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TRANSCRIPT OF PROCEEDINGS
BEFORE THE
TEXAS WORKFORCE COMMISSION
AUSTIN, TEXAS

PUBLIC MEETING)
FOR THE TEXAS)
WORKFORCE COMMISSION)

COMMISSION MEETING

TUESDAY, AUGUST 25, 2009

BE IT REMEMBERED THAT at 9:00 a.m., on
Tuesday, the 25th day of August 2009, the
above-entitled matter came on for hearing at the Texas
Workforce Commission, 101 East 15th Street, Room 244,
Austin, Texas, before CHAIRMAN TOM PAUKEN AND
COMMISSIONERS RONALD G. CONGLETON AND ANDRES ALCANTAR,
AND LARRY TEMPLE, EXECUTIVE DIRECTOR, and the
following proceedings were reported by Evelyn Coder, a
Certified Shorthand Reporter of:

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1 P R O C E E D I N G S
2 TUESDAY, AUGUST 25, 2009
3 (9:00 a.m.)

4 AGENDA ITEM NO. 1

5 CHAIRMAN PAUKEN: Good morning. The
6 meeting will now be called to order, and I'll turn the
7 meeting over to Commissioner Alcantar to preside over
8 that portion of the meeting involving Agenda Items 2
9 through 5.

10 And before that, Commissioner Alcantar,
11 when you have little kids in the house, you catch
12 everything.

13 COMM. ALCANTAR: Good morning, everyone.

14 AGENDA ITEM NO. 2

15 Discussion, consideration and possible
16 action regarding whether to assume continuing
17 jurisdiction on unemployment compensation cases, wage
18 claim cases, and/or tax liability cases and
19 reconsideration of unemployment compensation cases,
20 wage claim cases and/or tax liability cases, if any.

21 No discussion.

22 AGENDA ITEM NO. 3

23 Discussion, consideration and possible
24 action regarding tax liability cases listed on the
25 Texas Workforce Commission Docket 34.

1 The Commission considered and took
2 action on all tax liability cases listed on Docket 34.

3 AGENDA ITEM NO. 4

4 Discussion, consideration and possible
5 action regarding higher level appeals in wage claim
6 cases listed on the Texas Workforce Commission
7 Docket 34.

8 The Commission considered and took
9 action on all wage claim cases listed on Docket 34.

10 AGENDA ITEM NO. 5

11 Discussion, consideration and possible
12 action regarding higher level appeals in unemployment
13 compensation cases listed on the Texas Workforce
14 Commission Docket 34.

15 The Commission considered and took
16 action on all unemployment compensation cases listed
17 on Docket 34.

18 COMM. ALCANTAR: That brings us to the
19 end of Agenda Item 5. I'll now turn the meeting back
20 over to Chairman Pauken.

21 CHAIRMAN PAUKEN: Okay. We'll take a
22 short break. And, Mr. Jones, will you check and see
23 if there's any public comment?

24 (The Commission paused, then continued
25 with the remainder of the agenda)

1 (9:16 a.m.)

2 CHAIRMAN PAUKEN: We have some
3 announcements. We're going to go down in front and
4 ask that Jennifer Colehower and Rene Miller please
5 step forward with the Commissioners.

6 You-all look so nice today. Let me --
7 why don't you go ahead and you go first, Commissioner
8 Alcantar.

9 COMM. ALCANTAR: Well, Jennifer, on
10 behalf of the Texas Workforce Commission and on behalf
11 of me and my office, I really want to thank you for
12 your service to this great state. And ten years is an
13 awfully long time in the minds of some, especially in
14 my mind.

15 And I really think -- I've come to
16 really appreciate what you bring to the office and by
17 default to the agency. It's high-level
18 professionalism, strong sense of accomplishment, and I
19 really appreciate what you provide to this agency.
20 Congratulations.

21 MS. COLEHOWER: Thank you.

22 (Applause)

23 CHAIRMAN PAUKEN: Okay. Rene Miller
24 came to this organization when she was just a child.

25 (Laughter)

1 CHAIRMAN PAUKEN: I don't know if we
2 were violating the labor laws, but it's my pleasure to
3 present this service recognition award. The Texas
4 Workforce Commission wishes to recognize 30 years of
5 time, thought and energy contributed by Rene Miller
6 with our sincere appreciation for your dedicated
7 service to the people of Texas.

