

EXHIBIT 2
Edward Avadenka Deposition Transcript
January 25, 2006

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHELLE HORTON,

Plaintiff,

Case No.:

-vs-

2005-72356

48th DISTRICT COURT for Birmingham,
Bloomfield Hills, Sylvan Lake, Keego
Harbor, Orchard Lake Village, and the
Townships of Bloomfield and West
Bloomfield; and JAMES P. HARKINS, JR.,
individually and in his official
capacity,

Honorable

John Feikens

Magistrate

Steven D. Pepe

Defendants.

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DEPONENT: HONORABLE EDWARD AVADENKA
DATE: Wednesday, January 25, 2006
TIME: 4:00 p.m.
LOCATION: 33 Bloomfield Hills Parkway, Suite 275
Bloomfield Hills, Michigan
REPORTER: John J. Slatin, CSR-5180
Certified Shorthand Reporter
(248) 205-7010
(Appearances listed on page 2)

<p style="text-align: right;">2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 DEBORAH L. GORDON (P27058)</p> <p>4 Deborah L. Gordon, P.L.C.</p> <p>5 33 Bloomfield Hills Parkway, Suite 275</p> <p>6 Bloomfield Hills, Michigan 48304</p> <p>7 (248) 258-2500</p> <p>8 Appearing on behalf of the Plaintiff.</p> <p>9</p> <p>10 THOMAS R. PAXTON (P36214)</p> <p>11 Garan Lucow Miller P.C.</p> <p>12 1000 Woodbridge</p> <p>13 Detroit, Michigan 48207</p> <p>14 (313) 446-1530</p> <p>15 Appearing on behalf of the Defendants.</p> <p>16</p> <p>17 ALSO PRESENT: Michelle Horton</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">4</p> <p>1 Wednesday, January 25, 2006</p> <p>2 Bloomfield Hills, Michigan</p> <p>3 4:00 p.m.</p> <p>4 * * *</p> <p>5 HONORABLE EDWARD AVADENKA,</p> <p>6 having been first duly sworn, was examined and testified as</p> <p>7 follows:</p> <p>8 EXAMINATION</p> <p>9 BY MS. GORDON:</p> <p>10 Q. Judge, thanks for coming over this afternoon. I don't</p> <p>11 remember if we subpoenaed you or we just gave you a call,</p> <p>12 but we appreciate your being here today.</p> <p>13 I don't know if you've been deposed before. I know</p> <p>14 you've probably read a lot of depositions, but if you don't</p> <p>15 understand my question, want me to rephrase or repeat, just</p> <p>16 let me know; okay?</p> <p>17 You're aware, I guess, that Michelle Horton has a case</p> <p>18 pending against the 48th District Court?</p> <p>19 A. I became aware of it, yeah.</p> <p>20 Q. And roughly how long have you known Michelle, would you</p> <p>21 say?</p> <p>22 A. I think maybe six to eight years. I'm guessing.</p> <p>23 Q. She worked with you?</p> <p>24 A. She was my clerk. She was my criminal clerk.</p> <p>25 Q. And for roughly how long did she hold that job? About that</p>
<p style="text-align: right;">3</p> <p>1 TABLE OF CONTENTS</p> <p>2</p> <p>3 WITNESS PAGE</p> <p>4</p> <p>5 HONORABLE EDWARD AVADENKA</p> <p>6</p> <p>7 Examination by Ms. Gordon 4</p> <p>8</p> <p>9 EXHIBITS: IDENTIFIED</p> <p>10</p> <p>11 (None offered)</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">5</p> <p>1 same period of time?</p> <p>2 A. I think so, yeah.</p> <p>3 Q. About six to eight years?</p> <p>4 A. I think the latter part of when I was at the court.</p> <p>5 Q. As far as you knew, she did a professional job?</p> <p>6 A. She was a good employee. She was an excellent clerk.</p> <p>7 Q. Any complaints that stand out in your mind that you</p> <p>8 received?</p> <p>9 A. You mean with her?</p> <p>10 Q. Yeah.</p> <p>11 A. No.</p> <p>12 Q. Okay. Were you involved in any way in the decision to</p> <p>13 terminate her employment?</p> <p>14 A. No.</p> <p>15 Q. Anybody ask you your opinion or give any input?</p> <p>16 A. No. Very frankly, from the beginning of this, I turned</p> <p>17 everything over to Jim in the beginning of how it started,</p> <p>18 and I, very frankly, stayed out of it.</p> <p>19 MR. PAXTON: "Jim" is Jim Harkins?</p> <p>20 A. Jim Harkins, yes.</p> <p>21 BY MS. GORDON:</p> <p>22 Q. Did you know Michelle was being investigated at some point?</p> <p>23 A. I found out about that afterwards, too.</p> <p>24 Q. And when you say, "afterwards," what do you mean?</p> <p>25 A. Well, after I had turned -- I'm sure you know the history</p>

