

1 before her, sometimes she agrees with my position, and
2 sometimes she has no qualms about disagreeing with my
3 position. So I have absolutely no concerns about my
4 ability to serve on this hearing committee.

5 MR. STEIN: The other thing I would ask the
6 committee, the last time we were together, I moved for
7 involuntary dismissal of just about all of the
8 specification of charges. The committee took it under
9 advisement. Since that time, all of these other orders
10 -- excuse me -- motions have been filed by these
11 witnesses that I have subpoenaed, and you have ruled on
12 them. And I would ask if the committee was going to
13 announce any determination on the motions for
14 involuntarily dismissal. I think that it was
15 well-taken, but I certainly need to know. As I move
16 forward, it would certainly shorten the case if some of
17 these charges were gone.

18 CHAIRPERSON TINNIN: It remains under
19 advisement.

20 MR. STEIN: And is there a time when the
21 committee feels that it will meet for that purpose
22 before the matter is ended?

23 CHAIRPERSON TINNIN: There is not a time w
24 have set at all. I believe that the matter is one that
25 requires a full review of the record as it stood at the

1 time, and that's the way it's going to be.

2 MR. STEIN: Okay. Did all of the members
3 of the committee get their copies of the transcript up
4 until --

5 CHAIRPERSON TINNIN: Not yet.

6 MR. STEIN: Excuse me?

7 CHAIRPERSON TINNIN: All members of the
8 committee do not have copies of the transcript at this
9 point in time. I have a copy that is shared.

10 MR. STEIN: I'm sorry?

11 CHAIRPERSON TINNIN: "A copy that is
12 shared."

13 MR. STEIN: Would it help the committee if
14 we made copies of those transcripts so everybody would
15 have their own?

16 CHAIRPERSON TINNIN: Not at this point in
17 time. We will get whatever copies we need once we get
18 to that point where we're ready to deliberate.

19 MR. STEIN: Okay. I have Mr. Thayer
20 outside. I'm sorry, I didn't mean to --

21 CHAIRPERSON TINNIN: Fine. Let's go.

22 MR. STEIN: I have nothing --

23 CHAIRPERSON TINNIN: Let's proceed. Call
24 your first witness.

25 NORMAN S. THAYER,

1 having been duly sworn, testified as follows:

2 CHAIRPERSON TINNIN: Could you state your
3 full name for the record?

4 THE WITNESS: Norman S. Thayer,
5 T-H-A-Y-E-R.

6 CHAIRPERSON TINNIN: Mr. Stein.

7 MR. STEIN: Thank you, Mr. Chairman.

8 DIRECT EXAMINATION

9 BY MR. STEIN:

10 Q. Mr. Thayer, you are a person who was a reviewer
11 for the Disciplinary Board under the rules?

12 A. That's correct, the hearing officer --
13 reviewing officer.

14 Q. Okay. So you're a reviewing officer, and you
15 also serve on hearing committees, correct?

16 A. Yes.

17 Q. And how long have you been serving?

18 A. Since the middle '80s. I was appointed to the
19 Disciplinary Board in '85. I had been on a hearing
20 committee for about two years prior to that and have
21 been a member of a hearing committee since I left the
22 Board at the end of 1990.

23 Q. And how were you first appointed to be on a
24 hearing committee?

25 A. I was -- I was just interested in the function

1 of the Disciplinary Board, and I volunteered. I called
2 the chief disciplinary counsel and volunteered. I
3 believe it was Virginia Ferrar then, and she said they
4 had an opening on a hearing committee and put me on it.

5 Q. Okay. Now, you were on a hearing committee
6 that concerned my advertising at one time?

7 A. Yes. Yes.

8 Q. And that was after -- that was before this
9 particular hearing committee. And the matter before --
10 this advertising matter that you had in your hearing
11 committee was concerning declaratory relief as to
12 certain of my advertisements; is that correct?

13 A. Yes. There were two or three related matters
14 that originated with the advertising committee. I think
15 there was some sort of a petition filed in the Supreme
16 Court of New Mexico, and a separate lawsuit was filed in
17 the United States District Court. And all of those
18 were, in one way or another, involved in that matter
19 that was pending before my hearing committee.

