of
14 her in the underlying matter, did she -- how often did
15 she call you?

16 A I don't know the frequency, but we had to talk
17 to -- to handle the strategy that I was executing, but
18 I don't know the frequency.

19 Q Who answers the phones over at your office?

20 A It could be me; it could be Conor; it could be
21 Loree, who is my wife; it could be a paralegal; it could
22 be anybody.

23 Q Okay. So anybody. And did -- was there
24 any -- did she -- was there anyone in the office who
25 said -- I mean, when you receive a call from a client,

1 are there notes taken on that?

2 A Again, depends on who takes it. There should
3 be something at least, you know, to get -- so it's
4 usually to get them set up with somebody to talk to or
5 to dispose of it. So it would be, you know, sort of who
6 they were and what their situation was.

7 So as I recall this one, it was somebody, Hey,
8 I got this person on the phone, here's what's going on.

9 And then initially it was kind of like, Oh,
10 man, you know, we can't help that person.

11 And then I think she called back again, Dave,
12 is my memory, and either I got it, like, immediately or
13 something and, you know, really detected that this
14 person was -- had a lot going on and was in need of
15 help, so --

16 Q Okay. Was -- I'm sorry.

17 A And then I -- then I -- you know, the
18 relationship evolved from there. So --

19 Q Okay. Was there ever anyone in your office
20 that expressed that she had been calling too frequently?

21 A No.

22 Q Okay. Were you re -- and okay.

23 And where was Ms. Erin living when you were
24 represent -- when your firm was representing her?

25 A I want to say that she was relocated to

1 outside the state of Florida.

2 Q Okay. Do you recall where?

3 A I can't remember offhand, but I remember she
4 was outside of the state. I can't remember offhand.
5 That's my memory, is that she was outside of the state.
6 Maybe Virginia. I don't know, to be honest with you.
7 I don't want to speculate.

8 Q Did she leave during the course of her claim?

9 A What are you talking about when you say,
10 "claim"?

11 Q I mean, was she living in Florida when
12 Ms. Czyz began representing her?

13 A I believe so, but I don't know the answer to
14 that.

15 Q I see. Do you have any reason to believe that
16 Ms. Erin has been less than honest with you with regard
17 to her representations of her relationship with
18 Ms. Czyz?

19 A No.

20 Q Okay. How long did it take you to do a due
21 diligence in Ms. Erin's case for the underlying action?

22 A Well, when you say, "the underlying action,"
23 part of what I was doing was also trying to strategize
24 to -- to get it out of federal court, get this lady some
25 money, look at the underlying action, look at the

1 attorney-client stuff that had sort of occurred in the
2 context of that. So that, remember, I gave you a number
3 of hours before. But in terms of the -- the actual
4 frivolity of the underlying stuff and, you know, as I
5 analyze that, not -- not -- not that long --

6 Q Okay.

7 A -- of those hours. I don't know what portion
8 of those hours it would have been, but not -- not long.

9 Q Okay. And when you pursued the settlement,
10 you didn't believe the case to be meritorious?

11 A No.

12 Q Did you tell opposing counsel that?

13 A He knew. I mean, I didn't expect to get any
14 money. I probably -- I just -- you know, I was prepared
15 to settle it for nothing, and, you know, was glad to get
16 her out of it. And I felt bad that she even paid me
17 attorney's fees, but --

18 Q Just a moment. I'm sorry.

19 A Sure. Sure.

20 (Discussion off the record between counsel.)

21 BY MR. MERVINE:

22 Q Okay. How many -- do you recall how many
23 attorneys agreed to work on Ms. Erin's case while it was
24 in federal court?

25 A I don't understand your question.

1 (Discussion off the record between counsel.)

2 MR. MERVINE: Sorry, but just another minute.

3 We're going over our questions here.

4 THE WITNESS: No problem.

5 MR. ATWOOD: It's your deposition.

6 BY MR. MERVINE:

7 Q Okay. Mr. Gunter, have you ever testified
8 with regard to -- as an expert -- excuse me.

9 Have you ever testified as an expert with
10 regard to attorney fee agreements?

11 A Attorney fee agreements, no. I've testified
12 in my own attorney's fee hearing. That's it.

13 Q Okay. Did Ms. Erin tell you that Ms. Czyz
14 only agreed to have her -- excuse me. I'm going to
15 withdraw that.

16 Do you -- are you suggesting in any way that
17 there is an issue with Ms. Czyz's attorney's fee
18 agreement? Is there an issue with it?

