



## E-Notice

**2013-CH-23386**

CALENDAR: 14

To: MILLER CANFIELD PADDOCK STONE PLC  
kubasiak@millercanfield.com

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# NOTICE OF ELECTRONIC FILING

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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
TOWNSHIP TRUSTEE SCHOOLS vs. LYONS TOWNSHIP HIGH SCHOOL**

The transmission was received on 06/15/2018 at 10:50 AM and was ACCEPTED with the Clerk of the Circuit Court of Cook County on 06/15/2018 at 10:58 AM.

**STRIKE PLEADING(SET FOR MOTION HEARING) (LT's Motion to Strike the TTO's Motion for Summary Judgment)**

**EXHIBITS (Exhibits A-G)**

**NOTICE FILED (Notice Of Motion)**

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**DOROTHY BROWN**  
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COOK COUNTY  
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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

TOWNSHIP 38 NORTH, RANGE 12 EAST,	)	
	)	
Plaintiff and Counter-Defendant,	)	No. 13 CH 23386
	)	
v.	)	Hon. Sophia H. Hall
	)	
LYONS TOWNSHIP HIGH SCHOOL	)	Calendar 14
DISTRICT 204,	)	
	)	
Defendant and Counter-Plaintiff.	)	

**LT'S MOTION TO STRIKE  
THE TTO'S MOTION FOR SUMMARY JUDGMENT**

**I. INTRODUCTION**

Defendant Lyons Township High School District 204 ("LT"), respectfully asks this Court to strike the Revised Motion for Summary Judgment that Plaintiff Township Trustees Of Schools ("the TTO") filed on June 12, 2018 ("the TTO's 2018 Motion"); bar the TTO from filing another summary judgment motion; and transfer this case to the Presiding Judge of the Law Division for jury trial assignment.

The crux of the problem is that TTO's 2018 Motion attempts to re-argue the statute of limitations issue that the Parties already presented to and decided by this Court. The proceedings on LT's motion for partial summary judgment on its statute of limitations defense to the TTO's claim began in May 2017 and ended in February 2018. The Parties presented detailed briefs, supplemental briefs, and two oral arguments. At the end of those proceedings, the Court decided that the state of limitations issue could not be resolved on summary judgment, and instead had to be resolved after the presentation of evidence at the forthcoming jury trial. Now, the TTO seeks a second bite at the apple by re-arguing the exact same issue, even though it presents no new evidence or legal precedents to the Court.

Certainly, the TTO had every right – in light of this Court’s February 20, 2018 ruling on the statute of limitations issue – to ask this Court to enter summary judgment on one or more liability issues. However, the TTO chose not to respect this Court’s ruling, and instead sought complete summary judgment on its claims (including damages stretching back 20 years), based on its demand that this Court revisit the limitations issue and – this time – rule in the TTO’s favor. The TTO’s conduct is highly improper, and it warrants the striking of the TTO’s 2018 Motion.

In addition, the TTO filed a 48-page pleading (excluding the signature page) with 20 single-spaced footnotes. There is no question that the TTO was entitled to file an over-sized summary judgment brief. Nevertheless, the TTO’s 2018 Motion is 5 pages longer than its previous summary judgment motion filed in 2017. Also, as explained below, the representation in the TTO’s 2018 Motion that it includes only 28 pages of argument is incorrect, as the TTO’s 2018 Motion contains sections labelled as “Material Facts” that are replete with argument. The TTO’s circumvention of this Court’s page limit requirements is a further justification to striking the pleading.

By refusing to honor this Court’s prior decision and play by the rules, the TTO waived its right to engage in summary judgment proceedings. LT asks this Court to bar the TTO from filing another summary judgment motion, and to transfer this case to the Presiding Judge of the Law Division for jury trial assignment.

## **II. THE TTO’S RE-ARGUMENT OF THE LIMITATIONS DEFENSE**

On May 31, 2017, LT filed a motion for partial summary judgment on its statute of limitations defense to the TTO’s claims (“LT’s Motion”). On July 17, 2017, the TTO filed its response to the LT Motion. The same day, the TTO filed its own motion for summary judgment (“the TTO’s 2017 Motion”).

In the TTO's 2017 Motion, the TTO did not present any argument on LT's "Second Affirmative Defense: Statute of Limitations." Instead, the TTO merely cross-referenced its response to LT's Motion: "For the reasons set forth in responding to LT's motion for partial summary judgment on this issue, no limitations period applies to this case and the TTO is entitled to summary judgment on the second affirmative defense." (Exhibit A, p.36.)

On July 19, 2017, with the agreement of both parties, this Court decided to hear LT's motion first to determine whether the claims and damages would be narrowed through the application of a limitations period, and then later address the arguments on the merits in the TTO's 2017 Motion. Therefore, this Court entered an order setting a hearing date on LT's Motion, while entering and continuing the TTO's 2017 Motion. (Exhibit B.)

In lengthy and detailed briefs, LT asked the Court to apply a 5-year limitations period to the TTO's claims. On the other hand, the TTO asked this Court to determine as a matter of law that its claims were exempt from any limitations period. The Court heard oral argument from both sides. On December 21, 2017, this Court directed the parties to submit supplemental briefs.

On February 20, 2018, the Court decided that it could not resolve the statute of limitations issue in summary judgment proceedings, and that the parties would need to present evidence for a determination of this issue at the forthcoming jury trial. In the transcribed oral ruling, the Court stated, "I'm going to deny the motion for statute of limitations without prejudice because I think there is some factual matters that may have a bearing on whether or not a statute of limitations will apply." (Exhibit C, p.3.) The Court entered an Order stating that LT's Motion, "for the reasons that the Court stated in its oral ruling issued today in open Court, is denied without prejudice to proofs to be presented at trial." (Exhibit D.)

Obviously, both sides wanted to prevail on the statute of limitations issue. The TTO, however, simply refused to accept this Court's decision. In a March 5, 2018 email from the TTO's Treasurer to all of its school districts, the TTO pretended that it won on summary judgment: "Judge Hall denied [LT's Motion].... Because of this, LTHS may not properly assert the statute of limitations as a defense." (Exhibit E. p.1-2.) The TTO's statement was a clear misrepresentation of this Court's action. LT responded in a March 13, 2018 email that quoted this Court's Order and oral ruling, which deferred the statute of limitation issues for resolution at trial. (Exhibit F, p.1.) The TTO never corrected its misrepresentation of the decision.

On June 12, 2018, the TTO filed the TTO's 2018 Motion, in which the TTO continues its stubborn refusal to accept this Court's February 20, 2018 summary judgment decision. In the space where the TTO's 2017 Motion contained a cross-reference to the TTO's response to LT's Motion, the TTO now asserts a new argument in support of its already-litigated position on the statute of limitations defense.

The TTO's re-argument begins with another bold misrepresentation of the Court's decision: "This Court denied LT's motion for summary judgment and rejected LT's argument that the TTO's claims were subject to a five-year limitations period." (Exhibit G, the TTO's 2018 Motion (without exhibits), p. 40.) This is not what the Court decided. Both the TTO and its counsel well know that this Court actually did not reject LT's statute of limitations defense, and instead ruled that the parties needed to present evidentiary proofs at trial concerning this defense. Also, the TTO pretends that its motion for summary judgment against LT's Second Affirmative Defense somehow is the "next step" to this Court's prior ruling (Exhibit G, p. 40), even though the TTO's 2017 Motion recognized that this is the exact same limitations issue presented in LT's 2018 Motion. (Exhibit A.)

The TTO's 2018 Motion simply seeks a second bite at the apple, without providing any new evidence or legal precedent that could support a request for reconsideration. Moreover, the TTO seems to believe that this Court will not recall the substance of its February 20, 2018 ruling, which is insulting to everyone involved. Parties sometimes may not like a Court ruling, but the system breaks down when a party misrepresents and refuses to abide by judicial rulings.

As explained in our last round of briefings, the application of the 5-year limitations period – if LT prevails on that issue at trial – would reduce the TTO's total claim from \$4.6 million to \$1.3 million, and would eliminate the interest income issue entirely. The cannot obtain the complete judgment that it seeks without revisiting the limitations issue. However, there simply is no good faith basis for LT to have to engage in a second summary judgment proceeding on the statute of limitations defense by responding to the TTO's 2018 Motion. This problem cannot be solved by striking only the portion of the TTO's 2018 Motion that addresses the limitations issue, because several other brief sections that concern the computation of damages and requests for monetary and non-monetary relief also would have to stricken.

The TTO must be required to respect the Court's prior ruling, and the TTO's 2018 Motion should be stricken as improper.

### **III. THE TTO'S MANIPULATION OF THE COURT'S PAGE LIMIT**

This Court's Standing Order limits summary judgment briefs to 15 double-spaced pages, excluding the "Statement of Facts." In July 2017, the TTO filed a brief that was 43 pages long (excluding the signature page). In June 2018, the TTO filed a revised brief that is 48 pages long (without the signature page), and includes 20 single-spaced footnotes. (Exhibit G.) The revised pleading is 5 pages longer than the original one. The TTO did not file a motion for leave to file an oversized brief with the TTO's 2018 Motion, to LT's knowledge.

Furthermore, the TTO's 2018 Motion contends that it only has 28 pages of argument, after excluding the introduction, conclusion, and "statements of fact." (Exhibit G, p.2.) First, the correct standard is the length of the written pleading minus the length of the Statement of Facts. In this instance, that means a 48-page pleading less a 4-page Statement of Facts, which leaves a 44-page pleading. This is 29 pages longer than allowed. Second, the TTO attempts to circumvent the Standing Order by placing several sections on "Material Facts" within its argument section, even though these sections plainly contain argument concerning the facts and allegedly applicable law.

As one of many examples, take the first "Material Fact" section within the Argument:

Section 3-7 of the School Code provides that "[e]ach school district shall, as of June 30 of each year, cause an audit of its accounts to be made...." 105 ILCS 5/3-7. Each district, thereafter, "shall...submit an original and one copy of such audit to the regional superintendent of schools...." *Id.* If any district fails to do so, the regional superintendent "shall...cause such audit to be made by employing an accountant...to conduct such audit and shall bill the district for such services...." *Id.* The logical implication of this language is that the School Code requires each district to pay for its own audit, either because (a) it is the entity that "causes" the audit to be made, or (b) because it does not cause the audit to be made, and so the regional superintendent "causes" the audit to be made, and then bills the district for such audit.

\*\*\*

LT has defended this claim by arguing that the Treasurer *also* paid for the annual audit of the other districts during this same period. First, this would not have changed the fact that LT did not pay for its own audit, in violation of the School Code. Rather, it would just mean that the TTO would also have a claim it could assert against the other districts. Second, and more to the point, the TTO has undertaken a detailed analysis of the payment records and they establish beyond *genuine* dispute that LT's defense is not factually accurate. (Ex. 3 at ¶¶54-69; see Ex. 3(B) at tabs 101 – 2045 for TTO's analysis and backup.)

(Exhibit G, p.7-8.) This is not a “Statement of Facts.” It is an argument about the “logical interpretation” of the school code and how LT violated the School Code. All of the other “Material Facts” sections are like this. This designation of argument sections as “fact” sections is just a way for the TTO make its brief appear shorter. Also, the excessive number of single-spaced footnotes (20), had they been double-spaced text, would have made the TTO’s pleading several pages longer.

Thus, while LT agrees that 15 pages plainly is not enough space for the TTO to present its positions (not including a Statement of Facts), the TTO is not honoring the letter or spirit of this Court’s page requirements. The TTO’s 2018 Motion is improper and should be stricken for this additional reason.

#### **IV. CONCLUSION**

The TTO, without any reasonable justification, seeks to re-argue the statute of limitations issue that this Court decided must go to trial. In doing so, the TTO misstated the Court’s ruling, and pretended that it is asking for something other than reconsideration of the prior ruling. The TTO seems to believe that this Court has no recollection of the summary judgment proceedings that spanned eight months from 2017-18. The TTO also disregarded and sought to circumvent this Court’s Standing Order on page limits.

Based on this serious misconduct, LT respectfully asks this Court to strike the TTO’s 2018 Motion; bar the TTO from filing another summary judgment motion; and transfer this case to the Presiding Judge of the Law Division for a jury trial assignment.

Respectfully submitted,

LYONS TOWNSHIP HIGH SCHOOL  
DISTRICT 204

By s/Jay R. Hoffman  
*Its Attorney*



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Attorney No. 34710

**CERTIFICATE OF SERVICE**

Jay R. Hoffman, an attorney, certifies that on June 15, 2018, he caused the foregoing pleading to be served by email on the following attorneys:

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s/Jay R. Hoffman

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2013-CH-23386  
PAGE 8 of 8

6/15/2018 10:50 AM

Page 1

IN THE CIRCUIT COURT OF COOK COUNTY  
COUNTY DEPARTMENT, CHANCERY DIVISIONTOWNSHIP TRUSTEES OF )  
SCHOOLS TOWNSHIP 38 NORTH, )  
RANGE 12 EAST, )Plaintiff, ) NO. 13-CH-23386  
) Hon. Sophia H. Hall

vs. )

LYONS TOWNSHIP HIGH SCHOOL )  
DISTRICT 204, )

Defendant. )

## DISCOVERY DEPOSITION

Discovery deposition of ROBERT HEALY, taken  
at the instance of the Defendant on  
November 14, 2016, commencing at 1:37 p.m. at  
Taylorville Correctional Center, 1144 Illinois Route  
29, Taylorville, Illinois, before Angela C. Turner, a  
Certified Shorthand Reporter, pursuant to notice and  
the stipulation attached hereto.

DAVIS REPORTING SERVICE  
Angela C. Turner, CSR #084-004122  
Certified Shorthand Reporters  
3 Hickory Hills Drive  
Springfield, Illinois 62707  
(217) 546-6868

INDEX

ROBERT HEALY

Examination by Mr. Hoffman

Examination by Mr. Kaltenbach

Examination by Mr. Hoffman

## EXHIBITS

No.	Page
Healy Exhibit 1	8
Healy Exhibit 2	70
Healy Exhibit 3	70
Healy Exhibit 4	96
Healy Exhibit 5	101
Healy Exhibit 6	105
Healy Exhibit 7	108

Page 2

## APPEARANCES

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Telephone: (312) 460-4200

(Appearing on behalf of the Plaintiff)

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Hoffman Legal  
20 N. Clark St., Suite 2500  
Chicago, Illinois 60602  
Telephone: (312) 899-0899

(Appearing on behalf of the Defendant)

Page 4

## STIPULATION

It is stipulated and agreed, by and between  
the parties hereto, through their attorneys, that the  
deposition of ROBERT HEALY may be taken for discovery  
purposes before Angela C. Turner, a Certified  
Shorthand Reporter, upon oral interrogatories, on  
November 14, 2016, A.D., at the instance of the  
Defendant, commencing at 1:37 p.m. at Taylorville  
Correctional Center, 1144 Illinois Route 29,  
Taylorville, Illinois;

That the oral interrogatories and the  
answers of the witness may be taken down in shorthand  
by the Reporter and afterwards transcribed;

That all requirements of the Civil Practice  
Act and the Rules of the Supreme Court as to dedimus,  
are expressly waived;

That the witness does not waive signature  
and shall read and sign this deposition before a  
notary public;

That any objections as to competency,  
materiality or relevancy are hereby reserved, but any  
objection as to the form of the question is waived  
unless specifically noted;

That the deposition or any parts thereof may  
be used for any purpose for which discovery  
depositions are competent, by any of the parties  
hereto, without foundation proof;

That any party hereto may be furnished  
copies of the deposition at his or her own expense.

EXHIBIT

A

(Pages 1 to 4)

1 of 2000 that Mr. Cainkar wrote you concerning  
2 District 204.

3 My question is, does that -- and that's a  
4 document, by the way, that the trustee refused to  
5 produce to us and the court agreed with their  
6 position that it was attorney/client privilege.

7 My question is, does that information help  
8 you to recall whether you sought a legal opinion at  
9 this time?

10 **A. I don't remember if I did or not.**

11 Q. And you will agree that in proposal number  
12 one, on the first page of this letter, there's a  
13 reference that there would be an intergovernmental  
14 agreement required for proposal one. For proposal  
15 two, there is no such statement about an  
16 intergovernmental agreement.

17 You agree with that, right?

18 **A. Well, I think there are two avenues to  
19 address the same problem.**

20 Q. Right.

21 But the second avenue, which would be the  
22 trustee paying for the business functions of LT,  
23 that, in your understanding at the time, the other  
24 school districts did not have to specifically

approve?

MR. KALTENBACH: Objection. Calls for a  
legal conclusion.

MR. HOFFMAN: Asking for his understanding.

MR. KALTENBACH: I understand. I will make  
my own objection.

THE DEPONENT: Can you repeat? Sorry. I'm  
getting tired.

MR. KALTENBACH: Same objection.

Q. (By Mr. Hoffman) With the objection, is it  
fair to say that it was your understanding at the  
time this letter was written in 1999 that no  
intergovernmental agreement would be required for the  
proposal number two, which was the trustee paying for  
LT's business functions?

**A. I don't think an intergovernmental agreement  
was taken into account in proposal two.**

Q. Why is that? Because that's different from  
proposal one.

**A. It would seem less material than the scope  
covered it to.**

Q. Is that because the trustees had the  
authority to spend funds on what was basically the  
equivalent of additional staffing for the trustee?

MR. KALTENBACH: Objection. Calls for legal  
conclusion.

Q. (By Mr. Hoffman) In your understanding.

**A. I believe they would have the authority to  
spend money for a specific purpose or hire an  
employee with a specific purpose.**

Q. And paying for LT's business functions, as  
we have seen in a number of these documents, you  
regarded as the equivalent of paying for additional  
staff for the trustee, correct?

**A. It was paying for cost associated with  
handling District 204.**

Q. Now, in early years, as we saw in the  
documentation -- off the record.

(Discussion off the record.)

Q. (By Mr. Hoffman) Now, on the subject of the  
agreement between the trustees and LT on the payment  
of LT's business functions, we saw in 2000 that the  
trustees who were present at the meeting that we  
looked at specifically voted to approve this  
arrangement, correct?

**A. Yes.**

Q. Now, even if there aren't specific votes  
taken in the year 2001 and 2002 and 2003 and

subsequent years, am I correct that the trustees were  
aware during the 2001 to 2012 time period that the  
trustee was paying for LT's business functions during  
that time?

MR. KALTENBACH: Objection. Asked and  
answered.

