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PROFESSIONAL RESPONSIBILITY BOARD

IN RE:) Case No. PRB-018-2021
)
MELVIN FINK)
) September 27, 2021
) 9:13 AM
)
_____)

TRANSCRIPT OF HEARING

APPEARANCES (All present by video or telephone):

DAVID SLEIGH, ESQ.
Attorney for the Respondent
SARAH KATZ, ESQ., Disciplinary Counsel
GARY KARNEDY, ESQ., Chair
ASHLEY TAYLOR, ESQ., Attorney Member
PETER ZUK, Public Representative
MARK DISTEFANO, Hearing Panel Counsel

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I N D E X

WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE
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For the Disciplinary Counsel:					
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Melvin D. Fink	9	34	36		
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Nathan Lance Marshall	41	46	47		
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Patricia G. Benelli	49	70	81		
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EXHIBITS:	DESCRIPTION	MARK	ADMIT
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For the Disciplinary Counsel:			
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1 - 5	Unidentified documents		5
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6	Email dated June 4		5
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7	Court order		5
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8 - 9	Communications between Mr.		6
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	Fink and Ms. Benelli		
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10	Notice of Appearance		6
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11	July 31 letter from Ms.		6
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	Benelli to Mr. Fink		
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12	Docket case for complaint for divorce		6
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13	July 31 Email from Ms.		6
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	Benelli to Mr. Fink		
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14	Email communications		6
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For the Respondent:			
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1	Unidentified document		6
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3	June 1 Email communication		7
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	From Ms. Benelli to Mr. Fink		
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1 (Proceedings convened at 9:13 AM)

2 THE OPERATIONS ASSISTANT: Hi. Good morning. This
3 is the operations assistant with the Court. Who just joined?

4 THE RECORDER: Yes, it is.

5 THE COURT: Hi. Good morning. Who just joined by
6 phone?

7 THE RECORDER: This is the courtroom in Newfane, the
8 recorder.

9 THE OPERATIONS ASSISTANT: Perfect. Thank you.

10 MR. MARK DISTEFANO: This is Mark speaking. Are
11 you -- are you doing something further where we should wait or
12 should we advise people to, you know, get -- open up their
13 audio and video?

14 THE COURT REPORTER: Hi. This is the court reporter,
15 could you just let us know when you're ready with the FTR?

16 THE OPERATIONS ASSISTANT: We're good to go. Thank
17 you.

18 (Pause)

19 UNIDENTIFIED SPEAKER: All right. Are we ready to
20 start, Sophie (ph.)?

21 UNIDENTIFIED SPEAKER: I'm waiting on the operations
22 assistant.

23 UNIDENTIFIED SPEAKER: Oh, yes, sorry. I was just
24 confirming that FTR was connected so it sounds like we're all
25 good and there's another court staff that just joined.

1 Welcome, (indiscernible).

2 MR. DISTEFANO: Thank you very much, Sophie. So just
3 by way of explanation to the parties, the original person who
4 was assigned to FTR had an emergency and so what folks have
5 been doing for the last half hour is finding a replacement.
6 So I certainly apologize for the delay, something that was
7 unavoidable, something came up this morning. And thank you
8 for your patience and so we're all connected here. We're all
9 here. We're on the record. Let's start the hearing and I'm
10 going to get ask that the chairman to get the hearing started
11 and we'll go from there. Thank you.

12 MR. GARY KARNEDY: Terrific. So it's 9:15. We're on
13 the record. We're here on State of Vermont Professional
14 Responsibility program in re Melvin Fink, PRB file number
15 2021-18. I'm Gary Karnedy and here as chair of the review
16 panel with Peter Zuk and Ashley Taylor. Here, if I could just
17 get your name on the call. Okay. We'll make up the panel.
18 Okay.

19 Counsel, would you identify yourself and who you
20 represent?

21 MS. SARAH KATZ: Good morning to the panel. My name
22 is Sarah Katz, I'm the disciplinary counsel for the State of
23 Vermont.

24 MR. DAVID SLEIGH: Good morning. I'm David Sleigh.
25 I represent Melvin Fink.

1 MR. KARNEDY: I would like to also note that Mark
2 DiStefano is here at hearing. So before we get started with
3 the first witness, I see a number of exhibits.

4 Counsel, can you confer and someone will stipulate to
5 what you would like to do with those. If you want to put some
6 in now, how would you like to proceed? Ms. Katz?

7 MS. KATZ: Certainly. Good morning. The DC exhibits
8 (indiscernible) numbers 1 through 14. If either of the
9 parties haven't heard about the exhibits and filed a
10 (indiscernible) indicating their (indiscernible) and the
11 hearing exhibit list. Let me just double check to make sure
12 I'm not misspeaking here but I believe that the parties had
13 agreed to (indiscernible) in the (indiscernible) admissibility
14 of DC-1 through DC-14 inclusive.

15 MR. KARNEDY: That's true. So it sounds like the
16 parties stipulated to the admission of DC-1 through DC-14 and
17 I'll admit those for the record.

18 (Unidentified documents was hereby received into evidence
19 as Disciplinary Counsel's Exhibit 1 - 5, as of this date.)

20 (Email dated June 4 was hereby received into evidence as
21 Disciplinary Counsel's Exhibit 6, as of this date.)

22 (Court order was hereby received into evidence as
23 Disciplinary Counsel's Exhibit 7, as of this date.)

24 (Communications between Mr. Fink and Ms. Benelli was
25 hereby received into evidence as Disciplinary Counsel's

1 Exhibit 8 - 9, as of this date.)

2 (Notice of Appearance was hereby received into evidence as
3 Disciplinary Counsel's Exhibit 10, as of this date.)

4 (July 31 letter from Ms. Benelli to Mr. Fink was hereby
5 received into evidence as Disciplinary Counsel's Exhibit 11,
6 as of this date.)

7 (Docket case for complaint for divorce was hereby received
8 into evidence as Disciplinary Counsel's Exhibit 12, as of this
9 date.)

10 (July 31 Email from Ms. Benelli to Mr. Fink was hereby
11 received into evidence as Disciplinary Counsel's Exhibit 13,
12 as of this date.)

13 (Email communications was hereby received into evidence as
14 Disciplinary Counsel's Exhibit 14, as of this date.)

15 MR. SLEIGH: Okay. Thank you, Your Honor.
16 Respondent submitted four exhibits, two of which I believe
17 disciplinary counsel has no objection to. That will be
18 Respondent's 1 and Respondent's 3.

19 MR. KARNEDY: Ms. Katz, is that correct?

20 MS. KATZ: I believe that's correct.

21 MR. KARNEDY: Okay. So we'll admit Respondent's 1
22 and Respondent's 3. I'll (indiscernible) without admission,
23 Respondent's 2 and 4 if we can take up (indiscernible).

24 (Unidentified document was hereby received into evidence
25 as Respondent's Exhibit 1, as of this date.)

1 (June 1, 2020 communication from Ms. Benelli to Mr. Fink
2 was hereby received into evidence as Respondent's Exhibit 3,
3 as of this date.)

4 MR. KARNEDY: Very good. Ms. Katz, would you call
5 your first witness?

6 MR. DISTEFANO: Excuse me. If I could jump in for
7 just a second. I would allow just to bring up the point that
8 (indiscernible) counsel's exhibits have been filed and are
9 available for purposes of the record. I'm not sure that the
10 Respondent's exhibits have been actually submitted and so
11 maybe we could have them shown off of someone's screen today
12 in terms of (indiscernible) but if you want, I think the panel
13 will want the entire exhibits to be submitted. So tell me if
14 I'm wrong if they've already -- they've already been submitted
15 electronically, just tell me because they (indiscernible) I
16 was going to put them in.

17 MR. SLEIGH: I believe they've been submitted by the
18 piece of paper that indicates that (indiscernible). I can
19 certainly upload them again if that's necessary.

20 MR. DISTEFANO: Do you -- do you think they were
21 filed with your exhibit list originally? I'm sorry. I
22 apologize if I missed this.

23 MR. SLEIGH: I do. I believe that we sent them on
24 July the 26th.

25 MR. DISTEFANO: Hang on one second. Let me just make

1 sure that we have them. I do see that now. That the -- wait
2 a minute. I'm seeing the list but I'm just trying to find the
3 exhibits, so.

4 MR. SLEIGH: I believe it was filed in a single -- I
5 believe they call it an envelope.

6 MR. DISTEFANO: Yeah. Okay. I'm not sure. So when
7 we have a break, what I'm seeing is the -- I may have missed
8 it. I just scanned very quickly through those submissions on
9 the 26th. When we have a break, would you go back and look
10 and just make sure and draw my attention to that but right now
11 I'm going through the submission and I'm not seeing -- I'm
12 seeing the list itself but I'm not seeing the exhibits.

13 MR. SLEIGH: I don't need a break. I can just have
14 someone --

15 MR. DISTEFANO: Okay.

16 MR. SLEIGH: -- upload those right now and I'll have
17 1 and 3 and I'll upload all four and I would see.

18 MR. DISTEFANO: Okay. Thank you very much.

19 MS. KATZ: Can you try and send a copy of this
20 because I don't know that I have not located them
21 (indiscernible).

22 MR. SLEIGH: (Indiscernible).

23 Mr. DiStefano?

24 MR. DISTEFANO: Yes, yes.

25 MR. SLEIGH: Where would you like these to be sent?

1 I'll copy these scans but where are they to go for the most
2 expeditious filing of them? I'll send it now.

3 MR. DISTEFANO: Yup. As with the other files, please
4 just send them to Merrit Grutfield, program administrator of
5 (indiscernible) panel and --

6 MR. SLEIGH: Hold on.

7 MR. DISTEFANO: -- and copy Attorney Katz and she'll
8 send them off to the panel.

9 MR. SLEIGH: Yeah. We had an email problem with
10 Merrit so we'll send them again to Merrit and Ms. Katz.

11 MR. DISTEFANO: Oaky. Thank you.

12 MR. SLEIGH: All right. Thanks. All right.

13 MR. KARNEDY: Okay. Great.

14 Well, why don't you call your first witness and I'll
15 swear him in.

16 MS. KATZ: I will. Good morning, everybody. I call
17 Melvin Fink.

18 MR. KARNEDY: Good morning, Mr. Fink. I think you're
19 on mute. I can't hear you. Can you hear me okay? know.

20 MR. MELVIN D. FINK: Good morning, sir. Yes, I can.

21 MELVIN D. FINK

22 having been duly sworn, testified as follows:

23 THE WITNESS: I do.

24 MR. KARNEDY: Thank you.

25 DIRECT EXAMINATION

1 BY MS. KATZ:

2 Q. Hey, Mr. Fink. Can you introduce yourself to the
3 panel. Tell them a little about your current legal practice
4 and some of your work history and (indiscernible).

5 A. My name is Melvin Fink. I am a solo practitioner in
6 Rutland, Vermont and I've practiced law for fifty-one years.

7 Q. And what type of law have you been practicing over
8 the course of fifty-one years?

9 A. General practice.

10 Q. So would you say that every type of thing a small-
11 town lawyer gets from divorced to criminal to everything or do
12 you have any sort of narrower areas of practice that you take
13 or do not take (indiscernible)?

14 A. Well, throughout the -- excuse me. Throughout the
15 years, I've handled many varying cases, including domestic,
16 criminal, real estate, personal injury, state.

17 Q. So a large variety of practice; would you say?

18 A. I'm sorry. I didn't hear.

19 Q. Sorry. I'll speak up.

20 MS. KATZ: How's the volume for everybody else? I'm
21 going to adjust my volume a little.

22 Q. Is that any better, sir?

23 A. Yes, it is.

24 Q. Okay. Would you say that's a large variety across
25 various (indiscernible).

1 A. Well, it's a wide, certainly wide variety of facts
2 through the years. I've limited some areas that I used to
3 practice by way of (indiscernible) to do bankruptcy cases,
4 they became too complicated, I discontinued those type of
5 cases a number of years ago.

6 Q. Okay. So over the course of the fifty-one years, has
7 family law or domestic matters been sort of mainstay at that
8 practice?

9 A. No.

10 Q. Okay. Has there been certain decades over the five
11 plus decades where you've practiced more, worked more over
12 other work, or is there any way you could estimate how many
13 divorces you've handled in the last ten years, say?

14 A. I don't really know if I can do that with any
15 accuracy. So --

16 Q. Okay.

17 A. I have -- I had -- I had represented folks in
18 domestic cases more in recent years than the previous years.

19 Q. Okay. How many current domestic cases do you have
20 right now?

21 A. So I'm going to guess --

22 (Reconnecting to WebEx)

23 Q. I've emailed you -- (indiscernible).

24 THE OPERATIONS ASSISTANT: That was the courtroom
25 reconnecting.

1 MS. KATZ: Okay.

2 MR. KARNEDY: Do we have a problem on recording?

3 THE OPERATIONS ASSISTANT: It appears that for
4 some -- for a brief time, the telephone disconnected, yes.
5 The court recorder continued to type responses.