19 A With the agreement itself and whether or not
20 it violates bar rules, that type of thing? I'm
21 suggesting that there's an issue with it in the sense
22 that she engaged this individual to provide
23 representation in a case that -- without communicating
24 in such a way that would allow the person to make an
25 informed decision. So that is -- the attorney's fee

1 agreement is, you know, for that relationship. So in
2 that regard, you know, I'm testifying.

3 As to a specific provision as to whether or
4 not it's a problem or not, I haven't studied that. If
5 somebody wants to ask me about a provision and whether
6 or not it violates bar rules; but if it talks about --
7 for example, in there I believe it talks about a -- like
8 I said, the earlier things, I think there's a provision
9 in there on trust, a trust retainer, if that -- if there
10 wasn't a trust or wasn't put in trust, I'd have -- I
11 don't know that I'd have a problem with a provision or
12 whether it was a violation of the provision, but
13 I haven't studied per se the -- the agreement to
14 determine whether or not the agreement itself somehow --
15 any of the various amendments somehow violate, you know,
16 for example, bar rules.

17 Q Sure. And the ultimate arbiter, if a
18 violation of the rules of professional conduct have --
19 or excuse me -- the bar rules have been violated, would
20 be the Florida Bar, right?

21 A Ultimately the Florida Supreme Court, but if
22 I was asked an opinion on that, I would provide it.

23 Q Certainly.

24 And are you an expert with regard to the
25 bar -- the bar rules, all of them?

1 A I think I'm -- I think I'm very knowledgeable.
2 It's up to somebody else to determine whether or not I'm
3 an expert.

4 Q More so than an average attorney in the state
5 of Florida?

6 A Yes, yes, for sure.

7 Q And why is that?

8 A I've been -- I've had my own practice for
9 however many years; I've sat on the grievance committee;
10 I was a former chair of the grievance committee, and all
11 that makes me uniquely qualified to talk about those
12 things.

13 Q Okay. And how many years did you deal with
14 them -- have you dealt with them in your practice?

15 A The grievance committee?

16 Q No. How many years have you dealt with the
17 bar rules in your practice?

18 A Since when I got out of law school,
19 unfortunately.

20 Q Okay. So we'll just --

21 A I'm a student of them, so -- I try to be.

22 Q Sure.

23 And how long did -- how long ago did you sit
24 on the grievance committee?

25 A It's been a few years. I don't know the exact

1 dates.

2 Q More than ten years?

3 A No, no, no, no, no. Probably two years was
4 my -- my last -- when I was chair, and then prior to
5 that I was just a regular member.

6 Q Okay. And when you were just a regular
7 member, how long did you sit on the committee?

8 A I was on the -- I think my term was a total of
9 three years.

10 Q Okay. And when did that end?

11 A I don't remember. Maybe a year ago, give or
12 take.

13 Q And how about as the chair of the grievance
14 committee, when did that begin?

15 A I was only the chair for a very short time at
16 the very end, so I don't know the exact date, but it was
17 right at the very end.

18 Q Okay. And how long were you the chair?

19 A I'd say three to six months. I don't remember
20 the exact amount of time, Dave, as I sit here.

21 Q Sure.

22 And if there is a violation of the bar rules,
23 do you have faith that the Florida Bar will be able to
24 uncover that in their investigation?

25 A Yes.

1 Q Okay. And in the due diligence phase of the
2 case, when you first take on a case or -- and it's --
3 actually, specifically, when Ms. Czyz took on this case,
4 you say she's breached -- I mean, if I understand
5 correctly, if the -- the standard of care here with
6 regard to her representation is because of the amount of
7 time it took her to assess and bring the case; is that
8 right?

