

20348

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

App. Case No. 2012-212678
Lower Case No. 2009-CP-40-8705

Carolyn Mitchell Powell. Appellant,

v.

Ashlin Blanchard Potterfield; J. Michael Taylor; TAYLOR/POTTERFIELD;
GOLDEN, TAYLOR, POTTERFIELD AND BARRON; Reid Smith;
and PRICE, BIRD & SMITH, P.A., Defendants,

Of Whom: Ashlin Blanchard Potterfield; J. Michael Taylor;
TAYLOR/POTTERFIELD are Respondents.

RECORD ON APPEAL
Volume 1 of 4
Pages 1 - 464

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2009CP4008705

Carolyn Mitchell Powell

vs.

Ashlin Blanchard Potterfield

Plaintiff

Defendant

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other:
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy: ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☒ See attached order;☐ Statement of Judgment by the Court:

Dated at Columbia, South Carolina, this _____ day of _____, 2010.

PRESIDING JUDGEThis judgment was entered on the _____ day of _____, 2010, and a copy mailed first class this 6th day of October, 2010, to attorneys of record or to parties (when appearing pro se) as follows:_____
Susan F. Campbell

ATTORNEY(S) FOR THE PLAINTIFF(S)

J. Calhoun Watson
Charles E. Hill

ATTORNEY(S) FOR THE DEFENDANT(S)

SCRPC APP-24/FORM 4

Clerk of Court

SCANNED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

Carolyn Mitchell Powell,) Civil Action No.: 2009-CP-40-8705

Plaintiff,)

vs.)

Ashlin Blanchard Potterfield; J. Michael
Taylor; Taylor/Potterfield; Golden, Taylor
Potterfield and Barron; Reid Smith; and
Price, Bird & Smith, P.A.,)

Defendants.)

CONSENT SCHEDULING ORDER

2010 OCT -5 PM 3:45
JENNIFER W. McBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

Pursuant to the South Carolina Rules of Civil Procedure, the following schedule is established for this case by consent of the parties:

1. Written discovery by the parties shall be completed by Friday, **December 31, 2010**, except as to expert written discovery. All discovery shall be served in time for responses to be due by that date.
2. All depositions shall be completed by Friday, **February 25, 2011**, except those of expert witnesses.
3. Any discovery motions that cannot be resolved by the cooperation of the parties, including motions to quash or compel subpoenas, must be filed promptly and shall be given priority by the Clerk of Court by adding them to the next scheduled motions day that is at least ten days after service of the motions.
4. The plaintiff shall identify her additional expert witnesses, if any, to the defendants on or before Thursday, **March 31, 2011**, and shall simultaneously provide the experts' resumes together with the opinions as to which they are expected to testify. Each party will be responsible for the fees and costs of its own experts.
5. Defendants shall depose plaintiff's expert(s) on or before Friday, **April 29, 2011**.

SCANNED

6. The defendants shall identify their expert witnesses, if any, to the plaintiff on or before Friday, June 17, 2011, and shall simultaneously provide the experts' resumes together with the opinions as to which they are expected to testify.
7. Plaintiff shall depose defendants' expert(s) on or before Friday, July 29, 2011.
8. On or before Friday, August 5, 2011, the parties shall engage in Alternative Dispute Resolution (ADR) by mediating the case.
9. Dispositive motions, if any, shall be filed by the parties by Wednesday, August 31, 2011.
10. If no motions to dismiss or for summary judgment are filed, this case shall be set for a day certain trial not before August 31, 2011. The parties shall confer with the administrative judge for the purpose of setting the day certain trial date.
11. If a motion to dismiss or for summary judgment has been filed by the deadline above, the case shall not be subject to trial until such motion(s) are heard and decided by the Court after which the parties shall confer with the administrative judge for the purpose of setting the day certain trial date.



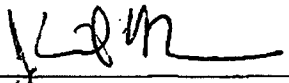
The Honorable Alison R. Lee
Chief Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina

October 4, 2010

WE SO MOVE AND CONSENT:

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

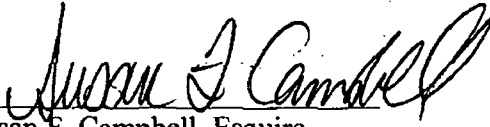
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(803) 929-1400

Attorneys for Defendants Reid Smith and Price, Bird, Smith, P.A.

WE CONSENT:

MCCUTCHEN BLANTON HOPKINS & CAMPBELL, LLP

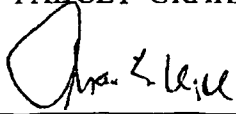
By: 

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William E. Hopkins, Jr., Esquire
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Post Office Box 11316
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Telephone: (803) 256-6152

Attorneys for Plaintiff

WE CONSENT:

TURNER PADGET GRAHAM & LANEY, P.A.

By: 

Charles E. Hill, Esquire
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Columbia, SC 29202
Telephone: (803) 227-4240 DD

**Attorneys for Defendants Ashlin Blanchard Potterfield; J. Michael Taylor;
Taylor/Potterfield**

RECEIVED NOV 15 2010

STATE OF SOUTH CAROLINA
 COUNTY OF RICHLAND
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NO: 2009CP4008705

Carolyn Mitchell Powell

vs.

Ashlin Blanchard Potterfield

Plaintiff

Defendant

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other:
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
 NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☒ See attached order;☐ Statement of Judgment by the Court:

Dated at Columbia, South Carolina, this _____ day of _____, 2010.

PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2010, and a copy mailed first class this 10 November 2010, to attorneys of record or to parties (when appearing pro se) as follows:

Susan F Campbell
 Thomas A. Pendarvis

ATTORNEY(S) FOR THE PLAINTIFF(S)

J Calhoun Watson
 Charles E. Hill

ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W. McBride

Clerk of Court

SCRPC APP-24/FORM 4

SCANNED

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2009-CP-40-8705

RICHLAND COUNTY
FILED
2010 NOV 10 PM 2:45
JEANETTE W. McBRIDE
C.C.P. & G.S.

Carolyn Mitchell Powell,

Plaintiff,

vs.

Ashlin Blanchard Potterfield; J.
Michael Taylor; Taylor/Potterfield;
Golden, Taylor Potterfield and
Barron; Reid Smith; and Price,
Bird & Smith, P.A.,

Defendants.

**CONSENT ORDER SUBSTITUTING
AND RELIEVING COUNSEL FOR
PLAINTIFF**

Pursuant to Rule 11(b) of the South Carolina Rules of Civil Procedure, Thomas A. Pendarvis is hereby substituted as counsel for Plaintiff, Carolyn Mitchell Powell, and Susan F. Campbell and William E. Hopkins, Jr. are hereby relieved as counsel for Plaintiff.


The Honorable Alison R. Lee
Chief Administrative Judge
Fifth Judicial Circuit

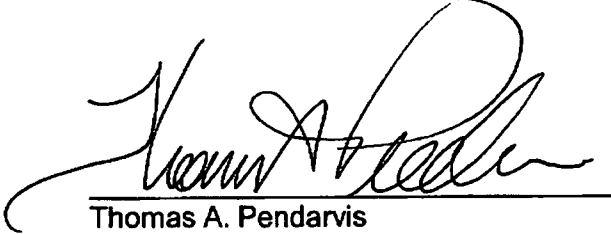
Columbia, South Carolina

November 10, 2010

SCANNED

WE CONSENT TO THE FOREGOING ORDER:

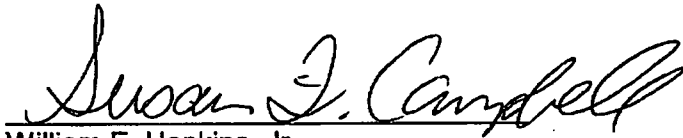
PENDARVIS LAW OFFICES, P.C.



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843.524.9501 fax.
Thomas@PendarvisLaw.com
www.PendarvisLaw.com

Substituted as counsel for Plaintiff

MCCUTCHEM BLANTON HOPKINS & CAMPBELL, L.L.P.



William E. Hopkins, Jr.
Susan F. Campbell
P.O. Drawer 11316
Columbia SC 29211-1316
803.256-6152 Tel.
803.256-6155 Fax.

Relieved as counsel for Plaintiff

RECEIVED JUN 06 2011

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF RICHLAND

CASE NO: 2009CP4008705

IN THE COURT OF COMMON PLEAS

Carolyn Mitchell Powell

vs.

Ashlin Blanchard Potterfield

Plaintiff

Defendant

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(c), SCRPC; ☐ SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other:
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☒ See attached order;☐ Statement of Judgment by the Court:

Dated at Columbia, South Carolina, this _____ day of _____, 2011.

PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2011, and a copy mailed first class this 31 May 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Susan F Campbell
Thomas A. PendarvisJ Calhoun Watson
Charles E. Hill

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W. McBride

SCRPC APP-24/FORM 4

Clerk of Court

SCANNED

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Carolyn Powell Mitchell,)
)
Plaintiff,)
vs.)
)
Ashlin Blanchard Potterfield; J.)
Michael Taylor; Taylor/Potterfield;)
Golden, Taylor Potterfield and)
Barron; Reid Smith; and Price, Bird)
& Smith, P.A.,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No. 2009-CP-40-8705

**ORDER DENYING DEFENDANTS' MOTIONS
FOR SUMMARY JUDGMENT**

RICHLAND COUNTY
FILED
2011 MAR 31 AM 8:54
JEANE M. W. MCBRIDE
CLERK

This matter comes before the Court on the Defendants Reid Smith and Price, Bird & Smith, P.A.'s Motion for Summary Judgment and Defendants Potterfield, Taylor and Taylor/Potterfield's Motion for Summary Judgment. A hearing was held on April 18, 2011, at which time counsel for the parties were all present and provided argument. The Court DENIES Defendants' Motions and makes the following findings of fact and conclusions of law:

I. Plaintiff's claims are not barred by judicial estoppel.

On March 14, 2007, Plaintiff's marital settlement agreement was approved by the Family Court in the underlying case. Defendants claim that Plaintiff's legal malpractice claims are barred by the doctrine of judicial estoppel based on language from the Complete Property, Support and Custody Agreement, dated April 27, 2007. The Supreme Court has held that "the doctrine of judicial estoppel is an equitable concept and should be applied sparingly, with clear regard for the facts of a particular case." *Cothran v. Brown*, 357 S.C. 210, 216, 592 S.E.2d 629,

632 (2004) (noting that the "application of judicial estoppel must be determined on a case-by-case basis"). Plaintiff has testified in this case that under the circumstances of extreme stress or emotional difficulties caused by Defendants' four year delay in prosecuting her domestic case, and with the advice of the lawyer who took over the representation after Defendants, she agreed with her former husband to settle the domestic case.

Under South Carolina law, all five of the following elements are necessary to apply the doctrine of judicial estoppel: "(1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent." *Cothran* at 215-16, 592 S.E.2d at 632.

The evidence in this matter fails on the first, fourth and fifth elements.

As to the first and fifth elements, Defendants' argument fails because judicial estoppel is only available when two totally inconsistent positions are taken by the same party or parties in privity with one another. *Id.* "Judicial estoppel, or the doctrine of inconsistent positions, precludes a party who assumed a certain position in a prior legal proceeding . . . from assuming a contrary position in another action simply because his or her interests have changed The doctrine rests upon the principle that a litigant 'should not be permitted . . . to lead a court to find a fact one way and then contend in another judicial proceeding that the same fact should be found otherwise.'" *Quinn v. Sharon Corp.*, 343 S.C. 411, 416, 540 S.E.2d 474, 476-77 (Ct. App. 2000) (quoting *City of New York v. Black Garter*, 685 N.Y.S.2d 606, 607-08 (N.Y. 1999)).

Plaintiff has testified that she accepted the settlement in her divorce action because it was the best she could get under the circumstances. She did not testify as to the adequacy or inadequacy of the Defendants' representation of her in the divorce proceedings.

As to the fourth element, Plaintiff agreed to settle the underlying domestic case. She had an obligation to mitigate her damages and accept the best settlement she could obtain before proceeding with the instant legal malpractice claim against Defendants. The Supreme Court has refused to use judicial estoppel to bar a professional negligence claim against a domestic relations attorney.

[T]he fact the client has accepted the benefit of the settlement and judicially sought to enforce its terms are not bars to maintenance of a malpractice claim. To hold otherwise would be to absolve the client of the duty to mitigate damages, and to require her to forego whatever benefit she is entitled to under the settlement in order to maintain a suit against her attorney, which if successful will result in a recovery only in the amount of the difference between the settlement entered and the amount it would have been but for the attorney's negligence. In other words, the client would be bound by the settlement . . . but would be denied its benefits.