8 And let me just add, it's just been a
9 real pleasure having an opportunity to work with Rene
10 and get to know her. She just does a wonderful job
11 and particularly at these Texas business conferences,
12 and I know that everybody around the state has grown
13 to appreciate her dedication to the people of Texas
14 and the great job she does.

15 MS. MILLER: Thank you.

16 (Applause)

17 AGENDA ITEM NO. 6

18 CHAIRMAN PAUKEN: Okay. Mr. Jones, any
19 public comment?

20 MR. JONES: No public comment.

21 CHAIRMAN PAUKEN: Well, we're having a
22 lot better success in that regard than the Congressmen
23 holding town hall meetings. We must be doing
24 something right anyway.

25 MR. TEMPLE: Knock on wood.

1 AGENDA ITEM NO. 7

2 CHAIRMAN PAUKEN: Okay. Discussion,
3 consideration and possible action regarding the Texas
4 Workforce Commission fiscal year 2010 internal audit
5 plan. Joann Benton?

6 MS. BENTON: Good morning, Chairman
7 Pauken, Commissioner Congleton, Commissioner Alcantar.

8 For the record, Joann Benton, director
9 of internal audit, and I'm here today to present the
10 FY 2010 internal audit plan for consideration and
11 possible approval.

12 Under Tab 7 in your briefing books,
13 you'll find two pages of the plan that identify the
14 specific projects selected for audit coverage in 2010.

15 And I'll be pleased to answer any
16 questions you may have at this time.

17 CHAIRMAN PAUKEN: Okay. Commissioner
18 Congleton?

19 COMM. CONGLETON: I have no questions.
20 I appreciate your briefing. It was very clear, and I
21 thank you for that. And I have no questions.

22 CHAIRMAN PAUKEN: Commissioner Alcantar?

23 COMM. ALCANTAR: Yes. I, too, want to
24 commend you on the briefing, and I think the plan
25 you've laid out is extremely comprehensive and very

1 thoughtful, so no additional comments.

2 CHAIRMAN PAUKEN: And let me make it
3 unanimous. Thanks for the fine job you're doing,
4 Joann.

5 MS. BENTON: Thank you.

6 CHAIRMAN PAUKEN: So is there a motion
7 to approve the plan?

8 COMM. CONGLETON: I move we approve the
9 2010 internal audit plan as presented by staff.

10 COMM. ALCANTAR: I would second.

11 CHAIRMAN PAUKEN: It's unanimous.

12 AGENDA ITEM NO. 8

13 CHAIRMAN PAUKEN: All right. No. 8;
14 discussion, consideration and possible action
15 regarding the Texas Workforce Commission fiscal year
16 2010 annual subrecipient monitoring plan. Chris
17 Nelson?

18 MR. NELSON: Good morning,
19 Commissioners. I'm Chris Nelson, and I'm here today
20 to present the subrecipient monitoring annual plan for
21 fiscal year 2010 for approval.

22 You have before you in your briefing
23 book Section 1 of the plan, which details our
24 missions, goals and strategies for fiscal year 2010.
25 All of the goals and objectives for the year are

1 further detailed in the body of the plan, which have
2 been provided to your offices in briefings.

3 I would be glad to answer any questions
4 you may have at this time.

5 CHAIRMAN PAUKEN: Commissioner Alcantar?

6 COMM. ALCANTAR: I have no questions.

7 CHAIRMAN PAUKEN: Commissioner
8 Congleton?

9 COMM. CONGLETON: My staff has reviewed
10 it, and I have no questions. And I move that we adopt
11 the subrecipient monitoring program for fiscal year
12 2010 as presented by staff.

13 COMM. ALCANTAR: And I would second.

14 CHAIRMAN PAUKEN: It's unanimous. Thank
15 you, Mr. Nelson.

16 AGENDA ITEM NO. 9

17 CHAIRMAN PAUKEN: Okay. The next item,
18 discussion, consideration and possible action
19 regarding implementation of the American Recovery and
20 Reinvestment Act of 2009 as it relates to funding for
21 unemployment compensation, child care, Workforce
22 Investment Act and related Texas Workforce Commission
23 and local workforce development board-administered
24 services. Reagan Miller?