6 MR. KARNEDY: Thank you.

7 BY MS. KATZ:

8 Q. Okay. I'd like to direct your attention, sir, to the
9 next exhibit that's marked DC-6. And this is an email dated
10 next day, June 4th, 2020. And is this your (audio
11 interference) email June 3rd communication we just went over?

12 A. Yes, it is.

13 Q. And what was your understanding of what Ms. Benelli
14 was trying to accomplish for her client at this meeting?

15 A. This is my communication.

16 Q. I'm sorry. You're right. What were you trying to
17 communicate with this communication to Ms. Benelli?

18 A. It was to indicate that the horse comes before the
19 cart, that we need an agreement before we started implementing
20 (indiscernible).

21 Q. And is it fair to say (indiscernible) subject matter
22 here is continuing to be about a disposition of marital
23 property?

24 A. Yes.

25 Q. And did either of you have these communications that

1 happened in quick succession here from June 1 to June 4, 2020?
2 So that's (indiscernible) 3, 4, 5, and 6. Was there any
3 discussion or any indication by Ms. Benelli that she would no
4 longer be involved in the matter if you're planning to file to
5 the divorce court?

6 A. No.

7 Q. I'd like to take one footnote over here now and take
8 a look at more communication between you and Ms. Benelli on
9 DC-8 and DC-9. And these emails seem to be dated June 12th,
10 2020. Is that correct for you too?

11 A. That's what it says at the top of the exhibit. Yeah,
12 that's what it indicates but that's not part of the email
13 itself.

14 Q. Okay. Do you have any information or memory that the
15 communications may have occurred on a completely different
16 date or were they all around that time?

17 A. They were all around that time. I haven't checked
18 them against the actual email.

19 Q. Okay. So DC-8 and then again DC-9, these were
20 communications between you and Ms. Benelli. Is it fair to say
21 that -- is it fair to characterize these as ongoing
22 negotiations between the attorney, provided by the realtor, to
23 wind up the marriage and divide the marital property?

24 A. Yes.

25 Q. So at some point I believe your client proceeded to

1 the filing of the complaint for divorce?

2 A. I did.

3 Q. And DC-12 I believe is a docket case for that with
4 the understanding I think that around that time, sometimes
5 docket sheets may not reflect exactly something because of
6 changes to the court operations, but this reflects DC-12 here
7 that the divorce complaint was filed on June 26th, 2021; does
8 that sound right to you?

9 A. It was filed then, yes.

10 Q. Okay.

11 A. And it looks like based on the docket sheet that it
12 was filed but that service was not actually completed until
13 July 20th; is that right?

14 A. Well, I received back the returning service from the
15 Windsor County Sheriff's Department in June -- excuse me. In
16 June.

17 Q. Okay. So it looks like, according to the docket
18 sheet in DC-12 and it says there under June 26th, 2020 that
19 the sheriff is returning a service, that's (indiscernible).
20 So would you agree then that you may have received it but
21 maybe it wasn't signed?

22 A. I don't know.

23 Q. Okay. Well, let's go ahead and take a look at that
24 DC-7 which is a court order for the matter between
25 (indiscernible) and Mr. Marshall Nathan's where there was

1 (indiscernible) service. And this one appears to be dated
2 July 20th, 2020. And (indiscernible). Do you have any reason
3 to believe that this record, Dc-7, is not representative of
4 that services (indiscernible)?

5 A. I only know that the sheriff's department served
6 earlier in June and that's what was filed in court.

7 Q. Okay. (Indiscernible) we a date on the job and she
8 acceptance of service form, so that's DC-12 and DC-7 but it
9 appears the service was not complete until July 20th of 2020.

10 A. Well, I don't want to argue the issue with you but
11 what constitutes service to process. The sheriff served Mr.
12 Marshall in June and that was filed with the Court so is that
13 service? This -- this was the start of service and then
14 filed.

15 Q. Okay. So it sounds like you do want to just deal
16 with that service -- that service bill date with July 20th,
17 2020.

18 A. I don't dispute it; I'm just trying to describe to
19 you what happened.

20 Q. Okay. So between your communications with Ms.
21 Benelli around June 12th of 2020 and the acceptance of service
22 July 20th of 2020, do you have any memory of other
23 communications that you had with Ms. Benelli?

24 A. No, not of the top off my head.

25 Q. And did you -- can your recollection -- did you take

1 any vacation during that time or did Ms. Benelli
2 (indiscernible) after that?

3 A. You know, I think -- what was the -- I'm sorry.
4 excuse me. What were the dates that you mentioned again?

5 Q. Certainly. So in the email communications between
6 you and Ms. Benelli from around -- I'm going to say around
7 June 12th of 2020. (Indiscernible) around June 12th of 2020
8 to July 20th of 2020, the acceptance of service and then for
9 in between there you have the (indiscernible) dated June 26th
10 of 2020. Do you have any memory of any other communications
11 you had with Ms. Benelli between those time frames? So
12 between June 12th of 2020 to around July 20th?

13 A. (Indiscernible) July 20th. No, not of the top of my
14 head. I have no recollection of it.

15 Q. Okay. And then the next question I had asked you was
16 did you have any memory of you yourself taking any medication
17 during that time for (indiscernible)?

18 A. You know, I reviewed the emails that you had
19 submitted, Ms. Katz, and there was a reference, I think she
20 was -- she was taking a vacation sometime around there if I'm
21 not mistaken. My memory suggests that. I do not believe I
22 took any vacation during that time as well.

23 Q. Okay. So let's take a look at what's next here
24 chronologically. It looks like -- and I'm looking here at DC-
25 10, in response to the divorce complaint filed by your client,

1 Nathan filed an answer and it looks to me like that answer is
2 DC-10 and that it's dated July 29th of 2020. Do you agree
3 that that's Nathan's handwriting?

4 A. It's what I received as his answer and it appears to
5 be signed and notarized by him.

6 Q. Okay. And can you read through his notary down there
7 (indiscernible) obviously of course dated July 29th, 2020?

8 A. Ms. Benelli.

9 Q. So based on what happened the next year
10 chronologically, I'm looking here at DC-11 which I believe is
11 the next written communication that we have from you and Ms.
12 Benelli and what was the traffic of that written
13 communication, there? It's DC-11.

14 A. That was having to do with stimulus payments that had
15 been received.

16 Q. Okay. And this letter here, you would agree that
17 you're still referring to Nathan as Ms. Benelli's client; is
18 that right?

19 A. Correct. I have not yet received his notice of
20 appearance.

21 Q. Okay. So moving on here chronologically, I now
22 have -- looking at DC-13 which looks to be an email
23 communication again between (indiscernible) and Ms. Benelli.
24 So this email appears to be dated July 31st, 2020. And when
25 you got this email from Ms. Benelli, what did you understand

1 that that email was trying to accomplish for her son?

2 A. Let's check.

3 (Reconnecting to WebEx)

4 (Recess at 9:56 a.m., until 9:58 a.m.)

5 THE OPERATIONS ASSISTANT: What was the last thing
6 you entered on the record?

7 THE COURT REPORTER: About marital property was the
8 question.

9 THE OPERATIONS ASSISTANT: The question about marital
10 property?

11 MR. KARNEDY: Can you please go back -- find the last
12 exhibit reference?

13 THE OPERATIONS ASSISTANT: The last exhibit
14 reference?

15 THE COURT REPORTER: DC-13, email communication.

16 THE OPERATIONS ASSISTANT: DC-13, email
17 communications.

18 MR. KARNEDY: Okay. So I would ask counsel to start
19 out with questions on that exhibit, just so we're clear that
20 we haven't missed anything. I think we're okay but just to be
21 clear, why don't you start with DC-13 and re-ask your
22 questions.

23 MS. KATZ: I can do that. Is everybody ready?

24 THE OPERATIONS ASSISTANT: You ready?

25 THE COURT REPORTER: Yup, we should be all set.

1 BY MS. KATZ:

2 Q. Okay. So going back now, we're looking here at DC-
3 13. Would you agree that this is again, email communications
4 between you and Ms. Benelli and that the date is July 31st,
5 2020?

6 A. So it is dated July 31st. It is a communication, the
7 31st was, I believe, on a Friday. And so you understand, I
8 was at home recovering from surgery that took place on
9 Thursday, the preceding day. So while it's dated the 31st, it
10 wasn't received by me until the following week.

11 Q. Okay.

12 A. And while -- and I think you also referred to Mr.
13 Marshall's pro se appearance being dated the 29th and
14 notarized the 29th. That would have been mailed from
15 Springfield and you can see from the docket sheet that it was
16 not received by the Court until -- pardon me, until the 3rd of
17 August and that's approximately the time that I would have
18 received it at the office in Ludlow.

19 Q. Okay. So are you suggesting, sir, that you
20 received -- around the same time you received a copy of the
21 pro se answer dated July 29th, 2020 and notarized by Ms.
22 Benelli, that you received those items possibly around the
23 same time as Ms. Benelli's email dated July 31st, 2020 when
24 you were back in the office the following week?

25 A. No, I received the email from Attorney Benelli prior

1 to Mr. Marshall's notice of pro se appearance.

2 Q. Okay. But you would agree, sir, that the pro se
3 appearance is dated July 29th and the email is dated after the
4 pro se appearance from Ms. Benelli to you, right?

5 A. I don't question the dates. I'm just telling you
6 when they were received.

7 Q. Okay. And I think you --

8 A. Received and filed.

9 Q. I'm sorry I spoke over you. What were you saying?

10 A. I said received and filed.

11 Q. Received and filed.

12 A. Because if it was mailed from Springfield, it would
13 have taken approximately the same time to go to White River as
14 it would to go to Ludlow because mail sent from Springfield
15 goes via White River.

16 Q. Okay. And I may have already asked this question but
17 I'm not sure that it was during the (indiscernible) and court
18 reporter so I'll just ask it again. When you receive this
19 email dated July 31st 2020 from Ms. Benelli, how did you --
20 what did you understand that the objective for this email was
21 for her client?

22 A. Continuing negotiations.

23 Q. About how to dissolve the marriage and divide up
24 property?

25 A. About how to divide up property, yes.

1 Q. After the pro se appearance or after this written
2 communication here dated July 31st, did you respond to Ms.
3 Benelli at all during the next few weeks?

4 A. No.

5 Q. Did Ms. Benelli during that time ever indicate to you
6 that she was no longer representing Nathan?

7 A. Well, I took his notice of appearance pro se having
8 been notarized by her as such an indication.

9 Q. Did you ever call and ask Ms. Benelli whether she was
10 no longer representing Nathan?

11 A. I did not.

12 Q. And she never told you that she was no longer
13 representing Nathan?

14 A. Well, that's how I interpreted the notarization of
15 his pro se --

16 Q. I'm not asking how you interpreted that form, sir.
17 I'm asking did Ms. Benelli ever tell you she was no longer
18 representing Nate?

19 A. No.

20 Q. When is the next time you recall communicating with
21 anybody other than your own client about the divorce matter
22 involving Nathan and Denise?

23 A. I called Mr. Marshall.

24 Q. And when was that?

25 A. I believe it was August 17.

1 Q. And what is your memory of that phone call?

2 A. To determine whether he wanted to reach some sort of
3 an agreement and if he did, to get together with him to see if
4 we could iron out an agreement -- agreement.

5 Q. Okay. So that's your complete memory of the
6 conversation or do you have any more specific memory of -- of
7 how that unfolded? You called him; did he answer? Can you
8 (indiscernible), your best memory of that?

9 A. You know, I -- I think that I called him and then he
10 called me back but I'm not absolutely certain whether I spoke
11 with him upon calling or he got back to me in thinking he got
12 back to me.

13 Q. Okay. And let's assume he called you back and you
14 answered and what is your best memory of what that
15 conversation was like?

16 A. I asked him whether he was interested in reaching an
17 agreement. He said yes. I told him that my client was
18 similarly interested and did he want to get together to see if
19 we could hash out an agreement. I told him that I was calling
20 him directly because I had received his pro se notice of
21 appearance. I recall him indicating at some time in the
22 conversation that he was only going to use Attorney Benelli if
23 we wound up going to court, if there could be no agreement.
24 We talked about dates.

25 He talked -- he mentioned that he was going to let

1 Attorney Benelli know and I think in response to that, I had
2 told him that I called him directly because of his pro se
3 appearance and that as far as I was concerned, she was not
4 involved in representing him and that if he wanted to call
5 her, fine but if he didn't want to, that's fine with me. I
6 didn't feel it was necessary to. It was a short conversation.
7 It was -- I don't want to take away from it but it was not
8 remarkable so I didn't make any notes about it. When I say
9 not remarkable, nothing substantive happened except that we
10 scheduled a date that was convenient for him to come to the
11 office and sit down and talk.