Crowley v. Harvey & Battey, P.A., 327 S.C. 68, 71, 488 S.E.2d 334, 335 (1997).

In the underlying domestic proceedings, the Plaintiff mitigated her damages by accepting the best settlement she felt was available under the circumstances of her four year divorce proceeding.

The doctrine of judicial estoppel is not a bar to Plaintiff's professional negligence claims against her former domestic relations attorneys; therefore Defendants' Motions for Summary Judgment are denied.

II. Plaintiff's claims are not barred by collateral estoppel.

The doctrine of collateral estoppel has no application to the facts in this case. Evaluating

the holdings in the case of *Irby v. Richardson*, 278 S.C. 484, 298 S.E.2d 452 (1982), and the holdings in *Smith v. Hastie*, 367 S.C. 410, 626 S.E.2d 13 (Ct. App. 2005), *reh'g denied*, (2007), *cert. dismissed as improvidently granted* (2008), the Defendants' Motion should be denied because none of the issues as to whether these Defendants were professionally negligent or caused injuries to Plaintiff were litigated in the underlying domestic case. The *Hastie* opinion holds that "the precise issues of whether Hastie was negligent or breached a fiduciary duty in advising Smith regarding the family limited partnership have never been actually litigated in any judicial form until the present lawsuit." *Smith* at 420, 626 S.E.2d at 18. Because the predicate issues to establish a professional negligence claim were not "actually litigated and necessary to the outcome of" Plaintiff's divorce case, the collateral estoppel doctrine has no application. See *McNaughton-McKay Elec. Co. of N.C. v. Andrich*, 324 S.C. 275, 279, 482 S.E.2d 564, 566 (Ct.App.1997). Plaintiff's professional negligence claim was not available to be litigated in Family Court because that court does not have jurisdiction to hear a professional negligence claim. Therefore, Plaintiff did not have a "full and fair opportunity" to litigate those issues until the initiation of this action.

The doctrine of collateral estoppel does not apply to the facts of this case; therefore, this Court denies Defendants' Motions for Summary Judgment on that basis.

III. Defendants' Motions for Summary Judgment are premature because discovery is incomplete.

A Rule 56(f), SCRCP affidavit was filed prior to the hearing requesting additional time necessary to complete discovery in order to respond to the motions for summary judgment. Counsel for all parties acknowledged that discovery has not been completed.

"Summary judgment is appropriate when it is clear there is no genuine issue of material



fact and the moving party is entitled to judgment as a matter of law.” *Moriarty v. Garden Sanctuary Church of God*, 334 S.C. 150, 155, 511 S.E.2d 699, 702 (Ct.App.1999); see Rule 56(c), SCRPC. In determining whether an issue of material fact exists, all evidence and inferences “must be viewed in the light most favorable to the nonmoving party.” *Id.* “All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the movant.” *Id.* “For summary judgment to be granted, it must be perfectly clear no issue of fact is involved.” *Id.*

Not only would granting Defendants’ Motions for Summary Judgment deny Plaintiff a full and fair opportunity to complete discovery, but the lack of discovery means that there may be insufficient facts on the record to fairly rule on whether Plaintiff can maintain the causes of action asserted in this lawsuit. Because genuine issues of material fact may exist in this case, Defendants’ Motions for Summary Judgment is denied at this time.

IV. The law of the case doctrine has no application to these proceedings.

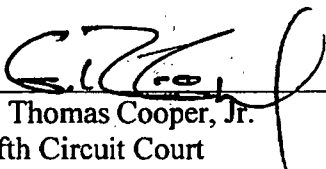
Other than a consent scheduling order, no orders of substance have been issued in this case. As a result, there are no unappealed orders that would trigger application of the law of the case doctrine. Under the law of the case doctrine, only an unappealed ruling becomes the law of the case. See *Floyd v. Floyd*, 365 S.C. 56, 615 S.E.2d 465 (Ct. App. 2005) (citing *ML-Lee Acquisition Fund, L.P. v. Deloitte Touche*, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997)); *Toyota v. Lynch*, 314 SC 257, 266, 442 SE2d 611, 616 (1994). Defendants’ Motions are denied to the extent Defendants seek summary judgment based on the law of the case doctrine.

CONCLUSION

Based on the foregoing findings and matters of law, it is hereby ORDERED that Defendants Reid Smith and Price, Bird & Smith, P.A.'s Motion for Summary Judgment and the Motion for Summary Judgment on Behalf of Defendants Potterfield, Taylor and Taylor/Potterfield are DENIED.

It is further ORDERED that all dates contained in the Consent Scheduling Order of October 4, 2010 shall be extended by 120 days.

IT IS SO ORDERED.



G. Thomas Cooper, Jr.
Fifth Circuit Court

Columbia, South Carolina
May 25, 2011

STATE OF SOUTH CAROLINA
 COUNTY OF RICHLAND
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2009CP4008705

Carolyn Mitchell Powell

vs.

Ashlin Blanchard Potterfield

Plaintiff

Defendant

CHECK ONE:

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- ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☒ See attached order;

☐ Statement of Judgment by the Court:

Dated at Columbia, South Carolina, this _____ day of _____, 2011.

PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2011, and a copy mailed first class this 9 September 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Susan F Campbell
 Thomas A. Pendarvis

J Calhoun Watson
 Charles E. Hill
 J Calhoun Watson

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W. McBride
 Clerk of Court

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Carolyn Mitchell Powell,

Plaintiff,

vs.

Ashlin Blanchard Potterfield; J. Michael
Taylor; Taylor/Potterfield; Golden, Taylor
Potterfield and Barron; Reid Smith; and
Price, Bird & Smith, P.A.,

Defendants.

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2009-CP-40-8705

CONSENT ORDER

RICHLAND COUNTY
FILED
2011 SEP -9 AM 11:24
JEANETTE W. McBRIDE
C.C.P. & C.S.

Upon Motion of Defendants **Defendants Reid Smith and Price, Bird & Smith, P.A.** and with the consent of all parties, it is hereby ordered that **Defendants Reid Smith and Price, Bird & Smith, P.A.** are dismissed from the above captioned matter with prejudice. The dismissal of **Defendants Smith and Price, Bird & Smith P.A.**, however, shall not serve as a dismissal of Plaintiff's claims against the remaining Defendants named in the above captioned Complaint.

It is further ordered that the caption of this matter is amended to delete **Defendants Reid Smith and Price, Bird & Smith, P.A.** as defendants. The caption of this matter, as amended, shall appear as indicated in **Exhibit A** which is attached to this Order.

AND IT IS SO ORDERED.


The Honorable Alison Renee Lee
Chief Administrative Judge, Fifth Judicial Circuit

Columbia, South Carolina
September 8, 2011

WE SO MOVE AND CONSENT:

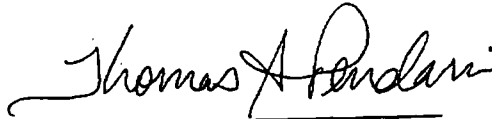
SOWELL GRAY STEPP & LAFFITTE,
LLC



J. Calhoun Watson, Esquire
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400
Attorneys for Defendants Reid Smith and
Price, Bird & Smith, P.A.

WE CONSENT :

PENDARVIS LAW OFFICES, P.C.



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Telephone: (843) 524-9500

Attorney for Plaintiff

WE CONSENT:

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Charles E. Hill, Esquire
Post Office Box 1473
Columbia, SC 29202
Telephone: (803) 227-4240
Attorneys for Defendants Ashlin
Blanchard Potterfield; J. Michael Taylor;
Taylor/Potterfield

_____, South Carolina

_____, 2011

WE SO MOVE AND CONSENT:

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LLC**

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(803) 929-1400
**Attorneys for Defendants Reid Smith
and Price, Bird & Smith, P.A.**

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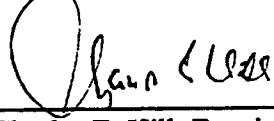
PENDARVIS LAW OFFICES, PC

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Beaufort, South Carolina 29902-5066
Telephone: (843) 524-9500

Attorneys for Plaintiff

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LANEY P.A.**



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Columbia, SC 29202
Telephone: (803) 227-4240
**Attorneys for Defendants Ashlin
Blanchard Potterfield; J. Michael
Taylor; Taylor/Potterfield**

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Carolyn Mitchell Powell,	)	Civil Action No.: 2009-CP-40-8705
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Ashlin Blanchard Potterfield; J. Michael	)	
Taylor; Taylor/Potterfield; and Golden,	)	
Taylor Potterfield and Barron,	)	
	)	
Defendants.	)	

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
Carolyn Mitchell Powell,

Plaintiff,

vs.

Ashlin Blanchard Potterfield; J. Michael Taylor;
Taylor/Potterfield; Golden, Taylor Potterfield and Barron;
Reid Smith; and Price, Bird & Smith, P.A.,

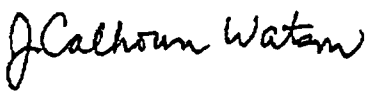
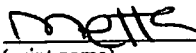
Defendants.

Check box above indicating submitting party

IN THE [X] COURT OF COMMON PLEAS
[] FAMILY COURT
Civil Action No. 2009-CP-40-8705

MOTION AND ORDER INFORMATION FORM
AND COVER SHEET

RICHLAND COUNTY
FILED
2011 SEP - 9 AM 11:24
JANETTE N. MCBRIDE
C.C.P. & G.S.

<u>name, SC Bar no. and address of plaintiff's attorney</u> SEE ATTACHED LIST		<u>name, SC Bar no. and address of defendant's attorney</u> SEE ATTACHED LIST	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Estimated Time Needed: Court Reporter Needed: YES ☐ NO ☐			
SECTION II: Motion Type ☐ Written motion attached ☐ Form Motion: I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff ☒ Defendant September 7, 2011 Date Submitted			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25.00 (check reason) ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION Collected by:  (print name) Mette ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____ DATE FILED 			

SCCA/233 (1/2003)

ATTACHED SHEET

ATTORNEYS FOR DEFENDANT'S REID SMITH AND PRICE, BIRD & SMITH, P.A.

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Attorney for Plaintiff

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**Attorneys for Defendants Ashlin Blanchard Potterfield; J. Michael Taylor;
Taylor/Potterfield; Golden. Taylor Potterfield and Barron**

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Email: VWilliams@TurnerPadget.com

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2009CP4008785

Carolyn Mitchell Powell

Ashlin Blanchard Potterfield

PLAINTIFF(S)

J Michael Taylor

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 23rd day of Nov., 2011 to attorneys of record or to parties (when appearing pro se) as follows:

Thomas A. Pendarvis

ATTORNEY(S) FOR THE PLAINTIFF(S)

Charles E. Hill

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. McBride

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

CAROLYN MITCHELL POWELL,

Plaintiff,

vs.

ASHLIN BLANCHARD POTTERFIELD; J.
MICHAEL TAYLOR; TAYLOR/POTTERFIELD;
GOLDEN, TAYLOR, POTTERFIELD AND
BARRON,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 09-CP-40-8705

AMENDED SCHEDULING ORDER

2011 NOV 23 AM 11:06
JEANETTE W. McBRIDE
S.C.P. & G.S.

RICHLAND COUNTY
FILED

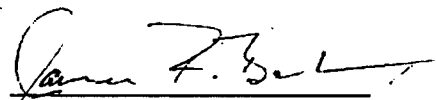
This is a case of alleged legal malpractice. At a status conference on November 22, 2011, counsel for the parties discussed the need to amend the prior scheduling order entered by Judge Lee on October 5, 2010. Since that order, there has been a substitution of counsel for the plaintiff, which has delayed completion of discovery. Upon good cause shown, and with the consent of the parties, the order of October 5, 2010, is superseded and the following schedule is established for remaining discovery, mediation and trial:

1. Depositions shall be completed by January 31, 2012, except for those of expert witnesses.
2. Plaintiff has previously disclosed Gregory Adams and Gary Brown as expert witnesses. Plaintiff shall identify any additional expert witnesses by February 13, 2012, and shall simultaneously provide the experts' resumes together with the opinions as to which they are expected to testify. Each party will be responsible for the fees and costs of its own experts. Any such additional plaintiff experts

SCANNED

will be made available for deposition within one month of disclosure, or as soon thereafter as is practicable depending upon counsel and the expert's schedules.