25 (No response)

1 CHAIRMAN PAUKEN: Nothing on that today?

2 AGENDA ITEM NO. 10

3 CHAIRMAN PAUKEN: Is there anything on
4 No. 10, discussion, consideration and possible action
5 regarding adoption of rules relating to general
6 administration, deobligation and reallocation of
7 board-allocated Funds, previously published for public
8 comment in the Texas Register on July 3, 2009? Reagan
9 Miller?

10 MS. MILLER: Good morning, Chairman,
11 Commissioners. On June 16th, you approved proposed
12 rules regarding the deobligation and reallocation of
13 board-allocated funds. The rules were published in
14 the Texas Register on July 3rd for a 30-day public
15 comment period.

16 No public comments were received, so
17 today we're bringing back final rules with no changes
18 from what was proposed for consideration for adoption.

19 CHAIRMAN PAUKEN: Commissioner
20 Congleton?

21 COMM. CONGLETON: Does the rule, as
22 written, require a WIA waiver from DOF?

23 MS. MILLER: Yes, they do.

24 COMM. CONGLETON: What's the status of
25 that waiver?

1 MS. MILLER: The status of that
2 waiver -- we currently have an extension of that
3 waiver that's in place. The new waiver is with DOL
4 right now, and we are awaiting their feedback. We
5 have heard from the Department of Labor that they are
6 considering modifications to what we have that would
7 limit our ability to deobligate WIA funds.

8 They're considering reversing their
9 position, which allows us to look at funds expended
10 and actually looking at funds obligated. We're
11 providing information back to the Department of Labor,
12 letting them know how we've implemented the rule, the
13 collaborative process we have with boards prior to the
14 deobligation of any funds and knowing the very, very
15 few times that WIA funds have actually been
16 deobligated from any boards.

17 I'll point out that in this program
18 year, there was zero WIA deobligations. So we will
19 keep you posted as we hear back from the Department of
20 Labor on our waiver request.

21 COMM. CONGLETON: That's great. Thank
22 you very much.

23 CHAIRMAN PAUKEN: Mr. Alcantar?

24 COMM. ALCANTAR: I have no questions.

25 CHAIRMAN PAUKEN: Is there a motion?

1 COMM. CONGLETON: Move that we adopt the
2 amendments to our Chapter 800 rules as discussed.

3 COMM. ALCANTAR: I would second.

4 CHAIRMAN PAUKEN: It's unanimous.

5 MS. MILLER: Thank you.

6 AGENDA ITEM NO. 11

7 CHAIRMAN PAUKEN: All right.

8 Discussion, consideration and possible action
9 regarding deobligation and reallocation of
10 board-allocated funds. Mr. Garcia?

11 MR. GARCIA: Good morning, Chairman
12 Pauken, Commissioners. Juan Garcia with workforce
13 development.

14 Commission Rule 800.74 allows the
15 Commission to deobligate Workforce Investment Act
16 funds at the end of the 12th month of the relevant
17 program year, if a board fails to meet an 80 percent
18 expenditure rate in each of the three funding streams;
19 adult, youth and dislocated worker. Per Section
20 800.74, the Commission may deobligate the difference
21 between a board's actual expenditure rate and an
22 80 percent.

23 For program year 2008, two boards did
24 not meet the 80 percent expenditure at the end of the
25 program year, North Texas and Brazos Valley in the

1 youth programs.

2 Staff recommends that the Commission
3 consider deobligation as follows: The North Texas
4 board, \$96,000 -- \$96,010; the Brazos Valley, \$51,617,
5 for a total amount of \$147,626 available for you to
6 consider to reallocate.

7 From a reallocation standpoint,
8 Commission Rule 800.75 allows the Commission to
9 reallocate funds to boards that have demonstrated the
10 need for and the ability to expend such funds.

11 Based on that rule, staff recommends
12 that the Commission consider reallocating additional
13 youth funds to the following boards: East Texas,
14 46,133; Texoma, 55,364 and Central Texas, 46,133.

