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BEFORE THE CAMPAIGN FINANCE
AND PUBLIC DISCLOSURE BOARD
OF THE STATE OF MINNESOTA

In the Matter of the Republican
Party of Minnesota

Telephonic sworn statement of MICHAEL E.
TONER, taken in the above-entitled matter, pursuant to
Notice, before Julie A. Rixe, court reporter and notary
public, at Suite 190, 658 Cedar Street, in the City of
St. Paul, County of Ramsey, State of Minnesota, on the
21st day of May, 2012, commencing at approximately
9:30 a.m.

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1 APPEARANCES:
2 GARY GOLDSMITH, Executive Director, and
3 JEFFREY SIGURDSON, Assistant Executive Director,
4 and JODY POPE, Management Analyst, Minnesota
5 Campaign Finance and Public Disclosure Board,
6 Centennial Office Building, Suite 190, 658 Cedar
7 Street, St. Paul, Minnesota 55155-1603, appeared
8 for and on behalf of the Minnesota Campaign
9 Finance and Public Disclosure Board.

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22 WHEREUPON, the following proceedings
23 were duly had and entered of record, to wit:
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I N D E X

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1 WITNESS	
2 MICHAEL E. TONER	
3 Examination by Mr. Sigurdson	4, 31
4 Examination by Mr. Goldsmith	28
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1 MICHAEL E. TONER,
2 after having been first duly sworn, was
3 examined and testified on his oath as follows:
4 EXAMINATION
5 BY MR. SIGURDSON:
6 Q And, sir, would you provide your name and address
7 for the record?
8 A Michael Eugene Toner. And my residential address
9 4227 Fordum Road Northwest, Washington, DC 20016.
10 Q And then just to identify everyone here, my name
11 is Jeff Sigurdson, S-I-G-U-R-D-S-O-N. I'm the
12 assistant director with the Campaign Finance and
13 Public Disclosure Board?
14 MR. GOLDSMITH: Gary Goldsmith,
15 executive director, Campaign Finance Board.
16 MS. POPE: Jody Pope, management
17 analyst, Campaign Finance Board.
18 THE WITNESS: And I apologize. I'm
19 having a little trouble hearing everybody. I'm
20 sorry.
21 BY MR. SIGURDSON:
22 Q Yes, sir. And we apologize for that too. The
23 problem with speaker phones is that we have so
24 much background white noise in the office.
25 Probably we're going to switch. Once I'm done

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1 with my questions, if Mr. Goldsmith or Jody Pope,
 2 who is also here from our office, if either one of
 3 them have questions, we'll probably change seats
 4 so you can hear us a little clearer.
 5 A Okay. And please let me know if you have any
 6 trouble hearing me on my end.
 7 Q Okay. Thank you. Just a couple of background
 8 questions. You're currently a member of the Wiley
 9 Rein Law Firm; is that correct?
 10 A Yes.
 11 Q But in 2010 you were a member of the Bryan Cave
 12 Law Firm?
 13 A That's correct.
 14 Q And just for the purposes of establishing a time
 15 line, sir, do you recall the date that you left
 16 Bryan Cave?
 17 A I left Bryan Cave in March of 2011 and joined
 18 Wiley Rein at that time.
 19 Q Okay. In 2010 did Bryan Cave and you specifically
 20 provide legal services to the Republican Party of
 21 Minnesota in relation to the recount of votes of
 22 the 2010 gubernatorial election?
 23 A Yes.
 24 Q Okay. With your response to the Board that's
 25 dated May 11, 2012, you included a letter of