3. Defendants shall similarly identify their expert witnesses within one month after the deposition of plaintiff's last named expert. Defendants' experts will be made available for deposition within one month of disclosure, or as soon thereafter as is practicable depending upon counsel and the expert's schedules.
4. Dispositive motions, if any, will be filed by March 30, 2012.
5. Mediation will be accomplished by ~~April 30, 2012.~~ ^{MARCH 31, 2012.} 
6. This case will be set for a day certain trial on or after May 28, 2012. Provided, however, that if a motion for summary judgment has been filed by the deadline set forth herein, the case shall not be subject to trial until such motions are heard and decided, after which the parties shall confer with the administrative judge for the purpose of setting the day certain trial date.



James R. Barber, III
Presiding Judge
5th Judicial Circuit

Columbia, S.C.

Nov. 22, 2011

RECEIVED MAY - 2 2012 FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2009CP4008705

Carolyn Mitchell Powell

Ashlin Blanchard Potterfield

PLAINTIFF(S)

J Michael Taylor

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this 26 April 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Susan F Campbell

Thomas A. Pendarvis

J Calhoun Watson
J Calhoun Watson

Charles E. Hill

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

Jeanette W. McBride

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

CAROLYN MITCHELL POWELL,

Plaintiff,

vs.

ASHLIN BLANCHARD POTTERFIELD; J.
MICHAEL TAYLOR; and
TAYLOR/POTTERFIELD

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 09-CP-40-8705

**ORDER GRANTING DEFENDANTS'
POTTERFIELD, TAYLOR, AND
TAYLOR/POTTERFIELD'S MOTION
FOR SUMMARY JUDGMENT**

FILED
RICHLAND COUNTY
2012 APR 23 AM 4:01
JANETTE W. HODGE
C.P. & G.S.

This matter is before the court on the amended motion for summary judgment filed February 16, 2012, on behalf of defendants Ashlin Blanchard Potterfield, J. Michael Taylor, and Taylor/Potterfield. The amended motion added an additional ground to defendants' motion filed December 27, 2011. The amended motion states the following grounds:

1. *As to all defendants:* The Amended Scheduling Order entered November 22, 2011, established a deadline of February 13, 2012 for plaintiff to identify any expert witnesses in addition to the previously disclosed experts, Gregory Adams and Grady Brown. Plaintiff failed to disclose additional experts by this deadline, and further, the experts previously disclosed have failed to express that plaintiff would have received a more favorable settlement in the underlying action but for the alleged negligence of defendants.
2. *As to Defendant Taylor:* There has been no expert testimony as to whether Defendant Taylor breached the standard of care, and as such Plaintiff has failed to make out a case of legal malpractice.



3. *As to Defendant Potterfield:* Defendant Potterfield raised a statute of limitations argument in the Amended Motion that has since been withdrawn for purposes of this motion by counsel for the Defendants by letter dated March 30, 2012.
4. *As to Defendant Taylor/Potterfield:* There are no allegations against the partnership Taylor/Potterfield exclusive of the allegations against Defendant Taylor and Defendant Potterfield individually. If claims against individual partners fail, there is no surviving claim against the partnership entity.

This motion came on for hearing before the undersigned on March 16, 2012. Plaintiff was represented by Thomas A. Pendarvis. Defendants were represented by Charles E. Hill and Virginia W. Williams of the firm of Turner, Padgett, Graham & Laney, P.A.

After considering the submittals by the parties and the arguments of counsel, the court determines that the defendants' motion should be GRANTED

SUMMARY OF FACTS

Potterfield and Taylor are Columbia attorneys who practice primarily in the area of family law. They practice together in a partnership known as Taylor/Potterfield. This case arises out of their representation of plaintiff in marital litigation against her husband Conrad Powell. On September 17, 2003 Plaintiff retained Potterfield to represent her in a marital dispute with her husband Conrad Powell. Plaintiff and husband separated December 2003. Carolyn Powell initially retained Potterfield, and Potterfield filed a complaint in Richland County Family Court on August 27, 2004. (Carolyn W. Powell, Plaintiff, vs. W. Conrad Powell, Defendant, Case No. 04-DR-40-3081). On April 1, 2005 Plaintiff terminated Potterfield and separately retained Michael Taylor to represent her. Taylor associated Columbia attorney Reid Smith to address the business issues in the marital litigation. Attorney Taylor represented Plaintiff from



April 1, 2005 until Jan 17, 2007 when Plaintiff terminated Attorney Taylor and thereafter retained Cantzon Foster. On April 27, 2007 Plaintiff and Husband entered into "Complete Property, Support and Custody Agreement" that was approved along with a Final Decree of Divorce by the Honorable Anne Gue Jones on May 2, 2007. This detailed agreement, 21 pages in length with an attached "agreement" and an exhibit to the agreement, placed significant financial obligations on Mr. Powell. He was to pay \$5,000 per month in child support/property distribution, until the oldest child graduated high school. He was to pay for education costs of the couple's two children, including undergraduate college fees and costs. He was to pay expenses associated with the keeping of up to four horses. The agreement acknowledged his prior advancements on equitable distribution of \$400,000 in January 2005 and \$250,000 in March 2007. He paid off a \$435,000 mortgage Ms. Powell had assumed in connection with her purchase of horse stables in Aiken after their separation.

December 11, 2009 Plaintiff filed a Verified Summons and Complaint along with an affidavit of Expert Opinion of Dr. Gregory B. Adams pursuant to S.C. Code 15-36-100 against Ashlin Potterfield, Michael Taylor, and Taylor/Potterfield alleging Legal Malpractice and Breach of Contract and Breach of Fiduciary Duty. Dr. Adams' affidavit is dated December 11, 2009 and has not been updated or amended in any manner.

There has been extensive discovery in this case including interrogatories, exchange of documents and depositions. The following depositions have been taken on the dates indicated: Plaintiff Carolyn Mitchell Powell (Jan 27, 2011), Ashlin B. Potterfield (March 10, 2011), Michael Taylor (April 19, 2011), Reid Smith (Sept 30, 2011), Grady Brown (Nov 16, 2011) and Cantzon Foster (Jan 26, 2012).

Grady Brown, Esq. was named as an expert witness for the Plaintiff on September 16, 2011 and a report was submitted from Mr. Brown to the Defendants' attorney through Plaintiff's attorney dated September 12, 2011. Mr. Brown indicated that he had been provided two deposition : the Plaintiff's and Potterfield's. He further indicated " Moreover, my review of the depositions and the exhibits was limited to a determination of whether or not the Taylor/Potterfield Law Firm failed to take action or took inappropriate action with respect to their representation of Ms. Powell. My review was not in any way intended to determine the nature or extent of any damages Ms. Powell may have incurred as a result of the representation by the Taylor/Potterfield Law Firm." (Page 1 Letter of H. Grady Brown September 12, 2011) During his deposition of November 16, 2011 Mr. Brown reiterated and affirmed that he was offering no testimony on the issue of damages. (Dep. P. 48) Mr. Brown opined as to the standard of care for attorneys in a matter of this type and concludes that "All of the opinions I have set forth herein are based upon a reasonable degree of professional certainty." (Page 7 Letter of H. Grady Brown September 7, 2011). Mr. Brown concluded that defendants breached the standard of care by, among other things, failing to seek a verified financial declaration; failing to hire a forensic accountant; failing to request a temporary hearing; failing to obtain a Lis Pendens; failing to obtain restraining orders regarding disposition of assets; failing to issue subpoenas or other discovery; and failing to bring in third party business associates as parties to this action. Plaintiff's later submitted the affidavit of Grady Brown on March 12, 2012 to supplement Brown's letter of September 12, 2011.

A handwritten signature, likely of the attorney, is written in black ink. It consists of a long, sweeping vertical line that curves to the right at the bottom, followed by a series of loops and a final horizontal stroke.

On September 23, 2011, defendants served notice of taking Brown's deposition, and the deposition was taken as scheduled and agreed upon on November 16, 2011. In the deposition he reiterated and affirmed that he was offering no testimony on the issue of damages. (Dep. p. 48).

On March 12, 2012, two days before the present motion was scheduled for hearing, plaintiff submitted an affidavit from Brown. In this document, Brown stated his belief that the defendants "caused Ms. Powell to be unprotected and vulnerable to dissipation of marital assets by her husband..." He stated that defendants could have taken actions which "would have been beneficial to Ms. Powell by protecting and preserving assets and by identifying assets or supplementing and verifying information obtained directly from the opposing party. Had these tools and procedures been used, and used promptly, assets could have been preserved or their status controlled, settlement negotiations could have proceeded based on verified information and delay avoided."

These defendants answered on February 22, 2010, admitting that there had been an attorney-client relationship between them and Carolyn Powell, but otherwise denying the material allegations of plaintiff's complaint.

On Nov. 22, 2011, counsel for the parties met with Chief Administrative Judge James R. Barber III for a status conference. The parties jointly submitted a proposed Amended Scheduling Order, as to which they had conferred and agreed. The order provided in pertinent part, "Plaintiff shall identify any additional expert witnesses by February 13, 2012, and shall simultaneously provide the experts' resumes together with the opinions as to which they are expected to testify." It required that dispositive motions be filed by March 30, 2012. Judge Barber signed the order, which was filed on Nov. 23, 2012.

Plaintiff did not disclose any additional expert witness by February 13. On February 16, defendants filed their amended motion for summary judgment, asserting that plaintiff had not disclosed any expert who, "by affidavit, report, or deposition, has expressed any opinion that plaintiff would have received a more favorable settlement in the underlying action but for the alleged negligence of defendants." In the absence of such testimony, defendants contend they are entitled to judgment as a matter of law.

STANDARDS

A motion for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. "When a motion for summary judgment is made and supported by such facts as would be admissible in evidence at trial, the adverse party may not rest upon the mere allegations of his pleadings. Instead his response to the motion must set forth specific facts, admissible in evidence, showing there is a genuine issue for trial. If he does not so respond, summary judgment should be entered against him." Moody v. McLellan, 295 S.C. 157, 163, 367 S.E.2d 449, 452-53 (Ct.App.1988) (citing Rule 56(e), SCRCP).

In cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. Even a scintilla of evidence presented in response to the motion must first be probative. See Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009); Bass v. Gopal, Inc., 384 S.C. 238, 247, 680 S.E.2d 917, 921 (Ct.App.2009). Excerpts of testimony may meet the scintilla requirement but fail the probative test if the testimony as a whole "rests entirely on surmise, conjecture and speculation, and therefore has no



probative value.” McDowell v. Stilley Plywood Co., 210 S.C. 173, 179, 41 S.E.2d 872, 874-75 (1947) (internal citations omitted).

“In order to prevail in a cause of action for legal malpractice, the plaintiff must prove: (1) the existence of an attorney-client relationship; (2) a breach of duty by the attorney; (3) damage to the client; and (4) proximate cause of the client’s damages by the breach.” Harris Teeter, Inc. v. Moore & Van Allen, PLLC, 390 S.C. 275, 701 S.E.2d 742 (2010). A plaintiff in a legal malpractice action must establish the standard of care by expert testimony. Smith v. Haynsworth, Marion, McKay and Guerard, 322 S.C. 433, 472 S.E.2d 612 (1996).

Moreover, the plaintiff in a legal malpractice case must show he or she “most probably would have been successful in the underlying suit if the attorney had not committed the alleged malpractice.” Hall v. Fedor, 349 S.C. 169, 561 S.E.2d 654 (Ct. App. 2002). The question of the success of the underlying claim is a question of law. Doe v. Howe, 367 S.C. 432, 626 S.E.2d 25 (Ct. App. 2005); Manning v. Quinn, 365 S. E. 2d 24 (1988)

ANALYSIS

Defendants argue that the failure of the Plaintiff to abide by the scheduling order in appointing an expert would cause the action to fail for want of proving the standard of care and the breach of that standard. However, summary judgment is a drastic remedy and should not be entered into lightly. Therefore, on the basis of failure to meet the deadline of the scheduling order, the motion for summary judgment is denied.

In proving a legal malpractice claim, the first element the Plaintiff must prove is the existence of an attorney-client relationship. The Plaintiff argues, and the Defendants agree, that there was an attorney-client relationship between the Plaintiff and Defendants Taylor and Potterfield and the partnership. Thus, this element is undisputed.