15 At this time, I'll answer any questions
16 you might have.

17 CHAIRMAN PAUKEN: Commissioner Alcantar?

18 COMM. ALCANTAR: I have no questions.

19 CHAIRMAN PAUKEN: Commission Congleton?

20 COMM. CONGLETON: I have no questions.

21 And I move that we deobligate \$96,010 from North Texas
22 and \$51,617 from Brazos Valley for a program year '08,
23 WIA youth funds, and reallocate those funds in the
24 amount of \$46,133 to East Texas; \$55,360 to Texoma;
25 \$46,133 to Central Texas.

1 Texas Workforce Investment Council and boards provide
2 information that aligned with their strategic plan.

3 Staff have found all the board
4 modifications to be satisfactory, and we are
5 recommending approval on all 28 plans with submission
6 to TWIC for their September 3rd meeting.

7 CHAIRMAN PAUKEN: Commissioner
8 Congleton?

9 COMM. CONGLETON: I have no questions.

10 CHAIRMAN PAUKEN: Commissioner Alcantar?

11 COMM. ALCANTAR: I just want to thank
12 staff for their effort on this. I think it's really a
13 step in the right direction. It really does help us
14 in terms of our goal of identifying the issues facing
15 different industries across the state, helping us
16 catalog what strategies are in place and allow us to
17 better leverage and support some of those initiative
18 that are responsive to the needs of industry and
19 positioning individuals to secure those opportunities
20 as we move forward. It's also an important part of
21 this strategy, so I want to thank you for that.

22 MS. MILLER: Thank you.

23 CHAIRMAN PAUKEN: Okay. Is there a
24 motion?

25 COMM. CONGLETON: Move that we approve

1 the 28 board plan modifications and submit them to
2 TWIC for their consideration.

3 COMM. ALCANTAR: I would second that.

4 CHAIRMAN PAUKEN: It's unanimous. Thank
5 you, Ms. Miller.

6 AGENDA ITEM NO. 13

7 CHAIRMAN PAUKEN: Discussion,
8 consideration and possible action regarding House Bill
9 1043, 81st Texas Legislature, Regular Session (2009),
10 Texas Government Code, Section 672.004, relating to
11 complaints concerning the Texas Workforce Commission's
12 application of former foster children employment
13 preference. Brenda Nichols and Diane Parker?

14 MS. NICHOLS: Good morning, Chairman,
15 Commissioners. For the record, Brenda Nichols,
16 director of human resources.

17 We are here today to present the staff
18 recommendation for implementing House Bill 1043.
19 House Bill 1043 added an employment preference for
20 eligible former foster youth who are 25 years of age
21 and under, and it allows individuals entitled to that
22 preference to appeal an employment decision by filing
23 a written complaint.

24 This bill generally requires TWC to
25 develop an internal process for addressing any

1 complaints that might be received concerning how the
2 agency applies the former foster youth employment
3 preference.

4 The bill states that the written
5 complaint must be made to you, the governing body of
6 the agency. The responsibilities of the governing
7 body include determining whether the former foster
8 youth preference was not applied, and if so
9 determined, the governing body has the discretion
10 whether to render a different hiring decision.

11 The staff recommendation for
12 implementing House Bill 1043 that we are seeking your
13 approval on today is identical to the other employment
14 preference complaint process currently in place and is
15 routine in nature.

16 If you have any questions, we're
17 available to answer them at this time.

18 CHAIRMAN PAUKEN: I don't know if you
19 know this, or maybe Mr. McCarty knows this. Who in
20 the House authored this bill?

21 MS. NICHOLS: This was authored by Orr
22 and several -- Orr, Rodriguez, Parker, Strama and
23 Shelton. And it came out of the House committee of
24 technology, economic development and workforce.

25 CHAIRMAN PAUKEN: I wish -- I guess I

1 wish I had known about it, quite frankly. What
2 bothers me is there's a strong reason for veterans'
3 preference, which is people have served their country
4 in the military and come back, and obviously have lost
5 time. And I think we really run the risk -- obviously
6 it's not our decision here at the Commission. We
7 simply implement decisions of the legislature, but I
8 would like to be -- you know, put on notice next time
9 if I'm around, Mr. McCarty, to testify on this issue,
10 and I hope maybe the legislature would revisit it.

11 I think it's very risky to start
12 watering down the veterans' preference. You start
13 here, and nothing against, you know, foster children
14 in this age range, but then you go from here and then
15 you do something else, and there was a singular
16 reason, in my judgment, for veterans' preference here
17 in Texas and nationally.