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1 engagement dated July 25, 2007 between Bryan Cave
 2 and the Republican Party. Was this the document
 3 under which the work related to the recount was
 4 performed?
 5 A Yes. And as you point out, there was an
 6 engagement letter I executed on behalf of Bryan
 7 Cave to represent the Republican Party of
 8 Minnesota that was dated back in July 2007, I
 9 think it's pages 1 through 5 of my document
 10 production, and have represented the Republican
 11 Party of Minnesota on a wide variety of federal
 12 and state campaign finance, election law
 13 compliance matters over the years. And this was
 14 the engagement letter under which we performed --
 15 or I performed and my colleagues performed work in
 16 connection with the 2010 gubernatorial recount out
 17 in Minnesota.
 18 On page 2 of the Bryan Cave engagement
 19 letter, at the end there it indicates that that
 20 engagement letter will cover any additional
 21 matters that are undertaken on behalf of the
 22 client's request, so it's standard language that
 23 was included in the Bryan Cave letter. So this is
 24 the engagement letter under which we did work for
 25 the Republican Party of Minnesota in connection

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1 with that 2010 gubernatorial recount.
 2 Q And so there was no other written authorization
 3 that was either required or received regarding the
 4 recount?
 5 A That's correct.
 6 Q Okay. Sir, if you could turn to page 48 of your
 7 submission, it's a listing of the hours and the
 8 services that you were providing relative to the
 9 recount. And I note that the very first item
 10 listed is dated November the 3rd of 2010, which
 11 would be the day after the general election, which
 12 was November 2, 2010.
 13 Can you recall who contacted you to
 14 start work on the recount basically immediately
 15 after the election was over?
 16 A Well, I do recall that some days before the
 17 November election, approximately a week before, a
 18 week to ten days before, I received a call from
 19 Tony Sutton, who was then chairman of the
 20 Republican Party of Minnesota. And Tony indicated
 21 that it looked like the gubernatorial race was
 22 very close in Minnesota and that a recount was
 23 quite possible.
 24 And Tony wanted to retain me and my law
 25 firm if a recount took place, and so we talked.

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1 And I indicated, well, you know, I represented the
 2 Republican Party of Minnesota for a number of
 3 years and they've been a good client of mine, so,
 4 you know, I'd be available to work on the recount
 5 if that came to pass. So we had that discussion
 6 before the election.
 7 And then I remember election night I was
 8 here in Washington. I represent clients in other
 9 parts of the country. So I was hoping there
 10 weren't going to be recounts in the various states
 11 and the clients for whom I'd been doing the legal
 12 work. I went to bed late on election night
 13 thinking I was in the clear and there was going to
 14 be no recount work for me.
 15 And then I got up the next morning, the
 16 Wednesday after the election, and I had gotten a
 17 voicemail message from Tony Sutton, you know,
 18 sometime before dawn, saying that, actually, the
 19 race was very close in Minnesota and a recount was
 20 imminent, and could I come out to the Twin Cities
 21 that day and begin work on behalf of the recount.
 22 And I did that.
 23 So I flew out to the Twin Cities the
 24 Wednesday after the election and began work, as
 25 the time records indicate, starting on

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1 November 3rd.
2 Q Okay. And, sir, obviously there's going to be a
3 description here of the services provided.
4 There's often references to Chairman Sutton and
5 RPM staff. During any of these meetings, was
6 there any question in your mind that the services
7 that you were going to be providing relative to
8 the recount were for any entity other than the
9 RPM?
10 A There was no question in my mind, no.
11 Q Okay. And it appears that you made actually three
12 trips to Minnesota related to the recount; is that
13 correct?
14 A I'd have to recall the exact number. I got used
15 to the Delta shuttle between Washington and the
16 Twin Cities and the nonstop flights that exist
17 there. I remember I was out there in the November
18 2010 time period a number of weeks. And I think I
19 was out there after Thanksgiving into early
20 December of 2010. I guess I'd have to go back and
21 look at my travel records to recall the exact
22 number of weeks I was out there. It seemed like a
23 long time at the time, but working during the
24 November, December period.
25 Q Okay. And for reference, sir, if you want, on