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1 of how this all started. Harold Fried probably informed
 2 you of it.
 3 There was a document. Marc Barron was running for
 4 judge at the time, and somebody posted out or sent out a --
 5 actually, it was a docket sheet. It wasn't even a charge
 6 sheet. It was a docket sheet, and if you didn't know how
 7 to read it, it indicated that it was a second offense.
 8 Q. This is Marc Barron's wife?
 9 A. Yeah.
 10 Hence, all of this started up. Harold brought it in
 11 to me. I said, "Harold, I'm not going to touch this. I'm
 12 not going to do anything administratively. I'm going to go
 13 to Jim Harkins. You can walk up with me or you can stay
 14 here."
 15 I took it up to Jim, and I said, "It's your baby."
 16 Q. So, Harold Fried came in to see you --
 17 A. Harold came in to me because it was alleged that -- what's
 18 her name? That Kim Bykalo had something to do with this, a
 19 very untrustworthy person. She no longer works at the
 20 court. And I shyed off of it right away.
 21 Q. Well, how did you very first hear about this document?
 22 Which I can pull it out.
 23 A. You don't have to pull it out.
 24 Q. You remember?
 25 A. I know what it is.

7

1 Q. It's the Register of Actions.
 2 A. I heard of this the day Harold Fried walked into my office.
 3 Q. What did he say?
 4 A. He told me, "This has been disseminated or sent out by
 5 somebody, and I don't know that it's going to hurt, but I
 6 want to let you know."
 7 Q. He was concerned that somebody from the court had been
 8 involved?
 9 A. He was concerned that somebody from the court was
 10 involved. He was also concerned that it would have a
 11 negative effect on Marc Barron's campaign if it got out,
 12 blah, blah, blah. And I cut him off.
 13 Q. Do you know why he came in to see you?
 14 A. I wasn't chief judge at the time.
 15 Q. You were the chief?
 16 A. No. I wasn't.
 17 Q. Yeah. That's what I thought.
 18 So, do you know why he came in to see you?
 19 A. I suppose that his relationship was better with me than it
 20 was with the chief judge at the time. That's the only
 21 thing I can think of.
 22 Q. So, he started explaining this to you, and you said, "Look,
 23 let's take it in to Jim Harkins. He's in charge of the
 24 court staff?"
 25 A. Well, he was the court administrator, and, very frankly, I

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1 felt this belonged in his hands.
 2 Q. Did Harold Fried tell you how he had gotten wind of this or
 3 how this had come to his attention?
 4 A. He said somebody had given it to him. I said, "Who?"
 5 And he said, "I prefer not to tell you."
 6 Q. And then you walked down to -- either at that point or a
 7 later point, to Jim --
 8 A. No. That was -- it was all the same morning.
 9 And I think the name Kim Bykalo came up in a
 10 discussion between Michelle and I, very frankly. I don't
 11 remember exactly when or how, but I think she and I
 12 discussed that.
 13 Q. So, if I can get the chronology, the first thing that
 14 happens is Harold Fried came in to see you, and then that
 15 same morning, you go to Jim Harkins' office with Harold?
 16 A. (No verbal response.)
 17 THE REPORTER: I'm sorry. Is that "yes"?
 18 BY MS. GORDON:
 19 Q. That's a "yes"?
 20 A. Yes.
 21 I'm sorry. I should know better.
 22 Q. When did you talk to Michelle? After you had gone to see
 23 Jim Harkins or before?
 24 A. No, no. It was after. Michelle came in to me, and I
 25 think -- I really think, and I feel badly about it, but I

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1 think I put her off, very frankly, because it was in his
 2 hands.
 3 I did tell her that -- I had a practice when I wanted
 4 someone, one of the prosecutors, to look at a ticket, I
 5 would give it to Michelle, and she would hand it to Tom
 6 Ryan or Tim Cronin when they came in. If they could do
 7 anything with it, fine. If they couldn't, they told me and
 8 that was it.
 9 And I said, "Don't let that be something that gets you
 10 in trouble," because I was the one that told her to do
 11 this.
 12 It turns out that wasn't any part of it from what I
 13 learned.
 14 Q. What have you learned was a part of it? It was this whole
 15 thing with the docket sheet?
 16 A. Well, that led to, I guess -- I don't even know when the
 17 police were brought into it, because Jim and I had another
 18 discussion and I said -- I'm trying to remember exactly
 19 when we had that, but sometime after that we had a
 20 discussion, and I said, "If it's true --" and I don't know
 21 where they pointed to Michelle at all, very frankly, at
 22 this point with this document, because I didn't know who
 23 had produced this document and given it to Harold and said,
 24 "Michelle gave me this" or "Somebody gave me this." I
 25 mean it wasn't clear at this time. And I told Jim about