THE DEPONENT: It was known that there was  
some costs were being paid associated specifically  
with 204. I don't know if it ever got -- I don't --

MR. HOFFMAN: You say "it was known."

MR. KALTENBACH: Let him finish.

MR. HOFFMAN: I just want to clarify.

Q. (By Mr. Hoffman) When you say "it was  
known," are you saying --

**A. We told them.**

Q. You told who? The trustees?

**A. Trustees.**

Q. Go ahead.

**A. Part of our expenses -- we were paying part  
of -- money to help with -- I'm saying it  
incorrectly.**

**That we were picking up some of the costs  
for 204 to process the regular business functions of  
which we were paying 100 percent for the other**

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT - CHANCERY DIVISION

TOWNSHIP TRUSTEES OF )  
SCHOOLS TOWNSHIP 38 )  
NORTH, RANGE 12 EAST, )

Plaintiff, )

-VS- ) No. 13 CH 23386

LYONS TOWNSHIP HIGH )  
SCHOOL DISTRICT 204, )

Defendant. )

The discovery deposition of RUSSELL HARTIGAN, taken before MAUREEN A. WOODMAN, a Certified Shorthand Reporter and Notary Public in and for the County of Cook and State of Illinois, pursuant to the Illinois Code of Civil Procedure and the Rules of the Supreme Court thereof, pertaining to the taking of depositions for the purpose of discovery at 20 North Clark Street, Chicago, Illinois, on November 22, 2016, at the hour of 12:00 o'clock p.m.

**ELECTRONICALLY FILED**  
**6/15/2018 10:50 AM**  
**2013-CH-23386**  
**PAGE 3 of 42**

# EXHIBIT

B

1 them, was the February 29th, 2000, memo from  
2 Lisa Beckwith to Robert Healy. Do you see  
3 that?

4 **A. Yes.**

5 Q. Are you familiar with that Lisa  
6 Beckwith memo setting forth the proposal of  
7 District 204?

8 **A. Not really. I don't recall it.**

9 Q. Do you have any reason at all to doubt  
10 that this memo was something you received at  
11 this meeting as the minutes indicate?

12 **A. It appears that way.**

13 Q. And you don't remember anything about  
14 this memo independently?

15 **A. No.**

16 Q. And then this -- the minutes go on to  
17 say, "As these costs would be incurred by the  
18 treasurer's office if the Lyons Township High  
19 School were to totally utilize the facilities  
20 of the treasurer's office. These costs would  
21 certainly be incurred."

22 Is that consistent with your  
23 recollection of the discussions that were had  
24 regarding District 204's proposal?

1 **A. I have no recollection.**

2 Q. Do you have any reason to doubt that  
3 those were discussions that were had?

4 **A. If it's in the minutes, I assume  
5 that's accurate.**

6 Q. It also says, "A further  
7 recommendation by Trustee Hartigan is that the  
8 trustees be given an evaluation of the  
9 employee's performance for those aforementioned  
10 personnel employed at the high school." Do you  
11 see that?

12 **A. I do.**

13 Q. Is that something that you  
14 recommended?

15 **A. Sounds logical.**

16 Q. And you have no reason to doubt it  
17 based on the --

18 **A. No.**

19 Q. Let's turn to page two of the March  
20 21, 2000, minutes, please. It says, "A motion  
21 was made by Russell Hartigan, seconded by  
22 Joseph Nekola to accept the proposal given to  
23 the Lyons Township Trustees of Schools by Cook  
24 County High School District number 204." And

1 then it has you and Mr. Nekola voting aye and  
2 no one voting nay, correct?

3 **A. Correct.**

4 Q. Is that the motion that you made, sir?  
5 Did you make that motion at that meeting?

6 **A. Apparently.**

7 Q. Based on the minutes, you believe that  
8 the trustees voted to accept the proposal of  
9 District 204, whereby the TTO would pay for  
10 business functions at District 204, correct?

11 **A. Appears that way.**

12 Q. And it appears that way because it's  
13 set forth in the minutes, correct?

14 **A. Yes.**

15 Q. Okay. Now, sir, do you recall that  
16 the way that the TTO's payments for District  
17 204's business functions -- actually, let me  
18 take that from you. I'll take that exhibit  
19 back.

20 Sir, do you recall that what  
21 would happen in practice was that the TTO would  
22 bill District 204 for its share of pro rata  
23 expenses and District 204 would deduct the cost  
24 of the business functions at District 204 that

1 the TTO was paying for and then District 204  
2 would pay the balance?

3 **A. I don't recall the financial  
4 interworkings, but it sounds somewhat accurate.**

5 **I think there was, what, a  
6 general account or something. General fund,  
7 maybe that's it.**

8 Q. Right, and the payments were more in  
9 the nature of adjustments or line items because  
10 District 204 wouldn't pay the treasurer because  
11 the treasurer already had District 204's money,  
12 right?

13 **A. I believe so.**

14 Q. So in showing you a document, which is  
15 a June 14th, 2000, memo from Lisa Beckwith to  
16 the Board of Education, and that by the way is  
17 the Board of Education of District 204.

18 MR. KALTENBACH: Is it part of the packet?

19 MR. HOFFMAN: Yes, it is.

20 BY MR. HOFFMAN:

21 Q. I don't have any reason to believe  
22 you've ever seen that memorandum, but the  
23 question I'm asking you, sir, does this -- the  
24 June 14th, 2000, memo from Lisa Beckwith talks

STATE OF ILLINOIS )  
) SS:  
COUNTY OF COOK )  
IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT - CHANCERY DIVISION

TOWNSHIP TRUSTEES OF SCHOOLS )  
TOWNSHIP 38 NORTH, RANGE 12 )  
EAST, )

Plaintiff, )

vs. ) No. 13 CH 23386

LYONS TOWNSHIP HIGH SCHOOL )  
DISTRICT NO. 204, )

Defendant. )

The Discovery Deposition of TODD SHAPIRO,  
taken under oath on the 6th day of January 2017, at  
Suite 2600, 225 West Washington Street, Chicago,  
Illinois, pursuant to the Rules of the Supreme  
Court of Illinois and the Code of Civil Procedure,  
before Steven T. Stefanik, a notary public in and  
for the County of DuPage and State of Illinois,  
pursuant to notice.

(12:58 p.m.)

## APPEARANCES:

MILLER, CANFIELD, PADDOCK &  
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for the Defendant.

INDEX  
WITNESS: PAGE

TODD SHAPIRO

Examination by:  
Mr. Kaltenbach 4  
Mr. Hoffman 78

Further Examination by:  
Mr. Kaltenbach 82  
Mr. Hoffman 88

EXHIBITS  
NUMBER FOR IDENTIFICATION

Shapiro No. 1 4

Shapiro No. 2 71

(Exhibits retained by counsel)

(Whereupon, Shapiro Deposition  
Exhibit No. 1 was  
marked for identification  
as of this date.)  
(Witness sworn.)

MR. KALTENBACH: Let the record reflect this is  
the discovery deposition of Todd Shapiro taken  
pursuant to notice.

TODD SHAPIRO,  
called as a witness herein, having been first duly  
sworn, was examined and testified as follows:

## EXAMINATION

BY

MR. KALTENBACH:

Q. Mr. Shapiro, thank you for agreeing to  
appear today without me having to serve you with a  
subpoena.

I know you were talking with the court  
reporter a little bit before we began about just  
some of the rules of a deposition. Just so that  
it's on the record, I'm going to cover that again.

I'll be asking you questions. You need  
to give me answers to the questions.  
From time to time, Mr.

EXHIBIT

C

4)

1 refresh his recollection -- I'd like to clear -- is  
2 he testifying based on his recollection or is he  
3 just reading the document? Is he just reciting the  
4 document into the record?

5 MR. HOFFMAN: Well, let me ask a different  
6 question to overcome your objection, sir.

7 BY MR. HOFFMAN:

8 Q. What do you recall occurring, if anything,  
9 at the June 19th, 2000 LT board meeting with  
10 respect to the agreement on the payment of business  
11 expenses that was discussed?

12 A. We would have approved the consent agenda  
13 in which was the agreement that the township  
14 treasurers -- Township Trustees were going to pay  
15 the agreed-upon cost to LT.

16 And we would have approved the consent  
17 agenda in total, not specifically each item in the  
18 consent agenda.

19 MR. HOFFMAN: Okay. I have no more questions.

20 MR. KALTENBACH: Can you just -- why don't you  
21 just leave the memo on the top right there. I just  
22 have one or two follow-up.

23 MR. HOFFMAN: Sure.  
24

1 finance -- I believe we discussed this in a finance  
2 committee because we came to an agreed-upon  
3 solution.

4 Q. Okay. Do you --

5 A. I don't recall the specific finance  
6 committee.

7 I would have seen this document,  
8 absolutely, if it's in the consent agenda. Because  
9 while we don't approve every individual item in the  
10 consent agenda, there was a lot of documentation  
11 behind the consent agenda. And being a very  
12 diligent board member, I would look at all the  
13 items within the consent agenda to make sure I had,  
14 you know, issues with any items in there.

15 Q. I believe Mr. Hoffman asked you -- and I'm  
16 going off my memory here -- in essence, what is  
17 this memorandum and you gave him an answer.

18 What I'm trying to figure out is,  
19 what -- what is the basis of you knowing what that  
20 memorandum is?

21 A. What is the basis of my knowing what the  
22 memorandum is?

23 Q. Right. You didn't draft it, correct?

24 A. Correct. It would have been presented to

#### FURTHER EXAMINATION

BY

MR. KALTENBACH:

4 Q. Mr. Shapiro, you testified about the  
5 February -- leap day -- February 29th, 2000 memo.  
6 It finally dawned on me in that case that's what  
7 that is.

8 You did not prepare that memorandum,  
9 correct, sir?

10 A. No.

11 Q. Do you recall if you received a copy of  
12 that memorandum in the course of business as a  
13 board member at LT?

14 That is to say, did you see that  
15 memorandum prior to this lawsuit?

16 A. Prior to this lawsuit?

17 Q. (Nodding.)

18 A. That memorandum may have been presented to  
19 the finance committee at some point in time. I  
20 don't recall.

21 Q. Okay. Do you recall discussing that  
22 particular memorandum with either Dr. -- with  
23 Dr. Beckwith?

24 A. With Dr. -- I don't recall if I had a

1 me -- it would have been --

2 Q. As part of the consent agenda?

3 A. As part of the consent -- at a minimum, as  
4 part of the consent agenda. And I would have to go  
5 back and see if that was ever -- we would also  
6 receive that prior to the board meeting as part of  
7 our preparation for the board meeting.

8 Q. Okay. I believe when Mr. Hoffman asked you  
9 what it is, you said this is the Township Trustees  
10 agreeing to pay for certain functions.

11 A. This is --

12 MR. HOFFMAN: Object to the form of the  
13 question. Misstates the witness's prior testimony.

14 Why don't you just -- instead of asking  
15 him what he said before, why don't you just ask  
16 him.

17 BY MR. KALTENBACH:

18 Q. I'm trying to understand -- so let me just  
19 make this as simple as I can.

20 How do you know what that is, that being  
21 the February 29th memo?

22 A. How do I know what that is?

23 Q. Yeah.

24 A. By reading it.

STATE OF )  
ILLINOIS ) SS.  
COUNTY OF COOK )  
IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

TOWNSHIP TRUTEES OF )  
SCHOOLS TOWNSHIP 38 )  
NORTH, RANGE 12 EAST, )

)  
)  
)  
Plaintiff, )

)  
)  
vs. ) No. 13 CH 23386  
)

LYONS TOWNSHIP HIGH )  
SCHOOL DISTRICT 204, )

)  
)  
)  
Defendant. )

The deposition of LISA BECKWITH  
taken before Meagan M. Cahill, Certified Shorthand  
Reporter, taken pursuant to the provisions of the  
Illinois Code of Civil Procedure and the Rules of the  
Supreme Court thereof pertaining to the taking of  
depositions for the purpose of discovery at 225 West  
Washington Street, Suite 2600, Chicago, Illinois,  
commencing at 2:04 p.m. on the 16th day of November,  
2016.

## APPEARANCES:

MILLER CANFIELD PADDOCK & STONE  
MR. BARRY KALTENBACH  
225 West Washington  
Suite 2600  
Chicago, Illinois 60606  
Phone: 312.460.4200  
E-Mail: bkaltenbach@millercanfield.com  
On behalf of the Plaintiff;  
HOFFMAN LEGAL  
MR. JAY R. HOFFMAN  
20 North Clark Street  
Suite 2500  
Chicago, Illinois 60602  
Phone: 312.899.0899  
E-Mail: jay@hoffmanlegal.com  
On behalf of the Defendant.

\* \* \* \* \*

## INDEX

WITNESS	PAGE
LISA BECKWITH	
Examination by Mr. Kaltenbach.....	4
Examination by Mr. Hoffman.....	147
Further Examination by Mr. Kaltenbach.....	149

## EXHIBITS

BECKWITH DEPOSITION EXHIBIT	PAGE
No. 1.....	14
No. 2.....	16
No. 3.....	18
No. 4.....	53
No. 5.....	57
No. 6.....	65
No. 7.....	82
No. 8.....	86
No. 9.....	128
No. 10.....	131
(EXHIBITS RETAINED BY MR. KALTENBACH.)	

(Witness sworn.)

## WHEREUPON:

LISA BECKWITH,  
called as a witness herein, having been first duly  
sworn, was examined and testified as follows:

## EXAMINATION

BY MR. KALTENBACH:

Q. It's Dr. Beckwith, correct?

A. Lisa.

Q. Lisa. Okay. Out of habit, I may refer  
to you as doctor at some point. It's drilled into me  
to be respectful of people who have achieved that  
title.

Have you ever been deposed before?

A. Yes.

Q. Okay. If at some point you need a break,  
please let me know, and we'll take a break for you.  
I'll try to get through this as quickly as I can. If  
you need to consult with your attorney at some point  
regarding a privilege issue, you can do so. I don't  
anticipate you'll need to. Other than that, if you  
want to consult with your attorney, you're required  
to answer my question before you consult with him.

If you don't understand a question

EXHIBIT

tabbies

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1 A. Correct.

2 MR. KALTENBACH: Now, it was marked this way,  
3 so I think we need to leave it marked this way.

4 MR. HOFFMAN: That's okay. I don't care.  
5 These were the next successive dated documents in the  
6 production progression.

7 MR. KALTENBACH: Then there's a  
8 misunderstanding of where the divider should have.  
9 That's fine.

10 BY MR. KALTENBACH:

11 **Q. And, Dr. Beckwith, I believe -- I don't**  
12 **know if Meagan caught it or not -- but I believe you**  
13 **said the dates of the invoices were all after you**  
14 **left the employ of LT, correct?**

15 A. That's correct.

16 **Q. And actually, the Page 10 of the meeting**  
17 **minutes where the treasurer's invoice, Exhibit T, is**  
18 **approved, that -- a few lines down, it states, As**  
19 **this was Dr. Beckwith's last meeting, various board**  
20 **members expressed their gratitude, correct?**

21 A. Yes.

22 **Q. So this would have been -- because you**  
23 **left within a couple weeks, correct?**

24 A. After this, yes. June 30th.

**Q. Dr. Beckwith, have you ever seen a**  
**written contract executed by someone -- I've just got**  
**a minute or two left -- executed by someone from LT**  
**and someone from the trustees wherein the agreement**  
**to absorb these costs was ever set forth?**

MR. HOFFMAN: Objection. Asked and answered.  
You can answer again.

BY THE WITNESS:

A. I saw the board minutes from LT High  
School that approved the treasurer's invoice, and I  
saw a copy of the board of Trustees township  
treasurer's minutes that approved the invoice.

**Q. And those are the documents that make you**  
**state your belief that the agreement was approved by**  
**both the board of education and the township**  
**trustees, correct?**

A. Yes.

**Q. Was there ever a discussion that you had**  
**or amongst the finance committee members or the board**  
**of education for LT as a whole about documenting this**  
**agreement in a written contract?**

MR. HOFFMAN: I'll object to your question,  
that it contains an assumption of there's no  
writing --

MR. KALTENBACH: I didn't say no writing. A  
written contract signed by both entities.

MR. HOFFMAN: Well, that's a different thing,  
as we both know.

BY THE WITNESS:

A. There is, in school districts, approval  
by boards of education for items. And this document  
was approved by the board of education on the  
June 19th board meeting, and also by the township  
trustees board.

**Q. So, I guess, then, just so we've wrapped**  
**up the answer to my question, you're not aware of any**  
**discussions within 204 about, I'll say alternative or**  
**further or any other way of documenting this**  
**agreement, correct?**

A. It was documented appropriately,  
according to appropriate methods for boards of  
education and for the township trustees. It was  
discussed, passed, and paid. That constitutes a  
contract.

MR. KALTENBACH: I have no further questions.

EXAMINATION

BY MR. HOFFMAN:

**Q. Very briefly, Dr. Beckwith. We talked**

**earlier about the agreement reached between the**  
**trustees or the treasurer's office and LT concerning**  
**the payment of certain business functions and as that**  
**agreement is stated in the memo that you wrote, do**  
**you have any opinion as to whether that agreement**  
**required the execution of what's called an**  
**intergovernmental agreement?**

MR. KALTENBACH: Objection. Calls for a  
legal conclusion.

BY THE WITNESS:

A. In the memorandum, Bob Healy stated that  
one -- I'd have to go back to the memorandum. One of  
the areas would include an intergovernmental  
agreement; however, the agreement that we set forth  
with the township treasurer and the Lyons Township  
board of education did not require an  
intergovernmental agreement; it required discussion  
of both parties, and it required passage of --  
through the board of education and through the  
township trustees.

**Q. I also want to clarify something you said**  
**earlier. Although you saw the minutes of the**  
**trustees approving this agreement recently, in 2000,**  
**did Bob Healy tell you or inform you in any way that**

STATE OF ILLINOIS )  
 ) SS:  
COUNTY OF COOK )  
IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT - CHANCERY DIVISION  
TOWNSHIP TRUSTEES OF )  
SCHOOLS TOWNSHIP 38 )  
NORTH, RANGE 12 EAST, )  
Plaintiff, )  
vs. ) Case No. 13 CH 23386  
LYONS TOWNSHIP HIGH )  
SCHOOL DISTRICT 204, )  
Defendant. )

The deposition of DENNIS KELLY, called  
for examination, taken pursuant to the provisions  
of the Code of Civil Procedure and the Rules of the  
Supreme Court of the State of Illinois pertaining  
to the taking of depositions for the purpose of  
discovery taken before WENDY A. KILLEN,  
CSR No. 84-003772, a Certified Shorthand Reporter  
of said state, on January 18, 2017, at the hour of  
1:05 p.m. at 225 West Washington Street,  
Suite 2600, Chicago, Illinois, pursuant to notice.