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1 page 59 -- I'm sorry, I should have mentioned that
2 to you before I asked the question -- there is a
3 listing of the travel expenses that Bryan Cave
4 related to the recount, and that's where I was
5 getting the three trips. But basically you were
6 out in Minnesota on numerous occasions related to
7 the recount. During those times you were always
8 working with RPM staff and Chairman Sutton?
9 A I was working for RPM staff, Chairman Sutton as
10 well, of course our co-counsel in the matter, Tony
11 Trimble from the Tony Trimble & Associates Law
12 Firm there in Minnesota, along with Eric Magnuson
13 and his law firm in the Twin Cities.
14 Q Okay. And in your submissions, sir, you provided
15 a number of invoices, both initially submitted by
16 Bryan Cave to the Republican Party and then, as
17 we'll get to later, sometimes resubmitted to Count
18 Them All Properly. But they were all consistent
19 on one point, and that is that December 7, 2010 is
20 the last date in which recount services are
21 listed. Is that consistent with your memory of
22 it?
23 A Let me look at the invoices. I'm trying to recall
24 the day in which Mr. Emmer ceded the race, and it
25 might very well have been that day. I just don't

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1 have that in front of me. On page 57 of my
2 production I did two hours of work on
3 December 7th. Do we know which day Mr. Emmer
4 conceded? Was it December 7th?
5 Q It was actually December the 8th, sir.
6 A Okay. And was that a Saturday? I recall it was
7 maybe a Saturday morning. Was it a Saturday?
8 Q That, I'm afraid, I don't know off the top of my
9 head.
10 A Okay. That sounds right. Because obviously once
11 Mr. Emmer made that decision, that brought work to
12 an end on the recount matter. So that sounds
13 right, yes.
14 Q Do you recall who informed you on the 7th, I
15 assume, that the recount effort was ending?
16 A I recall sometime in the latter part of that week
17 being told that Mr. Emmer was considering ceding
18 the race. I can't remember how far in advance I
19 learned that, but I recall that.
20 And then I recall seeing Mr. Emmer's
21 press conference. As I recall, I think it was at
22 his house, front of his house, you know, saw
23 that. I can't remember if I saw it live or if I
24 saw it in video, through the media, but I do
25 remember shortly before that announcement

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1 discussion that it looked like that's what he was
2 going to do.
3 Q Okay. So just to clarify, you weren't informed
4 prior, really, to the media account that the
5 recount effort was going to be ending?
6 A No, I think I was informed.
7 Q Okay.
8 A I just can't recall how far in advance I was
9 informed. Because, you know, there were various
10 efforts in terms of how to approach the
11 announcement, what the Republican Party of
12 Minnesota ought to say and, you know, when and
13 that kind of thing. So I do recall being informed
14 that this was going to happen before it took
15 place. I just can't remember, was it a day
16 before, was it two days before. I can't remember
17 how far in advance.
18 Q Do you recall, sir, was it Mr. Sutton that told
19 you that, that you were having these discussions
20 with?
21 A I think it was -- I mean, I don't have -- I don't
22 want to speculate here, but I think it was
23 discussions with the Republican Party of Minnesota
24 and our legal team, in other words, you know,
25 Mr. Trimble and his firm and perhaps Mr. Magnuson

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1 and his firm. Discussions with the Republican
 2 Party of Minnesota team.
 3 Q Okay. Thank you. If you could, could you turn to
 4 page 22 of the material?
 5 A Page 22?
 6 Q Yes, sir.
 7 A Yes. Yes, I've got it.
 8 Q Okay. There's a couple of e-mails here between
 9 you and Mr. Sutton. It appears from the e-mails
 10 that you had submitted an invoice for the legal
 11 services provided to the RPM on December the 10th,
 12 2010. And then in response later that same day,
 13 Mr. Sutton responds. I'm going to quote the
 14 e-mail. It says, technically these services were
 15 for the Emmer recount fund and not the RPM;
 16 payment will be coming from that fund, and then it
 17 says the state party will also transfer funds in
 18 as we receive them.
 19 Was this the first time that you became
 20 aware of some sort of recount fund?
 21 A I don't know if it was the first time. I do
 22 recall discussions at some juncture about possibly
 23 a new entity being created or a separate entity
 24 covering paying for the recount costs. I can't
 25 recall if that was before December 10th or after