12 Q. So in your memory then there was an actual date
13 scheduled?

14 A. There was.

15 Q. But I also --

16 A. And --

17 Q. -- you say that Nathan told you that he needed to
18 check with Ms. Benelli. Isn't that right?

19 A. I don't know whether he said check with her. I think
20 he was going to tell her. I don't -- I don't think he used
21 the word check but I don't recall the language.

22 Q. And when he said that, at no point did you say
23 something like, oh, I'm sorry, I didn't realize she was still
24 your lawyer, but instead I think you suggested that you said
25 that as far as you were concerned, she didn't have to be

1 there. Isn't that right?

2 A. Well, I said -- my response was to his suggestion
3 that he wasn't going to use a lawyer unless it went to Court
4 and I believe that response was to my suggestion that I called
5 him because he had entered a pro se appearance.

6 Q. And again, you hadn't actually checked with Ms.
7 Benelli on any of this before calling him; is that right?

8 A. I did -- I did not.

9 Q. And when Mr. Marshall brought up Ms. Benelli's name
10 and whether he used the word check with or contact her or ask
11 her or speak about coordinating, having her the date at no
12 point did you say, oh, I didn't realize perhaps I should be
13 speaking with her, you didn't say anything like that, did you?

14 A. I did not.

15 Q. What is your memory of what happened after the phone
16 call with Nathan?

17 A. With Nathan, nothing more. There was no meeting,
18 there was no further contact.

19 Q. And what is your memory of what happened after the
20 phone call; did Ms. Benelli contact you?

21 A. She did, she sent an email at some point.

22 Q. Let's go ahead and look at -- I believe that email is
23 DC-14. And the chronology of DC-14 is a little confusing, I
24 admit because it contains a couple of different emails here.
25 But which of these looks to me that the last -- on page 2

1 appears to be the first in the chronology, but you tell me if
2 that's correct. And now what appears to be dated August 17th,
3 2020, same day as (indiscernible).

4 A. That's what it says.

5 Q. Okay. And is this the -- is this the -- is this the
6 contact with Ms. Benelli that you're referring to as the next
7 time that you spoke to her?

8 A. Which one?

9 Q. The email from Ms. Benelli on page 2 of DC-14, dated
10 Monday, August 13th, 2020, with the time stamp of 17:02?

11 A. So I'm -- I agree with you. I have become confused.
12 Which is the email you're referring to?

13 Q. I'm referring to the second page.

14 A. Yes.

15 Q. DC-14. The email that appears there on the bulk of
16 that page, so it says from P. Benelli, date Monday, 17 August,
17 2020, time 17:02:32, to melawyer@comcast.net. Do you know
18 Nathan called today to report that you had called him that he
19 called back based on his called ID, that you thanked him for
20 calling back, you then went on to invite him to meet with you
21 one-on-one at your office next Monday at 10 a.m. am to discuss
22 settlement --

23 A. Okay. I see the --

24 Q. (Indiscernible).

25 A. Thank you. I see the confusion in my exhibits that I

1 have from you, that's the first page.

2 Q. Oh. I apologize for that.

3 A. No problem. And at the top of that it says 19/20 and
4 it says original email then it says the Monday, August 17th at
5 17:02. Is that the one you're referring to?

6 Q. Yes.

7 A. Okay. That's my first page. I have that email.
8 Yes.

9 Q. Okay. And was this the first time you had heard from
10 Ms. Benelli in a while?

11 A. Yeah, however long it was.

12 Q. And I believe -- I believe you said you hadn't heard
13 from her after we were looking at the communications dated
14 July 31st of 2020. I don't recall you saying that you had any
15 other communication with her between July 31st of 2020 and
16 this communication here, but correct me if that's not right?

17 A. I don't -- I think that's correct. I don't recall
18 any.

19 Q. Okay. So with this email here, the same day that you
20 had a phone conversation with Nathan. How did you understand
21 this email from Ms. Benelli; what did you take it to mean?

22 A. I took it to mean she was chastising me for
23 contacting an individual who had filed a pro se appearance.

24 Q. And did you take it to mean that she was telling you
25 that she still represented Nathan?

1 A. Well, she's -- I guess she's trying to say that.

2 Q. Did you have reason to doubt that Ms. Benelli was
3 being honest with you, that she still represented Nathan?

4 A. Well, I mean, what do you go by?

5 Q. Well, you told me that you had somewhere between one
6 and ten cases with her currently and that you'd had many cases
7 with her over the years, so you tell me. Going by that,
8 having had many cases with her, did you have reason to believe
9 she was being dishonest with you, telling you she still
10 represented Nate?

11 A. Dishonest, no, but confusing, yes. I don't know of
12 another situation where somebody files a pro se appearance
13 notarized by an attorney and then purports to be
14 represented -- continued to be represented by that attorney.

15 Q. I see. So you never help clients out with a slightly
16 different fee-structure model to handle parts of their cases,
17 or maybe not others. That's not something you're familiar
18 with?

19 A. No. No. Ordinarily, I -- I don't engage in that
20 practice.

21 Q. Are you aware that there are other practitioners who
22 do an effort to help make the cost of legal services
23 accessible for some?

24 A. Well --

25 MR. SLEIGH: I would object to the question. It

1 calls for speculation. How would he know how some other
2 lawyer is motivated in terms of entering into agreements with
3 clients?

4 MR. KARNEDY: Ms. Katz?

5 MS. KATZ: The witness has testified to having
6 practiced law in the area for fifty-one years. The question
7 is phrased as is he aware. I think he can answer either yes
8 or no as to whether he's aware that some attorneys in his
9 region or in fact his area engage in a type of unbundling of
10 legal services in order to make the services accessible or
11 otherwise.

12 MR. SLEIGH: I would object to the question where it
13 says in order to. I mean, he could be aware that people have
14 some kind of limited practice. My objection goes to his
15 knowledge of their motivation.

16 MS. KATZ: I can split the question into two pieces
17 if that's better.

18 MR. KARNEDY: Why don't you -- if it makes sense,
19 just ask a different question and see if there's an objection
20 and if we need to break out to consider the objection, we can.
21 BY MS. KATZ:

22 Q. Are you aware, sir, that some attorneys in Vermont
23 offer legal services to individuals where they may not take on
24 the whole of every possible component of the case but in a
25 limited way?

1 A. So what I am aware of -- and I'm not looking for any
2 applause on this, Ms. Katz. I've been doing pro bono work for
3 fifty years. And through the years, received pens and
4 certificates and whatever else and when I represent somebody
5 pro bono, I file a notice of appearance and I represent them.

6 Q. So it sounds like your answer to the question is you
7 don't personally engage in that practice. But the question
8 is, are you aware that is a practice that other lawyers in the
9 area engage in?

10 A. I am not.

11 Q. Okay. So going back to DC-14, my understanding is
12 that you took the August 17th, 2020 email from Ms. Benelli to
13 be disparaging you or calling Mr. Marshall directly, but that
14 you still were not clear that she was representing Mr.
15 Marshall based on that email or am I misstating your
16 testimony?

17 A. Well, she refers to him, I believe, let me -- let me
18 take a look. She refers to him as her client. She says that.
19 But certainly I did not contrary to the pro se notice of
20 appearance, which she was aware of. But going forward from
21 that letter, I had no further contact.

22 Q. You had no further? I'm sorry. I didn't catch the
23 last word. No further what?

24 A. I had no further contact.

25 Q. Okay. So --

1 A. The meeting did not happen.

2 Q. Okay. So on the same date, which again, I apologize
3 for the layout of DC-14, but on my page 1 it appears there's
4 another email also on August 17th, 2020 from Ms. Benelli to
5 you. And on my page that appears on the bottom, it says now,
6 this new email is coming to you as a shortcut by forwarding
7 email below which I sent to you earlier because our regular
8 email system is that this is a program hard to use, but the
9 substance of it is I'm writing in response to your letter of
10 July 31 which I think she must mean DC-11 based on her
11 testimony. Would you agree? Because I don't think there was
12 another letter of July 31.

13 A. Do I agree that this was an email?

14 Q. The question is -- the question is the email that
15 refers to your letter of July 31. By your letter on July 31,
16 do you agree what is meant by that is what is in the record as
17 DC-11, which is a letter from you to Ms. Benelli dated July 31
18 about the disposition of the marital property?

19 A. I agree.

20 Q. Okay. So by this additional email August 17th, 2020,
21 You take this email to -- again, be -- trying to help with the
22 divide the assets of the marriage of the parties?

23 MR. SLEIGH: Excuse me. I'm a little confused now.
24 Are you talking about -- okay, all right, I get it. Thank
25 you. Never mind.

1 MS. KATZ: Sure.

2 A. Would you restate the question, please?

3 Q. Certainly --

4 A. Okay.

5 Q. -- the question was just about the other August 17th,
6 2020, twenty email from Ms. Benelli to you. And the question
7 is how did you take to the meaning of this email. Did you
8 view it again as further discussion about the assets of the
9 couple or how did you understand that email?

10 A. It was in response to an inquiry about the stimulus.

11 Q. Okay. So you don't consider the stimulus to be part
12 of the property of the couple?

13 A. Well, yes and no. If the parties agreed to simply
14 split it then it's taken off the table.

15 Q. Okay. But they're splitting it so it seems that they
16 have to come to some agreement to split it so it's still part
17 of the marital property that they have to agree to, right?

18 A. Well, yes, it is. It is certainly marital property
19 but I think -- I think the government has indicated how it's
20 to be divided.

21 Q. Okay. So looking above that message, it looks like
22 the next email communication that we have here chronologically
23 is just above that dated Friday, August 21 of 2020 from you to
24 Ms. Benelli. And what is it you were trying to communicate
25 here with this email that says, don't pontificate to me,

1 Nathan Marshall filed a pro se appearance; he represents
2 himself, period.

3 A. The letter that you just previously referred to which
4 is on my first page and your second page.

5 Q. Okay. And what (indiscernible) --

6 A. Did I say letter? What I meant was email.

7 Q. Certainly. And what is it you were trying to
8 communicate with your email? The one I just read.

9 A. That that email that we're referring to, which
10 purports to chastise me, shouldn't chastise me for the reason
11 I contacted him because he had filed a pro se appearance.

12 Q. Would you agree that with your email of August 21st,
13 2020, you did not give Ms. Benelli any indication that you
14 would go through her for further communication with Nathan?

15 A. That was not discussed.

16 Q. In this email, would you agree that there is no
17 indication that you will go through Ms. Benelli?

18 A. Yes, that was not discussed.

19 Q. Are you suggesting so that as the opposing counsel
20 you have a say in the attorney-client relationship between the
21 other side?

22 A. Not at all.

23 Q. Moving on chronologically just above that, the last
24 email that we have here in DC-14 dated August, 24th of 2020
25 from Ms. Benelli to you. Now, your email implies that you are

1 still not accepting that Nathan is represented, he is, period,
2 you are not to have any more direct contact with him, period.
3 You are fully aware I represent Nathan, so on and so forth.
4 We've been exchanging settlement proposals and other
5 communications even after the divorce is filed. Do you recall
6 receiving that email and how did you understand what it meant?

7 A. I did receive it. And after it was sent, I waited
8 for an appearance to be filed.

9 Q. Okay. And how did you understand that -- what did
10 you understand that email to mean?

11 A. That Attorney Benelli was now saying that she
12 continued to represent Mr. Marshall contrary to the record,
13 the divorce had been filed, there was no notice of appearance
14 so it seemed inconsistent.

15 Q. So is it fair to say then that you still were not
16 sure after this email that Ms. Benelli represented Nathan? Is
17 that what you're saying?

18 A. I was certain that she had not yet filed a notice of
19 appearance with the Court and in my mind when somebody
20 represents somebody in a pending case, you file a notice of
21 appearance so that the other side knows who to contact or who
22 to send discovery or who to conduct business with.

23 Q. After this email dated August 24th, 2020, who did you
24 communicate with about this matter?

25 A. I didn't.

1 Q. You didn't communicate with anybody about this
2 matter?

3 A. Not until much later when a notice of appearance was
4 filed by Ms. Benelli.

5 Q. And your client understood that you were just going
6 to wait?

7 A. Well, I don't think it's fair for me to tell you what
8 my client understood or not.

9 Q. Fair enough.

10 MS. KATZ: Your Honor, I do not have any further
11 questions.

12 MR. SLEIGH: I just have a few.

13 MR. KARNEDY: Go ahead.

14 CROSS-EXAMINATION

15 BY MR. SLEIGH:

16 Q. Mr. Fink, going back to DC-11. July 31st, letter
17 from you to Ms. Benelli and looking at DC-13, the July 31st
18 email from Ms. Benelli to you. Did you receive each of those
19 before you received notice of Nathan's pro se appearance?