18 And I don't know what agenda prompted
19 this or, you know, it's easy to sort of everybody be
20 in favor of something like this, but I really am
21 concerned that this is sort of potentially the
22 beginning of a whole number of situations where
23 veterans' preference is, for all practical purposes,
24 watered down. I know that's not the purpose of the
25 discussion and nothing you-all have anything to do

1 with, but I did want to go on the record and express
2 my concern. And, again, it was something, obviously,
3 that went through without a lot of discussion or
4 debate in the legislature, and I think something like
5 this needs some discussion next session of the
6 legislature.

7 Do you-all have any questions on the
8 implementation? Commissioner Congleton?

9 COMM. CONGLETON: I believe that the
10 veterans remain a priority, even above foster
11 children, which I strongly agree with, and I strongly
12 agree with this preference for foster children.

13 CHAIRMAN PAUKEN: Well, but at the same
14 level in effect?

15 COMM. CONGLETON: No, sir.

16 (Simultaneous discussion)

17 CHAIRMAN PAUKEN: Okay. Well, that's --
18 it stays -- it is a little bit different then.

19 MR. TEMPLE: Yes, sir. Vet preference
20 above everything.

21 CHAIRMAN PAUKEN: Okay. All right.
22 Well, that clarifies something. I was told it was the
23 same as veterans' preference. I still have some
24 concerns, but that's neither here nor there. Okay.
25 All right. Any -- is there a motion?

1 COMM. CONGLETON: Move that we approve
2 the foster children employment preference complaint
3 procedures as recommended by staff.

4 COMM. ALCANTAR: And I would second
5 that.

6 CHAIRMAN PAUKEN: Okay. It's unanimous.
7 Thank you.

8 AGENDA ITEM NO. 14

9 CHAIRMAN PAUKEN: Discussion,
10 consideration and possible action regarding
11 performance renegotiation of targets for local
12 workforce development board areas for board contract
13 year 2009. Mr. Leonard?

14 MR. LEONARD: Good morning. After the
15 July 28th public meeting, staff contacted the boards
16 to let them know that they had the opportunity to
17 request to renegotiate targets on their WIA measures
18 for the current year -- board contract year '09.

19 We received requests from five boards to
20 renegotiate a total of seven measures. This is
21 slightly down from last year when I believe about ten
22 boards were requesting modifications.

23 On Pages 3 and 4 of the document, you
24 can see our individual recommendations. We are
25 proposing that you-all would approve five of the

1 requests, and we're recommending that two of the
2 requests not be approved, and so there's information
3 there that would show what the original target was,
4 the board request, the actual year-end performance and
5 what the recommended action on -- from us to you is
6 today. And I would be happy to answer any questions
7 you may have.

8 CHAIRMAN PAUKEN: Commissioner Alcantar?

9 COMM. ALCANTAR: I have no questions.

10 CHAIRMAN PAUKEN: Commissioner
11 Congleton?

12 COMM. CONGLETON: I have no questions,
13 and I move that we approve the staff recommended
14 changes to adult average earnings for Golden Crescent
15 and West Central to dislocated average earnings for
16 Deep East and West Central and the youth measure for
17 Gulf Coast.

18 COMM. ALCANTAR: I would second that.

19 CHAIRMAN PAUKEN: Okay. It's unanimous.

20 Thank you, Mr. Leonard.

21 MR. LEONARD: Thank you.

22 AGENDA ITEM NO. 15

23 CHAIRMAN PAUKEN: No. 15; discussion,
24 consideration and possible action regarding approval
25 of local workforce development board nominees.

1 MR. FULLER: Good morning, Chairman
2 Pauken, Commissioner Congleton. Commissioner Alcantar,
3 Mr. Temple. For the record, I'm John Fuller with the
4 workforce development division.

5 Today before you, you have nominees from
6 Cameron County, Brazos Valley, Gulf Coast and West
7 Central for your consideration.

8 CHAIRMAN PAUKEN: Everything seems fine
9 with me. Is there any discussion on any individual
10 nominees?

11 (No response)

12 CHAIRMAN PAUKEN: If not, is there a
13 motion to approve the nominees?

14 COMM. CONGLETON: I move that we approve
15 the nominees from Cameron County, Brazos Valley, Gulf
16 Coast and West Central as presented by staff.