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1 December 10th.
 2 To be honest with you, I was really
 3 focused on the merits of the recount and the
 4 various legal proceedings that were going on
 5 during November and December. So I don't know if
 6 this was the first time that I had heard about
 7 this, but I do recall this being a discussion.
 8 Q Okay. Sir, in your opinion, did you ever have any
 9 discussions with Tony Sutton that could be
 10 regarded as legal advice on whether or not it
 11 would be appropriate to establish a separate fund
 12 to pay for the recount?
 13 A I mean, I don't recall specifically. Does it mean
 14 that there weren't some? It just wasn't my
 15 focus. My focus was working with Tony Trimble and
 16 his firm, working with Eric Magnuson and his firm
 17 on the recount proceedings. So I might have had
 18 some discussions about this, but I don't, for
 19 example, recall, you know, doing any memos or any
 20 written legal analysis on these options.
 21 Q Okay. Let me word my questions -- It's Probably
 22 the same question, but I'm rewording it slightly.
 23 A Okay.
 24 Q Did you ever have any discussions with Mr. Sutton
 25 on why, especially after this December 10th

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1 e-mail, on why a separate fund for paying the
 2 recount bills would be advisable or why he was --
 3 why that was being established?
 4 A Again, I might have had those kinds of
 5 discussions. I don't specifically recall them.
 6 In terms of why a separate fund might be
 7 advantageous, obviously from a fiscal perspective
 8 it could be advantageous, but I don't recall.
 9 And, again, it doesn't mean that there weren't
 10 some discussions of that nature, but I don't
 11 recall, for example, providing legal advice on the
 12 ability to set up a separate organization under
 13 Minnesota law. For example, I understand there
 14 was a ruling of the Campaign Finance Board that
 15 related to this area. I just don't recall being
 16 in the middle of all that during that time period.
 17 Q Okay. Thank you. Now if I could have you turn to
 18 page 34 of the material.
 19 A Page 34?
 20 Q Yes, sir.
 21 A Yeah.
 22 Q And there's a series of e-mails here. They start
 23 on January 19th, and I believe the last one is
 24 through February 17th. And I guess to paraphrase
 25 the e-mails, they basically have the same subject,

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1 which is that you've asked for a status of payment
 2 from the RPM on the invoices that have been issued
 3 by Byron Cave for the recount. At this point were
 4 you under the impression that the RPM was not
 5 going to be obligated -- or not viewing itself as
 6 obligated for these bills?
 7 A It was definitely my impression that the
 8 Republican Party of Minnesota was my point in
 9 contact in terms of getting these bills paid. You
 10 know, I was in Washington DC and not in Minnesota,
 11 so I wasn't familiar with this other entity --
 12 What is it called again?
 13 Q Count Them All Properly.
 14 A Count Them All Properly, right. And as my written
 15 submission -- my letter to the Board indicates, I
 16 don't recall ever having any discussions with
 17 anyone associated with that entity or discussions
 18 about whether they were going to pay any of the
 19 Bryan Cave bills or what was going on with them.
 20 All of my discussions in terms of the billing was
 21 with Chairman Sutton and the Republican Party of
 22 Minnesota staff, who, after all, were the clients
 23 for whom we did this work and the clients for whom
 24 we sent our invoices and were the clients with
 25 whom we followed up on the invoices.

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1 So my understanding during this January
 2 period and really throughout 2011 was that my
 3 collection efforts were appropriately focused with
 4 Chairman Sutton and the Republican Party of
 5 Minnesota.
 6 Q Okay. Thank you. If I could have you now switch
 7 to page 42.
 8 A Page 42? Okay.
 9 Q Yes, sir.
 10 A Yes, sir.
 11 Q This is an e-mail from Lori Schwartz, who is with
 12 Bryan Cave. And I realize you had now left the
 13 firm, and she's apparently asking you about the
 14 RPM matter and the billing there. She has two
 15 points in her e-mail that I'd like to ask you
 16 about. If you want to take a minute to look at
 17 the e-mail, then I'll ask my questions.
 18 A Okay, sure. I'll go ahead and do that.
 19 Okay. Please go ahead.
 20 Q The first is her statement that, she states that,
 21 we've received a request from the client regarding
 22 reissuing of the invoices.
 23 Is this the first time that you had
 24 actually heard that the invoices were supposed to
 25 be re-invoiced to Count Them All Properly or to at