20 A. I did.

21 Q. Looking at DC-10, the notice of appearance. It says,
22 "I intend to represent myself and hereby enter my appearance
23 with the Court, no attorney will represent me in this case
24 unless an attorney or I notify the Court otherwise." You were
25 in receipt of that notice when it was served on you sometime

1 after August the 3rd, 2020?

2 A. Yes.

3 Q. And it was executed by Nathan?

4 A. It appears to be.

5 Q. And notarized by Ms. Benelli?

6 A. Correct.

7 Q. So did you interpret this as a Court filing that was
8 true and accurate and represented exactly what it said in
9 black and white?

10 A. Yes.

11 Q. Did you contact Nathan Marshall at any time between
12 August the 3rd and August the 16th?

13 A. No.

14 Q. Did you have any communication from Ms. Benelli on
15 Mr. Marshall's behalf between August the 3rd and August 16th?

16 A. No, I don't believe so.

17 Q. When you and Mr. Marshall spoke on the phone, was the
18 sole purpose of that conversation or conversations to schedule
19 a meeting to discuss the potential of resolving the divorce?

20 A. Yes.

21 Q. During those conversations, were any issues of
22 substance discussed at all?

23 A. None.

24 Q. After Ms. Benelli's email of August the 17th
25 chastising you for what she perceived to be a violation of

1 rule 4.2, did you attempt to or did you actually contact or
2 communicate with Nathan Marshall in any way?

3 A. No.

4 MR. SLEIGH: I have no further questions.

5 MR. KARNEDY: Any additional questions, Ms. Katz, or
6 turn to the panel?

7 MS. KATZ: Yes, just one I think.

8 REDIRECT EXAMINATION

9 BY MS. KATZ:

10 Q. Mr. Fink, going back to the phone conversation that
11 you had with Nathan on August 17th. I understand that it's
12 your view that nothing of substance was discussed on that call
13 but would you agree that you asked him in that call if he was
14 interested in reaching an agreement and he said yes?

15 A. I agree with that statement.

16 Q. Okay.

17 MS. KATZ: No further questions.

18 MR. KARNEDY: Any questions from the panel?

19 Peter, any questions?

20 MR. PETER ZUK: No.

21 MR. KARNEDY: Ashley, any questions?

22 MS. ASHLEY TAYLOR: I guess just to clarify. Between
23 July 31st and August 17th, did you -- was there -- was there a
24 lot of movement on the case during those few weeks? Do you
25 remember, you said you didn't communicate with Ms. Benelli or

1 Nathan. Do you remember doing much on the case at all during
2 those few weeks?

3 THE WITNESS: No. I -- I had surgery on that
4 Thursday. I think I indicated that I was at home on Friday
5 all day and saw her email when I got to the office the
6 following week and didn't do anything in response to that is
7 my recollection and when I got the notice of appearance after
8 her email wherein Mr. Marshall indicated he was going to be
9 representing himself, I did contact my client and we had a
10 conference and that was the only thing that happened until I
11 placed the phone call the following Monday.

12 MS. TAYLOR: And do you remember when you got the
13 notice, the pro se notice dated July 29th, do you remember
14 looking at that date at all and noting that it was dated
15 before the 7/31 correspondence that you received from Ms.
16 Benelli?

17 THE WITNESS: So I wouldn't have gotten that until
18 the middle of the following week and that sort of coincides
19 with when it was filed with the Court. I think it probably
20 took the same amount to be filed as it took to get to me.

21 MS. TAYLOR: Yeah. I understand you received it
22 after. I'm just wondering whether you remember looking at the
23 date that the pro se notice was actually signed and noting
24 that it was the 29th. Do you recall remembering whether the
25 notice was dated prior to the email and letter of

1 correspondence you received from Ms. Benelli

2 THE WITNESS: At the time I received it, I probably
3 did not take a special note of the date inside.

4 MS. TAYLOR: Okay. I don't have any other questions.

5 MR. KARNEDY: Attorney Fink, you mentioned that some
6 of this was a bit confusing and did you consider after you
7 received the notice of appearance and saw that the notary was
8 signed by Attorney Benelli, did you consider calling her up
9 and asking for clarification whether she was representing him
10 or not?

11 THE WITNESS: I think when I received the notice of
12 appearance, I didn't necessarily consider that confusing, I
13 thought it was more confusing when she purported to be
14 representing him after he -- after he had filed a pro se
15 notice of appearance.

16 MR. KARNEDY: In your experience working on marital
17 matters in particular, do you find that opposing counsel will
18 represent someone and then you have a communications with
19 them, as in this case, and then suddenly they're no longer
20 representing the person; is that common in your experience?

21 THE WITNESS: No.

22 MR. KARNEDY: So again, after you've received notice
23 of appearance, she's notarized his signature. Any question in
24 your mind as to whether she was representing him or not worthy
25 of a phone call?

1 THE WITNESS: No, because anything that she would
2 have done which purported to represent Mr. Marshall would have
3 been prior in time to the notice of appearance that I received
4 and once I received the notice of appearance pro se,
5 especially since she had notarized it, in my mind that was it.

6 MR. KARNEDY: Thank you very much.

7 THE WITNESS: You're welcome.

8 MR. KARNEDY: Attorney DiStefano, do we need to
9 confer before we dismiss the witness?

10 MR. DISTEFANO: I do not.

11 MR. KARNEDY: Okay. Thank you very much then.

12 THE WITNESS: You're welcome.

13 MR. DISTEFANO: I wonder if we could take a short
14 break, though, just maybe like five minutes before the next
15 witness.

16 MR. KARNEDY: Okay.

17 MS. KATZ: That'll give me a chance to grab a phone
18 and tell them to sign it so that I would need that.

19 MR. DISTEFANO: Thank you.

20 (Recess at 10:40 a.m., until 10:48 a.m.)

21 MR. KARNEDY: Mark, it looks like folks are back.

22 MR. DISTEFANO: I'm all set.

23 MR. KARNEDY: Okay. Were back on the record. Court
24 reporter, can you hear me? You with us?

25 Sophie, can you communicate with the court reporter

1 just to make sure we're all on?

2 THE OPERATIONS ASSISTANT: Yes, I will do that right
3 now.

4 MR. KARNEDY: Thank you.

5 THE OPERATIONS ASSISTANT: All right. They're all
6 set in the courtroom.

7 MR. KARNEDY: Thank you very much. Okay.

8 Attorney Katz, you can call your next witness,
9 please.

10 MS. KATZ: Yes. I call Nathan Marshall who I believe
11 is signed it through Ms. Benelli's name appearing on the
12 screen there. Hopefully he's in the room and he can turn his
13 video and audio on.

14 MR. NATHAN MARSHALL: (Indiscernible).

15 MS. KATZ: Okay.

16 MR. KARNEDY: Okay. Okay. I see you there, Nathan.
17 My name is Gary Karnedy. I'm the chair of the panel here.
18 Can you hear me okay?

19 MR. MARSHALL: Yes, I can.

20 MR. KARNEDY: So I'll swear you in then you'll be
21 asked some questions. Okay?

22 MR. MARSHALL: Yes, sir.

23 MR. KARNEDY: Okay. Raise your right hand.

24 NATHAN LANCE MARSHALL

25 having been duly sworn, testified as follows:

1 MR. KARNEDY: Your witness.

2 DIRECT EXAMINATION

3 BY MS. KATZ:

4 Q. Good morning, Nathan. Can you introduce yourself to
5 the panel and tell them your full name and spell it?

6 A. Yes. Nathan Marshal. Nathan Lance Marshall.

7 N-A-T-H-A-N L-A-N-C-E M-A-R-S-H-A-L-L.

8 Q. And where do you live and what do you do for a
9 living?

10 A. I live in Washington, Vermont. I'm a personal
11 trainer.

12 Q. Have you been involved with the divorce proceeding
13 with your spouse Denise (ph.)?

14 A. Yes.

15 Q. And roughly when did that start?

16 A. End of April last year.

17 Q. Last year, 2020?

18 A. Yes.

19 Q. At some point, did you start the process of trying to
20 get a lawyer for that matter and can you tell the panel about
21 how you went about that?

22 A. Yes. Let's see. So we're in -- in May where I had
23 started to seek out an attorney, I had reached out to an
24 attorney who had helped me in the past but it was a conflict
25 of interest so I had reached out to another one that he

1 recommended, which ended up not getting any callbacks and it
2 had taken me a few weeks to be able to reach out and then
3 finally I had gotten a call from this other attorney's office
4 and they recommended Patricia Benelli. I had reached out to
5 her and she answered the phone the first time I called and --
6 and we proceeded from there.

7 Q. Was one of the attorneys you looked into hiring
8 before you landed with Ms. Benelli, was one of those attorneys
9 the respondent, Mr. Fink?

10 A. Yes, it was.

11 Q. And did you already know him a little bit or knew who
12 he was?

13 A. Yes, when I had reached out to him, I had then heard
14 that he was already working with Denise.

15 Q. Do you have any sort of history or family
16 relationship that is also separate or was there a neighbor or
17 somebody (indiscernible).

18 A. He is my aunt's neighbor. So I've met him before at
19 different parties that have been there. He's represented my
20 mom in my parent's divorce, he's represented, you know, my
21 aunt and other various family members, you know, several
22 times, which is -- and also being my aunt's neighbor, which is
23 why I had reached out to him.

24 Q. When you started working with Ms. Benelli on the
25 matter, you may have already said this but was that around May

1 of 2020? I can't remember. Did you say that?

2 A. Yup. It would have been right at the end of -- the
3 end of May 2020.

4 Q. Was it your hope or expectation to resolve the matter
5 without court involvement?

6 A. Absolutely. Yup.

7 Q. At some point, did you receive service of a divorce
8 complaint from Denise?

9 A. Yes.

10 Q. And what did you do when you got that?

11 A. With the divorce complaint. Let's see. I was going
12 to say. So that -- the divorce complaint, just to be clear,
13 that's the same as the -- the -- the divorce agreement that I
14 have received from Mr. Fink?

15 Q. Oh, no, I'm just asking about the piece of paper that
16 came from Denise that was filed with the Court --

17 A. Okay.

18 Q. -- as the divorce complaint. Suing you for a
19 divorce, that court case. Do you recall getting that?

20 A. I do recall that. There was a lot going on at that
21 time, but I had hoped -- my hope was that was still to -- at
22 the time at the divorce, it seemed like we would be able to
23 settle it out of court. So with the divorce complaint, I had
24 responded representing myself trying to resolve that with the
25 assistance of (indiscernible).

1 Q. Okay. So I think what you're referring to is that
2 you filed that answer and that form and that you filed it
3 yourself pro se. Can you explain why you did that and what
4 was -- what was that -- why did you do that if Ms. Benelli was
5 your attorney?

6 A. Because as I had explained to her that I was trying
7 to -- as I was explained to you, Ms. Benelli was -- I
8 hadn't -- it still had seemed like we would be able to settle
9 it out of court and I didn't have her represent me, make an
10 appearance in court at that time. I had really thought both
11 parties, both myself and Denise thought that we'd be able to
12 resolve it just through proposals. So I had her -- her
13 assisting me through every step of the matter without -- and
14 with as much as I could be as her client but without her
15 making an appearance in Court.

16 Q. And when you filed that and this may be an obvious
17 question but I have to ask it, so were you ending your
18 lawyer-client relationship with Ms. Benelli when you filed
19 that form?

20 A. No.

21 Q. Okay. And at that time, was it your understanding
22 that Ms. Benelli was still working on your behalf to try to
23 help resolve the matter?

24 A. Yes.

25 Q. At some point, did you receive a phone call from

1 Denise's lawyer, Mr. Fink?

2 A. Yes.

3 Q. Can you explain to the panel your best memory of when
4 and how that occurred?

5 A. Yup. It was August 17th of 2020. I received a
6 missed call on my phone. I had called back the office and
7 left a message for him to call me back. He called me back
8 moments after that and we spoke for around ten minutes or so
9 and he had asked me to come in to meet and -- come into the
10 office and meet and we're going to try to resolve the -- the
11 divorce proceedings, which I was very excited for. I was
12 looking forward to being able to have that process move
13 forward.

14 And so we tried to set up a date that I could come in and
15 I said, okay, let me check with my attorney, Penny Benelli, to
16 see if she's available for that time. He stopped me and said
17 that she wouldn't have to be there because I filed pro se
18 which I didn't feel so comfortable with because she had been
19 representing me through every part of the matter so far,
20 exchanging emails with him -- with Ms. Benelli and Mr. Fink.
21 So at that point, I just kind of, you know, ended the
22 conversation and -- and then took the next steps.