17 COMM. ALCANTAR: And I would second
18 that.

19 CHAIRMAN PAUKEN: It's unanimous. Thank
20 you, Mr. Fuller.

21 AGENDA ITEM NO. 16

22 CHAIRMAN PAUKEN: Mr. Lewis, anything,
23 or, Mr. McCarty, nothing on legislation?

24 (No response)

25

1 AGENDA ITEM NO. 17

2 CHAIRMAN PAUKEN: Anything on
3 administrative matters, Mr. Temple?

4 MR. TEMPLE: One thing. I know we have
5 a formal event this Friday, but I would like to
6 recognize a very valuable member of our staff that's
7 decided she's going to take some time off -- well
8 earned, too -- and that's Jan Thomas. And I know I
9 would like to personally thank her for keeping me out
10 of trouble all these years, and I know everybody in
11 this room can say the same thing. So can we embarrass
12 you? Will you stand up? Thank you.

13 (Applause)

14 MS. THOMAS: Thank you.

15 MR. TEMPLE: And I would like to remind
16 the Commissioners and anyone else, Albert Hawkins is
17 retiring at the end of this month, and his event is
18 this afternoon as well. So if anyone would like to
19 give him their best wishes, I know he would appreciate
20 it. That's all.

21 CHAIRMAN PAUKEN: Good. Thank you,
22 Mr. Temple. All right. I think we're going to go
23 into -- oh, excuse me.

24 Is there another item?

25 COMM. ALCANTAR: Yes. I'm sorry, Larry.

1 DOL released a correspondence on August 21st regarding
2 best practices of unemployment compensation -- for
3 payment of unemployment compensation with debit cards.
4 Could you have staff review that and determine which
5 of those practices we should consider dabbling with --

6 MR. TEMPLE: Sure.

7 COMM. CONGLETON: They also had a
8 release on upgrading your computer systems in unison
9 with maybe some other states. Let's take a look at
10 that and see what we can do for our unemployment
11 system.

12 MR. TEMPLE: Will do. And we -- they
13 did release on SBRs, supplemental budget requests, and
14 we've gone down that list. Now, a lot of the
15 things that --

16 COMM. CONGLETON: Yeah. We've already
17 done a lot of that stuff, I know.

18 MR. TEMPLE: We may be able to pay for
19 some of it, though, some of the work forward. So
20 we're going to apply for it anyway, but we'll look at
21 that other as well.

22 COMM. CONGLETON: I would like to see
23 us, if we could get some money, upgrade our UI group.

24 CHAIRMAN PAUKEN: That would be
25 helpful --

1 COMM. ALCANTAR: Thank you, Chairman.

2 CHAIRMAN PAUKEN: -- very helpful.

3 AGENDA ITEM NO. 18.

4 CHAIRMAN PAUKEN: Okay we're going to go
5 into Executive Session, pursuant to Government Code
6 551.071(1) concerning contemplated litigation or
7 pending litigation in the following cases: Marilou
8 Morrison vs. TWC, et al., formerly the Texas
9 Commission on Human Rights.

10 (Recess: 9:38 a.m. to 9:59 a.m.)

11 AGENDA ITEM 20

12 CHAIRMAN PAUKEN: Okay. Is there a
13 motion --

14 COMM. CONGLETON: So made.

15 CHAIRMAN PAUKEN: -- to adjourn?

16 COMM. ALCANTAR: I second.

17 CHAIRMAN PAUKEN: It's unanimous.

18 (Proceedings concluded at 9:59 a.m.)

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1 C E R T I F I C A T E

2 STATE OF TEXAS)

3 COUNTY OF TRAVIS)

4 I, Evelyn Coder, a Certified Shorthand
5 Reporter in and for the State of Texas, do hereby
6 certify that the above-mentioned matter occurred as
7 hereinbefore set out.

8 I FURTHER CERTIFY THAT the proceedings
9 of such were reported by me or under my supervision,
10 later reduced to typewritten form under my
11 supervision and control and that the foregoing pages
12 are a full, true and correct transcription of the
13 original notes.

14 IN WITNESS WHEREOF, I have hereunto set
15 my hand and seal this 31st day of August 2009.

16

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19

20

21 EVELYN CODER
22 Certified Shorthand Reporter
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