10	<p>1 this process I used to find out whether the prosecutors 2 could do anything on a ticket or not. 3 And I think ultimately when Michelle was fired, I went 4 in and talked to Jim, and I said, "This is not a firing 5 offense." 6 And he said, "Well, the police have investigated." I 7 think it was Bowers(sic) that -- 8 Q. Bowden? 9 A. Bowden, yeah, Kirt Bowden. I forget who the other one was. 10 Q. Barker. 11 A. There was something illegal done with the LEIN network. 12 Q. And what did you say to that? 13 A. I said, "Well, I was not aware of that," and I walked away, 14 because they had already made their decision. 15 Q. Were you aware at any time, Judge, that they started to 16 investigate Michelle on this whole thing of this Register 17 of Actions and then -- 18 A. I'm sure I became aware -- 19 THE REPORTER: I'm sorry. One at a time. 20 A. I'm sorry. 21 BY MS. GORDON: 22 Q. And then it grew from there to them sort of trying to dig 23 up stuff on her? 24 A. You know, I can't say yes or no to that characterization. 25 At some point I became aware that she was being</p>	12	<p>1 Q. Gotcha. 2 A. But I had heard nothing else about it with any employee 3 that was working there. 4 Q. But I guess it wouldn't surprise you -- 5 A. I take it back. I take it back. 6 We did hear at one time something to do with Kim 7 Bykalo. She was being investigated quite extensively. I 8 was chief judge at the time, but it never went anywhere to 9 my knowledge. 10 Q. Okay. 11 A. But there was a reference at that time. 12 Q. I mean have you ever heard, for example, that other judges 13 other than yourself from time to time might ask a clerk to 14 run a check for them for whatever reason? 15 A. I can't speak to that. I don't know. 16 Q. Okay. Did you know, for example, that Jim Harkins has said 17 that he has asked for LEIN checks to be run on cars out in 18 the parking lot? Were you aware of anything like that? 19 A. No. If I was, I've forgotten it. I don't remember, quite 20 frankly. 21 Q. All right. 22 A. However, I imagine it's possible. 23 Q. Did anybody suggest to you that your clerk, Vadette, had 24 something to do with this Register of Actions being 25 circulated?</p>
11	<p>1 investigated. 2 What for, how far that investigation was going, again, 3 at that point I was out of the loop. 4 Q. So, nobody came to you and said to you, "Michelle has been 5 clerking under you. Are you aware of any misuse of the 6 LEIN machine or anything else she's done?" 7 A. No. 8 Q. Were you aware of any misuse of the LEIN machine? 9 A. I was not, no. 10 Q. Am I correct that there are certain computers in the office 11 that have access to the LEIN system? 12 A. I thought they all do, frankly. 13 Q. They all do? 14 A. I'm not saying they do. I'm telling you I thought they all 15 do, frankly. 16 Q. And are you aware that if somebody -- that there may be 17 more than one person using a particular computer? 18 A. That's possible, sure. 19 Q. Have you ever heard of any judges or court personnel 20 asking, for example, that somebody use the LEIN machine for 21 some purpose to run something? 22 A. Yeah. I asked once, and I was told it was illegal. 23 Q. And who told you that? 24 A. I forget who the clerk was, but I didn't realize it was 25 against the LEIN policy. This was early on.</p>	13	<p>1 A. That was who -- Harold Fried came into the office initially 2 and closed the door, and her name was mentioned. And we 3 had a little bit more conversation, and then I did exactly 4 what I said at that point. 5 Q. According to Jim Harkins' notes and I believe his 6 testimony, he has said that he had asked Harold Fried to -- 7 Harold didn't want to give the name right off the bat, but 8 had said he would get back to him the following Monday with 9 the name of the person that had given him the info. 10 Do you recall that? 11 A. That is exactly -- probably that happened when the three of 12 us were together. Because I had asked Harold, and he said 13 something about Vadette. We went up to Jim's office, and I 14 said, "Well, tell Jim." 15 And he said, "I'll get back to you. I don't want to 16 do it right now." 17 So, it was left at that. Where it went from there, I 18 don't know. 19 Q. Did you ever discuss this with Harold Fried again? 20 A. No. 21 Q. It never came up again? 22 A. We never chose to talk about it. I've had discussions with 23 him since then. 24 One thing that Harold said right from the get-go -- he 25 repeated it in Jim's office. He said it to me first. He</p>