23 Q. And what do you mean by the next steps, did you call
24 Ms. Benelli?

25 A. Yes.

1 Q. Okay. Did you ever meet with Mr. Fink?

2 A. No.

3 Q. Did you ever speak with him again directly after that
4 phone call?

5 A. No.

6 Q. Okay. I have no other questions for you. Mr. Sleigh
7 may has some questions for you and the panel may have some
8 question to you, but thank you for your time.

9 CROSS-EXAMINATION

10 BY MR. SLEIGH:

11 Q. Thank you, Ms. Marshall. You said you had a missed
12 call on your phone. You returned the call, did you know, at
13 that time that it was Mr. Fink that called you?

14 A. Yes.

15 Q. And then he returned your return fairly promptly?

16 A. Yes.

17 Q. And you -- in essence, the conversation was him
18 inviting you to set up a time to come and speak with him in an
19 attempt to resolve the divorce issues, right?

20 A. Correct.

21 Q. You told the panel that you to him for about ten
22 minutes, do you remember giving a deposition when you told me
23 that the call lasted six minutes and eleven seconds?

24 A. Yes, I do. I have it pulled up on my phone at the
25 moment. It was August 17th at 2:17 p.m. Six minutes and

1 eleven seconds.

2 Q. And you would agree with me that no substantive
3 issues about the divorce were discussed during that
4 conversation, right?

5 A. Correct. Believe or not it was just setting up a
6 time to be able to come in and discuss the matter.

7 Q. And Mr. Fink has never contacted you directly since;
8 is that right?

9 A. That's correct.

10 MR. SLEIGH: I have no further questions.

11 THE COURT: Any redirect?

12 MS. KATZ: Just one.

13 REDIRECT EXAMINATION

14 BY MS. KATZ:

15 Q. Even when Mr. Fink asked you if you were interested
16 in coming to sit down and talk about resolving the matter.
17 What do you recall your exact or approximate response was when
18 he suggested that?

19 A. My response was excitement to be able to have the
20 process move forward in the manner of the divorce then when
21 I -- then when initiated and said that let me get a hold of
22 Penny Benelli so that the three of us can meet, then when he
23 said that she doesn't have to be there, then my feelings
24 immediately changed and I felt very uncomfortable.

25 Q. Okay. But when he asked you to come in, is it your

1 memory that you communicated with excitement and enthusiasm
2 that you --

3 A. Yes. Because I'd like to have it move along.

4 Q. Okay, thank you. I have no further questions.

5 MR. SLEIGH: Nothing from me.

6 MR. KARNEDY: Panel members, mind if I ask
7 (indiscernible) questions?

8 MS. TAYLOR: Just one quick one.

9 Mr. Marshall, you mentioned when you hung up with Mr.
10 Fink that you called Ms. Benelli. Can you -- to the best your
11 best of your knowledge, can you kind of describe that
12 conversation that you had with her?

13 THE WITNESS: I called her immediately and it was
14 only moments after and said I had just gotten off the phone
15 with Mr. Fink. And she said, when, now? And I said yeah I
16 had just gotten off the phone with him and he tried to set up
17 an appointment to come in and talk and discuss -- discussed
18 the divorce and said when I mentioned that I would get a hold
19 of her, how he said she wouldn't have to be there. And --
20 and, you know, she -- she said that you can't do that, that
21 violates client -- client privilege. You're my client and he
22 can't reach out to you directly; he has to continue to go
23 through me as they -- at that -- up to that point.

24 MS. TAYLOR: Okay. Thank you.

25 MR. KARNEDY: Do you have any questions?

1 MR. ZUK: No.

2 MR. KARNEDY: I have no questions of the witness
3 either. Okay. Anything before I let the witness go?

4 MS. KATZ: Nothing --

5 MR. SLEIGH: No.

6 MS. KATZ: -- from me.

7 MR. SLEIGH: No.

8 MS. KATZ: Thank you very much for your time.

9 MR. KARNEDY: Thank you very much for your time.

10 MS. KATZ: Can you let me Ms. Benelli know that we're
11 ready for her.

12 MR. MARSHALL: Yes, thank you.

13 (Pause)

14 MR. KARNEDY: All right. We're going to swear --
15 we're going to swear you in and then the attorneys will ask
16 you some questions. Okay?

17 MS. PATRICIA G. BENELLI: Yup.

18 MR. KARNEDY: Would you please raise your right hand?

19 PATRICIA G. BENELLI

20 having been duly sworn, testified as follows:

21 THE WITNESS: I do.

22 MR. KARNEDY: Ms. Katz, your witness.

23 DIRECT EXAMINATION

24 BY MS. KATZ:

25 Q. Good morning, Ms. Benelli. Can you introduce

1 yourself to the panel and tell them a little bit about your
2 practice and your thirty years of practicing law in Vermont?

3 A. Thank you. My name is Patricia Benelli. I am
4 usually called Penny. So Penny Benelli is what a lot of
5 people refer to me, even judges. I have been in practice in
6 Vermont for thirty-five years as of -- just after Labor Day.
7 I graduated in 1985 from Vermont Law School magna cum laude
8 and I worked for the courts -- I worked for the Windham
9 courts, all of the courts for a year after law school from
10 August 1985 to August 1986 and then right after Labor Day I
11 joined Jake Dakin & Haul (ph.), which is what this law firm
12 used to be, and was an associate here until 1990 when John
13 (ph.) -- John Haul left the practice and it became Dakin &
14 Benelli PC and it's been that ever since.

15 I used to do a variety of civil cases and dabbled very
16 briefly in criminal law when I started practice. But over the
17 years, it has gradually become a practice devoted almost
18 exclusively to family law. I occasionally do a minor civil
19 thing that's related to it for a client but I don't take
20 separate -- I don't take new clients in civil cases unless
21 they're related to family law, things like cohabitants and I
22 do sometimes do adoptions in the probate court but I consider
23 those all family practice. So I would say it's at least
24 twenty years that I've done almost exclusively family
25 practice. I have been chair of the Vermont Bar Association's

1 family law section for fourteen years.

2 Q. Ms. Benelli, did you come to represent Nathan
3 Marshall in a divorce matter? And I should preface these
4 questions with to the extent that questions might call for
5 unnecessary additional confidential attorney client
6 information, that's not what I'm asking for. But --

7 A. Okay.

8 Q. -- did you come to represent Nathan Marshall in a
9 divorce matter?

10 A. Yes, I did.

11 Q. And do you recall when that was?

12 A. Yes, it was May 18th of 2020.

13 Q. Did you and Mr. Fink have some email communications
14 about your client's matters?

15 A. Yes, we did.

16 Q. And those communications have already been admitted
17 into evidence but I'd like to ask you a couple questions about
18 them. Do you have those handy so that you'll know what we're
19 referring to?

20 A. Yes, I have a folder with all of the exhibits.

21 MS. KATZ: And I apologize. I did not check with the
22 panel on this as I was examining Mr. Fink, but I did not do a
23 screen share last time. I can do a screen share if it's
24 easier for the panel. Is that something the panel would
25 prefer or shall I continue as I have been with the exhibits?

1 MR. KARNEDY: I'm content with the paper exhibits I
2 have but I'll defer to my panel members.

3 MS. TAYLOR: I'm fine with the paper copies as well.

4 MR. KUTZ: I'm fine.

5 MR. KARNEDY: Okay.

6 BY MS. KATZ:

7 Q. So I think we won't -- should go through the wringer
8 role of screen sharing and stop sharing and I'll just ask you
9 the questions since you have them in front of you too.

10 A. Okay.

11 Q. I'm looking that the one that is marked AZ-3. And it
12 looks to me that this is email communication from June 1st of
13 2020, and it's from you to Mr. Fink and ask you what is it you
14 were generally communicating here with Mr. Fink and do you
15 recall is this the first communication you had with him on the
16 matter? Uh-oh. I think you're muted or I can't hear you.

17 A. Sorry. It must have been the problem I was trying to
18 avoid. It was my first communication with Mr. Fink and the
19 purpose was to let him know that I was -- that I was
20 representing Nathan Marshall in what were negotiations then
21 related to a divorce. There was no -- there was no action
22 pending in Court at that time.

23 Q. Okay. So going forward then to C-4, was this the
24 next communication that you recall having between with you and
25 Mr. Fink with respect to Denise and Nathan's --

1 A. Yes, it was --

2 Q. -- divorce.

3 A. -- because it was two days later.

4 Q. Okay.

5 A. Yes.

6 Q. What did you understand was the purpose of that
7 communication?

8 A. Well, I understood that he was engaging with me on
9 negotiating for the divorce. We were talking about the
10 proposals and what had been sent to my client and he asked me
11 to call him if he -- if I had any further questions.

12 Q. Okay. So moving forward then with 5 and 6, would you
13 say -- are those further written communications that you had
14 with Mr. Fink, how did you understand what the back and forth,
15 the subject matter of those communications was about? What
16 was your understanding

17 A. Well, the subject matter was the proposal that Mr.
18 Fink had made to my client on May 22nd before he knew that I
19 was representing him and we were on -- number 5 is my email to
20 him the same day that I got the response from him on June 3rd
21 and number 6 is his response to me. Again, we are -- we are
22 negotiating some of the terms of the agreement at this point.

23 Q. And by agreement, do you mean agreement as to how to
24 dissolve the marriage and divide up the property?

25 A. Yes, that was what the proposal was for Mr. Fink to

1 my client. We were referencing the proposal that had been
2 made on May 22nd.

3 Q. So moving forward in the chronology of yours and Mr.
4 Fink's written communication. I'm looking now at DC-8 and 9
5 and those are dated around about June 12th of 2020. When you
6 were having these communications with Mr. Fink, what was your
7 understanding of what the purpose of those communications was?

8 A. It was more communication back and forth. We were
9 negotiating what had been happening. My client was as part of
10 the -- the proposed settlement then, my client was going to
11 file out his client's interest in some property, real property
12 in Springfield. And he had to make arrangements to get a loan
13 to do that and the bank was putting on a condition that he had
14 to be released from the mortgage on the family home which was
15 in both loans to do that so we were back and forth on how we
16 were we going to get -- you know, does this have to have to
17 happen in order, in what order are there going to be
18 deadlines. It was about -- I believe both of these were --
19 yeah. I think both of these emails were focused on that issue
20 of the arrangements that had to be made for him to be able to
21 buy out -- my client to buy out his client's interest.

22 Q. In the context of any of these negotiations with Mr.
23 Fink, did you ever indicate in any way that if a -- if an
24 actual divorce complaint was filed or any sort of lawsuit was
25 initiated, that that would be a different matter that you

1 would not be involved in representing Nathan on?

2 A. If it was a divorce, no. If there had been another
3 matter between the parties, that would not have been something
4 I probably would have been involved in but if it were related
5 to the divorce, absolutely no. I was representing him in that
6 at this point.

7 Q. Okay. At some point, did Denise serve Nathan with a
8 divorce complaint or try to have him shared with the divorce
9 complaint?

10 A. No, there was an attempt at service. I don't
11 remember the date but the summons was not signed and so it
12 wasn't proper service and a proper service was finally made in
13 Court when both of the parties were there on an RFA proceeding
14 that my client had -- had filed an RFA complaint against
15 Denise and at the hearing he was served by, I think, the court
16 officer -- I wasn't there. I didn't represent him on the RFA
17 and I wasn't there but I understand he was served then.

18 Q. Okay. Taking a look at DC-7, does that look to you
19 to be the form of acceptance of service where -- do you
20 believe that shows the actual service of the complaint?

21 A. Yes, he -- this is signed by Nathan. I recognize his
22 signature and it says that it's his acceptance of the summons
23 and complaint as of July 20th, 2020.

24 Q. And at any point after the filing or service of the
25 divorce complaint, did you say or indicate in any way to Mr.

1 Fink that he had permission to speak with your client
2 directly --

3 A. No.

4 Q. -- without reaching a resolution.

5 A. No, I didn't.

6 Q. Did Mr. Marshall, Nathan, did he ever file an answer
7 to the divorce complaint?

8 A. Yes, he did.

9 Q. Okay. So taking a DC-10, does that look to be the
10 answer that he filed?

11 A. Yes, it is.

12 Q. Okay. And what, if anything, can you tell the panel
13 about this answer, bearing in mind that the answer is pro se?

14 A. Well, I --

15 MR. SLEIGH: I object to the question. What, if
16 anything, can you tell me? I mean, I don't think that that
17 phrased to get a meaningful response.

18 MR. KARNEDY: Why don't you just ask a different
19 question, rephrase it.

20 MS. KATZ: Okay. But the question was, what, if
21 anything, can you tell the panel. I was trying not to lead
22 the witness, but I'll ask a different question.