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1 least some entity?
 2 A It's possible. I mean, obviously as of March 18th
 3 Bryan Cave had gotten that request, to have those
 4 invoices rerun. I don't recall Bryan Cave being
 5 notified about that previously or my being
 6 notified of that request previously.
 7 You know, when you leave law firms, as a
 8 partner you have an obligation to continue your
 9 collection efforts, so that's really what I have
 10 been doing since I left Bryan Cave in March of
 11 2011. I continue my collection efforts, and this
 12 is just one client file where I was continuing
 13 those efforts.
 14 So this is my best sense of when that
 15 request was received by Bryan Cave. You know,
 16 Lori Schwartz is the billing accounting manager
 17 for the Washington DC Bryan Cave office. So this
 18 March 2011 time period is my best sense of when
 19 that request was received.
 20 Q Okay. And, sir, then on that same e-mail she also
 21 says, there were two invoices issued to this the
 22 matter but were already paid by the Republican
 23 Party of Minnesota.
 24 And then she goes on to say -- or ask
 25 you a question as to whether or not those two

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1 invoices should now be re-invoiced, even though
 2 they've already been paid. So is it your
 3 understanding, then, that the Republican Party
 4 actually made two payments against the recount
 5 costs prior to -- well, prior to this moment, I
 6 guess?
 7 A I'm not aware of that. Because I think that it's
 8 possible that -- We did some work for the
 9 Republican Party of Minnesota concerning a Federal
 10 Election Commission enforcement matter that
 11 involved the 2008 senate recount, not the 2010
 12 gubernatorial recount. And so I think that the
 13 payments that are being referred to there might
 14 very well have been referring to that, that
 15 recount work. And, in fact, it wasn't really
 16 recount work. It was doing work for the Federal
 17 Election Commission concerning the 2008 recount.
 18 So I think that might be what's being referenced
 19 there.
 20 I had not been aware of any payments
 21 against the balance that was pending for the 2010
 22 gubernatorial recount, apart from this, what,
 23 \$9,000 payment that is referenced in some of the
 24 materials later in my production.
 25 For example, on page 84 of my production

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1 there's a reference to a payment dated April 21,
 2 2011 of \$9,000, which looks to me that it's likely
 3 a payment concerning the 2010 gubernatorial
 4 recount. That's the only payment that I'm aware
 5 of.
 6 Q On that same page, sir, up above that there's a
 7 payment of \$6,743.39. Do you believe that's the
 8 one that Ms. Schwartz is referencing in terms of a
 9 payment received prior to that?
 10 A I guess it could be, yeah. I'm somewhat at a
 11 disadvantage here because I'm not at Bryan Cave,
 12 so it's just harder for me to have a feel for all
 13 this, but that could very well be.
 14 Q This is jumping ahead a little bit, but because
 15 we're on this, I don't want to lose our train of
 16 thought. I may loop back, frankly, to an earlier
 17 e-mail here.
 18 But relating to the FEC issue, on the
 19 compliance issue, my understanding here is that
 20 not only was the 2010 gubernatorial election costs
 21 re-invoiced to Count Them All Properly, but
 22 apparently the costs related to this FEC matter
 23 was also re-invoiced to Count Them All Properly?
 24 A Not the latter. Only the 2010 gubernatorial
 25 charges were invoiced to the separate entity Count