Next, the Plaintiff must prove a breach of duty by the Defendant. In his affidavit, the Plaintiff's expert on the standard of care in legal malpractice opines that it was breached and provides a list of duties which would have been proper for the attorneys to carry out in adequately pursuing Plaintiff's case. The Court finds that the affidavit of Grady Brown is a scintilla of evidence that creates a genuine issue of material fact on this issue of breach of duty by the Defendant and as to this element, Defendants' Motion for Summary Judgment is denied as to breach of duty by the attorney(s).

Plaintiff's complaint alleges that the defendants failed to protect marital assets, and failed to secure marital property against waste and dissipation. Under the foregoing authorities, plaintiff has the burden of proving that the alleged failure to protect and secure marital property resulted in a less favorable disposition of the case than she would have otherwise achieved. Defendants' motion asserts that plaintiff has no evidence to carry this burden on the essential element of damages. Thus it is necessary to review the record before the court for evidence pertinent to this issue. The court begins with the deposition testimony of attorney Smith, who was associated by defendant Taylor.

Smith testified that he was qualified and competent to assist Taylor with regard to such issues as determining business assets, liabilities and cash flow. (Dep. 39, 41). He conducted his own investigation into Mr. Powell's holdings. (Dep. 41). Shortly after he was retained, he and Taylor went to Mr. Powell's attorney's office, where they spent several hours examining the husband's records. (Dep. p. 48). He reviewed Mr. Powell's tax returns going back to 1999, and the couple's joint returns through 2003 or 2004. (Dep. p. 55).

Continuing his investigation, Smith checked the RMC records and tax assessor's offices in Richland, Lexington, Horry, and Georgetown Counties in South Carolina and records in a

North Carolina county as well. He looked at closing statements, mortgages, deeds, financial statements, and check records. Because Ms. Powell had expressed a concern that her husband was diluting assets by giving them away to his brother or accountant (dep. 9), he checked the formation of Mr. Powell's corporations to determine who were the shareholders and what were their interests. (Dep. 62-65).

By late 2006, Smith was confident that "I had a handle on the business issues and the financial issues related to the businesses. I felt comfortable with the information that I had. I knew that there was a need to get information so that we could make sure we were pursuing settlement discussions appropriately" (Dep. p. 67). Because of Smith's familiarity with the business issues, he personally conducted the deposition of Conrad Powell on December 13, 2006. His impression was that Mr. Powell was forthcoming in his testimony regarding his business interests. Smith testified, "I didn't see anything that indicated that there was an effort to hide assets," and his opinion in that regard never changed. (Dep. p. 80).

Smith concluded, "My research indicated that there had never been any attempts to dilute the assets. Carolyn had suspected it, but I didn't see any grounds to confirm those suspicions. ... I didn't see any evidence of wasting corporate assets here." (Dep. p. 90).

Attorney Foster assumed the representation of Ms. Powell after she terminated Taylor, and Smith remained associated in the case. Foster likewise noted Ms. Powell's suspicion that her husband was hiding money and hiding assets. "There was a concern that some of the assets may have been transferred over to Mr. Powell's brother." (Dep. p. 30). But he acknowledged that Ms. Powell was never able to furnish him with any evidence of her husband hiding assets. "I don't recall there being any hard evidence, documentary—any documents supporting that

assets were transferred. ... No hard evidence that there were additional assets to the estate.” (Dep. p. 31).

During Foster’s representation, the deposition of Tim Tyler, Mr. Powell’s accountant, was taken. Foster testified, “We didn’t get anything that conclusively proves that there were other assets that we needed to go after...” (Dep. p. 105).

Foster was asked, “Did you ever become aware at any time, during the time that you were representing her or subsequently, of any assets that were hidden or transferred or anything improperly done by Mr. Powell in that regard?” He answered, “No, sir.” (Dep. p. 135).

Ms. Powell herself was not able to provide any specifics. In her deposition, she testified, “I think there’s property that (her husband) invested in and tied up that I don’t know about.” But she could not say what that property was. “Q. Any proof, though? Any facts, papers, witnesses? A. Not at this time.” (Dep. 198-200).

The “Complete Property, Support, and Custody Agreement,” entered into between Mr. and Mrs. Powell on April 27, 2007, is attached as Exhibit 20 to the deposition of Ms. Powell. This detailed agreement, 21 pages in length with an attached “agreement” and an exhibit to the agreement, placed significant financial obligations on Mr. Powell. He was to pay \$5,000 per month in child support/property distribution, until the oldest child graduated high school. He was to pay for education costs of the couple’s two children, including undergraduate college fees and costs. He was to pay expenses associated with the keeping of up to four horses. The agreement acknowledged his prior advancements on equitable distribution of \$400,000 in January 2005 and \$250,000 in March 2007. He paid off a \$435,000 mortgage Ms. Powell had assumed in connection with her purchase of horse stables in Aiken after their separation.



Foster, who was representing Ms. Powell at the time the settlement agreement was entered into, testified in his deposition, "Based on the information I had and based on my knowledge of the facts of the case, I thought it was a good settlement." (Dep. p. 134). Foster testified that he recommended that Ms. Powell not enter into this settlement, because in his opinion further discovery into Mr. Powell's assets should be conducted. But Ms. Powell declined to follow this advice, and proceeded with the voluntary settlement. (Dep. pp. 132-135).

The settlement agreement contained an acknowledgement that each party "has adequate knowledge of the other's financial situation, including: income, expenses, debts and assets as they have exchanged sworn financial declarations," and that the agreement was fair and reasonable.

Brown, an attorney in Beaufort, was identified by plaintiff as an expert witness on September 16, 2011. Plaintiff submitted a report written by Brown, dated September 12 and summarizing his review of the case. In this report, Brown stated, "My review was not in any way intended to determine the nature or the extent of any damages Ms. Powell may have incurred as a result of representation by the Taylor/Potterfield Law Firm."

On September 23, 2011, defendants served notice of taking Brown's deposition, and the deposition was taken as scheduled and agreed upon on November 16, 2011. In the deposition he reiterated and affirmed that he was offering no testimony on the issue of damages. (Dep. p. 48).

But on March 12, 2012, two days before the present motion was scheduled for hearing, plaintiff submitted an affidavit from Brown. In this document, Brown stated his belief that the defendants "caused Ms. Powell to be unprotected and vulnerable to dissipation of marital assets by her husband..." He stated that defendants could have taken actions which "would have been beneficial to Ms. Powell by protecting and preserving assets and by identifying assets or

supplementing and verifying information obtained directly from the opposing party. Had these tools and procedures been used, and used promptly, assets could have been preserved or their status controlled, settlement negotiations could have proceeded based on verified information and delay avoided.”

In addition to the Brown affidavit, plaintiff relies in opposition to this motion on Adams’ affidavit, dated Dec. 11, 2009, and filed with the complaint. In the affidavit, Adams asserted that various alleged deviations from the standard of care by defendants “caused Ms. Powell considerable damages including loss of any right to separate maintenance and support and loss of substantial value of the marital estate and her share of it due to the dissipation, transfer, and secreting of much of it by her husband during the pendency of the divorce litigation.”

The Hall and Doe cases, cited above, are instructive when determining whether plaintiff has sustained the burden of proof on the issue of damages when the alleged malpractice occurred during defendant’s handling of prior litigation. These cases were decided on defense motions for summary judgment, in circumstances very similar to the present case.

In the first of these cases, Hall was arrested by the Lexington County Sheriff’s Department on the basis of information about a potential drug purchase. Fedor represented Hall in the criminal matter; he was able to get the criminal charges dropped, and to secure the return of \$40,000 seized in the arrest. Hall then brought a civil suit against the arresting officer, and Fedor appeared as co-counsel. Hall accepted a settlement offer of \$30,000. He then brought a legal malpractice action against Fedor, contending that his attorney had made misrepresentations to him concerning the settlement. Fedor moved for summary judgment, and the trial court granted the motion.



In affirming, the Court of Appeals noted that Hall could have defeated the summary judgment motion by establishing he “most probably” would have received a larger settlement than \$30,000. But the court found there was no evidence to that effect. Judge Anderson remarked, “In contrariety, the evidentiary record demonstrates with remarkable clarity that the \$30,000 amount was a good settlement, even to the point of reaching a windfall for Hall.” 349 S.C. at 176; 561 S.E.2d at 657. Judge Anderson continued, “Indubitably, considering the absence of any admissible evidence presented by Hall, and in light of the evidence presented by Fedor, Hall failed to show he ‘most probably’ would have received a settlement amount greater than \$30,000.” 349 S.C. at 177; 561 S.E.2d at 658.

The court concluded, “In South Carolina, a plaintiff in a legal malpractice claim is required to prove he ‘most probably’ would have been successful in the underlying litigation if the attorney had not committed the alleged malpractice. In regard to Hall’s legal malpractice case based on the settlement agreement claim, there is no admissible evidence in the record to support Hall’s burden of proof.” 349 S.C. at 179; 561 S.E.2d at 659.

In the second case, John Doe was a pseudonym for a student who attended Porter-Gaud school in Charleston. He was sexually molested by a teacher at the school. Much later, Doe retained Howe to represent him in a claim against the school. This claim was settled for \$88,000. Other victims of the same teacher obtained more favorable settlements on their claims for sexual abuse. Doe sued his former counsel for legal malpractice. Howe moved for summary judgment on the legal malpractice claim, and the trial court granted the motion.

In affirming, the Court of Appeals considered the statements of attorney David Flowers, relied upon by plaintiff in opposition to the motion. Flowers said, “Doe most probably would have defeated Porter-Gaud’s defense if his case had been filed and zealously pursued.” The trial

judge held Flowers' statement was insufficient to defeat Howe's summary judgment motion because Flowers never explicitly stated Doe most probably would have recovered more than the \$88,000 he received in his settlement with Porter-Gaud.

Doe claimed that he only had to show that he "most probably would have been successful" in the underlying action and did not need expert testimony regarding the amount that he would have recovered. The Court of Appeals responded, "We disagree with both arguments." The court continued, "We further agree with the trial judge's reliance on the fact that Flowers never stated that Doe 'most probably' would have received more than the \$88,000 he received in his settlement with Porter-Gaud." Finally, the court commented, "Notably absent from the record in this case, however, is any mention of settlement value from Flowers or any other expert that was brought to the trial judge's attention." 367 S.C. at 445; 626 S.E.2d at 31-32.

Reading the affidavits of Dr. Adams (December 11, 2009) and Grady Brown (March 12, 2012) in the light most favorable to the Plaintiff, neither presents an opinion sufficient to meet the requirements of Hall and Doe. Neither states an opinion as to the value of the underlying settlement. Neither states an amount for which plaintiff could have settled, in excess of the value of the underlying settlement, but for the alleged negligence of the defendants. Neither refutes the conclusions arrived at by Smith, following his extensive investigation.

Brown's affidavit states that certain actions of defendants "would have been beneficial;" that assets "could have been preserved," and that settlement negotiations "could have" proceeded on verified information. These statements are remarkably similar to those of plaintiff's experts in Manning v. Quinn, 294 S.C. 383, 365 S.E.2d 24 (1988), who opined as to actions the defendant attorney "could have" and "should have" taken, one such action that attorneys should have sought a temporary restraining order among other actions. In affirming summary judgment

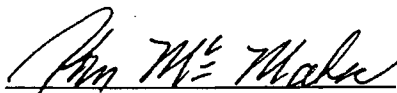
for the attorney, the court observed, "The attorney affidavits in the record contain mere conclusory statements suggesting legal actions which, in hindsight, might have been instituted on behalf of appellants. Nowhere in the affidavits do the attorneys address the likelihood of success of these actions." 294 S.C. at 386; 365 S.E.2d at 25.

Although damages do not have to be proven with mathematical certainty or precision, as the Plaintiff correctly points out, the claim cannot be speculative. Here Plaintiff has provided nothing more than bald assertions and conjecture, with no real factual support for any damages. The evidence in the record is not sufficient to withstand summary judgment as to the issues of damages in this case.

CONCLUSION

In summary, the Court denies Defendants' motion for summary judgment on the basis that Defendants breached the standard of care to the Plaintiff or that the Plaintiff violated the amended scheduling order thereby entitling the Defendants to summary judgment. The Court grants the Defendants' motion for summary judgment on the basis of Plaintiff's failure to present even a scintilla of evidence as to the issue of damages.

AND IT IS SO ORDERED.


R. Knox McMahon
Presiding Judge
Fifth Judicial Circuit

Lexington, S.C.

April 23rd, 2012

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2009CP4008705

Carolyn Mitchell Powell

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Dismissal); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this 25 July 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Thomas A. Pendarvis

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

Jeanette W. McBride

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Carolyn Mitchell Powell,

Plaintiff,

vs.