23 BY MS. KATZ:

24 Q. The answer that's been admitted as DC-10. Do you
25 agree that it is an answer that is to be filed pro se?

1 A. Yes.

2 Q. Why?

3 A. Because it's from Mr. Marshall was still hoping,
4 remember, negotiating a settlement and he was still hoping
5 that they would reach a settlement and there wouldn't be any
6 court proceeding. There is a procedure in family court that
7 if -- if you've been separated for six months and you agree to
8 everything, you can just file all the documents and literally
9 get the divorce by mail, that was his hope. And if I'm to
10 enter an appearance in court for a client, I require a
11 different agreement, a representation agreement that provides
12 for that and a retainer for that and Mr. Marshall at that time
13 was hoping he wasn't going to have to pay me a retainer to
14 represent him in Court. So I was helping him with this
15 because this is my handwriting on the -- on the answer. But
16 again I was still helping him without entering an appearance
17 for him in Court.

18 Q. And it looks as though you and Mr. Marshall worked on
19 this because correct me if I'm wrong, the notary stamp there,
20 the data, July 29th, 2020. Is that your notary and notary
21 stamp?

22 A. It is.

23 Q. Okay. After Mr. Marshall filed the pro se answer
24 with your assistance, did you tell the respondent anything at
25 all along the lines of I no long representing Mr. Marshall, if

1 you want to settle, just call him?

2 A. No.

3 Q. Would you say that filing this answer pro se but
4 also being involved in negotiations about dividing property in
5 your experience is not an unusual practice for family law in
6 your region?

7 A. Not at all. It's very common for litigants who can't
8 afford to hire somebody to -- to represent them in Court, to
9 hire someone to go over documents, to help prepare documents,
10 to review proposals, I do that a lot. I do that often. And I
11 believe all the attorneys in this area do that. I know I have
12 negotiated with other attorneys where neither one of us has
13 entered an appearance in Court until everything was resolved
14 and then we could file and sometimes we didn't even get
15 involved in the actual filling, the parties would also file
16 the stipulation and the motion for final order without a
17 hearing and it all went through without the Court ever having
18 known that there were any attorneys involved but in fact,
19 there were attorneys on both sides reaching the resolution and
20 preparing the documents. It's very common.

21 Q. Now, there's a family court rule that addresses
22 limited scope representation, right?

23 A. Yes. Family Court Rule 15. I believe it is. F --

24 Q. So --

25 A. Or P. (Indiscernible).

1 Q. What exactly is -- how exactly does that rule work?

2 A. Well, that rule only involves (indiscernible) --

3 MR. SLEIGH: Objection as to a basis for the answer
4 and there is no foundation that she has any information about
5 how it works in such a broad sense. Is she talking about case
6 law construing it, is she talking about other statutes, is she
7 talking about regulations or is this just her own assessment
8 of how she thinks it works?

9 MS. KATZ: Okay. I can rephrase the question.

10 Q. The family court rule that addresses limited-scope
11 representation, is that a rule that you are familiar with?

12 A. Yes.

13 Q. Have you ever entered a limited-scope representation
14 for a client?

15 A. Oh, yes. Many times, actually.

16 Q. In practical terms, can you explain how that worked?

17 A. Yes. That is for entering an appearance in court.
18 It has nothing to do with representation outside of court.
19 That, I have entered appearances -- a limited appearance under
20 that rule can be for just one proceeding, like attending a
21 case manager's conference, attending a -- a child support
22 hearing or a parental rights hearing. It can, with the
23 court's permission, also be for -- for representing a client
24 in only one portion of, for instance, a final hearing. But
25 you need court permission to do that and when you enter the

1 appearance, you are attorney of record for that party but only
2 for -- in the way that you limit it in the -- in the
3 description of the entrance of your appearance.

4 And then that -- I have, for instance, entered
5 appearances for parties for case managers conference only.
6 When the case managers conference is over, I'm no longer their
7 attorney of record as far as the court is concerned, unless I
8 enter a new appearance. But this is all court appearances.
9 This, again, is part of the judicial system's way of helping
10 parties get counsel who couldn't otherwise afford it because
11 they can't afford to hire an attorney for everything but they
12 can afford to hire an attorney for a limited purpose and
13 that's what the rule is for and I've used it many times.

14 Q. I'd like to ask you about the DC-13 which looks to be
15 email dated July 31st, 2020 from you to Mr. Fink, and can you
16 describe generally what you were trying to communicate with
17 that email?

18 MS. KATZ: Oh. She is muted again.

19 A. I'm sorry. I do not know how -- oh. I know. I
20 think I hit the spacebar with the folder that has the exhibits
21 in it. I'll try to separate it better. I'm sorry.

22 Q. Okay. Start from the beginning, whereas I was asking
23 you how you -- what you were trying to communicate with the
24 email that is marked DC-13.

25 A. Okay. Yes. What I was communicating is a

1 counterproposal to Mr. Fink. My client did not accept the
2 proposal of miss -- of his client on May 22nd and this says
3 attached please find a settlement proposal from Nathan and
4 then had some terms about it but that's what it was. It was a
5 communication of another proposal from my client for
6 settlement of the divorce.

7 Q. And this proposal dated July 31st from you sent to
8 Mr. Fink --

9 A. Yes.

10 Q. -- (indiscernible) after the pro se notice of
11 appearance of July twenty 29th; is that right?

12 A. Yes.

13 MR. SLEIGH: Your Honor, I just like to clarify that.
14 I mean, they're dated differently; is there a representation
15 that they were received simultaneously? I'm not sure what the
16 conclusion was we're supposed to draw from that answer is.

17 MR. KARNEDY: It's an answer to a question. I don't
18 know if I understand your objection. You can follow up with
19 the witness.

20 But if Attorney Sleigh is confused perhaps others
21 are; you might want to follow up with a question, Ms. Katz.

22 MS. KATZ: I guess the question was intended to just
23 ask the witness if the further negotiations about the marriage
24 dissolution and the division of property were still occurring
25 between the attorneys after the filing of the pro se notice of

1 appearance in response to the divorce complaint.

2 MR. SLEIGH: That's the filing. That's the key
3 question, Your Honor. So she refers to July 29th implicitly
4 as when it was filed. Her own record, DC-12 shows that it
5 wasn't filed until August 3rd. And that's what I'm trying to
6 make sure isn't compounded in this line of questioning.

7 MS. KATZ: Fair enough. I can change to a word -- do
8 a word change there.

9 BY MS. KATZ:

10 Q. The pro se notice of appearance that you notarized
11 and worked on with Mr. Marshall on July 29th of 2020, was that
12 before further negotiations between you and Mr. Fink about the
13 couple's dissolution and disposition of property?

14 A. Yes, it was.

15 Q. Looking also at DC-11 --

16 A. Okay.

17 Q. -- which is further communication from Mr. Fink to
18 you. And that's dated July, 31st, 2020?

19 A. Yes, it is.

20 Q. Was that again communication between you and Mr. Fink
21 about the couple's property with a date reflected after the
22 day you and Mr. Marshall worked on his pro se notice of
23 appearance that you notarized for him?

24 A. Yes, it is. July 31st.

25 Q. Okay. Did Mr. Fink ever ask you whether he could go

1 directly through Mr. Marshall to speak to him about possible
2 settlement?

3 A. No, he did not.

4 Q. At some point did you learn that he had contacted
5 your client?

6 A. Yes, I did.

7 Q. Was that concerning to you?

8 A. Very.

9 Q. Can you explain why?

10 A. Well, Mr. Fink knew that I was representing Mr.
11 Marshall. I mean, your Exhibit 11, in that he refers to him
12 as my client. And then I hear that he has called my client on
13 the telephone and invited him to have a meeting with him alone
14 at his office to settle the divorce and that when my client
15 said, well, I have to call Penny about that, he said, no, you
16 don't. What I heard was no, you don't have to; she's not
17 representing you in the divorce and you don't have to
18 (indiscernible).

19 MR. SLEIGH: I'm going to object to Ms. Benelli's
20 hearsay relation of the conversation between Mr. Frank and Mr.
21 Marshall. Mr. Marshall testified as to the contents of that
22 conversation. Anything that Ms. Benelli is now relating is
23 either hearsay from Marshall to her or a product of her own
24 inference.

25 THE WITNESS: But the question was why I was

1 concerned; that's why I was concerned.

2 MR. KARNEDY: Ms. Benelli, you're just a witness
3 here.

4 THE WITNESS: I'm sorry.

5 MR. KARNEDY: It's okay, it's a natural reaction.
6 Do you have anything say on that?

7 MS. TAYLOR: I agree; it's hearsay.

8 MR. KARNEDY: So the panel, disregard the hearsay
9 portion of the response to this question.

10 BY MS. KATZ:

11 Q. So the original question was was that concerning to
12 you and can you explain why. Can you explain to the panel,
13 why it's concerning that an opposing party could contact a
14 divorced litigant even if nothing exactly of substance was
15 addressed other than scheduling a meeting?

16 A. Well, do you mean an opposing attorney?

17 Q. Yes, explain why it's concerning generally? Without
18 Talking about what Mr. Fink said.

19 A. Okay. It's very concerning because the -- whenever
20 there are negotiations going on, the reason you have counsel
21 is so your counsel can advise you on those and to have the
22 opposing counsel contact the party directly is -- is bypassing
23 counsel; is bypassing his representation and that's unfair to
24 him and it's very unfair to the whole process. It's also the
25 rules of professional conduct.

1 Q. And can it potentially arise if a client is having
2 direct communication with the opposing party, that they could
3 volunteer something by accident even if nothing of substance
4 is discussed?

5 A. Oh, absolutely.

6 MR. SLEIGH: Strike that as the most talking trash
7 I've ever heard.

8 THE WITNESS: What?

9 MR. KARNEDY: All right. Ask another question.

10 MS. KATZ: I'll move on.

11 BY MS. KATZ:

12 Q. What did you do when you found out that Mr. Fink had
13 called your client directly?

14 A. I immediately sent an email to Mr. Fink. After my
15 conversations with -- with Nathan; I sent an email to Mr.
16 Fink. I said he is -- I am representing him in this divorce
17 action and you know that. You are not to have any direct
18 contact with him; you are to go through me, period. And then
19 I also, by the way, offered to meet with him and with Nathan
20 to settle this at his office. So I said, you can't do it
21 alone but we're willing to do it with the three of us, if
22 that's something you're willing to do.

23 Q. What was Mr. Fink's response to those communications
24 that you just spoke about?

25 A. He sent me another email, I think it was a couple of

1 days later because of the -- I can't remember the exact timing
2 on here now but I believe it's in some of the exhibits but he
3 sent me back an email saying don't pontificate to me. He's
4 not represented and that -- my response was, yes, he is, you
5 know it and apparently you are going to have to be reminded of
6 it by the professional responsibility board. He was
7 essentially telling me he was going to ignore my
8 representation of him and could continue to have tried to talk
9 to Nathan on his own, which as any attorney knows is extremely
10 risky.

11 Q. So --

12 A. I wasn't going to allow it.

13 Q. I'm sorry?

14 A. I wasn't going to allow that at all and Mr. Fink was
15 implying that he still had the right to do it and I felt --
16 continued to ask --

17 MR. SLEIGH: Objection, Your Honor. This is getting
18 a completely argumentative. As I understand it, all the
19 communication between Mr. Fink and Ms. Benelli on this issue
20 is contained in the exhibits. There's no testimony that Ms.
21 Benelli and Mr. Fink had any other conversations or any other
22 meetings so if she's explaining beyond the four corners of
23 what I can -- what I understand to be the representation of
24 disciplinary counter of the totality of the communications,
25 everything else she's offering is interpretation and it's

1 irrelevant.

2 MR. KARNEDY: Ms. Katz?

3 MS. KATZ: Is the objection relevance?

4 MR. KARNEDY: That was the objection.

5 MS. KATZ: Okay. Just making sure. I can -- I

6 can -- I can redirect the questioning to specify how Ms.

7 Benelli understood Mr. Fink's communications that are

8 encompassed within DC-14, so I can do that. Is that

9 acceptable?

10 MR. SLEIGH: Does her understanding of the

11 communications that goes beyond the four corners because I

12 think we have a complete written record of the communications

13 as to the letters in the email. No evidence has been

14 suggested that there was any other communication that's not in

15 the record as admissible. Her understanding of what those

16 things says is simply irrelevant and inadmissible and it's --

17 MR. KARNEDY: I understand --

18 MR. SLEIGH: -- unsupported opinion evidence.

19 MR. KARNEDY: I understand the objection. I

20 understand about what Attorney Katz is saying. Let's break

21 out.

22 (indiscernible), can you break us out into a --

23 MR. DISTEFANO: Yeah. Sophie, can you put us in a

24 breakout room, please, the panel members and myself. Thank

25 you.