20 Q. And we spoke once about that when the Supreme
21 Court got rid of the advertising rules?

22 A. At least once. I would say we probably talked
23 twice.

24 Q. Okay. I just remember one time.

25 A. All right.

1 Q. And there was some kind of attempt. And I
 2 think you spoke with Virginia Ferrar, also, about
 3 putting -- seeing if we could put something together.
 4 A. I'm sure I spoke with Virginia. I don't
 5 remember what we talked about.
 6 Q. But it was concerning that advertising?
 7 A. It would have been concerning that matter.
 8 Q. Okay. Do you remember, on that particular
 9 committee where you were concerned with my advertising,
 10 how did you become appointed to that and how was that
 11 committee made up?
 12 A. Ray Twohig was on that committee, and Jeff --
 13 his last name I've forgotten -- was on that committee.
 14 The matter was assigned to the committee by the chair of
 15 the Disciplinary Board.
 16 Q. And so the first time you heard about it was
 17 when you got your assignment --
 18 A. That's correct.
 19 Q. -- as the Chair, and there were two other
 20 members?
 21 A. That's my recollection.
 22 Q. Okay. Now, something came up -- well, let me
 23 rephrase that.
 24 Ultimately, the committee made a
 25 determination that it had no jurisdiction to issue

1 declaratory relief; is that correct?
 2 A. That's correct.
 3 Q. And do you recall the manner in which you
 4 distributed that opinion?
 5 A. My mistake. I mailed the opinion to chief
 6 disciplinary counsel rather than the chairman of the
 7 Disciplinary Board.
 8 Q. And you didn't mail a copy of that to either me
 9 or to Mr. Walz who was representing the committee?
 10 A. That's correct. The rule is quite clear that
 11 service of that decision is made by the Board itself,
 12 not by the hearing committee.
 13 Q. Okay. Let's talk about your position as a
 14 reviewer for disciplinary counsel. Could you explain to
 15 me -- or explain -- tell the committee, before this case
 16 here where you were contacted by Mr. Widman to be the
 17 reviewer, have you been a reviewer on other cases?
 18 A. Yes, many times.
 19 Q. And you sent us a -- on December 6th, 2006, in
 20 response to the subpoena --
 21 MR. STEIN: Where are we on my exhibits,
 22 Madam Reporter?
 23 (The court reporter responds.)
 24 Q. (BY MR. STEIN) Mr. Thayer, I'm going to hand
 25 you what has been marked as Number 19.

1 MR. STEIN: I'll distribute, to each member
 2 of the panel, a copy of this letter.
 3 Joel (indicating).
 4 Q. (BY MR. STEIN) Would you tell me, after you
 5 review it, Mr. Thayer, when you are complete?
 6 A. This is a copy of my letter of December 6th.
 7 It bears my signature. It's addressed to Mr. Widman at
 8 the Disciplinary Board and to yourself. And it's in the
 9 nature of a response to the subpoena so that both sides
 10 would know what was in my file.
 11 (Respondent's Exhibit Number 19 marked)
 12 Q. And I appreciate your courtesies on this.
 13 And so this would be a compilation of
 14 everything that is, in fact, in your file in this matter
 15 that we're here upon today?
 16 A. Yes, concerning anything under the name of
 17 Clinesmith.
 18 Q. Okay. Now, the first item that you mentioned
 19 in your letter, which has been --
 20 MR. STEIN: Mr. Chairman, I move that this
 21 be introduced, Number 19.
 22 CHAIRPERSON TINNIN: Any objection?
 23 MR. WIDMAN: I'm not -- I'm not sure what
 24 the relevance is at this point.
 25 CHAIRPERSON TINNIN: I think we're going to

1 have to explore that a bit further.
 2 Do you have any objection to foundation?
 3 MR. WIDMAN: No, no objection.
 4 CHAIRPERSON TINNIN: There being no
 5 objection to foundation, that'll be received.
 6 (Respondent's Exhibit Number 19 was offered
 7 and admitted into evidence.)
 8 Q. (BY MR. STEIN) Now, item number one is a letter
 9 of October 21st 2005 from Mr. Widman to yourself. Do
 10 you have a copy of that there. So you have a the
 11 original?
 12 A. I have the original.
 13 MR. STEIN: And we would like to mark a
 14 copy of this as Number 20 Madam Reporter.
 15 (Respondent's Exhibit Number 20 marked)
 16 Q. If you could compare the original to the one
 17 I've handed you, Mr. Thayer, and tell us if it's the
 18 same.
 19 MR. STEIN: This Number 20, for the Chair
 20 and members of the hearing committee.
 21 A. This is a copy of Mr. Widman's letter of
 22 October 21st, 2005 to me in the matter of Stuart L.
 23 Stein; no docket number from the state.
 24 Q. (BY MR. STEIN) Now, this starts out with you --
 25 it says: "Thank for you agreeing to act as hearing