9 A No.

10 Q Okay.

11 A It's whatever I -- I previously stated was the
12 standard of care. The standard of care is to exercise
13 that level of skill and experience that a reasonably
14 prudent person in this case within the specialty would
15 exercise, or even if we said that a reasonably prudent
16 attorney would exercise. That's the standard of care.
17 It was violated in a number of ways or breached in a
18 number of ways that I've previously described.

19 Q Okay. And the lack of skill, the lack of
20 skill here you say you previously described,
21 generally -- I believe it was generally what it was,
22 but, I mean, I guess -- I'm just going to go ahead and
23 withdraw that, and I'm going to --

24 A Okay.

25 Q -- take a second to look over this.

1 A Okay.

2 Q Let's see what we've got here.

3 Okay. Mr. Gunter, can an ordinary attorney
4 bring a claim? You know, someone who's never practiced
5 before in employment and labor law --

6 A Yes.

7 Q -- can they bring a claim?

8 A Yes.

9 Q And where -- what is the threshold? When does
10 the -- what skills specifically would you say Ms. Czyz
11 was lacking? You know, what skill was lacking here?

12 A Well, the -- it's both the skills and the
13 responsibility of duties, but let's -- the skill is
14 apparent, at least in this case, that she failed to
15 appreciate the elements and legal requirements of a
16 discrimination claim by virtue of what was alleged and
17 believing that would be a viable client.

18 So that skill was lacking for all the reasons
19 I previously talked about with regard to sex, failure to
20 include national origin, the inclusion of the
21 retaliation claims, all of the things that we've
22 discussed from the pleadings to the strategy all -- all
23 the way to where we're at. So that demonstrated a
24 lacking of -- of skill, but then there -- you know, the
25 inherent duty in determining this responsibility and

1 obligation that we have to our clients to -- we have a
2 fiduciary duty to advise our clients in such a way
3 because, they're not -- we're uniquely situated to
4 provide that advice, and -- and that was breached, in my
5 opinion, as well, so that's --

6 Q So what specific elements did -- you say she
7 omitted the national origin claim?

8 A Well, I -- all the previous -- I'll defer to
9 my previous testimony, but there was not only that. It
10 was the -- it was the viability and analysis of the sex
11 discrimination claim. The national origin
12 discrimination claim was not included in the charge,
13 which even if you had a viable national origin
14 discrimination claim is a breach of the standard of
15 care, but the -- the claim itself, even when it was
16 brought, in my opinion, was -- was, you know, not a
17 viable claim.

18 And the -- so I'm sorry. But, anyway, though,
19 for all the reasons I previously discussed, all of the
20 secondary claims, I'll call them, were also invalid.

21 Q Okay. Are you aware that there was a claim --
22 what made the national origin -- you said it was lacking
23 in the national origin claim; is that right?

24 A Well, the national origin claim which was --
25 again, it would be dismissed anyway, because it wasn't

1 included in the underlying charge and the -- you know,
2 so it would be dismissed. But even as alleged, there
3 was no -- it was -- I don't even want to use the word
4 insufficient. There just was no -- no claim and no
5 reasonable attorney or even an attorney who didn't --
6 there wasn't any better claim for national origin than
7 anything else.

8 Q Okay. And -- okay.

9 A The entire claim was not at all even close to
10 being viable --

11 Q Okay.

12 A -- all of them.

13 Q Okay. So the national origin claim, if
14 I understand correctly, was not -- you're saying is
15 not -- was -- to your knowledge today, was not included
16 in the charge of claim filed with the EEOC?

17 A Right. That's my knowledge.

18 Q Okay. And when you make these --

19 A It was included in the complaint thereafter in
20 the lawsuit.

21 Q Okay. And the -- the -- when making these
22 claims, they're going to be based on the allegations
23 made by the client, right?

24 A Sure. You're going to take the -- the
25 allegations and facts into consideration, yes.

1 Q Sure.

2 And are you aware of the extent of the
3 conversations between Ms. Erin and Ms. Czyz regarding
4 the facts of her situation?

5 A Yes.

6 Q Do you know --

7 A I mean, I assume them to be as conveyed in the
8 papers.

9 Q In the seven hours that you interacted with
10 Ms. Erin's case, do you believe that you were exposed to
11 as much detail as Ms. Czyz was over the several months
12 that she spoke with Ms. Erin?