1 THE OPERATIONS ASSISTANT: I certainly can. Could
2 you please just confirm the names that you would like in a
3 breakout room?

4 MR. DISTEFANO: Yes, it's myself. Gary Karnedy,
5 Ashley Taylor and Peter Zuk.

6 THE OPERATIONS ASSISTANT: Great, thank you.

7 (Recess at 11:35 a.m., until 11:38 a.m.)

8 MR. KARNEDY: Okay. We're back on the record. I'm
9 going to rule on the objection. I'm going to allow the
10 question. I think it helps the panel to understand the
11 context of the communications and what was going on. I will
12 say that whether or not this is a violation of professional
13 responsibility, Attorney Benelli's opinion on that is not
14 something that we're going to be considering; we'll make that
15 decision. And the -- other than the context and understand
16 the communications (indiscernible).

17 So I don't know if the court reporter is able to read
18 the question back, because there's been a passage of time.

19 Sophie, can you communicate with the court reporter,
20 I don't know.

21 THE OPERATIONS ASSISTANT: Yes, certainly.

22 MR. KARNEDY: Thank you.

23 (Pause)

24 MR. KARNEDY: (Indiscernible).

25 (Pause)

1 THE OPERATIONS ASSISTANT: Good morning, folks. So
2 what is the question to the recorder, what -- what do you need
3 to know? What -- what was the last question read?

4 MR. KARNEDY: Yes, please.

5 THE OPERATIONS ASSISTANT: Before the breakout room?

6 MR. KARNEDY: Yes, please.

7 THE OPERATIONS ASSISTANT: Okay.

8 (Pause)

9 THE COURT REPORTER: Thank you, folks. So the last
10 thing that I have on the record is the questioning of attorney
11 Benelli.

12 MR. KARNEDY: Right.

13 THE OPERATIONS ASSISTANT: Is that what you're
14 looking for?

15 MR. KARNEDY: Yes, the last question before we broke.

16 THE OPERATIONS ASSISTANT: So what -- what did you
17 find concerning about him contacting the client.

18 MR. KARNEDY: Thank you very much.

19 A. Okay. I was concerned because it meant that he could
20 have undue influence on my client if he wanted to have a
21 conversation with him without me present. I don't know what
22 he would ask; I don't know what my client would say. I don't
23 know how -- what he said to my client was taken. There's a
24 great risk that he might say something that was not in his
25 best interest to say. There's a risk that he could be

1 persuaded to agree to something that he definitely should not
2 have agreed to. The risk is to a client being in a one-on-one
3 meeting or conversation with opposing counsel.

4 BY MS. KATZ:

5 Q. In the course of your communications with Mr. Fink
6 after his phone call to Nathan, did you understand that Mr.
7 Fink was no longer going to contact Nathan directly?

8 A. No, I didn't, because he said even after I told him I
9 was representing him, he said, no, you're not. So I felt that
10 he could continue to try to talk to him one on one. That was
11 a very real concern of mine.

12 MS. KATZ: I do not have any further questions for
13 this witness.

14 MR. KARNEDY: All right.

15 MR. SLEIGH: Thank you.

16 CROSS-EXAMINATION

17 BY MR. SLEIGH:

18 Q. Ms. Benelli, I think you testified that you've been
19 practicing for thirty-five years. Is that right?

20 A. Yes, that's actually while representing clients. A
21 little over that. I was a law clerk for a year before that if
22 that counts. I was admitted to the bar in February of 1986
23 after what was back then a six-month clerkship. So if it
24 counts from then, it's still thirty-five years but it's closer
25 to thirty-five and a half.

1 Q. I did a year clerkship too with Silvio Valente and
2 while I don't count it as practice, it was trying.

3 A. Yeah. I clerked for him as well.

4 Q. So in any event. And in fact, you've been the chair
5 of the family court section of the VBA for about the last
6 decade; is that right?

7 A. It's actually longer than that. I checked with the
8 VBA after our deposition because I didn't know and it turns
9 out I have been chair since 2007 so it's fourteen years.

10 Q. And currently, you serve on the Family Court Rules
11 Committee; is that right?

12 A. Yes, I do.

13 Q. So you must have been familiar with the development
14 of the authorization of so-called unbundled practice, correct?

15 A. Actually, not for the rule. I wasn't a member of the
16 Family Rules Committee then but I believe that that was a
17 topic of consideration when in the Board of Bar Managers. I
18 was a member of the Board of Bar Managers for eight years, I
19 think. And I believe we talked about that then but I honestly
20 don't remember. I do remember that it was an issue at some
21 point and I know it was an issue in the family law section as
22 well.

23 Q. So unbundled practice deviates from the traditional
24 practice law in that lawyer doesn't enter an appearance to
25 represent a client in all aspects of an issue or controversy;

1 is that right?

2 A. Right.

3 Q. And the notion is that by allowing that sort of
4 unbundled practice, people would get some advice in situations
5 where their resources might prohibit them from getting any
6 advice. Right?

7 A. Yes and no. Advice, yes but it's more than that
8 because unbundled representation under the rule involves a
9 court appearance. So it meant that attorneys could appear in
10 court on limited issues but you don't have to -- and you don't
11 have to enter an appearance for somebody to be an attorney for
12 somebody.

13 Q. All right. Actually, the rules a little broader
14 rather than that, isn't it, it says you can represent somebody
15 with the Court on a specific issue under subsection F and
16 subsection C, you can help them with the alternative dispute
17 resolution. You can help them negotiate, it allows for all
18 sorts of unbundling practice, right?

19 A. It does but these are all unbundled practices that
20 involve court appearance. It only -- only governs appearance
21 of attorneys in court.

22 Q. Well, we may beg to differ on how the rule applies
23 but at any rate, there is such a thing as filing a notice of
24 limited appearance, correct?

25 A. Yes.

1 Q. And certainly that serves the salutary goal of
2 letting people know who they might be in contact with, who
3 they should contact in connection with a specific issue
4 regarding a case?

5 A. Certainly. It says I'm representing you in court.
6 It has the same effect as a general notice of appearance as
7 far as attorney appearance is concerned for the other -- for
8 opposing parties and opposing attorneys.

9 Q. So just getting to the chronology of this case a
10 little bit. You were approached by Nathan, I think you said
11 sometime in May; is that right?

12 A. Yes.

13 Q. And from May until July 31st, you and Mr. Fink had
14 gone back and forth about various proposals to resolve the
15 divorce case?

16 A. Yes, we had.

17 Q. And those proposals had not come to fruition, no
18 agreement had been reached, right?

19 A. True.

20 Q. And during that -- well, so do you have the DC
21 exhibits in front of you?

22 A. I do.

23 Q. If you look at DC-12, you can see that the Court
24 record indicates there was a returning service of the
25 complaint and summons for divorce.

1 A. Where exactly are you looking?

2 Q. June 26th. Right under events and orders of the
3 court.

4 A. Right. (Indiscernible).

5 Q. So you don't dispute -- you don't dispute that Nathan
6 was actually given a copy of the complaint and summons at that
7 time, rather that because of some technicality, it didn't
8 qualify as adequate service; is that right?

9 A. No, if he had copies but the summons just wasn't
10 signed.

11 Q. All right. And by virtue of your contact with
12 Nathan, you too had copies of the complaint at that time?

13 A. Yeah, he sent them to me. He brought them over
14 sometime after he received them. He didn't come directly to
15 me.

16 Q. So you and Mr. Fink go back and forth until July the
17 31st. On July the 29th, I take it that Mr. Marshall was in
18 your office preparing to review a notice of appearance, answer
19 to the complaint and the counterclaim; is that right?

20 A. That's right.

21 Q. And if you look at DC-10.

22 A. Okay.

23 Q. If I'm able to here -- hold on, I'm talking to
24 myself.

25 A. Okay.

1 Q. So DC-10, that's the notice of appearance and answer
2 to the complaint and counterclaim that you understood Mr.
3 Marshall prepared.

4 A. Yes, I did.

5 Q. All right. It says the very first sentence was, "I
6 intend to represent myself and hereby enter my appearance with
7 the court. No attorney will represent me in this case and
8 unless an attorney or I notify the court otherwise". That's
9 what it says, right?

10 A. Yes.

11 Q. And a pro se appearance means somebody is appearing
12 on their own without a lawyer?

13 A. In court, yes

14 Q. Well, the word case goes beyond simply in court,
15 right, there's a lot of work on a case that happens outside
16 court --

17 A. Well --

18 Q. -- there's sometimes discovery, there's sometimes
19 discussions, there's sometimes mediations or sometimes
20 accounting. There's all sorts of things that happen in a case
21 outside of court, right?

22 A. That's true. But this is a notice of appearance in
23 court --

24 Q. Okay.

25 A. -- (indiscernible).

1 Q. Okay. You explain later on. But maybe you just
2 answer the questions right now. So you signed this as a
3 notary, correct?

4 A. Yes.

5 Q. You've been a notary a long time?

6 A. Yeah. Ever since I've been in practice, I believe.
7 Yes.

8 Q. And you wouldn't notarize a statement that you knew
9 to be false, right?

10 A. That's true.

11 Q. So the statement that Mr. Marshall intended to
12 represent himself and that no attorney will represent him in
13 this case unless an attorney or he notifies the court
14 otherwise was true at the time that you notarized the
15 document, right?

16 A. As it -- as it applied to a court appearance.

17 Q. I understand your argument. Just it true or not?

18 A. Well, it's not a yes or no question. It applies --

19 Q. It is.

20 A. -- your notice and appearance (indiscernible).

21 Q. Was that statement true at the time that you
22 notarized it?

23 A. Sir, appearance in court --

24 Q. Was that statement true at the time?

25 MS. KATZ: I made an objection. I made an objection.

1 The objection is asked and answered.

2 MR. SLEIGH: I' haven't got an answer yet.

3 MS. KATZ: I believe the witnesses has answered the
4 question.

5 MR. KARNEDY: I believe the witness has answered the
6 question. You can ask a different question.

7 BY MR. SLEIGH:

8 Q. All right. Now, you notarized Mr. Marshall's
9 response on July the 29th; is that right?

10 A. Yup.

11 Q. And did you assist him with filing it with the Court?

12 A. No, I think he filed it himself. I sometimes file
13 things as a courtesy but I don't believe I did that here.

14 Q. Well, you don't know. You may have?

15 A. It's possible but I do that -- I don't personally do
16 that. The secretary will file it as a courtesy and we inform
17 the court if and when we do that that it is being done as a
18 courtesy only in that we are not entering an appearance for
19 the party.

20 Q. All right. So going back to DC-12. You can see that
21 Nathan's notice of pro se appearance was docketed on August
22 the 3rd, 2020, correct?

23 A. Okay.

24 Q. Do you have any reason to believe that Mr. Fink
25 received a copy of that notice prior to August 3rd, 2020?

1 A. No, I didn't send it to him.

2 Q. Between August 3rd and August 17th, did you
3 communicate in any way with Mr. Fink?

4 A. No, I don't think so. It's (indiscernible) --

5 Q. Okay.

6 A. -- (indiscernible) respondent. So I don't believe I
7 did.

8 Q. Between August 3rd and August 17th, did Mr. Fink
9 communicate with you?

10 A. Not that I know of, no.

11 Q. Have you personal knowledge as to whether any issue
12 of substance regarding the contested issue from the divorce
13 were discussed in any way in the August 17th phone
14 conversation between Mr. Fink and Mr. Marshall?

15 A. Yes, I did.

16 Q. Do you have personal knowledge?

17 A. No, I don't have personal knowledge, but I have what
18 Mister --

19 Q. I was asking personal knowledge. That's all I said.

20 A. I was not part of the conversation. I did not hear
21 it, so no.

22 Q. Now at some point, you entered an actual appearance
23 on behalf of Mr. Marshall; is that right?

24 A. Yes.

25 Q. And do you have the respondent's exhibits in front of

1 you?

2 A. I do.

3 Q. Is respondent's exhibit 3 a copy of your notice of
4 appearance?

5 A. Actually, no. I don't have that.

6 MR. KARNEDY: Pause for a second. I need to get
7 those exhibits in front of me.

8 THE WITNESS: Yeah. I have exhibits DC-1 through 14.
9 I don't have any other exhibits in front of the. If there are
10 other scents, then they weren't put into this folder, but I
11 can probably retrieve them if they were sent to us. I can ask
12 my assistant to get them.

13 MR. DISTEFANO: Ms. Taylor, can you forward the
14 exhibits to the witness?

15 MS. KATZ: Yeah.

16 MR. DISTEFANO: Yeah. This is Mark -- for the panel
17 initially and then let's expand it beyond that for the
18 parties. You know, not -- Merrick just sent those to us now.
19 They should be in your inbox. If you get to the inbox for the
20 panel members, I was able to open it up. That's the first
21 I've seen. So perhaps disciplinary counsel could -- I mean,
22 again, if you want to screen share, we can -- we could do it
23 this way. Is that -- is that Attorney Sleigh putting that up
24 or is that you?