APPEARANCES:  
MILLER, CANFIELD, PADDOCK and STONE, PLC,  
by MR. BARRY P. KALTENBACH  
225 West Washington Street, Suite 2600  
Chicago, Illinois 60606  
(312) 460-4251  
kaltenbach@millercanfield.com  
Appeared on behalf of the Plaintiff;

HOFFMAN LEGAL, by  
MR. JAY R. HOFFMAN  
20 North Clark Street, Suite 2500  
Chicago, Illinois 60602  
(312) 899-0899  
jay@hoffmanlegal.com  
Appeared on behalf of the Defendant.

REPORTED BY: WENDY A. KILLEN, CSR  
LICENSE NO.: 084-003772

## INDEX

WITNESS EXAMINATION  
DENNIS KELLY  
By Mr. Kaltenbach.....4  
By Mr. Hoffman.....73

## EXHIBITS

NUMBER MARKED FOR ID  
Kelly Deposition  
Exhibit No. 1.....22  
Exhibit No. 2.....25  
Exhibit No. 3.....49  
Exhibit No. 4.....54  
Exhibit No. 5.....59

## FIRST REFERENCED

Conway Deposition  
Exhibit No. 3.....51  
(ALL EXHIBITS WERE RETAINED BY MR. KALTENBACH)

(Whereupon, the witness was duly  
sworn.)  
MR. KALTENBACH: This is the discovery  
deposition of Dennis Kelly.  
Thank you for coming to our office today,  
sir. I appreciate that and I appreciate your  
agreement to show up without making me have a  
process server find you and issue you a subpoena.  
It makes it easier on everyone, including, I am  
sure, you.

DENNIS KELLY,  
having been first duly sworn, was examined and  
testified as follows:

## EXAMINATION

BY MR. KALTENBACH:

**Q. Have you ever been deposed before,  
Mr. Kelly?**

A. I think twice, many years ago.

**Q. Other than those two depositions, have you  
ever testified at a trial or a hearing before?**

A. Yes.

**Q. What were those trials?**

**How many times did that occur?**

A. Trial was once and it was over -- I was

semester.

**Q.** Okay. Again, it's possible there is a meeting minute that isn't in here, so I'm not going to represent to you there isn't one in between.

Would it strike you as unusual if the finance committee had met on November 4th and then did not meet again until March 22nd?

**A.** I don't think it would be totally unusual.

It would depend on issues being discussed at full board meetings. Quite often, in lieu of small finance committee meetings or curriculum committee meetings, they would discuss a singular issue at a full board meeting. I think it would be a little unusual for that amount of time to pass.

**Q.** Okay. Starting with the -- so you have the members present paragraph and then Mr. Pera calling it to order. Then you have the first substantial paragraph. It states, "The Committee reviewed the recommended changes in the Township Treasurer billing."

Do you recall that being discussed at this meeting, sir?

**A.** I think Lisa and Bob Healy had come up with four or five options for the Board. The first

option that was never really considered was to terminate the relationship. The second option was the one that both Lisa and Bob agreed upon, and that was a restructuring and reallocation, kind of a cost-back system where some of the salaried positions and benefits in LT's office would be charged against the pro rata. So this would have been the second option, I believe.

**Q.** And it goes on for the next couple of sentences to describe a little bit more about what that change is, so I don't want to -- you certainly should feel free to read that in terms of jogging your memory or something along those lines.

It states a few sentences, "This will be effective for the 1999 to 2000 school year."

Do you see that, sir?

**A.** Yes.

**Q.** To you, when would the 1999 to 2000 school year be in terms of on a calendar?

**A.** Good question. I'm not certain at the time whether we were going on a January 1st to December 31st calendar or not. I don't think so. I think our calendar started -- our budget calendar started new July the 1st.

**Q.** I believe that's the fiscal year that the Treasurer's Office was using, July 1st through June 30th. So you would understand the agreement or the recommended change.

Do you recall if that was when it was going to come into effect for the school year, I guess, that would have then been ending on June 30th of 2000?

**A.** I think what this indicates to me is that when that billing would come out, there would be an adjustment made prior to the new fiscal year in 2000, which would have been July 1st of 2000.

**Q.** As of this meeting on March 22nd of 2000, to your knowledge, had District 204 and the Township Trustees entered into an agreement regarding the billing change?

**A.** I'm not quite certain what you mean by an agreement because the Board had met and agreed upon this option, and the understanding was that Bob had met with the Township Trustees and that they had voted on it. So that would suggest to me that there was an agreement made.

**Q.** When did Bob let you know that the Township Trustees had agreed?

**A.** I have no idea.

**Q.** Well, for instance, he's not reflected as being in attendance at this meeting, so it presumably would not have been at this meeting.

Was it before the meeting? Was it after the meeting? Are you able to place that temporally at all?

**MR. HOFFMAN:** What is it that we're talking about; when the Trustees --

**MR. KALTENBACH:** When Bob told him the Trustees agreed.

**MR. HOFFMAN:** Okay. And he said he didn't know. The question is: Does that help you to remember in any way the date?

Right, that's the question?

**THE WITNESS:** No, I don't.

**MR. KALTENBACH:** Fair enough.

**THE WITNESS:** You need to know the lack of communication that we had. I never got minutes from the Board of Trustees. Bob would have always received copies of our minutes and our -- he was on the roster, you see, for all of the board meetings and minutes from Lyons Township High School. We never got anything from him. I'm kind of in the

1 dark on that one.

2 BY MR. KALTENBACH:

3 **Q. Did you have discussions yourself with**  
4 **Mr. Healy about the topic of the Trustees paying**  
5 **for certain of the business functions of LT?**

6 A. No, no. It wasn't my job and it was very  
7 clear from the board director, from both Mark Pera,  
8 the board president, and Todd Shapiro, the head of  
9 the finance committee, that they wanted Lisa to  
10 communicate directly and to develop the  
11 relationship and come up with the options and  
12 present the final plan.

13 I wasn't really involved in that, so that  
14 would have almost been inappropriate for me to do  
15 at the time.

16 **Q. Because you wouldn't have wanted to**  
17 **interject yourself given that Dr. Beckwith --**

18 A. No. He might have had the question who am  
19 I really dealing with; am I dealing with Kelly or  
20 Beckwith or who.

21 **Q. Fair enough.**

22 **Ultimately, is it your understanding,**  
23 **Dr. Kelly, that there was an agreement between LT**  
24 **and the Township Trustees on that topic?**

1 A. It was my understanding, it was  
2 Dr. Beckwith's understanding, and certainly was the  
3 Board's understanding, the agreement from  
4 '99/2000 -- and I'm saying this in retrospect,  
5 because after that, it seemed like every year there  
6 was an additional agreement for the year going  
7 through. So it was not a one-year agreement. It  
8 looked to me like it was still in place when I left  
9 in 2009.

10 **Q. What is your basis for saying it wasn't a**  
11 **one-year agreement?**

12 **Where are you getting that from?**

13 A. Well, I'm getting it from the board  
14 minutes and the billings from Bob Healy that  
15 included the pro rata for the services we provided.  
16 Typically that came from -- oh, gosh, the first  
17 year it was Lisa and then Lisa left. Right as this  
18 was all being put into place, she retired and --  
19 well, she didn't retire. She went and took care of  
20 her child, which was more important for her.

21 Harold Huang came in and he was involved  
22 in it. I remember his memos. And then the latter  
23 four years David Sellers was involved. Eventually  
24 somebody set up a spreadsheet and the positions

1 were listed with benefits.

2 **Q. I don't want to walk you through more**  
3 **paperwork than I have to. You mentioned these**  
4 **memos and we've looked at those before. These are**  
5 **memos generated annually by the business manager to**  
6 **Mr. Healy.**

7 **Is that what you're referring to, sir?**

8 A. I believe it came out of the business  
9 office, yes.

10 **Q. Did you receive copies of those memos?**

11 A. Typically I would have gotten a copy at  
12 the finance committee meeting.

13 **Q. Did you ever discuss those memos with**  
14 **Mr. Healy?**

15 A. Probably not.

16 **Q. Did you discuss them with the business**  
17 **manager that drafted them in any given year?**

18 A. The one discussion I remember having --  
19 well, I had actually two discussions. The first  
20 one was because it was a relatively new arrangement  
21 when Harold Huang came in in July of 2000, I  
22 remember sitting down with him in my office and  
23 that was one of his questions was tell me what's  
24 been going on. He had gone through the files and

1 saw some of the memos. So we talked about the  
2 arrangement and what his role was in it.

3 I told him at the time this is coming out  
4 of the business office, this is not the  
5 superintendent's office, so if you have questions,  
6 ask me, but this is part of your responsibility.

7 Then, oh, five years later when Sellers  
8 started, I remember having the same conversation  
9 with him, but to a limited degree, because David  
10 had already been a part of LT before in a different  
11 position, so he knew a lot more than Harold would  
12 have coming in.

13 **Q. What was the agreement that was reached**  
14 **with the Township Trustees insofar as you were**  
15 **aware of it?**

16 A. Well, my understanding was the prorated  
17 amount, which is based on actually the amount of  
18 money that the school district had for investing,  
19 services that LT was providing, rather than stop  
20 those services and return them to the Township  
21 Treasurer and having that expense, Lyons Township  
22 High School was able to charge back those against  
23 the fee. And it was typically, I think, the first  
24 year -- oh, goodness -- it was \$106,000 or

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

TOWNSHIP TRUSTEES OF SCHOOLS )  
TOWNSHIP 38 NORTH, RANGE 12 )  
EAST, )

Plaintiff, )

vs. )

LYONS TOWNSHIP HIGH SCHOOL )  
DISTRICT NO. 204 )

Defendants )

No. 13 CH 23386

Judge Sophia H. Hall

Calendar 14

**AFFIDAVIT OF NANCY SYLVESTER**

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

1. My name is Nancy Sylvester. I am providing this affidavit in connection with a motion for summary judgment that the plaintiff in this lawsuit is filing. I am competent to testify as to the facts and opinions set forth herein. My opinions expressed herein are based upon my review of the documents described in paragraph 5. The defendant has already been provided a list of the materials that I reviewed in forming my opinions and the defendant has already deposed me concerning my opinions. The opinions expressed herein are the same as set forth in my expert disclosure; I am not adding any additional opinions.

2. I have been a practicing professional parliamentarian since 1980. I am a member of the National Association of Parliamentarians, through which I am a Professional Registered Parliamentarian (PRP). I am also a member of the American Institute of Parliamentarians,

ELECTRONICALLY FILED  
6/15/2018 10:50 AM  
2013-CH-23386  
PAGE 12 of 42

EXHIBIT

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EXHIBIT

99

through which I am a Certified Professional Parliamentarian and a Certified Professional Teacher of Parliamentary Procedure (CPP-T). I am one of only approximately thirty parliamentarians in the country to hold both PRP and CPP-T designations. During the periods 2001 through 2003 and 2009 through 2011 I was the Parliamentarian for the National Association of Parliamentarians, thereby serving as the "Parliamentarian for Parliamentarians."

3. I am the author of *The Complete Idiot's Guide to Robert's Rules*, First and Second Edition (2004 and 2010) and *The Guerilla Guide to Robert's Rules* (2006), along with various booklets and journal articles. In addition to my activities as a professional parliamentarian, I also provide training on leadership, teamwork, strategic planning, meeting and communications. I have been quoted as an expert in *The New York Times* and various other publications.

4. I received my Bachelor of Science in Speech from Indiana State University in 1969 and my Master of Arts in Communications from the University of Michigan in 1970. I am presently Professor Emeritus of Speech at Rock Valley College and prior to this was a Professor of Speech at Rock Valley College for approximately thirty-one years. I am the co-owner of Sylvester Enterprises, Inc.

5. In developing my opinions, I relied upon my professional education, training and experience, *Robert's Rules of Order Newly Revised* (11th ed. 2011)<sup>1</sup> (I also confirmed that the material aspects of this publication were similarly effective in 2000), and the following materials provided to me by counsel: Township Trustees of Schools Meeting Minutes from 1993 through 2010 (including agenda and attachments where available), except for July 18, 2005, May 23, 2007 and May 18, 2009, which were not available; those Meeting Minutes produced by District 204 (also called "LT") in this case, which consist of the Board of Education meetings in June from 2000 through 2012 (including those attachments produced by LT); Transcripts of the

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<sup>1</sup> *Robert's* is the most widely used manual of parliamentary procedure in the United States.

depositions of Robert Healy, Russell Hartigan and Dr. Timothy Kilrea; and the Verified Amended Complaint for Declaratory Relief, and the First Amended Verified Counterclaim.

6. In accordance with *Robert's* and parliamentary practice, an organization may have a custom that certain words, such as "accept," "adopt" and "approve," as having meanings specific to that organization. This custom continues in effect until such time as the organization clearly demonstrates its intent to not abide by the custom

7. Based upon my review of the Township Trustees Meeting Minutes, it is my opinion that the Trustees used the word "accept" as the equivalent of "receives." This opinion is based upon the Trustees custom and usage as set forth in the Minutes. For example, on six occasions, the Trustees moved to "accept" a Canvass and Proclamation and file a resolution. This demonstrates the Trustees did not use the word "accept" to mean that they were entering into a contract. It demonstrates that they used the word "accept" to acknowledge official receipt. In another instance, the Trustees moved to "accept and approve" their agreement to pay legal bills. Clearly, the word "accept" did not mean the same as "approve" or the Trustees would not have used both words.

8. The Trustees did not use the word "approve" to indicate their receipt of a document. Rather, they used the word to signify their entering official consent to actions such as agreeing to a contract. This is demonstrated in yearly and biannual contracts, including the TTO leases, agreements with Puffer Hefty School Dist. No. 69 and the Treasurer's employment contracts. Based on custom and usage, the Trustees used "adopt" and "approve" interchangeably. The Trustees moved to "approve" or to "adopt" resolutions; they did not "accept" a resolution. The Trustees never demonstrated their intent to discontinue their custom of using the word

“accept” as being used to mean “receive” and as not being synonymous with “approve” or “adopt.”

9. My review of the Minutes reveals that when the Trustees considered and decided to enter into an ongoing or reoccurring contract the contract was presented annually or biannually as appropriate. (For example, the Trustees entered into contracts with Puffer Hefty and the Treasurer.) The Trustees’ custom was to review specific information about the nature of and changes from previous contracts, including the financial commitment and contract term. Where an exception exists, the Minutes nonetheless reflect that specific information was provided to the Trustees. For example, in January 2001, the Puffer Hefty written contract was included in the attachments to the Minutes. The Trustees “approved” contracts, but did not “accept” contracts.

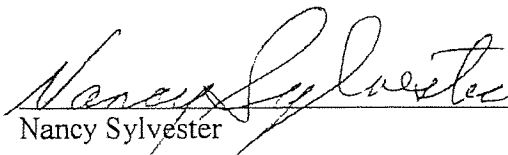
10. The Minutes demonstrate the Trustees’ custom of wanting to know by how much the applicable contract costs were increasing. Despite the fact that the amount LT was proposing to charge increased significantly on an annual basis, particularly as compared to the increases applicable to the Puffer Hefty and the Treasurer’s contracts, there is no record that the Trustees were made aware of these increases.

11. While I do not opine that the Township Trustees voted to enter into a contract with LT, the referenced action of March 21, 2000 was only a proposal for one year. There is nothing to indicate it was intended to be a contract lasting beyond the one year referenced. The Minutes refer to “the proposal,” not a contract or agreement; the proposal references payment of “[a]n invoice” “in May.” This proposal is never again discussed in subsequent Minutes. The custom of the Trustees was to consider ongoing or recurring contracts as they were renewed for a new term.



12. With respect to LT's Board of Education, it is my opinion that, as reflected in the June 2000 Agenda and Meeting Minutes, the only relevant official action taken by the Board was to approve payment of one invoice from the Treasurer's office. This is based upon the fact that the June 2000 Agenda and Minutes do not reflect that the Board was voting to approve or enter into a contract. This opinion is also based upon the fact that the June 14, 2000 Memorandum from Dr. Beckwith states that the action to be taken by the Board is to approve one specific payment, not to approve or enter into a contract. There is nothing to suggest an ongoing or continuing contract was to be approved. There is nothing to suggest that the single payment was to be ongoing or continuing in nature. This is further based upon the fact that approval of the invoice was done through the Consent Agenda.

13. I also opine that, in accordance with *Robert's* and parliamentary practice, entering into a new contract such as the one alleged here is not within the purpose of the Consent Agenda. This is based upon the fact that *Robert's* defines the Consent Agenda as being for "routine business." The agreement alleged was not "routine business" for LT, because other Board of Education minutes show that entry into new, ongoing contracts with other entities was undertaken after discussion during New Business (in particular, at least on June 19, 2006, June 18, 2007, and June 20, 2011). None of the other Board of Education Minutes produced by LT predate this June 2000 meeting and reflect prior public discussion of the alleged agreement. It would be inappropriate for the Board of Education to enter into the alleged contract through the use of the Consent Agenda.

  
Nancy Sylvester  
7/13/17  
Date



STATE OF ILLINOIS )  
 ) SS.  
 COUNTY OF C O O K )

IN THE CIRCUIT COURT OF COOK COUNTY  
 COUNTY DEPARTMENT-CHANCERY DIVISION

TOWNSHIP TRUSTEES OF	)	
SCHOOLS TOWNSHIP 38 NORTH,	)	
RANGE 12 EAST,	)	
	)	
Plaintiff and	)	
Counter-Defendant,	)	
	)	
vs.	)	No. 13 CH 23386
	)	
LYONS TOWNSHIP HIGH SCHOOL	)	Hon. Sophia H. Hall
DISTRICT 204,	)	
	)	Calendar 14
Defendant and	)	
Counter-Plaintiff.	)	

The deposition of NANCY SYLVESTER, called by Defendant and Counter-Plaintiff for examination, pursuant to notice and pursuant to the provisions of the Illinois Code of Civil Procedure and the Rules of the Supreme Court of the State of Illinois, for the purpose of discovery, taken before Stephanie A. Battaglia, CSR and Notary Public in and for the County of DuPage and State of Illinois, at 20 North Clark Street, Suite 2500, Chicago, Illinois, on April 20, 2017, at 1:00 p.m.