13 A Well, remember, I said five to seven hours.

14 Q Sure.

15 A Yes, in the sense that I had the complaint and
16 everything else. And, you know, I don't know about the
17 level of their conversations and what they were talking
18 about privately, but to the extent that I would assume
19 all of that was conveyed ultimately in the legal
20 complaint and the underlying papers, yes, I was able to
21 see everything that mattered, and -- and we've discussed
22 some of it; but the basis of it was, you know, like
23 I said, it was that -- that she was a white woman and --
24 and had a bubbly personality, and blonde, and these
25 types of allegations, which were not at all anything

1 viable under the realm of employment discrimination law
2 based on what had transpired.

3 Q Okay. So then, in your opinion, do you
4 believe that Ms. Czyz was attempting to help Ms. Erin?

5 A No.

6 Q Okay. To your knowledge, has Ms. Erin ever
7 been -- I mean, how is her credibility with you? Did
8 you find her to be credible?

9 A Yes.

10 Q Has she ever been convicted of a crime or
11 anything?

12 A I don't know.

13 Q Okay. Do you know about her reputation in the
14 community, anything like that?

15 A No.

16 Q Do you have any reason to believe that she
17 might have lied to you?

18 A No.

19 Q Do you have any reason to believe she might be
20 associated with organized crime?

21 A No.

22 Q Okay. What about organized crime under the
23 veil of, you know, official business?

24 A I don't know what that means, but no.

25 Q Well, I mean, you know, you --

1 A I don't have any knowledge of any of that.

2 Q You're here today saying that Ms. Czyz took
3 advantage of this woman, right?

4 A I'm here to say that Ms. Czyz breached her
5 duty as an attorney, as I've already talked about, and a
6 number of other things. So in that regard, yes.

7 Q And as a member of the, you know, the
8 grievance committee, you've been --

9 A Well, I'm a past member of the grievance
10 committee.

11 Q -- past member --

12 A Right.

13 Q -- you've been closely associated with the
14 policing actions of attorneys, right?

15 A I'm familiar with, you know, bar rules and the
16 application of bar rules, certainly. And I do -- and
17 I believe they were certainly violated.

18 Q And was -- where did Ms. Erin get the money to
19 pay Ms. Czyz?

20 A I have no idea.

21 Q Do you have reason to believe Ms. Erin was
22 intentionally inflating her damages?

23 A No, because her damages are very clear to me.
24 They're the amount of money that she paid.

25 Q But in her conversation with you, she seemed

1 to anticipate that Ms. Czyz had done something contrary
2 to bar rules, right?

3 A She didn't really use those words, but she
4 just conveyed to me the story. And then I had a candid
5 discussion with her about the merits and just had a
6 discussion, so that's --

7 Q And she also anticipated the filing of a
8 malpractice claim, right?

9 A Again, I don't -- I'm sure that that thought
10 was in her mind and eventually she was going to have it,
11 but I think we were more focused on the case that she
12 had, and then there would -- those things -- types of
13 things would be dealt with after that had ended.

14 Q To your knowledge, has any entity, individual,
15 organization, or any member of the Florida Bar, or any
16 official of this state engaged in any action to entrap
17 an attorney with regard to malpractice?

18 A No.

19 Q To your knowledge, has anybody ever engaged an
20 attorney with the intention of them committing
21 malpractice?

22 A No.

23 MR. MERVINE: Okay. Bear with me, everyone.

24 I'm moving as quickly as I can here. Just
25 reviewing my notes --

1 THE WITNESS: Sure.

2 MR. MERVINE: -- and I'll make sure to get us
3 through this as soon as possible.

4 BY MR. MERVINE:

5 Q Now, did Ms. Erin talk to you about how she
6 felt discriminated against by Ms. Rachel Gould?

7 A Again, I think we've covered this in general,
8 Dave. We talked about the facts, and we talked about
9 what they were, and we talked about what was pled in the
10 complaint, which the facts were in the complaint. So
11 that's what we talked about.