Ashlin Blanchard Potterfield; J. Michael
Taylor; Taylor/Potterfield; Golden, Taylor
Potterfield and Barron; Reid Smith; and
Price, Bird & Smith, P.A.,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2009-CP40-08705

**ORDER DENYING PLAINTIFF'S
MOTION TO ALTER OR AMEND
JUDGMENT**

RICHLAND COUNTY
FILED
2012 JUL 19 PM 2:50
JEANETTE W. McBRIDE
C.C.P. & G.S.

Plaintiff moves to Alter or Amend the Court's Order Granting Defendants' Potterfield, Taylor, and Taylor/Potterfield's Motion for Summary Judgment dated April 23, 2012. For the reasons following, Plaintiff's motion is **DENIED**.

FACTS & PROCEDURAL HISTORY

Potterfield and Taylor are Columbia attorneys who practice primarily in the area of family law. This case arises out of their representation of Plaintiff in marital litigation against her husband Conrad Powell. Carolyn Powell initially retained Potterfield, and Potterfield filed a complaint in Richland County Family Court on August 27, 2004. In 2005, Potterfield transferred the role of primary attorney to her partner, Michael Taylor. Taylor represented Plaintiff from 2005 until January 17, 2007, when Plaintiff terminated Attorney Taylor and thereafter retained Cantzon Foster. On April 27, 2007, Plaintiff and Husband entered into "Complete Property, Support and Custody Agreement" that was approved along with a Final Decree of Divorce by the Honorable Anne Gue Jones on May 2, 2007. That agreement, running 21 pages in length, put substantial financial obligations on Mr. Powell, including \$5,000 per month in child support, the

education costs of the couple's two children, the expenses of maintaining up to four horses, and the payment of a \$435,000 mortgage Ms. Powell had assumed in connection with her purchase of horse stables after their separation. Plaintiff filed suit against Attorneys Potterfield, Taylor, and the Taylor/Potterfield partnership on December 11, 2009, alleging Legal Malpractice, Breach of Contract, and Breach of Fiduciary Duty.

Defendants first motioned for summary judgment in 2011. That motion was denied by the Honorable G. Thomas Cooper, Jr. on May 31, 2011. Defendants again motioned for summary judgment in 2012. That motion, the subject of Plaintiff's present motion to alter or amend, was granted April 23, 2012. Plaintiff received that Order on May 2, 2012 and submitted the present motion on May 11, 2012.

STANDARDS

A party may motion to alter or amend a judgment of the Court no later than 10 days of receipt of the written notice of the entry of the order. Rule 59(e), SCRPC. Rule 59(e) is the proper procedure for correcting factual errors in an order. Doe v. Doe, 324 S.C. 492, 502, 478 S.E.2d 854, 859 (Ct. App. 1996) "[A] party cannot use a Rule 59(e) motion to present to the . . . [C]ourt an issue the party could have raised prior to the judgment but did not." Gartside v. Gartside, 383 S.C. 35, 43, 677 S.E.2d 621, 625 (2009).

A motion for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. "When a motion for summary judgment is made and supported by such facts as would be admissible in evidence at trial, the adverse party may not rest upon the mere allegations of his pleadings. Instead his response to the motion must set forth

specific facts, admissible in evidence, showing there is a genuine issue for trial. If he does not so respond, summary judgment should be entered against him.” Moody v. McLellan, 295 S.C. 157, 163, 367 S.E.2d 449, 452-53 (Ct. App. 1988) (citing Rule 56(e), SCRPC). Summary Judgment cannot be granted unless the opposing party has had a full and fair opportunity to complete discovery. Doe ex rel. Doe v. Batson, 345 S.C. 316, 322, 548 S.E.2d 854, 857, (2001). However, the opposing party cannot be dilatory in seeking discovery and further discovery must be likely to uncover additional relevant evidence. Id.

In cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. Even a scintilla of evidence presented in response to the motion must first be probative. Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009); Bass v. Gopal, Inc., 384 S.C. 238, 247, 680 S.E.2d 917, 921 (Ct. App. 2009). Excerpts of testimony may meet the scintilla requirement but fail the probative test if the testimony as a whole “rests entirely on surmise, conjecture and speculation, and therefore has no probative value.” McDowell v. Stilley Plywood Co., 210 S.C. 173, 179, 41 S.E.2d 872, 874-75 (1947) (internal citations omitted).

“In order to prevail in a cause of action for legal malpractice, the plaintiff must prove: (1) the existence of an attorney-client relationship; (2) a breach of duty by the attorney; (3) damage to the client; and (4) proximate cause of the client’s damages by the breach.” Harris Teeter, Inc. v. Moore & Van Allen, PLLC., 390 S.C. 275, 701 S.E.2d 742 (2010). Moreover, the plaintiff in a legal malpractice case must show he or she “most probably would have been successful in the underlying suit if the attorney had not committed the alleged malpractice. Hall v. Fedor, 349 S.C. 169, 561 S.E.2d 654 (Ct. App. 2002). The question of the success of the underlying claim is

a question of law. Doe v. Howe, 367 S.C. 432, 626 S.E.2d 25 (Ct. App. 2005); Manning v. Quinn, 294, S.C. 383, 365 S.E.2d 24 (1988).

ANALYSIS

Plaintiff advances five arguments in favor of amending the Order of Summary Judgment dated April 23, 2012:

1. The Order misstates or fails to recognize factual allegations creating disputed issues of material fact that would defeat the motion for summary judgment.
2. The Order fails to recognize that discovery was not complete nor was discovery closed under the scheduling order when the trial court granted summary judgment.
3. The Order fails to recognize the evidence creating a disputed issue of material fact presented by two expert witnesses' sworn testimony supporting Plaintiff's allegations that Plaintiff was damaged by Defendants' acts or omissions.
4. The Order fails to recognize or apply the proper standard of review to Dr. Adams' specific statements regarding damages as presenting the evidence necessary to move forward with a trial in this matter.
5. The Order fails to recognize Plaintiff's breach of fiduciary duty claim and the evidence in the record satisfying the standard of proof as to disputed facts regarding the amount of damages flowing from the attorneys' errors in breach of their fiduciary duties owed to Plaintiff.

In addressing these arguments, it is vital to recognize the narrow grounds on which this Court granted Defendants' Motion for Summary Judgment. This Court found that Plaintiff, as of the summary judgment hearing, did not provide a scintilla of evidence as to damages element of a legal malpractice claim. Plaintiff offered no facts to argue that she "most probably" would have

received more than what was provided in the divorce agreement. With that narrow ground in mind, the overwhelming majority of Plaintiff's present motion is irrelevant.

**I. PLAINTIFF FAILS TO PROVIDE ANY EVIDENCE THAT SHE
"MOST PROBABLY" WOULD HAVE RECEIVED A SUM GREATER
THAN THAT PROVIDED IN THE DIVORCE SETTLEMENT**

Plaintiff insists that the scintilla of evidence as to the other elements of a legal malpractice claim, in combination with the expert affidavit of Gregory B. Adams, is sufficient to show that she would have "most probably" received a larger settlement. First, the evidence as to establishing a relationship, breach, and cause, are all irrelevant to the singular matter of damages. That Defendants breached their standard of care says nothing as to whether or not Plaintiff "most probably" would have received at trial a sum greater than the settlement. As for the testimony of Professor Adams, the Court finds it to be remarkably similar to the testimony he provided for the opposing party in Doe v. Howe. In Howe, Prof. Adams testified that "Doe would have shared in the lucrative settlement and recovered much more than what he agreed to accept on Howe's advice." Howe, 367 S.C. at 444, 626 S.E.2d at 31. The Court of Appeals concluded that Prof. Adams "did not assert anything that would create an issue of material fact warranting denial of summary judgment in this case." Id. The Court further endorsed the reliance on the fact that Doe provided no expert testimony explicitly stating that he would have received more than what was provided in the settlement of that case. Here, once again, Plaintiff provides no such expert testimony. The facts of the present case are so incredibly similar to those of Howe that the Court would be misguided to reach any contrary conclusion on this matter. Therefore, Plaintiff's motion as to the legal malpractice claim is **DENIED**.



II. PLAINTIFF'S ARGUMENT THAT DISCOVERY WAS NOT COMPLETE WAS NOT RAISED IN OPPOSITION TO THE MOTION FOR SUMMARY JUDGMENT AS IS THEREFORE UNAVAILABLE IN A MOTION TO ALTER OR AMEND.

Plaintiff further argues that she was not yet finished with discovery and that Plaintiff's expert H. Grady Brown was working on a comprehensive damages report. However, this argument that summary judgment was foreclosed due to ongoing discovery does not appear anywhere in Plaintiff's "Memorandum in Opposition to Taylor/Potterfield Defendants' (Second) Motion and Amended (Second) Motion for Summary Judgment." Under Garfield, Plaintiff cannot raise an issue previously unstated on a Motion to Amend any more than she could on appeal. The Court therefore rejects this argument.

Furthermore, even had Plaintiff raised this argument below, the Court would find that she has had ample opportunity to seek discovery. This case has hung on the judicial system for two-and-a-half years. There has been extensive discovery in this case, including interrogatories, exchange of documents, and depositions. The Court went so far as to allow the submission of a new affidavit by Mr. Grady Brown on March 12, 2012, a mere two days before the motion for summary judgment. Depositions were closed. Additional expert witnesses were by the date of the hearing prohibited. The deadline for dispositive motions, such as Defendants' motion for summary judgment, was looming at the end of March, as was required mediation. Plaintiff had full and fair opportunity to complete discovery and cannot defeat summary judgment through claims that an already identified expert witness is still working up until the day of trial, especially given that dispositive motions were due two months before the day certain.

Therefore, Plaintiff's motion that the order of summary judgment be withdrawn on the grounds that discovery was ongoing is **DENIED**.

III. PLAINTIFF'S BREACH OF FIDUCIARY DUTY CLAIM WAS NOT SETTLED BY THE COURT'S ORDER OF APRIL 23, 2012

Finally, Plaintiff argues that this Court's Order of Summary Judgment did not recognize her breach of fiduciary duty claim. Defendants did not address the breach of fiduciary duty claim in their motion for summary judgment, nor did Plaintiff argue the subject in its opposition. The motion and hearing thereon were focused overwhelmingly on the legal malpractice claim.

As to the issue of the fiduciary duty claim, the Court is guided by Gartside and Howe. First and foremost, Plaintiff puts an unnecessary burden on the Court by raising an issue on a Rule 59(e) motion that was not otherwise argued in opposition to the motion for summary judgment. The decision to do so potentially offers Plaintiff a second bite at the apple beyond the typical scope of a Rule 59(e) motion. Allowing that second bite on grounds that Plaintiff did not bring the Court's attention to the fiduciary duty issue would only give incentive to incomplete and inefficient arguments in Court and disrupt the steady beat of the judicial system. It is that concern of judicial efficiency and fairness that underpins the rule stated in Gartside, that a party cannot use a Rule 59(e) motion to bring up issues not raised before judgment. For that reason, the Court concludes that Plaintiff failed to adequately preserve the issue of a fiduciary duty in opposition to the motion for summary judgment.

Furthermore, even if it were adequately preserved, the Court would still deny Plaintiff's motion. Plaintiff's failure to show she "most probably" would have recovered a larger settlement than she did recover is a flaw that persists through her breach of fiduciary duty claim. Howe, 367 S.C. 432, 448 n.27, 626 S.E.2d 25, 33 n.27; see also Cf. General Sec. Ins. Co. v. Jordan, Coyne & Savits, LLP, 357 F.Supp.2d 951, 961-62 (E.D.Va. 2005) (breach of fiduciary duty claim was "mere disguise[] for the plaintiffs' legal malpractice claims"). To allow a fiduciary duty claim to continue under a standard of damages lesser than that of the malpractice

claim central to the whole case would, in effect, defeat the "most probably" standard as it presently exists as a hurdle for proving legal malpractice. The Court therefore finds that Plaintiff's claim for breach of fiduciary duty is as deficient as her claim for legal malpractice.

Because Plaintiff failed to argue her claim for breach of fiduciary duty in opposition to the motion for summary judgment and because Plaintiff failed to prove she would "most probably" have recovered a larger settlement, Plaintiff's motion as to the breach of fiduciary duty claim is **DENIED**.