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 6/15/2018 10:50 AM  
 2013-CH-23386  
 PAGE 18 of 42

1 PRESENT:  
2 MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.  
3 BY: MR. BARRY P. KALTENBACH  
4 225 West Washington Street, Suite 2600  
5 Chicago, Illinois 60606  
6 (312) 460-4251 / FAX: (312) 460-4201  
7 e-mail: kaltenbach@millercanfield.com  
8  
9 appeared on behalf of Plaintiff and  
10 Counter-Defendant;  
11 HOFFMAN LEGAL  
12 BY: MR. JAY HOFFMAN  
13 20 North Clark Street, Suite 2500  
14 Chicago, Illinois 60602  
15 (312) 899-0899  
16 e-mail: jay@hoffmanlegal.com  
17  
18 appeared on behalf of the Defendant and  
19 Counter-Plaintiff.  
20 ALSO PRESENT:  
21 Ms. Stephanie A. Battaglia, CSR, RMR, CRR  
22 Thompson Court Reporters  
23  
24

1 INDEX  
2 WITNESS: PAGE  
3 NANCY SYLVESTER 4  
4 EXAMINED BY:  
5 Mr. Hoffman 4  
6 Mr. Kaltenbach 90  
7  
8 EXHIBITS  
9 Sylvester Exhibits  
10 (Retained by counsel and not attached)  
11 Exhibit 1 Invoice for Professional 10  
12 Services to: Township Trustees  
13 of Schools vs. Lyons  
14 Township H.S. District 204  
15  
16 Exhibit 2 Plaintiff's Rule 213(f)(3) 15  
17 Expert Disclosure  
18 Nancy Sylvester  
19  
20 Exhibit 3 Notes from Township Trustees 48  
21 of Schools Minutes  
22 Exhibit 4 Handwritten notes 57  
23 Exhibit 5 Handwritten notes 60  
24 Exhibit 6 Handwritten notes 70  
25 Exhibit 7 The Complete Idiot's Guide 87  
26 to Robert's Rules, Second Edition  
27 Nancy Sylvester, PRP, CPP-T  
28 Exhibit 8 The Guerrilla Guide to Robert's 88  
29 Rules  
30 Nancy Sylvester, PRP, CPP-T  
31  
32  
33  
34

1 NANCY SYLVESTER,  
2 called as a witness herein, having been first duly  
3 sworn was examined and testified as follows:  
4 EXAMINATION  
5 BY MR. HOFFMAN:  
6 Q. Good afternoon, Ms. Sylvester.  
7 How are you?  
8 A. Good.  
9 Q. I understand you recently had a medical  
10 procedure. I just want you to know that I will  
11 accommodate your needs in any way that you need. If  
12 you want to take a break just tell me that, we will.  
13 A. Thank you.  
14 Q. Just keep me apprised. Fair enough?  
15 A. Fair enough, thank you.  
16 Q. Have you been deposed before, ma'am?  
17 A. Yes.  
18 Q. How many times?  
19 A. About five, seven, somewhere in there.  
20 Q. What types of cases have you been deposed  
21 in?  
22 A. In all of the cases it has been as an  
23 expert witness in parliamentary procedure.  
24 Q. Have any of those cases been in Illinois?

1 A. Yes.  
2 Q. How many?  
3 A. Probably as much as 20 years ago,  
4 15 years ago, I did one for a hospital in Sycamore,  
5 Illinois.  
6 Q. What type of case was that, please?  
7 A. I am not sure how to answer what type of  
8 case.  
9 Do you want me to describe what it was  
10 about?  
11 Q. Yes.  
12 A. The issue was that the board chairman had  
13 decided that he didn't like what was going to be the  
14 outcome of the meeting and so he got up, said the  
15 meeting was adjourned, left, and the other people who  
16 were the rest of the board members who were there and  
17 they stayed and did -- and followed procedure and then  
18 continued the meeting.  
19 Q. Okay.  
20 And your expert opinion had to do with  
21 the validity of the continued meeting?  
22 A. Yes.  
23 Q. And did you believe that it was valid?  
24 A. Absolutely.

1 Q. And you said that was 15 to 20 years ago.  
2 A. **Yes, something like that. It has been a**  
3 **long time.**  
4 Q. You gave a deposition in that case?  
5 A. **Yes.**  
6 Q. You said the hospital was in Sycamore,  
7 Illinois.  
8 Was the lawsuit in Sycamore, Illinois, as  
9 well?  
10 A. **I don't remember.**  
11 Q. Fair enough.  
12 You live in Rockford Illinois, correct?  
13 A. **Yes, I do. Actually Loves Park but, yes.**  
14 Q. Do you have a dog?  
15 A. **Yes.**  
16 Q. There is the most wonderful dog park in  
17 Rockford my wife and I went to.  
18 A. **My husband hasn't taken me to, I will**  
19 **have to tell him.**  
20 Q. It is a whole \$3 to go.  
21 A. **I will tell my husband, it is his, not**  
22 **mine.**  
23 Q. It is the same park that had the world's  
24 largest Easter egg hunt according to the Guinness Book

1 of World Records, it is on the sign as you enter the  
2 park, that is how you will find it.  
3 A. **I will look for it.**  
4 Q. The Illinois case where you testified for  
5 the hospital in Sycamore, Illinois, did that case go  
6 to trial?  
7 A. **I don't remember.**  
8 **I did not. I did not --**  
9 Q. You did not testify at trial?  
10 A. **I did not testify in a trial. So that is**  
11 **-- I don't know how -- I know the final end result,**  
12 **but, I am sorry, too many years.**  
13 Q. Do you know why it was that you weren't  
14 called to testify at trial?  
15 A. **I think they settled soon after that. As**  
16 **I understand it they settled soon afterwards now that**  
17 **I think about it.**  
18 Q. Soon after the deposition you mean?  
19 A. **Yes.**  
20 Q. And did the court in that case make any  
21 determination as to whether it would allow you to  
22 testify at trial as an expert to your knowledge?  
23 A. **I don't know.**  
24 Q. Any other case in Illinois in which you

1 have given a deposition?  
2 A. **I did give -- the case was not in**  
3 **Illinois, but I did a video conference deposition once**  
4 **and so I was in Illinois obviously for that part of**  
5 **it.**  
6 Q. Where was the case?  
7 A. **The case was in Hawaii.**  
8 Q. The approximately three other times in  
9 which you were deposed, were those cases all out of  
10 state as well like the Hawaii case?  
11 A. **Yes, I think so.**  
12 Q. And --  
13 A. **I am sorry, I didn't realize you were**  
14 **going to ask this or I could have looked up**  
15 **information.**  
16 Q. Quite all right.  
17 I am just -- let me run through a couple  
18 -- even though you are a veteran of depositions.  
19 I am going to ask you questions. It is  
20 important for you to answer yes or no rather than  
21 uh-huh or uh-uh. Does that make sense?  
22 A. **Yes, of course it does.**  
23 Q. You are going to provide me with the best  
24 answer you can give me today, and if you have to

1 approximate that is fine. Do you understand that?  
2 A. **Uh-huh.**  
3 Q. Yes?  
4 A. **Yes.**  
5 Q. You broke Rule 1 there, you broke Rule  
6 No. 1 there.  
7 A. **It is probably not the last time.**  
8 Q. I will give you a mulligan on that one.  
9 A. **How about a few?**  
10 Q. We will see about that.  
11 If I ask you a question and you don't  
12 understand it will you be kind enough to tell me that,  
13 please?  
14 A. **There is no question, you will know.**  
15 Q. Otherwise I will assume that you  
16 understand my question. Is that fair?  
17 A. **That is fair.**  
18 Q. In any of the cases in which you have  
19 been deposed as an expert witness have you ever  
20 testified subsequently at trial?  
21 A. **No.**  
22 Q. In any case in which you have been  
23 deposed as an expert witness has any court ever made a  
24 determination as to whether or not you would be

1 allowed to testify at trial?  
2 **A. Not that I know of.**  
3 **(Document marked Sylvester Exhibit 1 for**  
4 **identification.)**  
5 BY MR. HOFFMAN:  
6 Q. Ma'am, Sylvester Exhibit No. 1 is a  
7 three-page document containing two invoices as well as  
8 a statement of a work in progress that I received from  
9 your counsel or the counsel who is here today for the  
10 Plaintiff, Mr. Kaltenbach.  
11 Do you recognize this document?  
12 **A. Yes, I do.**  
13 Q. Is Page 1 a correct copy of the  
14 February 28, 2017 invoice that you provided for this  
15 matter?  
16 **A. I honestly believe so. I didn't -- it**  
17 **looks exactly like what I gave him, yes.**  
18 Q. There is going to be a lot of questions  
19 like that.  
20 **A. I will try to give the best guesstimate.**  
21 MR. KALTENBACH: If I believe a document  
22 has been altered, I will let you know. You can assume  
23 that what Mr. Hoffman is showing you has not changed  
24 in any way.

1 BY MR. HOFFMAN:  
2 Q. Is Page 2, Sylvester Exhibit 1, the  
3 March, 2017 invoice?  
4 **A. Yes.**  
5 Q. And to whom did you send these two  
6 invoices?  
7 **A. To Jerry, he has been my contact through**  
8 **the entire --**  
9 Q. Is that Jerry Kubasiak?  
10 **A. Yes, K-u-b-a-s-i-a-k.**  
11 Q. How did you get connected with Jerry with  
12 respect to work on this case?  
13 **A. I received a phone call from Jerry.**  
14 Q. Had you done any prior work with him or  
15 his law firm?  
16 **A. No.**  
17 Q. Did Jerry tell you how he found you,  
18 Internet search, referral from some other means?  
19 **A. I don't remember.**  
20 **You know what, I think he told me that it**  
21 **was a referral from another parliamentarian.**  
22 Q. Do you remember who that was?  
23 **A. It might have been Judy Reynolds, but I**  
24 **am not positive on that. I think that is what he said**

1 **on that.**  
2 Q. Did you ever talk to Judy Reynolds about  
3 this matter?  
4 **A. No.**  
5 Q. Call her and thank her for the referral?  
6 **A. No, I haven't.**  
7 Q. Did Jerry tell you why he had talked to  
8 Judy Reynolds --  
9 **A. No.**  
10 Q. -- before talking with you?  
11 **A. No.**  
12 Q. And just for the sake of clarity, it is  
13 going to be helpful --  
14 **A. Wait, he may have --**  
15 Q. Go ahead.  
16 **A. I think he said that she said she was not**  
17 **-- that this was not something she felt comfortable**  
18 **doing and so recommended me.**  
19 Q. Did he say anything about why she didn't  
20 feel comfortable doing it?  
21 **A. I think lack of experience. She is a**  
22 **Professional Registered Parliamentarian, but for**  
23 **nowhere near as long as I have been.**  
24 Q. I totaled the two invoices and the work

1 in progress on -- I am sorry, on the third page the  
2 third section that is not highlighted, I take it that  
3 is a more current billing that has not been billed out  
4 --  
5 **A. That's correct.**  
6 Q. -- in an invoice, right?  
7 **A. That's correct.**  
8 Q. And it is going to flow better with the  
9 court reporter if you wait until I am done asking my  
10 question before you give your answer.  
11 **A. Good, thank you.**  
12 Q. This is a little different than ordinary  
13 conversation, unfortunately.  
14 **A. Yes.**  
15 Q. I added those numbers up, I came to  
16 \$10,812.50. I am not asking you to add them yourself.  
17 **A. Good.**  
18 Q. Does that sound right?  
19 **A. It sounds about right.**  
20 Q. And that is the work you have done  
21 through -- this includes all the work you have done  
22 through April 17th of 2017?  
23 **A. Correct.**  
24 Q. And your work on this began on

1 February 3, 2017, correct?  
2 A. **Correct.**  
3 Q. When did you get the first communication  
4 or you said phone call from Jerry?  
5 A. **Sometime before the 3rd of February, I**  
6 **don't know exactly when.**  
7 Q. Was it a matter of days, weeks, months,  
8 years, what?  
9 A. **Not years, not months, maybe weeks at the**  
10 **most.**  
11 Q. Okay.  
12 So sometime in 2017 you started work on  
13 this probably?  
14 A. **I could look at my schedule and figure**  
15 **out the date that I first met with him because I was**  
16 **coming back from one of my clients and he wanted to**  
17 **meet me in person and we met at O'Hare.**  
18 Q. I see.  
19 And that was a matter of weeks before  
20 February 3, 2017?  
21 A. **Yes.**  
22 Q. All right, fair enough.  
23 A. **As I remember, yes.**  
24 Q. Tell me all of the people that you met in

1 person with in connection with your work on this  
2 assignment, please.  
3 A. **Jerry, Gretchen, and Barry.**  
4 Q. And Gretchen is Gretchen Kubasiak?  
5 A. **Yes.**  
6 Q. And Barry is Barry Kaltenbach, the  
7 gentleman who is here today?  
8 A. **Yes.**  
9 Q. Other than those three individuals have  
10 you ever other met with or spoken with any other  
11 person in connection with this case, obviously not  
12 including myself?  
13 A. **No.**  
14 **(Document marked Sylvester Exhibit 2 for**  
15 **identification.)**  
16 BY MR. HOFFMAN:  
17 Q. Sylvester Exhibit No. 2 is Plaintiff's  
18 Rule 213(f)(3) Expert Disclosure for Nancy Sylvester.  
19 It is a document that was sent to me by e-mail  
20 according to the certificate of service on March 15,  
21 2017.  
22 Do you recognize this document, ma'am?  
23 A. **Yes, I do.**  
24 Q. Is this a document that you read and

1 discussed with one of the attorneys for the Plaintiff  
2 on this case before it was filed?  
3 A. **Yes.**  
4 Q. And does all of the information -- is all  
5 of the information in this disclosure accurate with  
6 respect to your background, your review of documents,  
7 your opinions, and anything else contained herein?  
8 A. **Yes.**  
9 MR. HOFFMAN: Off the record.  
10 (A discussion was held off the record.)  
11 BY MR. HOFFMAN:  
12 Q. And so Page 1 and 2 describes your  
13 background, correct?  
14 A. **Yes.**  
15 Q. And on Page 2 there is two books that you  
16 wrote.  
17 A. **Uh-huh.**  
18 Q. The Complete Idiot's Guide to Robert's  
19 Rules and the Guerrilla Guide to Robert's Rules, is  
20 that correct?  
21 A. **Yes.**  
22 Q. On Page 3 it talks about what you relied  
23 on in forming your opinions in this case, correct?  
24 A. **Correct.**

1 Q. And one of the things you relied on was  
2 Robert's Rules of Order, Newly Revised 2011, is that  
3 right?  
4 A. **Correct.**  
5 Q. Is that --  
6 A. **Referred to as the 11th Edition, but,**  
7 **correct.**  
8 Q. Is the 11th Edition the book that is in  
9 front of you right now at the deposition?  
10 A. **That is correct.**  
11 Q. Do you always take it with you wherever  
12 you go?  
13 A. **I don't sleep with it.**  
14 Q. Okay.  
15 There is a list of materials that you  
16 received from the lawyers in this case, the  
17 Plaintiff's lawyers in this case, correct?  
18 A. **Yes.**  
19 Q. And this list includes -- The plaintiff  
20 has got a very long and unwieldy name, it sometimes is  
21 called the Township Trustees of Schools.  
22 Would it be all right with you if I  
23 referred to it as the TTO?  
24 A. **I would love it if you did, that is what**

1 I referred to it as.

2 Q. And the Defendant has a little bit of a  
3 lock name as well and most people have been calling it  
4 either LT or District 204.

5 Is that acceptable with you?

6 A. I would like to do 204, if you don't  
7 mind.

8 Q. That is fine.

9 You received from the Plaintiff's lawyers  
10 the TTO meeting minutes from 1993 to 2010, including  
11 agenda and attachments where available, except for  
12 three sets of minutes that were not available. Am I  
13 right?

14 A. That is correct.

15 Q. In how many instances were the agenda  
16 and/or the attachments for the minutes that you  
17 received from 1993 through 2010 unavailable?

18 A. Would you repeat the question, please?

19 Q. Sure.

20 In how many circumstances were either the  
21 agenda or the attachments to TTO minutes from 1993  
22 through 2010 not available or missing?

23 A. Well, there were --

24 Q. Do you understand the question?

1 Let me ask a better question.

2 A. Are you asking --

3 Q. Let me ask a better question.

4 A. Okay.

5 Q. It says here in the disclosure that you  
6 reviewed the TTO minutes from 1993 through 2010, and  
7 it says including agenda and attachments where  
8 available. Right?

9 A. Yes.

10 Q. So what I am trying to figure out is --  
11 and then you go on to list there are three sets of  
12 minutes where the minutes were not available entirely,  
13 right?

14 A. Correct.

15 Q. So in how many instances were there  
16 minutes but missing agenda and/or missing attachments  
17 to the minutes?

18 A. I don't recall any of them missing that,  
19 just the full set of minutes from those meetings.

20 Q. Well, why did you say that it included  
21 the agenda and attachments where available?

22 A. Well, because I don't know what all they  
23 have, what all they do include, and so it is what I  
24 was given.

1 Q. Okay.

2 A. I wanted to make it clear is what I was  
3 given.

4 Q. Do you know whether all of the minutes  
5 that you got from 1993 until 2010 had all of the  
6 agendas and attachments that they were supposed to  
7 have or not?

8 A. As I said, I don't recall missing -- of  
9 the minutes I got I don't recall missing any documents  
10 that -- finding any that were missing either the  
11 agenda or the minutes or attachments.

12 Q. Okay.

13 Do you know why some of the TTO meeting  
14 minutes for the period that you looked at were not  
15 available?

16 A. I know what the answer -- explanation was  
17 given to me.

18 Q. What was that?

19 A. When I asked the answer was those are --  
20 what we have given you is the only set that we got  
21 from them and that they had asked -- they had asked  
22 for all of the minutes and this is what they got.

23 Q. Okay.

24 A. And, frankly, a couple of those cases the

1 only way I knew it is because I am reading minutes and  
2 I am finding there is a different board member here,  
3 there must have been a meeting in between, things like  
4 that.