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1 Them All Properly entity. All the other work was
 2 invoiced to the Republican Party of Minnesota.
 3 So, for example -- I'm just going through here.
 4 Q Actually, sir, if you stay on the same page that
 5 you reference, page 84 is kind of the issue that
 6 I'm having. The current charges for matter, it
 7 does say federal recount legal compliance advice.
 8 This is an invoice to Count Them All Properly.
 9 That was my issue of confusion, is whether or not
 10 in fact you believe there had been any that had
 11 been shifted prior -- or try the adverse --
 12 services prior to the 2010 recount, if that also
 13 had been accepted by Count Them All Properly?
 14 A Not to my knowledge. So looking at this invoice
 15 that starts on page 84, that's all work related to
 16 the gubernatorial recount in November of 2010,
 17 just thumbing through the invoice here, pages 84
 18 to 88.
 19 And then going on to the December
 20 invoice to the Count Them All Properly again, just
 21 for work in connection with the gubernatorial
 22 recount.
 23 And then the other element all along
 24 here is that in November and December of 2010,
 25 Bryan Cave was also doing non-recount,

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1 non-gubernatorial recount work for the Republican
 2 Party of Minnesota at the same time, so that work
 3 you see being separated out earlier in my
 4 production, for example, starting on page 68. We
 5 were separating out that work.
 6 Q Okay.
 7 A And so, for example, the top of page 68, there's
 8 an entry that says, circled items are not Emmer
 9 recount time entries. So those time entries were
 10 not billed to Count Them All Properly, but,
 11 instead, continued to be billed to the Republican
 12 Party of Minnesota. Does that make sense?
 13 Q It does. I am going to ask you, then, to look at
 14 one last e-mail related to this subject before we
 15 kind of go on to a different one, I think. I'm
 16 sorry. I need to look at my notes to find the
 17 right page. Hold on for a second.
 18 If you want to turn to page 98, sir.
 19 A 98?
 20 Q Yes.
 21 A Okay.
 22 Q This is an e-mail from you to Tony Sutton dated
 23 July 27, 2011 in which I believe what is happening
 24 here or what you're stating is happening is that
 25 attached is an invoice from Bryan Cave, apparently

Page 23

1 in reference to a request for Mr. Sutton. Well,
 2 I'm not sure. Scratch that last. I'm not sure
 3 who the "asked me to" is referring to. But at any
 4 rate, it's breaking out the billing for the FEC
 5 matter. And then the invoice says, split between
 6 the recount and the FEC work.
 7 And then the invoice -- And I know I'm
 8 coming back and hitting the same point, but the
 9 invoice is to Count Them All Properly, not to the
 10 Republican Party and it still has the FEC work on
 11 it. Do you think that was accurate or do you
 12 think that there's still confusion here on the
 13 billing?
 14 A Well, right. In July of 2011 I followed up with
 15 Tony Sutton concerning the invoices that had been
 16 split out, right. We had two sets of invoices.
 17 We had the invoices that had been made out to the
 18 Count Them All Properly entity for the
 19 gubernatorial recount only, and then we had the
 20 parallel invoices for all the other work we were
 21 doing for the Republican Party of Minnesota
 22 concerning federal election law compliance work.
 23 And so the invoice that you have here,
 24 the invoices that you have starting on page 99 of
 25 my production are just the gubernatorial recount

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1 work that we did for the Republican Party of
 2 Minnesota that had been rebilled to -- reissued.
 3 The invoices had been reissued to Count Them All
 4 Properly, Inc.
 5 I think what's confusing about this is
 6 that the invoice says, federal recount legal
 7 compliance advice.
 8 Q Right.
 9 A Really what this is, is the gubernatorial recount
 10 legal compliance advice.
 11 Q Okay.
 12 A And you'll see in the time entries, we did some
 13 redactions for things that were beyond what the
 14 Board had been requesting in terms of some of
 15 these time entries. But all of these entries and
 16 these invoices concern the gubernatorial recount
 17 only. Does that make sense? Because every effort
 18 was made not to issue any invoices to Count Them
 19 All Properly, Inc., that was beyond the 2010
 20 gubernatorial recount work.
 21 Q Okay. So I suppose I'm just paraphrasing. So the
 22 statement on the invoice that refers to federal is
 23 inadvertent?
 24 A That's right. This is gubernatorial recount legal
 25 advice.