SUMMARY

1. Plaintiff's motion to alter or amend the Order of Summary Judgment dated April 23, 2012 as it relates to the legal malpractice claim is **DENIED**.
2. Plaintiff's motion to withdraw the Order of Summary Judgment dated April 23, 2012 on the grounds that discovery was ongoing is **DENIED**.
3. Plaintiff's motion to alter or amend the Order of Summary Judgment dated April 23, 2012 as it relates to the breach of fiduciary duty claim is **DENIED**.

IT IS SO ORDERED

Lexington, SC
July 19, 2012



The Honorable R. Knox McMahon

Powell
301215

COPY

2007 APR 27 PM 1:44
FAMILY COURT
FIFTH JUDICIAL CIRCUIT
SOUTH CAROLINA

STATE OF SOUTH CAROLINA :
COUNTY OF RICHLAND :

CAROLYN POWELL, :

Plaintiff, :

-vs- :

W. CONRAD POWELL, :

Defendant. :

IN THE FAMILY COURT
FOR THE
FIFTH JUDICIAL CIRCUIT

Civil Action No. 07-DR-40-0570

PENDENTE LITE ORDER

Presiding Judge: Rolly W. Jacobs
Counsel for Plaintiff: C. Cantzon Foster, II, & Reid B. Smith
Counsel for Defendant: Marne Sherman
Guardian *ad litem*: Not Applicable
Court Reporter: T. Dayton Grainger, Jr.
Date of Hearing: March 14, 2007

This matter came before the Court after the filing and service of a Notice of Motion and Motion for *Pendente Lite* Relief, Summons and Complaint, all of which were properly served on Defendant. Present at the hearing were the Plaintiff, accompanied by her attorneys, as well as the Defendant, accompanied by his attorney.

After reviewing the file in this matter, including the Affidavits submitted to the Court, as well as the Financial Declarations of the parties and the Child Support calculations prepared by counsel for Defendant, this Court finds and concludes as follows:

1. Plaintiff is a citizen and resident of the County of Aiken, State of South Carolina and has been so for more than three months prior to the filing of this action and Defendant is a citizen and resident of the County of Richland, State of South Carolina and has been so for more than three months prior to the filing of this action.

2. Plaintiff and Defendant are wife and husband, having been married on September 17, 1988, and they last resided together as wife and husband in the County of Richland, State of South Carolina.

3. To the marriage of the parties, two children were born, to wit: Mary Morgan Powell, born April 18, 1989 and Alexandra Powell, born May 5, 1991. No other children were born and none are expected.

4. The allegations set forth in the Complaint in this matter provide this Court with *in personam* jurisdiction, as well as subject matter jurisdiction, and venue is proper before the Court.

5. Custody of the children is not being contested in this action. One of the children will turn the age of eighteen in April, 2007, and the other will turn age sixteen in May, 2007, and both children have remained in the custody of their mother, who has lived in Aiken for the last several years and visitation has not been problematic between the parties and this Court finds and concludes that Plaintiff will continue to have custody of the parties' minor children and that visitation will continue as can be mutually established.

6. Plaintiff requested a lump sum payment of \$250,000.00 and Defendant agreed to advance such amount so long as such would be treated as an advance toward the equitable distribution award. Counsel for Plaintiff had no objection to treating the \$250,000.00 as an advance payment toward Plaintiff's equitable division in this case. This Court finds and concludes that such advance should be made to Plaintiff within thirty days.

7. There are significant liquid assets, as well as business assets, from this

marriage and the monies that are being advanced to Plaintiff, as well as those monies which have been previously advanced to her (\$400,000.00 in January, 2005), should be sufficient to constitute taking care of the expenses for any valuations needed by Plaintiff.

8. Plaintiff requested child support in the amount of \$3,000.00 per month. This Court finds and concludes that based upon Defendant's income from dividends and interest, without invading the principal of the marital assets, the South Carolina Child Support Guidelines dictate for the two children of the parties that child support in the amount of \$1,249.00 per month would be applicable. Beginning in June, 2007, this Court finds and concludes that the amount of child support should decrease to the amount of \$878.00 per month, such decrease being caused by the graduation from high school by the older daughter of the parties. This Court finds and concludes that Defendant should be required to make one monthly payment of child support to Plaintiff, such to be due and payable on the 1st day of each month, effective April 1, 2007, and that should Defendant ever be more than five days late with any payment, after the 10th day of the month in which Defendant is late, upon the filing of the appropriate Affidavit by Plaintiff, all future child support should be paid through the Richland County Family Court Support Section, with Defendant also paying an additional 5% for the administrative cost. In establishing the amount of child support Defendant should be required to pay, this Court excludes the fact that Plaintiff shows on her Financial Declaration that she has \$1,000.00 per month income from her business. This Court finds and concludes that it will not adopt that amount in so far as the calculation of child support is concerned.

9. This Court finds and concludes that full pre-trial discovery should be authorized and that the parties should be able to accomplish the evaluations that are required and should complete all discovery as quickly as possible.

10. This Court further finds and concludes that all other issues should be held in abeyance pending further Order of this Court.

WHEREFORE, it is hereby **ORDERED, ADJUDGED and DECREED** that:

1. Plaintiff will continue to have custody of the parties' minor children and visitation will continue as can be mutually established.

2. The lump sum payment of \$250,000.00 that Defendant agreed to advance to Plaintiff shall be treated as an advance toward the equitable distribution award and such advance shall be made to Plaintiff within thirty days.

3. The significant liquid assets, as well as business assets, from this marriage and the monies that are being advanced to Plaintiff, as well as those monies which have been previously advanced to her (\$400,000.00 in January, 2005), shall be sufficient to constitute taking care of the expenses for any valuations needed by Plaintiff.

4. Defendant shall pay child support in the amount of \$1,249.00 per month until June, 2007, when such amount of child support shall decrease to \$878.00 per month, such decrease being caused by the graduation from high school by the older daughter of the parties. Defendant shall be required to make one monthly payment of child support to Plaintiff, such to be due and payable on the 1st day of each month, effective April 1, 2007, and that should Defendant ever be more than five days late with any payment, after

the 10th day of the month in which Defendant is late, upon the filing of the appropriate Affidavit by Plaintiff, all future child support shall be paid through the Richland County Family Court Support Section, with Defendant also paying an additional 5% for the administrative costs.

5. The request for full pre-trial discovery is granted and the parties shall accomplish the evaluations that are required and shall complete discovery as quickly as possible.

6. All other issues shall be held in abeyance without prejudice to either party.

AND IT IS SO ORDERED.



HOLLY W. JACOBS
JUDGE, FAMILY COURT
FIFTH JUDICIAL CIRCUIT

At Chambers

Dated: April 23, 2007

Handwritten initials

✓
STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

Carolyn W. Powell,)

Plaintiff,)

vs.)

W. Conrad Powell,)

Defendant.)

IN THE FAMILY COURT FOR THE
IN THE FIFTH JUDICIAL CIRCUIT

Case No. 04-DR-40-3081

Case No. 07-DR-40-0570

**FINAL DECREE OF DIVORCE AND ORDER
APPROVING AGREEMENT**

Date of Hearing:
Presiding Judge:
Plaintiff's Attorney:
Defendant's Attorney:
Court Reporter:

May 2, 2007
The Honorable Anne Gue Jones
C. Cantzon Foster, II, Esquire
Marne Sherman, Esquire
Ms. Faith Thompson

FILED
2007 MAY -2 PM 2:32
BARBARA A. SCOTT
CLERK
& FAMILY COURT

This action was commenced by Plaintiff with the filing and service of a Notice of Motion and Motion for Temporary Relief, Summons and Complaint, bearing docket number 04-DR-40-3081, on or about August 27, 2004. Defendant filed and served his Answer and Counterclaim on or about October 21, 2004. Defendant filed and served his Amended Answer and Counterclaim on or about November 4, 2004. Plaintiff filed and served a Reply on or about December 16, 2004.

Subsequently, the case was administratively dismissed, pursuant to the 270 day rule in July of 2005, and Plaintiff re-filed and served a Notice of Motion and Motion for Temporary Relief, Summons, and Verified Complaint, bearing docket number 07-DR-40-0570, on or about February 21, 2007. Defendant filed and timely served an Answer and Counterclaim on April 17, 2007.

Plaintiff filed a motion to restore action 04-DR-40-3081 and consolidate said action with action 07-DR-40-0570 on March 9, 2007. Without objection from the Defendant, this Court granted Plaintiff's motion to restore and consolidate the above-mentioned actions at the commencement of this hearing.

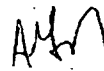
On April 27, 2007 the parties executed a Complete Property, Support, and Custody Agreement, hereinafter referred to as the "Agreement", which resolved all issues raised in the pleadings other than the issue of divorce. The parties requested that the Court approve and incorporate the Agreement in the Divorce Decree. The parties' Agreement is attached hereto and incorporated by reference as Exhibit 1.

Based on the representations of the attorneys, the sworn testimony of the parties, the sworn testimony of the corroborating witness, and a review of the parties Agreement and of the record in this matter, the Court makes the following findings of fact and conclusions of law:

1. Plaintiff is a citizen and resident of Aiken County, South Carolina, and has been for more than one year prior to the commencement of this action.
2. Defendant is a citizen of Richland County, South Carolina and has been for more than one year prior to the commencement of this action.
3. Defendant was personally served with the Summons and Complaint and thereafter filed an Answer and Counterclaim. Both parties have invoked, and submitted themselves to, the jurisdiction of this Court. Accordingly, I find that the Court has *in personam* jurisdiction of the parties, has subject matter jurisdiction, and that the venue properly lies with this Court in Richland County, South Carolina.
4. The parties are husband and wife, having been lawfully married to each other on September 17, 1988. There are two minor children of this marriage, Mary Morgan Powell, who is emancipated by age and expected to graduate during this school year (DOB: 4/18/89) and Alexandra Caroline Powell (DOB: 5/05/91). (hereinafter referred to as "minor children" or "children"). No other children are expected of the marriage.

AM

5. Plaintiff has requested that she be allowed to resume the use of her maiden name: "Carolyn Mitchell". The Court finds that the Plaintiff is not seeking a name change to elude creditors, evade criminal prosecution and that the Plaintiff's name has not been placed on any sexual predator list. The Court finds that the Plaintiff's request is reasonable under the circumstances and is so ordered.
6. Based on the record and testimony before this Court, I find and conclude that Plaintiff has clearly and convincingly proven by the preponderance of the evidence that the parties have lived separate and apart without cohabitation since December of 2003, which a corroborating witness also testified to. Based on the parties' responses to the Court's questions, I find that there is no possibility of reconciling the marriage and that any efforts to do so would be unavailing. Accordingly, I find Plaintiff and Defendant are mutually entitled to a divorce a *vinculo matrimonii* on the statutory ground of living continuously separate and apart for one year.
7. Plaintiff and Defendant entered into the Agreement, signed by the parties on April 27, 2007, which provides for a full and final resolution of all issues arising out of their marital relationship, save and except the issue of divorce. A copy of the Agreement was reviewed by the Court at the hearing. The original Agreement is attached as Exhibit 1 hereto and incorporated herein by reference.
8. Considering the age, health, education, and earning capacity of each party, and the terms of the property division, the waiver of alimony is fair and reasonable under the circumstances.



9. Considering the factors set forth in S.C. Code § 20-7-472 and the nature of marital property available for division, the property division provisions of the Agreement are fair and equitable.
10. The Court questioned both parties under oath about their understanding of the Agreement, their desire to enter into the Agreement in lieu of a trial and their desire to have it approved by the Court. Based on the parties' testimony, I conclude that the Agreement was reached in a procedurally fair manner. Neither party was under the influence of alcohol, drugs, duress, threats, undue influence, or other improper factors, which would impair the party's ability to freely and voluntarily enter into the Agreement. The parties have been represented by independent and competent counsel throughout and are satisfied with the advice they have received and the services rendered by their respective attorneys.
11. Each party has had ample opportunity to confer with his and her counsel and financial advisors and each considered the terms of the Agreement to be fair and equitable. Each party is sufficiently knowledgeable of the financial circumstances of the other and is satisfied with the financial disclosure made by the other. The Agreement is the product of arm's length negotiations which have taken place over a reasonable period of time. Neither party has any questions about the Agreement and each party seeks the Court's approval of the Agreement. Both parties understand that, once approved, the Agreement shall become an order of this Court and the same shall be enforceable by the contempt powers of this Court.
12. The Agreement is substantially fair. As the parties know, it is not necessarily the identical result this Court would have reached after a full hearing on the merits of the



case. However, it does provide for custody of the minor children with the Plaintiff and the Defendant having visitation, which I find is in the minor children's best interest.