5 Q. I see.

6 You were able to discern from looking at  
7 the minutes there were missing meeting minutes from  
8 the TTO?

9 A. Yes, thank you.

10 Q. You also reviewed -- why did you review  
11 meeting minutes starting in 1993, why didn't you go  
12 back earlier?

13 A. Because that was what was given to me.

14 Q. Why didn't you review meeting minutes of  
15 the TTO ending in 2010?

16 A. As you are saying this I am thinking that  
17 in that packet we might have a few beyond that.

18 Can I go check that?

19 MR. KALTENBACH: I can't give you the  
20 answer to that. And if --

21 THE WITNESS: Can I walk over and check  
22 and make sure?

23 BY MR. HOFFMAN:

24 Q. Sure, of course, take your time.



1 A. It is until '10, correct. The minutes  
2 that were jumping around in my head with different  
3 dates were the ones for the 204.

4 Q. Why didn't you review minutes of the TTO  
5 in the years after 2010?

6 A. Because these are what were given to me  
7 and what -- I was told this is all that they were  
8 given. They asked -- what I was told is that they  
9 asked for all of the minutes that had anything to do  
10 with -- anything to do with the lawsuit. Or is that  
11 -- this is what I was given.

12 Q. Well, I understand you might have been  
13 given something, but it is up to you to decide what  
14 you need in order to do your work properly, correct?

15 A. I did not feel -- there was no reason I  
16 knew that I needed beyond this and I trusted those who  
17 gave it to me to make that judgment.

18 Q. Why didn't you think it would be  
19 meaningful for you to look at the TTO minutes that  
20 came after 2010?

21 A. Because as I understood it the heart of  
22 the lawsuit was during the time before that, but that  
23 was maybe a misunderstanding, I don't know.

24 Q. You also reviewed meeting minutes from

1 the Board of Education of District 204, correct?

2 A. Yes.

3 Q. And that was from June of 2010  
4 through 2012?

5 A. Yes.

6 Q. Is there any reason --

7 A. But only the June meeting minutes of each  
8 of those years, that is all I was given.

9 Q. Why didn't you think it was important to  
10 review any of the District 204 board meeting minutes  
11 other than the ones in June of each year?

12 MR. KALTENBACH: Objection as to the form  
13 of the question.

14 You can answer.

15 BY MR. HOFFMAN:

16 Q. Go ahead.

17 A. The question was why do --

18 MR. HOFFMAN: Go ahead, read it back,  
19 please.

20 (Record read as requested.)

21 THE WITNESS: Because the attorney had  
22 indicated to me that these were the minutes -- that  
23 they had asked 204 to give them all of the minutes  
24 that had anything to do with this issue in them and

1 that is what they were given. When I asked why there  
2 weren't other ones, that was the answer.

3 BY MR. HOFFMAN:

4 Q. Do you think that your opinion was in any  
5 way limited by the inability to review a broader set  
6 of District 204 meeting minutes?

7 A. I did not feel that way, no.

8 Q. You also received the transcripts of the  
9 depositions of Robert Healy, Russell Hartigan, and  
10 Dr. Timothy Kilrea.

11 A. Yes.

12 Q. That is K-i-l-r-e-a.

13 Was it that the attorneys just gave you  
14 these three documents and told you these were the  
15 relevant ones or were these something you requested?

16 A. No, they gave those to me.

17 Q. Do you know how it was that they decided  
18 that these were the three important ones that you  
19 should read?

20 A. I do not recall.

21 Q. Okay.

22 A. No -- that's right, never mind, go on.

23 Q. Go ahead.

24 A. I am just trying to remember. I got one

1 by electronic later, but it is one of those three,  
2 never mind.

3 Q. So these are the only three deposition  
4 transcripts that you read, correct?

5 A. Correct.

6 Q. And so is it fair to say that you did not  
7 read the transcript of the deposition of Todd Shapiro  
8 who was the board president for District 204 in June  
9 of 2000?

10 A. That's correct.

11 Q. And you did not read the deposition of  
12 Lisa Beckwith, who was the business manager of  
13 District 204 in June of 2000, correct?

14 A. That's correct.

15 Q. And you did not read the deposition  
16 transcript of Dr. Dennis Kelly who was the  
17 superintendent of District 204 in June of 2000, did  
18 you?

19 A. That's correct.

20 Q. And are you aware of how many of those  
21 three individuals, Mr. Shapiro, Ms. Beckwith, and  
22 Dr. Kelly, attended the June, 2000 District 204 board  
23 meeting that you analyzed?

24 A. No, because it is the first time I heard

1 the name so, no. But -- go ahead.

2 Q. Well, if Todd Shapiro, for example, was  
3 in attendance at the June, 2000 District 204 board  
4 meeting and testified about what happened at that  
5 meeting, why is it that you are unaware of his  
6 testimony and didn't consider it important enough to  
7 ask for?

8 A. Because the minutes were a record of what  
9 occurred at a meeting. They are the official record  
10 of what occurred at a meeting and it isn't dependent  
11 upon what somebody remembers occurred at that meeting.  
12 It is what was documented in the minutes and approved.

13 Those minutes have been approved by the  
14 trustees, and that is what I needed. The other  
15 information was not significant -- would not affect my  
16 opinion because what was -- it is not what the intent  
17 is, it is what is in the minutes.

18 Q. Did any of the testimony that Robert  
19 Healy gave in his deposition have any impact upon your  
20 opinions in this case?

21 A. No.

22 Q. Did any of the testimony that Judge  
23 Russell Hartigan gave at his deposition in this case  
24 have any impact on your opinions given in this case?

1 A. No.

2 Q. Did any of the testimony that Dr. Timothy  
3 Kilrea gave in his deposition in this case have any  
4 impact on your opinions in this case?

5 A. My answer is yes.

6 I am not sure that it is accurate to say  
7 it had an impact on my opinion, but it solved for me  
8 one of the issues I needed to know, and that is that  
9 it is clear that Robert's Rules of Order is their  
10 parliamentary authority.

11 Q. Anything else in his deposition that was  
12 significant to you?

13 A. No.

14 I found a lot of it interesting, but  
15 making an opinion -- having an impact on the opinion,  
16 no, because it is based upon the facts, not what  
17 somebody thinks happened.

18 Q. Okay.

19 Did you read the deposition of Dr. Susan  
20 Birkenmaier who was the official representative of the  
21 TTO for purposes of this case and her testimony that  
22 she gave in this case?

23 A. No.

24 Q. It says here on Page 3 "Ms. Sylvester is

1 expected to testify then in accordance with Robert's  
2 and parliamentary practice an organization may have a  
3 custom that certain words such as accept, adopt, and  
4 approve as having meanings specific to that  
5 organization."

6 Is that your opinion?

7 A. Yes.

8 Q. How was that opinion in accordance with  
9 Robert's?

10 A. There is a hierarchy of rules, and in  
11 that list of hierarchy Robert's began in the 10th  
12 Edition to include custom because it was vague before  
13 that. So in Robert's you see specific direction on  
14 what custom -- what impact custom has upon the rules.

15 Q. What year was the 10th Edition?

16 A. It was '00.

17 Q. 2000?

18 A. Yes.

19 Q. When in 2000?

20 A. When in 2000?

21 Q. Yes.

22 A. Probably -- I don't know for a fact.

23 I would have to go back and look, but my  
24 guess is it was September of 2000, September or

1 October.

2 Q. Which edition do you have with you here  
3 today?

4 A. The 11th Edition.

5 Q. I see.

6 And what does the 11th Edition say about  
7 this custom issue that you have testified about?

8 A. There is quite a bit said, more than  
9 this, but here are the key things.

10 Q. Tell me what page you are on.

11 A. I am on Page 19.

12 Q. Terrific.

13 A. Custom is the heading.

14 "In some organizations a particular  
15 practice may sometimes come to be followed as a matter  
16 of established custom so that it is treated  
17 practically as if it were prescribed by a rule. If  
18 there is no contrary provision in the parliamentary  
19 authority or written rules of the organization, the  
20 established custom should be adhered to unless the  
21 assembly by a majority vote agrees in a particular  
22 instance to do otherwise. However, if a customary  
23 practice is or becomes in conflict with the  
24 parliamentary authority or any written rule and a

1 point of order citing the conflict is raised at any  
2 time, the custom falls to the ground and the  
3 conflicting provision in the parliamentary authority  
4 or written rule must thereafter be complied with."

5 Q. Is that the entirety of the statement  
6 about custom in the 11th Edition that you believe is  
7 relevant to this issue?

8 A. Yes.

9 There is another sentence after that that  
10 I didn't -- I can read it if you like.

11 Q. Do you believe it is significant?

12 A. I don't believe it is pertinent.

13 Q. If you don't think it is pertinent then  
14 we don't need to read it.

15 A. Okay.

16 MR. HOFFMAN: Off the record.

17 (A discussion was held off the record.)

18 BY MR. HOFFMAN:

19 Q. You reviewed the TTO's meeting minutes  
20 and formed the opinion that the trustees used the word  
21 accept as the equivalent of receives, is that correct?

22 A. That's correct.

23 Q. Did you speak with any of the former or  
24 current trustees concerning whether or not they had

1 But, remember, the definition from

2 Robert's --

3 Q. I didn't ask you to argue with me, I just  
4 asked whether it was written down or not.

5 A. Sorry.

6 Q. So the answer is no, right?

7 A. The answer is no.

8 Q. If this custom was not written down do  
9 you know how it was handed down from trustee to  
10 trustee from 1993 through 2010?

11 A. By practice.

12 Q. Okay.

13 Was there perhaps a briefing that each  
14 trustee received when they came in as to how the TTO  
15 uniquely followed Robert's Rules of Order and what  
16 their particular customs were to your knowledge?

17 A. I have no way of knowing that.

18 Although, it is typical for boards to do  
19 some kind of training in between when they have new  
20 board members, but it is not always done by any means.

21 Q. With respect to whether it is typical for  
22 boards to train new members, you have absolutely no  
23 idea as to the TTO whether they did that?

24 A. That's correct. That's correct.

1 this custom that you felt they did?

2 A. No.

3 Q. Why not?

4 A. I didn't feel I needed to.

5 Q. Why not?

6 A. Because there was enough documentation in  
7 the minutes to demonstrate that beyond what I believed  
8 was a shadow of a doubt.

9 Q. Well, the meeting minutes you reviewed  
10 for the TTO were 1993 through 2010, correct?

11 A. Yes.

12 Q. Were the trustees the same in all of  
13 those years?

14 A. No.

15 Q. Do they change every few years?

16 A. Yes.

17 Q. And were the trustees who started in 1993  
18 the same trustees who were there in 2010?

19 A. No.

20 Q. And can you tell me if there was this  
21 custom that you are testifying to was it written down  
22 anywhere in any policy, procedure, rule book of the  
23 TTO?

24 A. No, it is not.

1 MR. HOFFMAN: I move to strike the prior  
2 answer as speculative.

3 BY MR. HOFFMAN:

4 Q. Tell me again if the trustees turned over  
5 completely from 1993 through 2010 and there was no  
6 written statement of the TTO as to the TTO's custom as  
7 to how they used the word accept in their minutes, how  
8 did the trustees know about this custom as the years  
9 went by?

10 A. I have no way of knowing that, how.

11 Q. Wouldn't you be interested to know  
12 whether Russell Hartigan who was a trustee in March of  
13 2000 when the critical meeting occurred believed that  
14 there was the type of custom of the TTO that you claim  
15 there was?

16 A. I believed that I had enough information  
17 in the minutes to draw the conclusion that I drew and  
18 did not feel the need to search that out.

19 Q. That didn't answer my question.

20 A. Try it again.

21 Q. Wouldn't it be interesting to you to know  
22 whether Judge Hartigan would say today that the custom  
23 you found by looking through the minutes actually did  
24 or did not exist at the TTO?

1       **A. Interesting at best. I don't believe it**  
2       **would have affected my opinion.**

3       Q. So hypothetically if Judge Hartigan said  
4       that he was unaware of any custom at the TTO whereby  
5       the use of the word accept in the board minutes was  
6       the equivalent of receives, if he said he was unaware  
7       of that custom would that have any impact on your  
8       opinions in this case?

9       **A. No.**

10      Q. Why not?

11      **A. Because when I did the analysis -- first**  
12      **of all, this may be more than you need to know, but --**

13      Q. I need to know everything, my dear,  
14      please.

15      **A. It is very, very common for the general**  
16      **public to believe that the words accept, adopt, and**  
17      **approve do not mean the same thing.**

18      **Most people get -- think that accept and**  
19      **receive is -- means the same thing.**

20      Q. What are you basing that on, that most  
21      people think accept and receives means the same thing?

22      **A. The phenomenal amount of training that I**  
23      **have done, helped groups throughout the country, and**  
24      **been in meetings watching them practice what we are**

1       talking about.

2       And when I train many times when I say  
3       those three words mean the same thing I don't remember  
4       a time when there wasn't at least one person in the  
5       group, but usually many, who had this shocked look on  
6       their face and I had to proceed to explain.

7       Q. So from a parliamentary standpoint the  
8       words accept, adopt, and approve all mean the same  
9       thing, correct?

10      **A. That's correct.**

11      **I don't know if this is, again, more than**  
12      **you need, but it is ironic that --**

13      Q. Let me just say, there is nothing you are  
14      going to say that is more than I need, so don't worry  
15      about that, please.

16      **A. It was -- it is ironic to me that I found**  
17      **that the other -- that the 204 trustees had the same**  
18      **custom.**

19      Q. And, again, you were able to determine  
20      what District 204's custom was in its board minutes  
21      without speaking with anybody associated with  
22      District 204 that was actually involved in those  
23      meetings, correct?

24      **A. That's correct.**

1       Q. And your testimony is that when  
2       District 204 used the term accept in the board minutes  
3       of District 204 that what District 204 really meant  
4       was receives, is that your opinion?

5       **A. Yes.**

6       Q. Now, you also say later on on Page 4 of  
7       your disclosure about five lines down "based on custom  
8       and usage the trustees" -- that is of the TTO -- "used  
9       adopt and approve interchangeably." Do you see that?

10      **A. Yes, I do.**

11      Q. What is the difference between custom and  
12      usage, if there is one?

13      **A. Custom is when you are repeatedly doing**  
14      **something as a group as if it were a rule written in**  
15      **the book.**

16      Q. As opposed to usage which means what?

17      **A. I looked up all of their minutes and I**  
18      **paid close attention to when they used each of those**  
19      **three words and it was clear that they were using**  
20      **adopt and approve interchangeably.**

21      Q. So I don't understand the difference in  
22      your mind between custom on the one hand and usage on  
23      the other hand. Explain it to me better, please.

24      **A. I will try. I thought I -- custom is**

1       **when you using something -- when you do something as**  
2       **if it were a rule but it is not written in your rules,**  
3       **we do it so consistently that it is done as if it were**  
4       **a written rule and yet it is not in the rules.**

5       Q. The trustee's use of the word accept is  
6       the equivalent of receives, was that a custom or was  
7       that something you saw based on the usage or both?

8       **A. That was a custom that I judged to be a**  
9       **custom based upon their usage.**

10      Q. So something can be a usage and in your  
11      opinion it is elevated to the equivalent of a written  
12      rule then it becomes a custom, am I summarizing your  
13      testimony correctly?

14      **A. Would you repeat that question again?**

15      Q. Sure.

16      MR. HOFFMAN: Go ahead, please.

17      (Record read as requested.)

18      MR. HOFFMAN: When it becomes.

19      THE WITNESS: It is not making sense.

20      BY MR. HOFFMAN:

21      Q. Let me ask the question again.

22      Please tell me if I am summarizing your  
23      testimony accurately, I am not trying to misstate it  
24      in any way.

1 You can look at a group of minutes and  
2 find a usage of a term and that is how you perceive  
3 the board to be using a particular term like the word  
4 accept. But that usage can become a custom if the  
5 usage of that term in your view is the equivalent to a  
6 written rule that the organization has.  
7 **A. Yes. And that is based on Robert's.**  
8 Q. Okay.  
9 **A. I would not have said anything about**  
10 **adopt and approve being used interchangeably as a**  
11 **custom because it is in the rules.**  
12 Q. It is in what rules?  
13 **A. Robert's.**  
14 Q. So they don't need to have a custom to  
15 use adopt and approve interchangeably because that is  
16 already in Robert's Rules of Order, correct?  
17 **A. Yes.**  
18 Q. Does Robert's Rules of Order also state  
19 that adopt, approve, and accept can all be used  
20 interchangeably and all have the same meaning?  
21 **A. Yes, those are not the exact words.**  
22 **Would you like the exact words?**  
23 Q. Sure, that would be awesome.  
24 MR. KALTENBACH: If you are going to read

1 from it make sure the page number.  
2 THE WITNESS: Page 508, beginning on line  
3 number 11, I am going to read just one of the  
4 paragraphs on this. "Equivalence of terms incorrect  
5 motions as applied to an assembly's action with  
6 respect to board or committee reports or any of their  
7 content the expression adopt, accept, and agree are  
8 all equivalent. That is the text adopted becomes in  
9 effect the act or statement of the assembly. It is  
10 usually best to use the word adopt, however, since it  
11 is the least likely to be misunderstood."  
12 MR. KALTENBACH: I think there might have  
13 been -- I think you might have misread a word in  
14 there.  
15 MR. HOFFMAN: Just read back her answer  
16 and he can check it, please.  
17 MR. KALTENBACH: Something didn't sound  
18 right.  
19 (Record read as requested.)  
20 MR. KALTENBACH: I am sorry, that was  
21 correct. It sounded funny to me.  
22 BY MR. HOFFMAN:  
23 Q. So is the words adopt --  
24 **A. Accept and approve.**

1 Q. And approve.  
2 **A. That particular sentence I am now**  
3 **realizing did not refer to approve. I am sorry, did**  
4 **not --**  
5 Q. Adopt, accept, and agree.  
6 **A. That's correct.**  
7 Q. Is there anything in Robert's Rules of  
8 Order that says that adopt and approve are  
9 interchangeable?  
10 **A. I am -- yes, there is, but I am -- don't**  
11 **have it marked. Do you want me to go find it?**  
12 Q. No, thank you.  
13 You don't have a law degree, do you?  
14 **A. I don't what?**  
15 Q. You don't have a law degree, do you?  
16 **A. No, I do not.**  
17 Q. What makes you more qualified to  
18 interpret the meaning of board minutes in this case  
19 than a judge or the jury?  
20 MR. KALTENBACH: I object as to the form  
21 of the question and argumentative, but you can answer.  
22 THE WITNESS: I am a student of and know  
23 extremely well Robert's Rules of Order, which is the  
24 parliamentary authority of the organizations --

1 actually about 95 percent of the organizations in the  
2 United States, and those that use that I am an expert  
3 on them.  
4 The judge and most law students have  
5 never had a course in parliamentary procedure. And,  
6 yet, that is the rule book that is in the bylaws and  
7 that must be followed.  
8 BY MR. HOFFMAN:  
9 Q. What told you that the TTO follows  
10 Robert's Rules of Order?  
11 **A. What I said earlier in the deposition**  
12 **that I read from the current superintendent.**  
13 Q. The current superintendent was from  
14 District 204, Dr. Kilrea. My question had to do with  
15 TTO.  
16 **A. I am sorry, TTO.**  
17 Q. Yes, ma'am.  
18 **A. I think I asked the attorney for that**  
19 **information and was given that, but I honestly don't**  
20 **remember.**  
21 Q. So the only reason you think that the TTO  
22 followed Robert's Rules of Order is because you might  
23 have asked --  
24 **A. No, I asked -- I did some checking into**

1 it at one point.