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1 said, "Whoever it is, I don't want them fired. I don't
 2 want to make a big deal out of this." Where it went, I
 3 don't know.
 4 Q. Do you know how it is Michelle ended up being investigated
 5 by the police over this?
 6 A. I haven't got the vaguest. I haven't got the vaguest.
 7 Q. Did you ever discuss it with Marc Barron?
 8 A. No. Never.
 9 Q. Do you know Marc Barron?
 10 A. I know him as my successor. I don't know him intimately.
 11 He's not a friend.
 12 Q. Did you attend any fund-raisers for him or anybody else at
 13 that time?
 14 A. No.
 15 Q. Do you typically attend or not attend fund-raisers for
 16 people?
 17 A. Well, typically I don't attend if it has to do with our
 18 court. We had a big discussion about that with Chief Judge
 19 Small. We both decided to stay out of the Smith,
 20 D'Agostini campaign, and when I was out of town, she chose
 21 to come out and back D'Agostini. From then on, I was
 22 pretty much out of the loop, very frankly, because I had a
 23 very, very harsh discussion with her.
 24 Q. About the fact that she had done that?
 25 A. She went back on an agreement as far as I'm concerned.

15

1 Q. Okay. Anybody else that asked you any questions or to whom
 2 you provided information concerning this whole issue of
 3 this Register of Actions and who would have been behind it?
 4 A. No.
 5 Q. Did you observe that there was a fair amount of concern on
 6 the part of -- I think you've already said this -- Marc
 7 Barron and/or anybody associated with him that this could
 8 potentially hurt the campaign?
 9 A. I don't even know that he was aware of it.
 10 Q. I think the testimony from Mr. Fried earlier today was that
 11 he had had a meeting with Mr. Barron.
 12 A. That might be.
 13 Q. But you never discussed it personally with him?
 14 A. No. The only thing we discussed personally was the actual
 15 event at this initial meeting.
 16 I didn't even know she had been charged.
 17 Q. Mrs. Barron?
 18 A. Yeah.
 19 And then we all found out about it, and it was taken
 20 out of our court, because it wouldn't be right for one of
 21 us to sit on this case. So, it went to Royal Oak.
 22 Was it Royal Oak?
 23 MS. HORTON: I think so.
 24 BY MS. GORDON:
 25 Q. 44th or 43rd?

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1 A. 43rd.
 2 MR. PAXTON: 44th is Royal Oak.
 3 A. 43rd is Hazel Park. 44th is Royal Oak, yeah.
 4 MS. GORDON: Okay. I think that's it.
 5 A. And I just want to put on the record, I think, very
 6 frankly, that it sounded like I was running away from it
 7 with Michelle, but I just felt I had to stay out of it at
 8 that time.
 9 I mean I'm sure you felt I let you down, but it was
 10 the politics of the whole thing.
 11 BY MS. GORDON:
 12 Q. What do you mean by that, judge?
 13 A. In the court. In the court.
 14 It's a whole different matter.
 15 Q. But could you just give me a brief explanation when you
 16 say, "it was the politics"?
 17 A. Well, it had to do with my inability to put behind me
 18 things that Kim Small had done, and I just guess I was
 19 bearing a grudge at the time.
 20 Q. So, she just kind of took the matter and ran with it?
 21 A. Well, she ran with everything when she was chief judge.
 22 I mean she really does. I don't want to malign her, but --
 23 Q. So, she took on this investigation?
 24 A. I'm sure she did.
 25 Q. And you just stayed clear because there was already some

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1 political --
 2 A. Judge D'Agostini and I were out of it completely.
 3 Q. And you were never asked any questions, even though you had
 4 supervised Michelle for some time?
 5 A. Well, I supervised her and I didn't supervise her.
 6 Q. Indirectly?
 7 A. Yeah.
 8 Q. She provided services for you?
 9 A. Sure she did. Sure she did. But I didn't -- I never
 10 thought it would get this far.
 11 MS. GORDON: Okay. Well, unfortunately, it did. So,
 12 I appreciate your time today.
 13 THE WITNESS: All right. Thank you.
 14 (Deposition concluded at 4:15 p.m.)
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1 STATE OF MICHIGAN)
2 COUNTY OF OAKLAND)
3 CERTIFICATE OF NOTARY PUBLIC
4 I do hereby certify that the witness, whose attached
5 testimony was taken in the above matter, was first duly
6 sworn to tell the truth; the testimony contained herein was
7 reduced to writing in the presence of the witness by means
8 of stenography; afterwards transcribed; and is a true and
9 complete transcript of the testimony given.
10 I further certify that I am not connected by blood or
11 marriage with any of the parties; their attorneys or
12 agents; and that I am not interested, directly or
13 indirectly, in the matter of controversy.
14 In witness whereof, I have hereunto set my hand this
15 day at South Lyon, Michigan, County of Oakland, State of
16 Michigan.
17
18
19
20 _____
21 John J. Slatin, CSR-5180
22 Certified Shorthand Reporter
23 Notary Public, Oakland County, Michigan
24 My commission expires: July 25, 2011
25