13. The Agreement also provides for a fair and equitable division of the parties' marital property, allocating to each party a reasonable share of that marital property, and a substantively fair resolution of all other issues.

14. I find that the Agreement has been freely, voluntarily and knowingly entered into by the parties and resolves all the issues this Court would otherwise have to adjudicate.

Now, therefore, based upon the foregoing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

- A. Plaintiff's motion to restore docket number 04-DR-40-3081 and consolidate said case with docket number 07-DR-40-0570 is hereby granted.
- B. Plaintiff and Defendant are mutually granted a divorce *a vinculo matrimonii* from each other on the statutory ground of living continuously separate and apart for a period of one year;
- C. The Complete Property, Support, and Custody Agreement between Plaintiff, Carolyn W. Powell, and Defendant, W. Conrad Powell, which is fully described above and incorporated herein by reference, is hereby approved by this Court, is adopted as the Order and directive of this Court, and shall have the full force and effect of all other orders and decrees issued by this Court as fully as if repeated herein verbatim. The parties shall strictly comply with the terms of the Agreement or risk the contempt powers of this Court; and

D. The Plaintiff shall be entitled to resume her former maiden name of Carolyn Mitchell.

AND IT IS SO ORDERED, ADJUDGED AND DECREED.



The Honorable Anne Gue Jones
Presiding Family Court Judge
Fifth Judicial Circuit

May 2, 2007
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Carolyn Mitchell Powell,

Plaintiff,

vs.

Ashlin Blanchard Potterfield; J. Michael
Taylor; Taylor/Potterfield; Golden, Taylor,
Potterfield and Barron; Reid Smith; and Price,
Bird & Smith, P.A.,

Defendants.

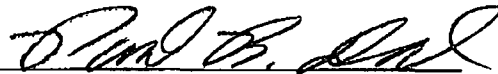
IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2009-CP-40-8705

**STIPULATION OF DISMISSAL
OF DEFENDANT
GOLDEN, TAYLOR, POTTERFIELD
AND BARRON**

Pursuant to South Carolina Rule of Civil Procedure 41(a)(1), The Plaintiff hereby stipulates to voluntarily dismiss this action, without prejudice, only as to defendant Golden, Taylor, Potterfield and Barron. Undersigned counsel hereby certifies this defendant has filed neither an answer nor a motion for summary judgment.

McCUTCHE BLANTON HOPKINS
& CAMPBELL, LLP



William E. Hopkins, Jr.

Susan F. Campbell

Paul B. Deal

1414 Lady Street (29201)

Post Office Box 11316

Columbia, South Carolina 29211-1316

(803) 256-6152

(803) 256-6155 - facsimile

wehopkins@mbhclaw.com

scampbell@mbhclaw.com

pdeal@mbhclaw.com

ATTORNEYS FOR PLAINTIFF

January 25, 2010
Columbia, South Carolina

Carolyn Mitchell Powell V. ASHLIN BLANCHARD POTTERFIELD, ET AL.

DOCKET NUMBER 2009-CP-40-8705

PROOF OF ADR

1. Alternative Dispute Resolution (ADR) was conducted in the form of: **Mediation.**
2. The neutral was: **Karl A. Folkens.**
3. The ADR was conducted on **March 21, 2012.**
4. As a result of ADR, this case should be considered (please check one):

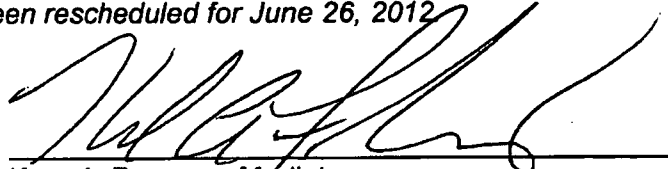
_____ Fully Settled by Consent Judgment or a Voluntary Dismissal to be filed by the parties.

_____ Partially Settled, with agreement of the parties on the following issues:

_____ At an impasse.

_____ X In need of further ADR. I X am / _____ am not willing to mediate this case further. I recommend that ADR resume as of: *next scheduled session*

_____ X Continued to: *June 26, 2012*
5. Plaintiff _____ was/ X was not present.
Defendants _____ were/ X were not present (through representatives).
6. Other participants were:
_____ X Lawyer for Plaintiff: *Thomas A. Pendarvis, Esq.*
_____ X Lawyer for Defendants: *Charles E. Hill, Esq.*
_____ Representative for insurance carrier:
_____ Guardian ad Litem:
_____ Experts:
_____ Others:
7. Choice of the mediator was by:
_____ X Stipulation
_____ Court Order
8. The total number of hours spent in ADR was: **1.0** hours.
9. Further comments of the neutral: *A meaningful mediation could not occur because of a pending Motion for Summary Judgement. Mediation has been rescheduled for June 26, 2012*


KARL A. FOLKENS, Mediator
P. O. Box 6139, Florence, SC 29502-6139
(843) 665-0100; FAX (843) 665-0500

March 21, 2012

MA12-051

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Carolyn Mitchell Powell,

Plaintiff(s)

vs.

Ashlin Blanchard Potterfield, J. Michael Taylor,
Taylor/Potterfield, Golden, Taylor, Potterfield and
Barron, Reid Smith, and Price, Bird & Smith, P.A.

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2009-CP - 40-8705

(Please Print)

Submitted By: Susan F. Campbell

Address: Post Office Box 11316

Columbia, SC 29211-1316

SC Bar #: 70545

Telephone #: 803-256-6152

Fax #: 803-256-6155

Other:

E-mail: scampbell@mbhclaw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts	Torts - Professional Malpractice	Torts - Personal Injury	Real Property
☐ Constructions (100)	☐ Dental Malpractice (200)	☐ Assault/Slander/Libel (300)	☐ Claim & Delivery (400)
☐ Debt Collection (110)	☒ Legal Malpractice (210)	☐ Conversion (310)	☐ Condemnation (410)
☐ Employment (120)	☐ Medical Malpractice (220)	☐ Motor Vehicle Accident (320)	☐ Foreclosure (420)
☐ General (130)	☐ Notice/ File Med Mal (230)	☐ Premises Liability (330)	☐ Mechanic's Lien (430)
☐ Breach of Contract (140)	☐ Other (299)	☐ Products Liability (340)	☐ Partition (440)
☐ Other (199)		☐ Personal Injury (350)	☐ Possession (450)
		☐ Wrongful Death (360)	☐ Building Code Violation (460)
		☐ Other (399)	☐ Other (499)
-
Inmate Petitions	Judgments/Settlements	Administrative Law/Relief	Appeals
☐ PCR (500)	☐ Death Settlement (700)	☐ Reinstate Driver's License (800)	☐ Arbitration (900)
☐ Mandamus (520)	☐ Magistrate's Judgment (720)	☐ Relief (820)	☐ Magistrate-Criminal (920)
☐ Habeas Corpus (530)	☐ Minor Settlement (730)	☐ Permanent Injunction (830)	☐ Municipal (930)
☐ Other (599)	☐ Transcript Judgment (740)	☐ Forfeiture-Petition (840)	☐ Probate Court (940)
	☐ Lis Pendens (750)	☐ Forfeiture--Consent Order (850)	☐ SCDOT (950)
	☐ Other (799)	☐ Other (899)	☐ Worker's Comp (960)
-
Special/Complex /Other	
☐ Environmental (600)	☐ Pharmaceuticals (630)
☐ Automobile Arb. (610)	☐ Unfair Trade Practices (640)
☐ Medical (620)	☐ Out-of State Depositions (650)
☐ Other (699)	☐ Sexual Predator (510)

Submitting Party Signature:

Susan F. Campbell

Date:

12-11-09

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR.**
 Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Carolyn Mitchell Powell,

Plaintiff,

vs.

Ashlin Blanchard Potterfield; J. Michael Taylor; Taylor/Potterfield; Golden, Taylor, Potterfield and Barron; Reid Smith; and Price, Bird & Smith, P.A.,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2009-CP-40 -

SUMMONS

2009 DEC 11 PM 4:27
JEANETTE W. McBRIDE
C.C.P. & C.S.

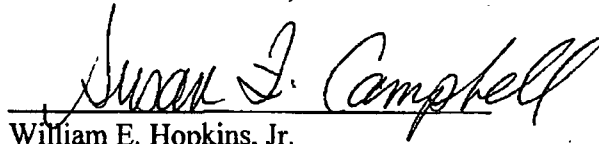
RICHLAND COUNTY
FILED

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this action. A copy of the Complaint is attached to this Summons and is herewith served upon you. Your answer must be in writing and signed by you or by your attorney and must state your address or the address of your attorney if signed by your attorney. Your answer must be served upon the undersigned attorneys for the Plaintiff within thirty (30) days after the service hereof, exclusive of the day of service at Post Office Box 11316, Columbia, South Carolina 29211-1316.

YOU ARE HEREBY GIVEN NOTICE FURTHER that, if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, judgment by default will be rendered against you for the relief demanded in the Complaint.

McCUTCHEN BLANTON HOPKINS
& CAMPBELL, LLP



William E. Hopkins, Jr.

Susan F. Campbell

Paul B. Deal

1414 Lady Street (29201)

Post Office Box 11316

Columbia, South Carolina 29211-1316

(803) 256-6152

(803) 256-6155 - facsimile

December 11, 2009

Columbia, South Carolina

ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Carolyn Mitchell Powell

Plaintiff,

vs.

Ashlin Blanchard Potterfield; J. Michael Taylor; Taylor/Potterfield; Golden, Taylor, Potterfield and Barron; Reid Smith; and Price, Bird & Smith, P.A.

Defendants.

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2009-CP-40 -

COMPLAINT

(Jury Trial Demanded)

RICHLAND COUNTY
FILED
2009 DEC 11 PM 4:27
JANETTE W. HODRIDE
C.C.P. & C.S.

Plaintiff Carolyn Mitchell Powell, by and through her undersigned attorneys, complaining of the above-named Defendants, all of which are or were South Carolina residents and entities, would respectfully allege and show to this Honorable Court the following:

JURISDICTION AND VENUE

1. Plaintiff Powell is a citizen and resident of Richland County, State of South Carolina.
2. Defendants Ashlin Blanchard Potterfield, Esquire and J. Michael Taylor, Esquire, individually and as partners in Defendant Law Firm Taylor/Potterfield, are attorneys who maintain a place of business in Richland County, State of South Carolina. Defendant Taylor holds himself out as a legal specialist in the field of matrimony law.
3. Defendants Potterfield and Taylor were formerly partners in Defendant Golden, Taylor, Potterfield and Barron, a partnership between a Professional Association and Attorneys, during part of their representation of Plaintiff. Defendant Golden, Taylor, Potterfield and Barron maintained a place of business in Richland County, State of South Carolina.

4. Defendant Reid Smith, individually and as a partner in Defendant Price, Bird & Smith, P.A. is engaged in the practice of law and maintains a place of business in Richland County, State of South Carolina.

5. On or about September 2, 2003, Defendants Golden, Taylor, Potterfield and Barron (hereinafter "GTPB") and Defendant Ashlin Potterfield were engaged by Plaintiff to serve as her counsel for a family law matter between Plaintiff and her then husband, Conrad Powell (hereinafter "husband"). Plaintiff paid these Defendants a \$3,000 retainer fee at that time.

6. At the time Plaintiff retained Defendants GTPB and Defendant Potterfield, the Plaintiff had been married to her husband for fifteen years and was the primary caretaker for two children born of the marriage.

7. The legal services which these defendants were expected to provide included:

- a. Custody and Support of two minor children;
- b. Separate Support and Maintenance of Plaintiff;
- c. Property Division;
- d. Alimony; and
- e. Advice concerning extra-marital affairs by Plaintiff's husband.

8. Soon after the representation began, Plaintiff's husband sold a valuable commercial property, referred to as the South Carolina Student Loan building. Plaintiff believed that Defendant Potterfield would take protect the proceeds from the sale of that building.

9. Upon information and belief, Defendants GTPB and Potterfield did not protect those proceeds.

10. On or about September 2, 2003, Plaintiff provided these Defendants with a copy of a private investigator report documenting substantial evidence of her husband's opportunity and inclination to commit adultery.

11. Although they were well aware of the law, the Defendants never told Plaintiff that she would be forever barred from receiving alimony should she engage in an adulterous affair before the earliest of these two events: (1) the formal signing of a written property or marital settlement agreement or (2) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties.