2 Q. What did you do to check into it?

3 A. I asked the attorney, I am sure.

4 Q. Which attorney?

5 A. It would have been Jerry at that stage.

6 Q. Jerry Kubasiak?

7 A. Yes.

8 Q. And what did Jerry Kubasiak tell you  
9 about whether or not the TTO followed the Robert's  
10 Rules of Order?

11 A. He indicated it was. I think it is  
12 somewhere in their rules, but I don't know.

13 Q. There is no statement on Page 3 that you  
14 were ever provided with the rules of the TTO.

15 A. That's correct, I went by -- I am sorry.

16 Q. Go ahead, finish.

17 A. I went by what he told me.

18 I also went by the fact that  
19 approximately 95 -- 90 to 95 percent of the  
20 organizations in the United States use Robert's as  
21 their parliamentary authority, and in my experience I  
22 have not run into any, and I have worked with a lot of  
23 government bodies.

24 Q. What do the other 5 to 10 percent of the

1 organizations use if not Robert's Rules of Order?

2 A. About three or four percent use a book  
3 written by a women named Sturgis. It has been since  
4 rewritten because she has passed and it has been  
5 rewritten by the American Institute of  
6 Parliamentarians. There is a few other books, Demeter  
7 is one that some have used. I just have to go back on  
8 his name. Those are the most common.

9 Q. On Page 5 it says at the bottom of the  
10 page, Ms. Sylvester -- by the way, I am on -- let me  
11 start over.

12 Looking at Sylvester 2, which is the  
13 disclosure for your opinions in this case, on Page 5  
14 in the last full paragraph it says "Ms. Sylvester will  
15 offer her opinion that in accordance with Robert's and  
16 parliamentary practice entering into a new contract  
17 such as the one alleged here is not within the purpose  
18 of the consent agenda." Do you see that?

19 A. Yes.

20 Q. So you also concluded that the agreement  
21 that -- it says "the agreement alleged was not routine  
22 business for District 204." Do you see that  
23 statement?

24 A. Yes.

1 Q. And is that opinion based solely on your  
2 review of District 204's minutes or is it based on  
3 anything else?

4 A. It is also based upon my experience with  
5 governmental bodies and other deliberative assemblies.

6 Q. You also say on Page 6 "It would be  
7 inappropriate for the Board of Education to enter into  
8 the alleged consent through the use of the consent  
9 agenda." Do you see that?

10 A. Yes.

11 Q. When you say inappropriate, what do mean  
12 by that?

13 A. Well, because of the Open Meetings Act if  
14 they do not have the discussion in the meeting then a  
15 group of people who were given a decision -- given the  
16 government's ability of that particular organization  
17 would be entering into a contract without any  
18 opportunity to have a discussion amongst themselves.

19 They are a deliberative assembly, and  
20 Robert's is very, very clear that a deliberative  
21 assembly does not have individual conversations. But  
22 in order to be -- to properly follow what is  
23 appropriate for a deliberative assembly they would  
24 have to be in a meeting and have a discussion about

1 it.

2 Q. So does that mean that you believe that  
3 if the -- that it would be illegal for the Board of  
4 Education in June of 2000 to have entered into the  
5 alleged contract through the use of the consent  
6 agenda?

7 A. It is not my place to judge legality. I  
8 am talking from a parliamentary point of view.

9 Q. But you are saying that the Board of  
10 Education in June of 2000 entered into the alleged  
11 contract through the use of the consent agenda in your  
12 opinion --

13 A. Would --

14 Q. Let me finish my question.

15 -- would violate the Open Meetings Act,  
16 am I correct?

17 A. No.

18 I said if they had any discussion before  
19 this, before that meeting, that was not covered in the  
20 minutes of the previous meetings --

21 Q. Yes.

22 A. -- then they would have to be entering  
23 into a contract without any discussion of it  
24 whatsoever as a deliberative assembly.

1 Q. And would that action in your opinion  
2 violate the Open Meetings Act?  
3 A. **The violation -- I do not give an opinion**  
4 **on the Open Meetings Act, as you know it is a law. It**  
5 **is not --**  
6 Q. Yes, I do.  
7 A. **It is not a parliamentary.**  
8 Q. But what you --  
9 A. **But what I am saying is -- go on.**  
10 Q. You brought up the Open Meetings Act.  
11 A. Yes.  
12 Q. I did not, correct?  
13 A. Yes.  
14 Q. So I am trying to figure out what your  
15 opinion is with respect to the Open Meetings Act  
16 because that is not an opinion that is set forth in  
17 this disclosure, correct?  
18 This disclosure doesn't say anything  
19 about the Open Meetings Act, does it?  
20 A. No.  
21 Q. So I am asking you are you saying that  
22 the Open Meetings Act in your opinion would require  
23 the Board of Education to approve a contract through  
24 means other than the consent agenda?

1 A. **Absolutely not, that is not what I have**  
2 **said.**  
3 Q. So what is your point with respect to the  
4 Open Meetings Act?  
5 A. **In order for a deliberative assembly, a**  
6 **governing body, to make a decision on something like a**  
7 **contract that had first year over \$100,000 involved**  
8 **that deliberative assembly should have discussed that**  
9 **and talked about it in their meeting.**  
10 **There is, to my understanding, no record**  
11 **of them discussing that in their meeting.**  
12 Q. Fair enough.  
13 Just so I am clear, you have no opinion  
14 at all as to whether the Board of Education entering  
15 into the alleged contract through the use of a consent  
16 agenda would be legal or illegal because that is not  
17 your area?  
18 A. **That is correct.**  
19 Q. And you are not saying that it would  
20 either be consistent with or violative of the Open  
21 Meetings Act for the same reason, correct?  
22 A. **I am saying that if they follow the Open**  
23 **Meetings Act and they made a decision without any**  
24 **discussion in a meeting that is, in my judgment,**

1 **inappropriate.**  
2 Q. When you say inappropriate, do you mean  
3 that may not be the best practice, but are you saying  
4 -- were you going so far to say not only is that not  
5 the best practice, not only is it not consistent with  
6 Robert's Rules of Order, but it is void, invalid, or  
7 illegal because of that?  
8 A. **I am not in a position to judge that.**  
9 Q. So you do not take the view that any  
10 contract that is approved on the consent agenda is  
11 somehow invalid, do you?  
12 A. **No, never said it.**  
13 Q. Do you need to take a break?  
14 A. **Yes, I have to.**  
15 MR. KALTENBACH: Why don't we.  
16 (Recess taken.)  
17 (Document marked Sylvester Exhibit 3 for  
18 identification.)  
19 BY MR. HOFFMAN:  
20 Q. Ms. Sylvester, I am handing you Sylvester  
21 Exhibit No. 3, which are some notes that you created,  
22 correct?  
23 A. **Correct.**  
24 Q. And can you tell me what these are,

1 please?  
2 A. **I went through the minutes of the**  
3 **Township Trustees and I marked them, highlighted when**  
4 **they used any of these three terms, accept, adopt, or**  
5 **approve.**  
6 **The accept is any time it was used in**  
7 **relationship to the making of a motion. And there**  
8 **were eight of those times.**  
9 **Something wrong?**  
10 Q. Yes, I am sorry.  
11 MR. HOFFMAN: Would you mark this one?  
12 Here we go, that is a better copy.  
13 BY MR. HOFFMAN:  
14 Q. I am sorry, ma'am, you were saying?  
15 A. **That accept I went through, I read**  
16 **through the minutes and highlighted any time -- and**  
17 **made note of any time that the word accept was used at**  
18 **all.**  
19 **I then -- I also made notes to myself of**  
20 **when the word adopt or approved were used in**  
21 **relationship to a resolution. There were many, many**  
22 **other times that those two words were used, but these**  
23 **are notes of when it was used in relationship with a**  
24 **resolution.**

1 Q. And in the column that says accept, one  
2 of the entries is for the March 21, 2000 TTO meeting  
3 that is central to this case, correct?

4 A. **That's correct.**

5 Q. Now, in the other instances that you  
6 listed where there was the use of the word accept, in  
7 any of those instances was a vote taken?

8 A. **I believe there was, but I would have to  
9 look again at the minutes.**

10 Q. Okay, go ahead and look, please.

11 A. **Can I get over there?**

12 Q. Sure, do whatever you need to do.

13 MR. KALTENBACH: The box is over here.

14 THE WITNESS: Yes.

15 BY MR. HOFFMAN:

16 Q. Which vote are you looking at?

17 A. **At that moment I was looking at the  
18 November of '93 vote.**

19 Q. Right.

20 A. **And if I look at --**

21 Q. Let me see that, so I can see the same  
22 thing you are looking at.

23 A. **Okay.  
24 Right there.**

1 Q. And in this particular instance when we  
2 are looking it says a motion was made by Donna Milich.

3 Do you know who she is?

4 A. **She is a trustee.**

5 Q. Is she still alive?

6 A. **I have no idea.**

7 Q. A motion was made by Donna Milich and  
8 seconded by Joseph Nicola.

9 How about him, is he a trustee?

10 A. **Yes.**

11 Q. Alive or dead?

12 A. **I don't know.**

13 Q. It says to accept the canvass and  
14 proclamation and file the resolution in abstract votes  
15 with the Cook County Central Office. There was a roll  
16 call taken and the motion was carried, correct?

17 A. **Correct.**

18 Q. What was the canvass and proclamation  
19 referred to in the meeting minutes dated November 5,  
20 1993 of the TTO?

21 A. **It is an official report that -- and this  
22 is not a parliamentary thing, but it is an official  
23 report that they get.**

24 **If I would compare it to a parliamentary**

1 **thing it is similar to a teller's report that is  
2 provided to the presiding officer.**

3 Q. Well, is the canvass and proclamation  
4 attached to the minutes of the TTO meeting?

5 A. **Right here they are. So it is very  
6 similar to a teller's report.**

7 Q. Okay.

8 And when you say a teller's report, what  
9 do you mean by that? You don't mean a bank teller, do  
10 you?

11 A. **If you are having a vote of some kind in  
12 a meeting and there are a large number of people in  
13 the meeting and you need assistance in counting them  
14 then you appoint a teller's committee and the teller's  
15 committee -- or also if you are doing a ballot vote  
16 you appoint a teller's committee. The teller's  
17 committee comes up with the conclusion -- comes up  
18 with the numbers and gives -- in a form provided by  
19 Robert's gives the number of votes cast, the number of  
20 votes needed to pass, and then the number of votes  
21 that each either person or each concept that was being  
22 voted on received.**

23 Q. So in this instance here the TTO voted to  
24 accept the canvass and proclamation and file the

1 resolution, correct?

2 A. **That's correct.**

3 Q. And did they have to take a vote on  
4 accepting the canvass and proclamation or did they  
5 take a vote to file the resolution or both?

6 A. **As far as --**

7 Q. Because those are two separate actions,  
8 correct?

9 A. **As far as have to, I don't know that I  
10 can answer that question without going more into --  
11 because that is something that is specific to a --  
12 this particular -- to a governmental body.**

13 Q. So you don't know from your review of the  
14 TTO board minutes whether it was necessary for the TTO  
15 to vote solely to accept the canvass and proclamation  
16 or whether it was necessary to vote --

17 A. **I --**

18 Q. Ms. Sylvester --

19 A. **I stopped myself.**

20 Q. -- I would appreciate if you would let me  
21 finish my questions, please.

22 A. **I stopped myself.**

23 Q. So you don't know -- am I correct that  
24 you do not know based upon your review of the TTO



1 board minutes whether it was necessary for the board  
2 to take a vote in order to accept the canvass and  
3 proclamation or whether it was necessary to take a  
4 vote to file the resolution or whether it was  
5 necessary to take a vote for both of those things, do  
6 you?

7 **A. There would be no reason to have to have**  
8 **a vote to file a resolution.**

9 **And so one would assume then from that --**  
10 **could conclude from that that to accept the canvass**  
11 **and proclamation is what they were doing and they were**  
12 **receiving it in essence saying they received it.**

13 Q. Why would you need to take a vote in  
14 order to acknowledge receiving something?

15 **A. Because then it is made official record**  
16 **in your minutes.**

17 Q. But didn't they receive it when they  
18 received it, isn't that a factual matter of when the  
19 TTO board receives something?

20 **A. But --**

21 Q. Why do they need to take a vote to  
22 acknowledge the receipt of something?

23 **A. Because then it goes in their minutes**  
24 **that they as a group have received it, not that the**

1 **TTO office somewhere received it, but that in their**  
2 **meeting they as a group have received that document.**

3 Q. But from 1993 through 2000 isn't it fair  
4 to say that the TTO board received lots of documents  
5 and proposed contracts and other written information?

6 **A. Yes.**

7 Q. And so the instances that you found in  
8 which they mention in their board minutes that they  
9 accepted something were these eight instances spanning  
10 18 years, correct?

11 **A. Correct.**

12 Q. So why didn't they regularly -- why  
13 didn't the TTO regularly state in its own minutes that  
14 it accepted and thereby acknowledged the receipt of  
15 something many more times over these 18 years if your  
16 testimony about the use of the word accept is correct?

17 **A. I don't know that I can make a judgment**  
18 **of why they did what they did. It is --**

19 Q. Well, you already have.

20 **A. This is --**

21 Q. You already have.

22 **A. Can I finish my question?**

23 Q. Yes, go ahead.

24 **A. This is an official document that has to**

1 **do with an election and that election needs to be**  
2 **entered. All of that information on that election**  
3 **should be entered in the minutes so that down the road**  
4 **that can be checked in their minutes.**

5 Q. Why didn't the TTO vote to accept the  
6 canvass and proclamation in 1994?

7 **A. I do not --**

8 Q. Why didn't the TTO vote to accept the  
9 canvass and proclamation in 1996?

10 **A. Because --**

11 Q. Do you know?

12 **A. Are you finished with the question?**

13 Q. Yes.

14 **A. I assumed when I read it because of the**  
15 **length of their terms that they didn't have elections**  
16 **in those years, and as you can see there are some**  
17 **changes in when the elections occurred over the time.**

18 Q. So you believe it was every other year?

19 **A. There -- my conclusion -- I believe that**  
20 **I have every single one of those motions -- of the**  
21 **motion to accept represented here having to do with**  
22 **canvass and proclamation.**

23 Q. Well, not only that, but you believe that  
24 you have every usage here of the term accept by the

1 TTO board in the 1993 through 2000 time period,  
2 correct?

3 **A. Yes, 2001, yes.**

4 Q. How come some of the meetings listed here  
5 from 2001 and -- I am sorry, strike that.

6 Why didn't the -- if the TTO every other  
7 year voted to accept the canvass and proclamation how  
8 come the last year you have is 2003, what about 2005,  
9 '07, and '09?

10 **A. It was not in there. That may be a**  
11 **custom or law that they had to follow at that time. I**  
12 **do not know that.**

13 Q. And further down you have every instance  
14 you found anyway in which the TTO board either adopted  
15 or approved a resolution according to the minutes,  
16 correct?

17 **A. Correct.**

18 **Obviously there are some added in that I**  
19 **didn't -- going back found, but, yes, those are only**  
20 **having to do with resolutions.**

21 Q. Okay.

22 MR. HOFFMAN: Let's mark this.

23 (Document marked Sylvester Exhibit 4 for  
24 identification.)

1 BY MR. HOFFMAN:

2 Q. Sylvester Exhibit No. 4 was given to us  
3 by your lawyer. Are these your notes?

4 A. Yes.

5 Q. And I see a heading accept and adopt and  
6 resolution.

7 Are these the handwritten notes that you  
8 made prior to typing them up in the form that we see  
9 as Sylvester Exhibit 3?

10 A. Correct.

11 Q. And on Page 4 it says exception -- let me  
12 make sure you get there first.

13 Page 4 it says exception, accept and  
14 approve legal bills 65 01.

15 Why is that an exception, what is that an  
16 exception to?

17 A. It is an exception to using only one or  
18 the other of those words and so, therefore, it stuck  
19 out in my mind and further demonstrated that those two  
20 words do not mean the same thing to them because you  
21 wouldn't say accept and accept if they meant the same  
22 thing.

23 Q. Did you find any other instance in all  
24 the minutes you looked through of the TTO in which

1 they used the phraseology accept and approve?

2 A. All of the times when I saw them use the  
3 word accept, whether it was by itself or with some  
4 others, is documented in these notes and here.

5 Q. Let me ask you the same question again.  
6 Did you use any other instance other than --

7 A. No.

8 Q. This 65, 2001, in which the TTO trustees  
9 in their board minutes used the phraseology "accept  
10 and approve"?

11 A. No.

12 Q. In the third to last page, it says in the  
13 top, if I am reading the handwriting correctly,  
14 "minutes get sloppy in later years."

15 What did you mean by that?

16 A. There were some mistakes made in them.

17 They were the kind of mistakes that I  
18 frequently see made whenever you pull up an old  
19 document and you then instead of starting with a fresh  
20 document you start with the old one, and I found that  
21 to be what I considered sloppy.

22 If you want me to --

23 Q. When you say later years -- these are  
24 specific examples, you list here they mixed up regular

1 and special meetings, they left off the roll call and  
2 attendance information, and the start and finish time  
3 was not possible, you see that?