Page 25

1 Q Then while we're in the invoices, if you could
 2 flip to page 109.
 3 A 109, okay.
 4 Q And I believe the dates here are a little
 5 confusing because the invoice is dated
 6 April 11th. And as you noted on the invoice that
 7 showed the \$9,000 payment, that's dated April 21st
 8 on an April 5th invoice. So I'm not quite sure,
 9 frankly, if that check was actually received in
 10 March and that's a misdate.
 11 But my point on page 109 is the
 12 statement total is \$154,101.32. To the best of
 13 your knowledge, then, that's the amount that was
 14 re-invoiced to Count Them All Properly for the
 15 2010 gubernatorial recount?
 16 A That's right. That's my best sense of that total,
 17 and that we incurred approximately \$154,000 on
 18 2010 gubernatorial recount legal work.
 19 Q Okay. If you could loop back to page 44, sir.
 20 A Page 44?
 21 Q Yeah.
 22 A Okay.
 23 Q And I realize this e-mail is not to you. It's
 24 from Ron Huettl, who is the finance director at
 25 the RPM, to Bryan Cave, I believe. Again, if you

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1 could just review that quickly.
 2 A Sure, sure. Yes.
 3 Q And this is dated March 16, 2011. And this was,
 4 apparently, forwarded to you, I'm sorry, by
 5 Ms. Schwartz. Is this the first time you had
 6 heard the term or saw the term Count Them All
 7 Properly?
 8 A Well, like we were talking about earlier, it's
 9 possible that I heard of this entity before
 10 March 16th.
 11 Q Okay.
 12 A You know, as I indicated in my written submission,
 13 I didn't have any interaction -- I don't recall
 14 any interaction with Count Them All Properly, or
 15 whoever was running this entity. But certainly as
 16 of March 16th, you know, this request was made,
 17 according to the e-mail traffic, by Ron and the
 18 Republican Party of Minnesota for these invoices
 19 to be reissued.
 20 Q The e-mail references a Dan Puhl. Are you
 21 familiar with that individual?
 22 A I mean, I know the name and I may have met him. I
 23 think Mr. Puhl has done some work, for example,
 24 for the Republican National Committee, and so I
 25 may have met him in connection with his work for

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1 other entities. So I know the name.
 2 Q Okay. But you didn't have any work with -- In
 3 terms of related to the recount, you didn't have
 4 any contact with him?
 5 A I don't recall any at all, no.
 6 Q Okay. One last set of e-mails to look at, sir,
 7 and then I'll be handing it over to Mr. Goldsmith
 8 and Ms. Pope to see if they have any questions.
 9 Can you turn to page 98? I think we
 10 looked at this one briefly, but I have another
 11 question.
 12 A 98, okay.
 13 Q I'm sorry. Actually, I'm going to change that.
 14 98 we did talk about. This is the one from you to
 15 Mr. Sutton.
 16 On page 110 is his response. If you
 17 could turn to page 110.
 18 A Page 110? Okay.
 19 Q And the top of the page is the e-mail in response
 20 to your e-mail, again, dated the same date,
 21 July 27, 2011. And he states, the good news for
 22 real is that we intend to start making substantial
 23 payments to Bryan Cave for the FEC matter in
 24 August; the recount is a little trickier issue to
 25 raise money for due to the fact that we lost;

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1 however, my intention is to pay the FEC matter
 2 first and then the recount.
 3 From that e-mail, sir, do you have any
 4 doubt that he's referring to the Republican Party
 5 still being responsibility for cost of the
 6 recount?
 7 A No, I don't have any doubt.
 8 MR. SIGURDSON: Okay. I believe that's
 9 all the questions I had before I give it to
 10 Mr. Goldsmith. He does have a couple questions.
 11 We're going to switch chairs here for just a
 12 second. Hold on.
 13 EXAMINATION
 14 BY MR. GOLDSMITH:
 15 Q Hi, Mr. Toner, Gary Goldsmith.
 16 A Mr. Goldsmith, good morning.
 17 Q I just have two questions. You mentioned you
 18 understood that there was a Campaign Finance Board
 19 ruling relating to other associations paying for
 20 recount activities. Did you review that ruling in
 21 the course of your services for the Republican
 22 Party?
 23 A It's possible I did. I became refamiliar (sic)
 24 with it in reviewing some of the materials
 25 produced by the other law firms in this matter, so