25 MS. KATZ: No. Oh. Scared me there. I thought I

1 was doing it.

2 MR. DISTEFANO: Is that Ashley Taylor putting this
3 up?

4 MR. SLEIGH: No, it's me.

5 MR. DISTEFANO: Oh. Okay, great. So we can do it
6 this way and for the benefit of the panel members, it's
7 something in your inbox.

8 MR. SLEIGH: Thank you, all. It's terrific. I can
9 see it and I can see it in my inbox. Witness, see it? Good.

10 THE WITNESS: Yes, I can. Yup.

11 BY MR. SLEIGH:

12 Q. So that's your October 6th entry notice of appearance
13 on behalf of Nathan; is that right?

14 A. Yes, it is.

15 Q. And as I understand it, the divorce proceedings are
16 continuing apace?

17 A. Yeah.

18 Q. And other than the written communication that you
19 have in front of you, the disciplinary counsel's exhibits, do
20 you have any other record of communications between yourself
21 and Mr. Fink regarding the divorce of Nathan and Denise?

22 A. Well, we've had several other communications because
23 we have continued since then, we've had motions in court. we
24 have continued to negotiate on settlement. We've had more
25 back and forth correspondence.

1 Q. Fair enough.

2 A. Yeah.

3 Q. The time limit on my question. The DC exhibits are
4 the full record of communication between you and Mr. Fink
5 regarding the marital situation involving Denise and Nathan up
6 to and including August of 2020?

7 A. That's true.

8 Q. I don't have anything further. Thank you.

9 MR. KARNEDY: Redirect?

10 MS. KATZ: Yes, just briefly.

11 REDIRECT EXAMINATION

12 BY MS. KATZ:

13 Q. Ms. Benelli, after you entered your notice of
14 appearance in October of 2020 in court for the divorce matter,
15 still pending, did the respondent, Mr. Fink ever bring up to
16 the court, to your memory any issue related to the scope of
17 your appearance at all of?

18 A. Nope, never.

19 Q. Did the Court ever raise any issue or question with
20 respect to your role in Mr. Marshall's pro se answer that
21 shows your notary stamp?

22 A. No.

23 Q. Did the respondent suggest or did the Court ever find
24 that anything you did or Mr. Marshall did relative to that pro
25 se appearance was deceitful or dishonest or otherwise

1 intending to mislead anyone?

2 A. No. It's very common for an appearance to start out
3 pro se and then for an attorney (audio interference),
4 especially family court, I think.

5 Q. I do not have any further questions, the panel may
6 have some questions for you, Ms. Benelli.

7 MR. KARNEDY: Peter, Any questions?

8 MR. ZUK: No.

9 MR. KARNEDY: Ms. Taylor, any questions?

10 MS. TAYLOR: No questions.

11 MR. KARNEDY: So I have one question, if you go to
12 the DC-10, notice of appearance. I think you testified you
13 filled that out with your client, heled him to prepare it and
14 you've had some cross-examination about those first couple of
15 sentences in the document, correct? You with me so far?

16 THE WITNESS: Yes.

17 MR. KARNEDY: So prior to filling this out at the
18 time, you were feeling this out, did you ever think to call up
19 Attorney Fink JUST to let him know what's going on in terms of
20 the representation in Court versus negotiation?

21 THE WITNESS: No, it's pretty standard practice that
22 attorneys represent people outside of Court all the time; it's
23 not a conflict with an attorney with a -- with a party
24 entering a pro se appearance. It doesn't negate the
25 representation out of court and a notice of appearance only

1 tells the court that -- that I am there as an attorney so they
2 communicate with me. That was not the intent that the Court
3 would do that here. But that doesn't mean that Mr. Fink
4 didn't know I was still representing. We were still
5 negotiating.

6 MR. KARNEDY: My only question is whether you called
7 and --

8 THE WITNESS: No.

9 MR. KARNEDY: -- (indiscernible) --

10 MR. KARNEDY: Had you had any other matters with him.
11 It sounds like over the years you've had matters together,
12 right?

13 THE WITNESS: We have five or six going right now.

14 MR. KARNEDY: And did you ever have a situation like
15 this with him before where you represented a client, were
16 negotiating with him along the way, and then it got to the
17 point of court you weren't doing that part, you ever had that
18 with him before?

19 THE WITNESS: Honestly, let me think. I don't know;
20 I had that many times. I may have. I honestly can't remember
21 specifically. I've probably done hundred cases with Mr. Fink
22 over the years, maybe more and I honestly don't remember. But
23 this is a common occurrence so it may have -- may have
24 happened if but can't swear to it.

25 MR. KARNEDY: Thank you very much.

1 I think we're all done with you, Attorney Benelli.
2 Thank you so much.

3 THE WITNESS: Thank you. I'll check out then. Thank
4 you. Bye-bye.

5 MR. KARNEDY: Any more witnesses, Attorney Katz?

6 MS. KATZ: No, That concludes my case.

7 MR. KARNEDY: Attorney Sleight?

8 MR. SLEIGHT: No, no witnesses, Your Honor.

9 MR. KARNEDY: I believe, Mark, unless you tell me
10 different, the record is closed and we could move on to
11 closing at this point. Is that correct, Mark?

12 MR. DISTEFANO: Yeah, I think it is, but I also think
13 that we should take a short break in the breakout room, the
14 panel and myself to discuss a few things before we -- before
15 we conclude the hearing.

16 MR. KARNEDY: Okay. So we'll keep the record open
17 until we have that discussion and then we'll come back.

18 MR. DISTEFANO: Sophie, can you put us in a breakout
19 room, please? And it's going to be myself, Gary Karnedy,
20 Ashley Taylor, and Peter Zuk.

21 THE OPERATIONS ASSISTANT: Certainly.

22 MR. DISTEFANO: Thank you.

23 (Recess at 12:08 p.m., until 12:16 p.m.)

24 MR. KARNEDY: Oh. We're muted. We good to go with
25 the court reporter.

1 THE COURT REPORTER: Yes. The Court is all set to
2 resume.

3 MR. KARNEDY: Thank you. So we'll go back on the
4 record. I had referenced closings, if you all want to do
5 closings, you can and then we have some ministerial matters to
6 talk about on scheduling.

7 What are your thoughts, counsel?

8 MS. KATZ: I would certainly --

9 MR. SLEIGH: I don't think it's particularly
10 necessary, it seems like it's a pretty clear, factual basis,
11 nothing complicated about it.

12 MR. KARNEDY: Okay.

13 MS. KATZ: I trust the panel to execute its job and I
14 don't think we need to do closings. Thank you.

15 MR. KARNEDY: Terrific. And I'll turn it over to
16 Mark for some deadlines and confirmation on exhibits.

17 MR. DISTEFANO: Thank you. So we typically -- the
18 panels typically offer the parties an opportunity to file
19 proposed findings of fact and conclusions of law and in
20 general, it's -- it's more -- you know, I think the panel
21 would prefer to get some legal briefing, as -- you know, could
22 be a legal memo. It doesn't have to be called conclusions of
23 law. We have a memo that was filed by respondent before the
24 hearing but respondent can have another opportunity to file a
25 post hearing legal memo. We'd like the parties as part of any

1 submission that they make to address both issues having to do
2 with whether a violation has been proven and the legal
3 elements of the rules that are charged and to generally assist
4 the panel the way parties routinely do in civil proceedings
5 when they file proposed conclusions of law or legal memos.

6 As far as time goes, there's some flexibility there.
7 The panels will often ask the parties if they can do that
8 within thirty days, if the -- if the panels -- if the parties
9 need some additional time, we can talk about that. And so I
10 think we need to hear from the -- the parties counsel. We
11 need to hear from counsel on how much time they'd like to file
12 any proposed findings and conclusions of law.

13 MR. SLEIGH: I just want seven days after Ms. Katz.

14 MR. KARNEDY: We can build a reply period in, but
15 frankly, it's -- it's helpful --

16 MR. SLEIGH: Yeah.

17 MR. KARNEDY: -- to have the parties file at the same
18 time, if you'd like a reply -- if you'd like a short period
19 for a reply. There's no -- there's no problem with that, I
20 believe is --

21 MR. SLEIGH: That's fine. Simultaneous filings is
22 fine. I just I'd like to make mine more pointed and shorter
23 if I can but that's fine, simultaneous filing is fine. It's
24 okay with me.

25 Why don't we say -- why don't we say just a thought.

1 So any reply briefs can be pointed. Why don't we have some
2 sort of page limit on them so we're not putting too much work
3 on the attorneys on something that's pretty -- relatively
4 straightforward. I'll defer to you on that.

5 MR. KARNEDY: So Ms. Katz, what do you propose for
6 time periods?

7 MS. KATZ: I'm fine with thirty days. Like whatever
8 date is needed is fine with me, I don't care.

9 MR. KARNEDY: Okay. So why don't we say thirty days
10 for proposed findings and legal memos and -- and then we'll --
11 we'll allow seven days for replies to be filed, not to exceed
12 ten pages? Is that -- chair is that work, you want shorter
13 than that?

14 MR. DISTEFANO: No, I think that's fine.

15 MR. KARNEDY: Okay. Seven days to four to file any
16 reply and not to exceed -- not to exceed ten pages. Okay.
17 The last thing is I left before the hearings conclude, I'd
18 like to just make sure everybody's clear about the exhibits.

19 MR. KARNEDY: Mark, could we go back for a second.
20 You had mentioned something else, which is--

21 MR. KARNEDY: Sure.

22 MR. DISTEFANO: -- we're supposed to issue a decision
23 within sixty days.

24 MR. KARNEDY: That's right.

25 MR. DISTEFANO: And we just want to be clear with

1 everyone's schedules that it could be sixty days from when
2 those reply briefs have been filed.

3 MR. KARNEDY: Yeah.

4 MR. DISTEFANO: Do we have consent on that?

5 MR. KARNEDY: Yes.

6 MR. DISTEFANO: Attorney Katz?

7 MS. KATZ: I didn't realize I got to weigh in on
8 that. Whatever amount of time the panel needs to do its job
9 is fine by me.

10 MR. DISTEFANO: Okay. Thank you.

11 And thank you, Chair, for remembering that. And I do
12 like to just make sure that everybody is on the same page with
13 the exhibits. We have DC-1 through 14 have all been admitted
14 into the record and we have Respondent's 1 and Respondent's 3
15 that have been admitted into the record and nothing else
16 that's -- that's what I have for exhibits.

17 MR. KARNEDY: Right.

18 MR. DISTEFANO: Okay. All right. I think from my
19 standpoint, that's all -- that's all we need to do today and
20 Chair or any of the other panel members, if you have anything
21 more you want to say.

22 MR. KARNEDY: I don't believe so. I think the
23 records closed.

24 Mr. Fink, thank you very much for your time today.

25 MR. DISTEFANO: And we can -- we can let the --

1 Sophie, we can let the parties and the witnesses go
2 now and I would like to hold the panel for --

3 MR. FINK: I'm sorry. I was muted. And in response,
4 I thanked you, sir.

5 MR. SLEIGH: I was raising my hand because that's
6 what I did in 4th grade. Who do I order a transcript from?

7 MR. DISTEFANO: So the way -- the way it works is
8 that you can get the information for a transcript to order it
9 through the program administrator, Eric Grudgefield (ph.),
10 unless it's Attorney Katz has some other angle on this. Okay.
11 She'll be able to -- she'll be able to help you with that,

12 MR. SLEIGH: Great. Thank you.

13 MR. DISTEFANO: Okay. And I was about to ask Sophie.

14 Sophie, we'd like to let the parties go but the panel
15 and I would like to have a confidential session afterwards and
16 we don't need the FTR for that because our discussions are all
17 confidential as a matter of law. So I think we can just close
18 the record on that. And it would be like the equivalent of
19 putting us in a breakout room but whether you want to put us
20 in a breakout room or just make sure everybody's off, it's
21 fine. Either way. Just if you can make that happen and
22 finally, just thank you so much, Sophie, for your help.

23 And also for Betty Wosowsky (ph.) for stepping in in
24 the situation and helping us with the FTR.

25 Thank you, Betty.

1 MR. SLEIGH: Thanks all. Bye.

2 MS. KATZ: Thanks.

3 MR. FINK: Thank you, panel.

4 (Proceedings concluded at 12:23 PM)

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C E R T I F I C A T I O N

I, Jordan Robins, the court-approved transcriber, do
hereby certify the foregoing is a true and correct transcript
from the official electronic sound recording of the
proceedings in the above-entitled matter.



October 11, 2021

JORDAN ROBINS

DATE