4 A. Yes.

5 Q. And I read those correctly?

6 A. Yes.

7 Q. Does this in any way impact on your view  
8 as to whether the TTO followed Robert's Rules of  
9 Order?

10 A. No.

11 Q. Is it fair to say if they did follow  
12 Robert's Rules of Order they did not strictly adhere  
13 to the requirements of Robert's Rules of Order?

14 A. I would phrase it more as they followed  
15 Robert's and they didn't pay as close of attention  
16 when they were reviewing their minutes. It is an  
17 issue I see on a regular basis.

18 Q. Okay, thank you.

19 A. Done with that?

20 Q. Yes, ma'am.

21 (Document marked Sylvester Exhibit 5 for  
22 identification.)

23 BY MR. HOFFMAN:

24 Q. Ms. Sylvester, Exhibit No. 5, are these

1 more of your notes?

2 A. Yes, they are.

3 Q. You reviewed the District 204 meeting  
4 minutes for the June 19, 2000 meeting, correct?

5 A. Yes.

6 Q. And you also saw the agenda and  
7 attachments, correct?

8 A. Yes.

9 Let me correct that, I saw the agenda and  
10 attachments that were provided to me.

11 Q. Right.

12 And those weren't all the attachments,  
13 correct?

14 A. No, that's correct, they were not.

15 Q. You see, you quoted from the minutes the  
16 statement "Board of Education action is to approve the  
17 payment in the net amount of 59,073." Do you see  
18 that?

19 A. Yes.

20 Q. And what is your understanding of what  
21 that net amount of 59,073 represents?

22 A. There was -- they were charged a  
23 particular amount of money, given credit for some  
24 money that they had spent, and then this was the

1 amount left.

2 Q. When you say they were given credit for  
3 some money they had spent, who gave them the credit  
4 and what was the credit for?

5 A. I will answer the second question first.

6 The credit was for personnel who were  
7 doing work that was many times for others in some  
8 cases done by the township trustee, the TTO.

9 What was the first half of the question?

10 Q. And who granted them that credit?

11 MR. KALTENBACH: I object to the extent  
12 the witness is being asked to offer an opinion beyond  
13 her disclosure.

14 You can answer the question.

15 MR. HOFFMAN: It is not an opinion, I am  
16 following up on her understanding what the facts are.

17 MR. KALTENBACH: You don't have to  
18 comment on my objection.

19 MR. HOFFMAN: It is not a reasonable  
20 objection, stop coaching the witness.

21 BY MR. HOFFMAN:

22 Q. Go ahead and answer.

23 MR. KALTENBACH: I am not coaching, I am  
24 making my objection.

1 THE WITNESS: I don't need coaching, I am  
2 a big girl.

3 BY MR. HOFFMAN:

4 Q. That is terrific.

5 A. I forgot the question.

6 Q. You said that there was an offset or  
7 credit actually against the amount that they were  
8 being billed.

9 A. Yes.

10 Q. And you said they were given that and  
11 used the passive tense. I am asking you in your  
12 understanding who granted the credit?

13 A. I can't answer that question because I am  
14 not sure that I believe anyone gave that credit.

15 Q. Okay.

16 And that is based on your review of the  
17 documentation?

18 A. That is based upon what I read in the  
19 minutes and what I know as a professional  
20 parliamentarian, yes.

21 Q. Is that based on what Jerry Kubasiak told  
22 you about the facts in this case?

23 A. Absolutely not.

24 Q. Is it based on what you read in the

1 briefs or legal papers that the parties filed in this  
2 case?

3 A. The briefs I read -- if I remember  
4 correctly, I read the briefs after I read the minutes  
5 and -- but I don't remember that, that is not fair.

6 I don't think that there was any  
7 interchange there.

8 Q. When you have the words "not contract"  
9 next to the quoted statement, what did you mean by not  
10 contract?

11 A. The way in which it was phrased was in my  
12 mind not an ongoing contract, not a contract.

13 Q. Was it a contract for one year or was it  
14 not a contract at all?

15 A. I can't make that judgment.

16 Q. Why not?

17 A. Because what they did was so vague.

18 Q. What who did was so vague?

19 A. What --

20 Q. District 204, the TTO, or both?

21 A. Right now I am talking about the TTO,  
22 what was done on March 21st.

23 Q. Okay.

24 Go ahead, tell me, why do you say it was

1 vague, explain what you mean.

2 A. Let me gather my thoughts, just a second.  
3 They were given a document.

4 Q. "They" who?

5 A. The TTO, the trustees, were given a  
6 document that expressed a proposal and they then  
7 accepted that proposal.

8 The proposal was in my mind not ongoing,  
9 it was at best for that current year, and because it  
10 was a motion to accept in my mind they in essence took  
11 this issue and put it in limbo and never came back to  
12 it again.

13 Q. Isn't it true that the TTO by its conduct  
14 for the next 12 years, from 2000 to 2012, conducted  
15 itself as if there was an understanding as to a credit  
16 or offset for District 204's business function costs?

17 MR. KALTENBACH: Hold on, I am going to  
18 object as being beyond the scope of her opinion and  
19 argumentative.

20 BY MR. HOFFMAN:

21 Q. Go ahead, you can answer.

22 A. Would you repeat it again?

23 (Record read as requested.)

24 THE WITNESS: I have no way of being able

1 to support that statement because nowhere in the  
2 minutes in the next -- from the time -- in all of the  
3 minutes I read after this is there a motion and is  
4 there some decision to pay a bill, to have them  
5 understand what that exchange was.

6 So there is no way that I can answer that  
7 they -- that their conduct did anything because there  
8 is no evidence in the minutes to demonstrate it.

9 BY MR. HOFFMAN:

10 Q. Let me ask you about the vote that the  
11 TTO trustees took on March 21, 2000.

12 Do you agree or disagree that that vote  
13 they took on District 204's proposal was inconclusive?

14 MR. KALTENBACH: Objection as to form.

15 THE WITNESS: I used the word that it put  
16 the issue in limbo, and I prefer to phrase it that  
17 way.

18 BY MR. HOFFMAN:

19 Q. Well, Susan Birkenmaier testified in her  
20 deposition as the representative of the TTO that the  
21 vote was inconclusive, and I am asking you whether you  
22 agree or disagree with that statement.

23 MR. KALTENBACH: Same objection.

24 THE WITNESS: I don't know what the

1 they did not approve, adopt, accept, they did not do  
2 anything with an ongoing contract.

3 That is why in my mind it was vague in  
4 that they put it in limbo because it was to accept,  
5 which was not giving direction having to do with any  
6 kind of a contract.

7 Q. That wasn't the question I asked you.

8 A. I am sorry.

9 Q. It specifically focused on the meaning of  
10 the word accept in the minutes of the March 21, 2000  
11 meeting. Answer this question, please.

12 Am I correct that if a person only looked  
13 at the meeting minutes for the TTO's meeting on  
14 March 21, 2000 that person could not be clear as to  
15 the meaning of the word accept as used in those  
16 minutes?

17 A. Are you saying that is the only thing  
18 they looked at --

19 Q. Correct.

20 A. -- is one set of minutes?

21 Q. Just that document.

22 A. There would be some vagueness to it, yes.

23 Q. And in your opinion it is necessary to  
24 look at a much broader collection of meeting minutes

1 basis, she was saying it was inconclusive. There was  
2 a quorum there.

3 BY MR. HOFFMAN:

4 Q. Do you agree with Dr. Birkenmaier's  
5 testimony that the meaning of the word accept as used  
6 in the March 21, 2000 minutes is "unclear"?

7 MR. KALTENBACH: I am going to object as  
8 to form and lack of foundation, but you can answer.

9 THE WITNESS: I did not agree that it is  
10 clear -- that it is unclear because there are some  
11 conclusions one can draw from that.

12 BY MR. HOFFMAN:

13 Q. Well, you couldn't look solely at the  
14 meeting minutes of March 21, 2000 and come to an  
15 opinion as to what the TTO trustees meant when they  
16 used the word accept, am I right about that?

17 A. Can I phrase it another way?

18 Q. No. Answer my question. You can't avoid  
19 the question.

20 A. I don't know.

21 Q. What do you mean you don't know?

22 A. I would like to explain what I am saying.

23 Q. Go ahead.

24 A. It is clear to me from that vote that

1 in order to be able to properly interpret the meeting  
2 minutes of March 21, 2000, right, right?

3 A. It is not only my opinion, but it is the  
4 opinion of the parliamentary authority, Robert's, that  
5 that is the responsibility to do that, to determine  
6 what is their custom.

7 Q. Where does it say in Robert's Rules of  
8 Order that in order to ascertain the meaning of a  
9 particular set of meeting minutes that a person can  
10 and should go back and look at a whole bunch of other  
11 meeting minutes?

12 A. What it says in Robert's on that is that  
13 here are the rules and that section that I read to you  
14 says that an organization can have a custom and that  
15 custom unless it is a point of order is made  
16 continues, and in this case they continued with that.

17 Q. Is there anything that specifically  
18 stated in Robert's Rules of Order that a proper way to  
19 interpret a particular set of meeting minutes involves  
20 going back and looking at, you know, ten-plus years of  
21 other meeting minutes, is there anything that said  
22 that?

23 A. Robert's does not give any of that kind  
24 of guidance, kind of specific guidance --

1 Q. Thanks for answering --  
2 A. **He simply tells the custom.**  
3 Q. Thanks for answering my question.  
4 A. **You are welcome.**  
5 **Are we finished with this?**  
6 Q. Give me one second.  
7 A. **Do you want me to put it over?**  
8 Q. Give me a second, please.  
9 A. **Sure.**  
10 Q. Okay, we are done, thank you.  
11 (Document marked Sylvester Exhibit 6 for  
12 identification.)  
13 BY MR. HOFFMAN:  
14 Q. Ms. Sylvester, are these more minutes --  
15 excuse me, I am sorry.  
16 Are these more notes from your file  
17 concerning meeting minutes?  
18 A. **That is accurate.**  
19 MR. KALTENBACH: Jay, can you hand me the  
20 one next to you?  
21 MR. HOFFMAN: Sorry.  
22 MR. KALTENBACH: Thanks, No. 6.  
23 BY MR. HOFFMAN:  
24 Q. On Page 1 of Sylvester 6, you wrote

1 "Minutes don't support what Healy said in his  
2 deposition." Do you see that?  
3 A. **Yes.**  
4 Q. And what is the basis for your statement  
5 there?  
6 A. **I had -- after I had read all the minutes**  
7 **I went and read the deposition and it was a note to**  
8 **myself that I did not believe some of the things he**  
9 **said in his deposition were supported by the minutes.**  
10 Q. In particular what?  
11 A. **Oh, wow. I would have to take a few**  
12 **moments and go through that.**  
13 Q. So you would need to actually reread  
14 Mr. Healy's deposition in order to figure out what  
15 areas --  
16 A. **I would have to go to my copy of it**  
17 **and --**  
18 Q. Does it help you to look at the last page  
19 of these notes where you have got some notes from the  
20 Healy deposition and ask whether these are the  
21 instances in which you felt that his deposition  
22 testimony was contrary to the minutes? Or maybe there  
23 is something different, you tell me.  
24 A. **There is some examples there.**

1 **The one on Page 42, the one on Page 43**  
2 **are examples where I am saying there that don't think**  
3 **this statement is supported by the minutes.**  
4 Q. And so do you have any opinion as to the  
5 credibility of Mr. Healy's testimony that he gave in  
6 this case? Yes, no?  
7 A. **Would you restate the question?**  
8 Q. Do you have any opinion as to the  
9 credibility of the testimony that Healy gave in this  
10 case?  
11 A. **Without putting any judgment on it I do**  
12 **think this did affect my judgment of his credibility.**  
13 Q. And what is your judgment of his  
14 credibility?  
15 A. **That he didn't get --**  
16 MR. KALTENBACH: I am sorry --  
17 BY MR. HOFFMAN:  
18 Q. Just answer the question.  
19 MR. HOFFMAN: Let her answer the  
20 question.  
21 MR. KALTENBACH: Jay, I am stating an  
22 objection, you don't have to argue with me.  
23 I am going to object it is beyond the  
24 scope.

1 You can answer, Ms. Sylvester.  
2 THE WITNESS: What was the question?  
3 MR. HOFFMAN: Read it back, please.  
4 (Record read as requested.)  
5 THE WITNESS: He was stating things that  
6 he may have believed to be true, but there is  
7 absolutely no support for them in the minutes.  
8 BY MR. HOFFMAN:  
9 Q. So does that lead you to believe that  
10 Mr. Healy's testimony on those points is not  
11 believable?  
12 MR. KALTENBACH: Same.  
13 THE WITNESS: I believe the minutes over  
14 what he said so I guess the answer is yes.  
15 BY MR. HOFFMAN:  
16 Q. Isn't it up to the jury to decide whether  
17 the witnesses are believable and not up to you?  
18 MR. KALTENBACH: Objection,  
19 argumentative, calls for a legal conclusion.  
20 You can answer, Nancy.  
21 THE WITNESS: As I understand it I am  
22 called in to give an expert opinion on the minutes.  
23 Most of your jury will not have read -- I  
24 can guarantee you that no one in your jury has read

1 the number of minutes I have read in my professional  
2 career and worked with in as many circumstances as I  
3 have in my professional career, and so I then bring  
4 some expertise that they do not have.  
5 BY MR. HOFFMAN:  
6 Q. Thank you.  
7 A. **You are welcome.**  
8 Q. Have you ever heard of the concept of  
9 offer and acceptance with respect to contract  
10 formation?  
11 A. **Vaguely.**  
12 Q. What do you mean vaguely?  
13 A. **Well, don't ask me to define it for you.**  
14 **If you want to talk about it you will**  
15 **need to redefine it for me. You asked me if I ever**  
16 **heard of it, I have, but I am not sure I could give**  
17 **you.**  
18 Q. Have you ever heard the phrase offer and  
19 acceptance with respect to --  
20 A. **Yes, I have.**  
21 Q. -- contracts?  
22 A. **Yes, I have.**  
23 Q. Do you have any understanding as to what  
24 that phrase means with contracts "offer and

1 acceptance?"  
2 A. **Is the question do I have any**  
3 **understanding from a legal point of view what it**  
4 **means?**  
5 Q. If you have any understanding of any kind  
6 yourself, what do you think, what do you think?  
7 A. **I think that when people refer to that**  
8 **they say that if an offer was made and someone has**  
9 **accepted that offer then you together have a contract.**  
10 **Whether it is accurate or not, I don't know.**  
11 Q. Have you ever heard of the phrase offer  
12 and approval with respect to contract formation?  
13 A. **I don't know if I have.**  
14 Q. Have you ever heard the phrase offer and  
15 adoption with respect to contract formation?  
16 A. **I haven't heard of any of this enough to**  
17 **give you that much knowledge of it to know --**  
18 Q. You have heard the phrase offer and  
19 acceptance, right?  
20 A. **And I may have heard --**  
21 Q. Yes?  
22 A. **I may have heard --**  
23 Q. Hello?  
24 MR. KALTENBACH: Hold on a minute. Hold

1 on a minute.  
2 MR. HOFFMAN: I want an answer.  
3 MR. KALTENBACH: That was a sarcastic  
4 remark, knock it off.  
5 MR. HOFFMAN: It is not sarcastic.  
6 MR. KALTENBACH: Hello?  
7 MR. HOFFMAN: I want an answer to that  
8 question.  
9 MR. KALTENBACH: That is fine. That is  
10 fine. She will state an answer. And if you don't  
11 feel it was a responsive answer you can reask the  
12 question or ask her to answer it again. I don't need  
13 the sarcastic arguing with the witness.  
14 MR. HOFFMAN: It is not sarcastic.  
15 MR. KALTENBACH: It was sarcastic.  
16 MR. HOFFMAN: She was changing her  
17 testimony.  
18 MR. KALTENBACH: I think saying hello to  
19 a witness is sarcastic in the middle of an answer.  
20 MR. HOFFMAN: I said it in order to  
21 interrupt the witness and if that was rude I  
22 apologize.  
23 THE WITNESS: Your apology is accepted.  
24

1 BY MR. HOFFMAN:  
2 Q. Ms. Sylvester, please continue.  
3 A. **I have heard the concept of an offer and**  
4 **accept, but whether I have heard -- whether they have**  
5 **used the word adopt or approve, I have not paid enough**  
6 **attention to it, but I have heard it to understand**  
7 **which one of those words they were meaning.**  
8 Q. Did you ever review any of the  
9 communications between the TTO and District 204 that  
10 preceded the March 21, 2000 board meeting of the TTO?  
11 A. **Any communication between the TTO and**  
12 **204.**  
13 Q. Do you want to hear the question again?  
14 A. **Please.**  
15 Q. The court reporter would be happy to read  
16 it back, that is why she is here.  
17 (Record read as requested.)  
18 THE WITNESS: I do not recall seeing any.  
19 MR. KALTENBACH: Do you want to take a  
20 break?  
21 MR. HOFFMAN: Let's do it. We haven't  
22 been going that long, I think it would be a good time.  
23 MR. KALTENBACH: It has been a little  
24 over a half hour, that is fine.

1 MR. HOFFMAN: It has been 37 minutes,  
2 let's take a break.

3 (Recess taken.)

4 BY MR. HOFFMAN:

5 Q. Do you know who Michael Cainkar is,  
6 C-a-i-n-k-a-i-r?

7 A. **Not off the top of my head.**

8 Q. Do boards like the TTO sometimes have  
9 lawyers who attend board meetings and provide legal  
10 advice to the board from time to time?

11 A. Yes.

12 Q. And are those lawyers for a board  
13 sometimes helpful in being able to explain or  
14 interpret the actions that the board takes from time  
15 to time at its meetings?

16 A. **They are very competent and very good in  
17 my experience at being able to make judgements in  
18 regard to the law but not necessarily in regard to  
19 parliamentary procedure.**

20 Q. I see.  
21 Are you aware that there is a letter  
22 dated May 2, 2000 that attorney Michael Cainkar sent  
23 to Robert Healy, the treasurer of the TTO, "Regarding  
24 proposed agreement with Lyons Township High School"?

1 A. **No, I am not.**

2 Q. Gretchen, Barry, and Jerry never told you  
3 about a lawyer letter that came about six weeks after  
4 the March 21, 2000 TTO board meeting?

5 A. **Not that I recall.**

6 Q. Would you want to -- a letter like that  
7 does exist, but I don't have a copy of it, and the TTO  
8 asked the Court to prevent me from receiving it and  
9 the Court agreed with that position so I do not have  
10 it.