1 I read it a few weeks ago. And I might very well
2 have read it back at that time. I can't recall.
3 Do we know what date that ruling was issued? I
4 can't remember.
5 Q I don't have it in front of me, but it was just, I
6 think, right after the election.
7 A Okay. So early November 2010?
8 Q Yes, uh-huh.
9 A Okay. So I might very well have read it at that
10 time. As I testified earlier, my real focus
11 during this November, December period was on the
12 merits of the recount and, you know, the mechanics
13 of these proceedings that, as you know, were going
14 fast and furious in the state of Minnesota. That
15 really was my focus in the November, December
16 period.
17 Q Okay. And the reason I ask is because we believe
18 that Mr. Sutton is representing that he consulted
19 with attorneys about the feasibility of setting up
20 a third organization or another organization for
21 the payment of the recount costs, and we're trying
22 to determine which attorneys he would have
23 consulted on that matter.
24 A Okay.
25 Q And you're saying you don't know for sure if he

1 production, I mean, Chairman Sutton indicated,
2 which I appreciated, fairly regularly that he was
3 going to pay these balances, and so it was natural
4 for me to continue following up with him on it.
5 Q All right. Thank you. I don't have anything
6 further.
7 FURTHER EXAMINATION
8 BY MR. SIGURDSON:
9 Q Did you have anything that you wanted to add to
10 the record?
11 A No.
12 Q That completes the deposition, then. Thank you.
13 A Thank you.
14 (Deposition concluded at 10:06 a.m.)
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1 consulted you or not?
2 A Well, I don't recall providing any written advice
3 in this area. I may very well have discussed it
4 orally, but I really don't recall providing legal
5 guidance in this matter.
6 Q Okay. And my final question, was there anything
7 that you did or the Republican Party did, either
8 during or after the services you provided for the
9 recount, that made you conclude that the
10 Republican Party was relieved of its legal
11 obligation to pay Bryan Cave's attorney's fees?
12 A No. As I indicated earlier, Chairman Sutton and
13 the Party was my contact for the work that was
14 done in connection with the gubernatorial
15 recount. As my document production indicates, I
16 did follow up on a regular basis via e-mail with
17 Chairman Sutton on Bryan Cave's pending invoices
18 and, also, the invoices related to non-recount
19 work, because there were two categories of
20 invoices we were talking about. That's the
21 approach I took in terms of trying to collect
22 these funds.
23 I have not had any discussions with
24 representatives of other entities concerning our
25 pending invoices. And, as you see from my

1 STATE OF MINNESOTA)
2) ss.
3 COUNTY OF DAKOTA)
4
5 Be it known that I took the statement of MICHAEL
6 E. TONER on the 21st day of May, 2012, at Suite 190,
7 658 Cedar Street, St. Paul, Minnesota;
8 That I was then and there a notary public in and
9 for the County of Dakota, State of Minnesota, and that
10 I was duly authorized to administer an oath;
11 That the witness before testifying was first duly
12 sworn to testify the truth and nothing but the truth;
13
14 That the testimony was recorded by myself and
15 transcribed into a computer-aided transcript and that
16 the deposition is a true record of the testimony given
17 by the witness to the best of my ability;
18 That I am not related to any of the parties hereto
19 nor interested in the outcome of the action;
20
21 That the cost of the original transcript has been
22 charged to the party noticing the deposition, unless
23 otherwise agreed by Counsel, and that copies have been
24 made available to all parties at the same cost, unless
25 otherwise agreed upon by Counsel;

That the reading and signing of the statement by
the witness was waived.
WITNESS MY HAND AND SEAL this 30th day of May,
2012.

JULIE A. RIXE
Court Reporter