12 Q Okay. Have you been contacted by any law
13 enforcement agency with regard to Ms. Erin?

14 A No.

15 Q Okay. Do you have any reason to believe that
16 Ms. Erin has committed an act of fraud or any other
17 crime?

18 A No.

19 Q And when you spoke to Ms. Erin, did she tell
20 you that she didn't want to put the national origin
21 claim in her lawsuit? Did she specifically say she
22 didn't believe that she was discriminated against based
23 on national origin?

24 A I don't think she specifically told me that,
25 no.

1 Q Okay. So, Mr. Gunter, do you have anything
2 good to say about Mrs. Czyz, anything nice to say about
3 her?

4 A No.

5 MR. ATWOOD: Object --

6 A Not that I -- not that I -- no.

7 MR. ATWOOD: -- to the question.

8 A Whatever I have shared here today is -- is
9 what I've shared. Beyond that, I don't -- I don't know
10 her, beyond this meeting here today and this case, so --

11 Q And you weren't aware of her practice before
12 you met Ms. Erin?

13 A No.

14 Q Okay. Do you have reason to believe that --
15 never mind.

16 MR. MERVINE: I'm just going to take a moment
17 to confer with Ms. Czyz.

18 THE WITNESS: Sure.

19 (Discussion off the record.)

20 BY MR. MERVINE:

21 Q All right. Mr. Gunter, have all of your
22 responses here today been candid?

23 A Yes, to the best of my knowledge.

24 Q And do you have any information or knowledge
25 that might mitigate the damages that Ms. Czyz is -- you

1 feel she's responsible for?

2 A No.

3 Q No? Are there -- are there any -- do you have
4 any knowledge or -- or reason to believe that Ms. Czyz
5 is not liable for malpractice in this case?

6 A No.

7 Q Okay. And --

8 A I don't know what you mean when you say,
9 "liable." I don't have any knowledge to believe that
10 she hasn't breached the standard of care, is really what
11 I'll say.

12 MR. MERVINE: Sure.

13 Okay. I think -- I think that's all we've
14 got. Thank you, Mr. Gunter, for your time.

15 THE WITNESS: Thank you.

16 MR. MERVINE: Thank you, Mr. Atwood.

17 MR. ATWOOD: Okay. Thank you.

18 THE REPORTER: Read or waive?

19 THE WITNESS: I'll read if it's ordered.

20 MR. ATWOOD: Yeah, we'll reserve too.

21 THE REPORTER: Okay.

22 - - -

23 (Thereupon, at 11:43 a.m., the deposition was
24 concluded.)

25 - - -

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CERTIFICATE OF OATH

STATE OF FLORIDA)
COUNTY OF LEE)

I, Kimberly T. Westberry, RPR, CRR, Notary Public, State of Florida, certify that JASON L. GUNTER personally appeared before me on the 22nd day of October, 2019, and was duly sworn.

SIGNED this 5th day of November, 2019.

(This transcript has been digitally signed.)

Handwritten signature of Kimberly J. Westberry

Kimberly T. Westberry, RPR, CRR
Notary Public, State of Florida
My Commission Expires 1/25/2022
Commission Number GG 156790

* * * * *

STATE OF FLORIDA)
COUNTY OF LEE)

I, _____, Production Manager, do hereby certify that JASON L. GUNTER was notified via U.S. mail, email, and/or telephone that the transcript of the deposition was available for reading and signing; that as of this date the deponent has not read and signed the transcript for the following reason:

Dated this ____ day of _____, 2019.

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CERTIFICATE OF REPORTER

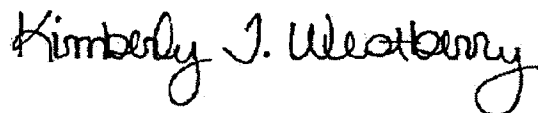
STATE OF FLORIDA)
COUNTY OF LEE)

I, Kimberly T. Westberry, RPR, CRR, and Notary Public in and for the State of Florida at Large, do hereby certify that I was authorized to and did stenographically report the deposition of JASON L. GUNTER; that a review of the transcript was requested; and that the transcript is a true record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED this 5th day of November, 2019, at Fort Myers, Lee County, Florida.

(This transcript has been digitally signed.)



Kimberly T. Westberry, RPR, CRR

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