11 A. Okay.

12 Q. Would you as a parliamentarian believe it  
13 is relevant for your analysis to see Michael Cainkar's  
14 May 2, 2000 letter regarding the proposed agreement  
15 with Lyons Township High School?

16 A. No.

17 Q. Why not?

18 A. **Because his would be a legal answer to it  
19 and mine would be a parliamentary.**

20 Q. And is it that the legal answer is just  
21 not your bailiwick or that the legal answer is not  
22 important as far as you are concerned?

23 A. **They are both of equal importance. No, I  
24 am not saying it is not important.**

1 I am saying that I am here to testify  
2 regarding the parliamentary procedure, and what the  
3 attorney says about it does not -- it doesn't have an  
4 influence on what I would have as a judgment with it  
5 because mine is based upon Robert's and their official  
6 documents.

7 Q. Are you aware from reviewing the TTO  
8 board minutes that Michael Cainkar frequently attended  
9 the TTO board meetings?

10 A. **I probably when I went through them  
11 because I have a habit of looking at who attended, but  
12 do not recall that, that was months and months ago.**

13 Q. Would Michael Cainkar, assuming he did  
14 attend the board meetings, which I assume the minutes  
15 do in fact show, would that mean that he would be  
16 knowledgeable about the board's customs?

17 A. **Not necessarily.**

18 Q. And why is that, because -- why is that?

19 A. **Because he doesn't -- because he most  
20 likely does not understand parliamentary procedure and  
21 the customs have to do with what is based on Robert's.  
22 So he would have to understand what is in Robert's to  
23 understand the customs, and my experience is that they  
24 usually don't.**

1 Q. Your opinion in this case is that there  
2 was no contract approved by either the TTO board or  
3 the District 204 board in 2000 relating to the payment  
4 of District 204's business functions, correct, based  
5 on the minutes, correct?

6 A. **Let me just take a moment and check  
7 something, if I could.**

8 Q. Sure.

9 A. **Keep in mind the answer I would like to  
10 make sure.**

11 Q. Tell us what it is you are looking at.

12 A. **I am looking at information from the  
13 minutes.**

14 MR. KALTENBACH: Let us know which  
15 minutes when you find the right one.

16 THE WITNESS: Okay.  
17 Could you restate the question for me,  
18 please?

19 MR. HOFFMAN: Read it back, please.  
20 (Record read as requested.)

21 THE WITNESS: I believe that there was  
22 definitely no ongoing contract in either of those  
23 minutes.  
24

1 BY MR. HOFFMAN:

2 Q. Well, was there a contract for one year  
3 on either of those minutes?

4 A. **In the TTO it is hard to understand how  
5 what they did would be considered a contract.**

6 **In the case of the school board it is my  
7 judgment that this is not a contract, it is they are  
8 agreeing to pay a -- make a payment, and to me that is  
9 different than a contract.**

10 Q. And this is based on your review what you  
11 are looking at right now --

12 A. **Yes, which is --**

13 Q. Let me finish.

14 What you are looking at right now, if I  
15 am correct, is Exhibit T to the agenda and minutes of  
16 the June 19, 2000 District 204 minutes, correct?

17 A. **Correct.**

18 Q. And that is a memo from Lisa Beckwith to  
19 the board dated June 14, 2000, right?

20 A. **Correct.**

21 Q. I am going to show you just a very small  
22 portion of a document already marked in this case as  
23 Healy Exhibit No. 1.

24 And if you turn, there is --

1 MR. HOFFMAN: It is chronological, so,  
2 Barry, turn to September 7, 2000.

3 BY MR. HOFFMAN:

4 Q. Within Healy Exhibit No. 1 there is a  
5 letter dated September 7, 2000 that Robert Healy sent  
6 to Dennis Kelly. And I just ask you to take a minute  
7 and read that letter.

8 Have you read the letter, ma'am?

9 A. **Yes.**

10 Q. Have you ever seen this letter before  
11 today?

12 A. **I think it might be in my documents, but  
13 I am not 100% positive.**

14 **If you want me to look at what I was  
15 looking at I can see, but --**

16 Q. Well, let's talk about it right now  
17 because you just read it, I don't need you to go back  
18 through your documents and tell me for sure whether  
19 you have seen it before.

20 A. **Okay.**

21 Q. It says on the second paragraph "As was  
22 done last year, the trustees will continue funding  
23 certain business expenses." Do you see that?

24 A. **Yes.**

1 Q. And that is written by Bob Healy who was  
2 the treasurer in 2000, right?

3 A. **Yes.**

4 Q. And does this letter give any indication  
5 in your mind as to whether the funding of LT's or  
6 District 204's business functions was an ongoing  
7 process between the parties?

8 A. **Absolutely not.**

9 Q. Why not?

10 A. **Because -- and this is one of the things  
11 I was talking about in my notes when we went over  
12 these notes about Healy is drawing conclusions that  
13 are not documented in the minutes. He is telling them  
14 that the trustees will continue.**

15 **There is no basis in their minutes in  
16 which he can draw the conclusion -- that I have seen  
17 that he can draw the conclusion that the trustees will  
18 continue funding.**

19 Q. He testified that the trustees were aware  
20 that they were continuing to fund District 204's  
21 business functions from 2000 through 2012.

22 Do you have any factual basis to disagree  
23 with his testimony?

24 A. **Would you repeat the first part of the**

1 **question?**

2 Q. **Sure.**

3 (Record read as requested.)

4 THE WITNESS: I have no factual basis to  
5 disagree with his testimony, but the fact that they  
6 were aware of it does not make it a contract.

7 BY MR. HOFFMAN:

8 Q. And what makes it a contract would be  
9 formal approval each and every year --

10 A. **No.**

11 Q. -- in the minutes, no?

12 A. **Not of a governing body who is going in  
13 to a continual -- into a contract that is over a  
14 period of time.**

15 **The responsibility of that governing body  
16 is to make that decision, get that decision in the  
17 minutes, and then the actions of the treasurer would  
18 follow what was decided in those minutes, similar to  
19 how they did with District 69.**

20 Q. And what did they do with respect to  
21 District 69?

22 A. **Every single year there was a contract --  
23 an agreement they called it between District 69 and  
24 the TTO and every single year there was a vote on that**



1 to continue it. There was a report on what kind of  
2 percentage increase it was from the year before, that  
3 kind of thing.

4 Q. Okay.

5 And what is the date that you are looking  
6 at on the -- how many years did you find these  
7 discussions about an agreement between District 69 and  
8 the TTO?

9 A. Every year from 1993 to 2004, and the  
10 word that was used in those motions was approve.

11 And in every one but the last three years  
12 they gave the percentage of change or the amount of  
13 dollars of change.

14 Q. Okay.

15 I need this document.

16 A. That is mine.

17 Q. You are okay.

18 Let's go to the fun part. You have got  
19 some royalties coming to you.

20 MR. KALTENBACH: She thanks you.

21 BY MR. HOFFMAN:

22 Q. I have both of your books.

23 MR. KALTENBACH: Just happenstance, I am  
24 sure.

1 THE WITNESS: You probably had them  
2 before this.

3 MR. HOFFMAN: They call me the Library of  
4 Congress, Chicago location.

5 (Book marked Sylvester Exhibit 7 for  
6 identification.)

7 BY MR. HOFFMAN:

8 Q. Am I correct that Sylvester Exhibit No. 7  
9 is the book you wrote called the Guerrilla Guide to  
10 Robert's Rules?

11 A. That is correct.

12 Q. Am I also correct that this book has a  
13 copyright of 2006 on the left-hand side?

14 A. I am looking.

15 Yes.

16 Q. Is there any prior edition of this book?

17 A. No.

18 Q. There is a glossary of parliamentary  
19 terms at the back, yes?

20 A. Yes.

21 Q. And that is Appendix A.

22 Would you read what it says under the  
23 word "approve" in your glossary?

24 A. "This word is synonymous with ratify,

1 confirm, adopt, or accept, the text becomes an act or  
2 statement of the assembly."

3 Q. Would you also, please be kind enough to  
4 read what it says in the glossary in your book as to  
5 the word "adopt".

6 A. "To accept or approve a motion or report,  
7 the text becomes an act or statement of the assembly."

8 Q. And would you also, please, read the  
9 definition of "accept" in your glossary.

10 A. "To adopt or approve a motion or report,  
11 the text becomes an act or statement of the assembly.  
12 (Book marked Sylvester Exhibit 8 for  
13 identification.)

14 BY MR. HOFFMAN:

15 Q. You also have the same glossary online at  
16 your website nancysylvester.com.

17 A. Correct.

18 Q. And the glossary also appears -- let's go  
19 through this.

20 Sylvester Exhibit No. 8 is The Complete  
21 Idiot's Guide to Robert's Rules, Second Edition, with  
22 a copyright of 2010, correct?

23 A. Correct.

24 Q. And this is a book you wrote?

1 A. Yes.

2 Q. Ma'am, what was the year of the first  
3 edition?

4 A. 2004, I believe.

5 Q. And there is a glossary that is Appendix  
6 A to this book as well, correct?

7 A. Yes.

8 Q. And do the definitions of "approve",  
9 "adopt", and "accept" in the glossary of your second  
10 book have the same definitions essentially?

11 A. Essentially, yes.

12 I guess I should look to make sure they  
13 do, but my memory is they do. Let me go back.

14 Q. Please, take your time.

15 A. Let me not rush to judgment.

16 Yes. My yes answer stays.

17 Q. Having read the definitions in the  
18 glossary of your second book they are substantially  
19 the same as in the first book?

20 A. Correct.

21 MR. HOFFMAN: I have no further  
22 questions, thank you.

23 MR. KALTENBACH: Why don't I just take a  
24 minute with the witness, I may have a couple.

1 (Recess taken.)

2 EXAMINATION

3 BY MR. KALTENBACH:

4 Q. Ms. Sylvester, I have a couple of  
5 follow-up questions for you.

6 To clarify, your determination of custom  
7 was based on your review of the official records of  
8 the deliberative bodies at issue, correct?

9 A. Yes.

10 My judgment of what is their custom was  
11 by going to their documents and reviewing how they  
12 were used.

13 Q. And you did not feel it was appropriate  
14 to review what individual members of that deliberative  
15 body may have thought or recalled, correct?

16 A. That is correct.

17 Q. Or -- sorry, for a parliamentarian.

18 A. The only time that would be of any value  
19 is if you had inconsistency. But the consistency in  
20 this case was so overwhelming that there is not -- and  
21 also as we all know there is a change -- there is a  
22 difference in view at the moment, there is a  
23 difference in view later, you know, what did you mean  
24 by "accept" 20 years later, it is hard to recall.

1 Q. If the Township Trustees did not have an  
2 official policy of following Robert's Rules of Order  
3 would that impact the opinions that you have expressed  
4 in this case?

5 A. No, it would not.

6 Q. To clarify, you are not offering an  
7 opinion on whether District 204 complied with any sort  
8 of open meeting laws, correct?

9 A. Absolutely not.

10 Q. Okay.

11 Your opinion is that if District 204  
12 entered into the agreement alleged through the use of  
13 the consent agenda and had not previously discussed it  
14 as a deliberative body, that that would violate  
15 Robert's, correct?

16 MR. HOFFMAN: Objection, leading.

17 BY MR. KALTENBACH:

18 Q. You can answer.

19 MR. HOFFMAN: You can answer.

20 It is just -- let me explain to the  
21 witness. If I think there is something wrong with the  
22 question that he is asking I have to state an  
23 objection on the record and I am supposed to do it  
24 before you answer the question if I can. And so I

1 don't mean to be rude in posing an objection, nor am I  
2 in any way trying to stop you from answering the  
3 question.

4 THE WITNESS: Okay.

5 Now I need you to repeat it.

6 BY MR. KALTENBACH:

7 Q. So you testified you are not offering an  
8 opinion on whether District 204 complied with an Open  
9 Meetings Act or not?

10 A. That's correct, absolutely. That is  
11 outside of my --

12 Q. You are offering an opinion on whether or  
13 not they complied with Robert's, correct?

14 A. Correct.

15 Q. Based --

16 A. As a deliberative assembly whether or not  
17 they followed what Robert's says is the process for a  
18 deliberative assembly, yes.

19 Q. And your opinion is that based on the  
20 records you have reviewed if District 204 entered into  
21 the contract alleged through the consent agenda  
22 without having previously discussed it as a  
23 deliberative body that would violate Robert's,  
24 correct?

1 MR. HOFFMAN: Objection, leading.

2 THE WITNESS: Yes.

3 BY MR. KALTENBACH:

4 Q. Ms. Sylvester, your testimony regarding  
5 the meaning and usage of the words "accept", "adopt",  
6 and "approve" is how the deliberative bodies in this  
7 lawsuit used them based on Robert's and based on their  
8 custom, correct?

9 MR. HOFFMAN: Objection, leading.

10 THE WITNESS: Absolutely. It does not --  
11 they use them in a different way than Robert's -- they  
12 used at least one of them in a different way than what  
13 Robert's gives the term -- defines the term and so  
14 their custom trumps Robert's.

15 MR. KALTENBACH: No further questions.

16 THE WITNESS: No according to Robert's.

17 MR. KALTENBACH: No further questions.

18 MR. HOFFMAN: No questions, we are done.

19 MS. REPORTER: Signature?

20 MR. HOFFMAN: Do you want to reserve  
21 signature?

22 MR. KALTENBACH: Sure.

23 MR. HOFFMAN: And I need solely  
24 electronic, PDF and then the PTX.

1 MS. REPORTER: Are you taking a copy?  
2 MR. KALTENBACH: Yes, I am. If you can  
3 e-mail me a PDF, full, and mini.  
4 (WHICH WERE ALL OF THE PROCEEDINGS HAD OR  
5 TAKEN PLACE IN THE ABOVE-ENTITLED MATTER.)  
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1 STATE OF ILLINOIS)  
2 ) SS.  
3 COUNTY OF DUPAGE )  
4 I, STEPHANIE A. BATTAGLIA, CSR and Notary  
5 Public in and for the County of DuPage and State of  
6 Illinois, do hereby certify that on April 20, 2017, at  
7 1:00 p.m., at 20 North Clark Street, Suite 2500,  
8 Chicago, Illinois, the deponent NANCY SYLVESTER  
9 personally appeared before me.  
10 I further certify that the said NANCY  
11 SYLVESTER was by me first duly sworn to testify and  
12 that the foregoing is a true record of the testimony  
13 given by the witness.  
14 I further certify that the deposition was  
15 terminated at 3:23 p.m.  
16 I further certify that I am not counsel for  
17 nor related to any of the parties herein, nor am I  
18 interested in the outcome hereof.  
19 In witness whereof, I have hereunto set my  
20 hand and seal of office this \_\_\_\_ of April, 2017.  
21  
22 Notary Public  
23 CSR No. 084-003337 - Expiration Date: May 31, 2017.  
24

1 STATE OF ILLINOIS )  
2 ) SS.  
3 COUNTY OF C O O K )  
4 IN THE CIRCUIT COURT OF COOK COUNTY  
5 COUNTY DEPARTMENT-CHANCERY DIVISION  
6  
7 TOWNSHIP TRUSTEES OF )  
8 SCHOOLS TOWNSHIP 38 NORTH, )  
9 RANGE 12 EAST, )  
10 )  
11 Plaintiff and )  
12 Counter-Defendant, )  
13 )  
14 vs. ) No. 13 CH 23386  
15 )  
16 LYONS TOWNSHIP HIGH SCHOOL ) Hon. Sophia H. Hall  
17 DISTRICT 204, )  
18 ) Calendar 14  
19 Defendant and )  
20 Counter-Plaintiff. )  
21  
22 I, NANCY SYLVESTER, being first duly  
23 sworn, on oath say that I am the deponent in the  
24 aforesaid deposition taken on April 27, 2017; that I  
have read the foregoing transcript of my deposition,  
consisting of pages No. 1 through No. 91, inclusive,  
and affix my signature to same.  
  
-----  
NANCY SYLVESTER  
  
Subscribed and sworn to  
before me this \_\_\_\_ day of  
\_\_\_\_, 2017

IN THE CIRCUIT COURT OF COOK COUNTY  
COUNTY DEPARTMENT, CHANCERY DIVISION

TOWNSHIP TRUSTEES OF SCHOOLS	)	
TOWNSHIP 38 NORTH, RANGE 12 EAST,	)	
	)	
Plaintiff,	)	No. 13 CH 23386
	)	
v.	)	Hon. Sophia H. Hall
	)	
LYONS TOWNSHIP HIGH SCHOOL	)	
DISTRICT 204,	)	
	)	
Defendant.	)	

**NOTICE OF MOTION**

Please take notice that on June 19, 2018, at 9:30 a.m., we shall appear before the Honorable Sophia H. Hall in Courtroom 2301 of the Richard J. Daley Center, 50 West Washington Street, Chicago, Illinois, and present the attached motion.

LYONS TOWNSHIP HIGH SCHOOL  
DISTRICT 204

By s/Jay R. Hoffman  
*Its Attorney*

Jay R. Hoffman  
Hoffman Legal  
20 N. Clark St., Suite 2500  
Chicago, IL 60602  
(312) 899-0899  
[jay@hoffmanlegal.com](mailto:jay@hoffmanlegal.com)  
Attorney No. 34710

**CERTIFICATE OF SERVICE**

Jay R. Hoffman, an attorney, certifies that on June 15, 2018, he caused the foregoing notice of motion to be served by email on the following attorneys:

Gerald E. Kubasiak  
[kubasiak@millercanfield.com](mailto:kubasiak@millercanfield.com)  
Barry P. Kaltenbach  
[kaltenbach@millercanfield.com](mailto:kaltenbach@millercanfield.com)  
Miller, Canfield, Paddock and Stone, P.L.C.  
225 W. Washington St., Suite 2600  
Chicago, IL 60606

s/Jay R. Hoffman

# Chancery DIVISION

## Litigant List

Printed on 06/15/2018

Case Number: 2013-CH-23386

Page 1 of 1

### Plaintiffs

Plaintiffs Name	Plaintiffs Address	State	Zip	Unit #
TOWNSHIP TRUSTEE SCHOOLS			0000	

Total Plaintiffs: 1

### Defendants

Defendant Name	Defendant Address	State	Unit #	Service By
LYONS TWP H S			0000	
NON PARTY			0000	

Total Defendants: 2