12. From September 2, 2003, and for three years thereafter, Plaintiff had not engaged in any form of adultery and was entitled to pursue a claim for an award of alimony under the law of South Carolina.

13. Defendants never pursued a claim for an award of alimony on Plaintiff's behalf.

14. Plaintiff provided these Defendants with multiple documents evidencing the existence of valuable marital assets, as well as the net worth of the husband.

15. Plaintiff further provided these Defendants with multiple documents evidencing her immediate financial needs and evidencing her belief that the husband was hiding assets through family members and business ventures.

16. Despite having knowledge that Plaintiff's interests in the valuable marital assets were in need of protection, by Court Order or otherwise, from September 2, 2003, the date of retention, through August 26, 2004, these Defendants made absolutely no filings with the Richland County Family Court on Plaintiff's behalf.

17. The marital home was placed on the market sometime in June 2004 and put under contract by Plaintiff's husband while Plaintiff was out of the country.

18. Upon Plaintiff's return to South Carolina, Defendant Potterfield convinced her to move with her daughters out of the marital home.

19. Plaintiff agreed to do so in light of Defendant Potterfield's assurances that she would protect Plaintiff's interest in the proceeds from the sale of the marital home.

20. At the time Defendant Potterfield negotiated Plaintiff's removal from the marital home, she failed to negotiate any provision whereby Plaintiff and her daughters could move into another residence, despite the fact that at least three homes were owned by the couple. Thus without funds, without means of support or other alternatives, Plaintiff was forced to move herself and young daughters into a commercial space owned as part of the marital estate.

21. On or about August 26, 2004, these Defendants filed a Complaint for separate support and maintenance, styled as Powell v. Powell 2004-DR-40-3081, in the Richland County Family Court.

22. On or about December 16, 2004, these Defendants filed a Reply in response to husband's Answer with the Court.

23. On or about January 20, 2005, and on several occasions thereafter, Plaintiff informed Defendant Potterfield that she had no access to the marital estate funds and that her husband had signed a contract for sale of marital property in the form of a beach home for approximately \$2,075,000.

24. Defendants did not protect Plaintiff's interest in the proceeds from the sale of the beach home.

25. On or about January 21, 2005, these Defendants accepted, on behalf of Plaintiff, an amount of \$400,000 from Plaintiff's husband as a partial property settlement.

26. This partial property settlement was offered only after Defendant Potterfield unilaterally agreed, without Plaintiff's consent, that Plaintiff would vacate the marital property commercial space that was being used to house her art gallery.

27. The art gallery was the only existing source of support, as well as future source of support, for the Plaintiff.

28. If Defendant Potterfield had reduced to a formal writing the terms of the property settlement on or about January 21, 2005, Plaintiff's ability to pursue a claim for alimony would have been protected.

29. On or about March 17, 2005, Defendant Potterfield consented to the withdrawal of Plaintiff's husband's motion for *pendent lite* relief, giving up the ability to move forward with a scheduled temporary hearing to approve the partial property agreement. With the exception of ministerial affidavits of service and continuances, this was Defendant Potterfield's third and final filing with the Richland County Family Court on behalf of Plaintiff during the multi-year representation.

30. If Defendant Potterfield had allowed the hearing to go forward, an Order could have been entered with respect to the partial property agreement, thereby protecting Plaintiff's ability to pursue a claim for alimony.

31. Defendant Potterfield did not engage in any formal discovery at any time during her multi-year representation of Plaintiff.

32. Defendant Potterfield did not engage in any informal discovery at any time during her multi-year representation of Plaintiff.

33. These Defendants did not reduce to writing any agreement concerning the January 21, 2005 partial property settlement.

34. These defendants did not tell Plaintiff that despite the fact that she had been separated from her husband for three (3) years, any claim to alimony would be forever barred should she begin a romantic relationship.

35. During the entire time that Defendant Potterfield served as Plaintiff's lead attorney, Plaintiff recalls only one (1) face to face meeting in the law office.

36. During the entire time that Defendant Potterfield served as Plaintiff's lead attorney, Plaintiff does not recall receiving any itemized billing for services rendered, nor did she receive a refund for any portion of an unearned fee with respect to the initial retainer paid by Plaintiff.

37. On or about April 1, 2005, these Defendants agreed that Plaintiff's domestic case would be taken over by Defendant Taylor as a replacement for Defendant Potterfield, and he too was thereafter paid a retainer fee, in the amount of \$5,000.

38. Specifically, Defendant Taylor made representations to Plaintiff which assured her that this change in attorneys within the Defendant law firm would provide relief to Plaintiff's concerns concerning inactivity of her domestic case.

39. On or about May 12, 2005, Plaintiff provided Defendant Taylor with a list of proposed settlement terms for a final settlement and explained that she had not received an accounting from the sale of the beach home.

40. On or about June 23, 2005, Defendant Taylor served Plaintiff's husband with interrogatories and requests for production, for the first time in the multi-year litigation.

41. On or about July 12, 2005, Defendant Taylor admitted that husband's financial declaration had never been requested by Defendant Potterfield.

42. As set forth above, from September 2, 2003 through July 12, 2005, Defendants had purported to represent Plaintiff in the domestic dispute, yet they failed to determine the full extent of the parties' marital assets.

43. Even though Defendant Taylor knew that as of July 12, 2005, the proceeds from the sale of the beach home were placed into Plaintiff's husband's personal accounts, and not in an escrow account, he took no action on Plaintiff's behalf to ensure Plaintiff's interest in the marital assets would be protected by Court Order, or otherwise, while in husband's personal account.

44. These Defendants submitted letters to Plaintiff upon which they intended for her to rely, which led her to believe that Defendants would ensure the beach house sale proceeds were being protected.

45. On or about August 18, 2005, Defendant Taylor, for the first time, received personal financial statements from Plaintiff's husband in response to a request for production.

46. The personal financial statements revealed the value of the marital estate to be as follows:

2002	\$7,000,000
2003	\$2,800,000
2004	\$3,200,000

47. Although this dissipation of marital assets was set out in the husband's personal financial statements received by Defendant Taylor on August 18, 2005, Plaintiff had, in 2003, warned these Defendants that her husband would hide or transfer assets and provided these Defendants with documentation of such conduct.

48. On or about February 22, 2006, Defendant Taylor associated Defendant Reid Smith to assist with certain financial and accounting aspects of the Plaintiff's case.

49. Defendant Smith reviewed extensive financial records regarding Conrad Powell's assets and business ventures during the marriage.

50. Plaintiff informed Defendant Smith she believed her husband was diluting assets via transfers to his brother, his accountant, and business ventures.

51. On or about August 4, 2006, Defendant Smith compiled an "Asset Summary," as shown by his itemized invoice to Plaintiff dated March 9, 2007.

52. This Asset Summary indicated Plaintiff's husband was attempting to conceal or move marital assets.

53. Defendant Smith admitted he questioned the veracity of Plaintiff's husband's reported income on his tax returns.

54. Despite having this knowledge throughout their representation of Plaintiff, these Defendants did not make any filings with the Family Court to ensure that marital assets were protected, nor did they make any filings with the Family Court to have Plaintiff's husband account for missing marital assets.

55. With the exception of continuances, affidavits of service, and one deposition notice, Defendant Taylor made no substantive filings with the Family Court during his representation of Plaintiff from April 1, 2005 to January 19, 2007.

56. From approximately February 28, 2006 to October 12, 2006, Defendant Taylor did not communicate in writing with Plaintiff regarding any aspect of her case.

57. On or about December 13, 2006, Defendant Smith took the deposition of Plaintiff's husband, wherein Plaintiff's husband admitted he had been living off of the sale of marital assets since the parties' separation in 2003. Defendant Taylor was present during this deposition.

58. Defendant Smith failed to fully explore and discern the extent of Plaintiff's husband's transfers and dilution of marital assets.

59. To the extent Defendant Smith did fully explore and discern the extent of Plaintiff's husband's dilution of marital assets, he failed to protect Plaintiff with regard to what he had discovered concerning Plaintiff's interests in the marital assets.

60. All of the Defendants should have acted on the information they had available, and to the extent such information was insufficient, they should have conducted appropriate discovery to become knowledgeable about the true value of the marital estate.

61. On or about January 19, 2007, Defendant Taylor was relieved as Plaintiff's counsel and replaced by attorney Cantzon Foster.

62. Defendant Smith filed a notice of representation of Plaintiff on March 16, 2007, although he was representing Plaintiff as one of her attorneys for more than one (1) year prior to this date.

63. On or about January 23, 2007, Plaintiff was told, for the first time, that she could not pursue a claim for alimony because she had begun a romantic relationship with another man in September, 2005, two years after she first hired Defendants GTPB and Defendant Potterfield.

64. Defendant Taylor led Plaintiff to believe that because this September, 2005 relationship began long after the parties' separation, it would not bar an alimony claim.

65. Defendant Taylor never pursued Plaintiff's alimony claim.

66. After Plaintiff relieved Defendant Potterfield and Defendant Taylor as her counsel, she learned that if the Defendants had procured a formal signing of the January 21, 2005 partial property settlement agreement, then her claim for permanent alimony would not have been barred as a result of Plaintiff's September, 2005 relationship.

67. After five years of frustration, anxiety, depression, and emotional distress concerning the handling of her domestic case, and after repeated assurances that the Defendants' pursuit of her case would become more aggressive, Plaintiff was on the verge of an emotional breakdown.

68. Plaintiff sought counseling from friends who were licensed and trained to provide professional help so that Plaintiff could attempt to cope with the anxiety brought about by the divorce, her lack of financial support, and the length of time the proceeding was taking.

69. In light of the untenable circumstances and Plaintiff's inability to cope with those circumstances after the multi-year battle with her husband, Plaintiff agreed to a settlement of her domestic case, and on May 2, 2007, a Final Decree of Divorce was granted by Judge Anne Jones of the Family Court for the Fifth Judicial Circuit.

FOR A FIRST CAUSE OF ACTION
(Legal Malpractice)

70. The Plaintiff adopts the allegations of above paragraphs and incorporates the same herein by reference as if stated verbatim.

71. Defendants, in providing legal representation for the Plaintiff, owed a duty of care to the Plaintiff.

72. Defendants by their acts and/or omissions breached the duty of care owed to the Plaintiff.

73. The Plaintiff had a right to, and in fact did, rely on that duty.

74. The Defendants were negligent, grossly negligent, reckless, wanton, and/or willful, including but not limited to, the following particulars:

- a. in failing to timely prosecute her domestic case in a manner that would protect Plaintiff, her interest in valuable marital assets, her alimony claim, and the well being of Plaintiff's children;

- b. in failing to advise client to avoid all dating and sexual activity during the separation until a formal divorce decree or until the formal signing of a written property or marital settlement agreement;
- c. in failing to advise client regarding the existence (in her favor) of a fault based divorce from her husband on the ground of adultery and the ability to seek an expedited divorce hearing under South Carolina law;
- d. in failing to advise client regarding her husband's defense of recrimination should Plaintiff begin a relationship with another man;
- e. in failing to file the financial declaration of Plaintiff and failing to ensure the sworn financial declaration of Plaintiff's husband were filed within 45 days of serving the complaint in accordance with South Carolina Rule of Family Court 20;
- f. in failing to obtain a valuation of the marital estate, through an expert or otherwise, at the commencement of litigation;
- g. in failing to prevent Plaintiff's husband from marketing and selling marital assets without a protective order from the Family Court;
- h. in failing to protect marital assets each time Plaintiff's husband sold marital assets during the parties' separation;
- i. in failing to advise client of her right to pursue, and probable entitlement to, a substantial temporary and permanent alimony award;
- j. in failing to advise client that the parties should enter into a written agreement to evidence the partial property settlement in January, 2005;
- k. in failing to advise client regarding the effect of adultery/cohabitation prior to a final divorce decree or approval of a marital settlement agreement;
- l. in failing to pursue temporary relief and separate support and maintenance despite having knowledge that client had no control over the marital estate and was in dire need of temporary relief as early as September, 2003;
- m. in failing to timely file and serve interrogatories and requests for production on Plaintiff's husband or to timely pursue any other meaningful discovery which would assist Defendants in determining the true value of the marital estate;
- n. in failing to advise client to immediately secure all property against waste and dissipation;

- o. in failing to seek a protective order enjoining Plaintiff's husband from dissipation of marital assets;
- p. in failing to secure timely and sufficient child support payments for Plaintiff;
- q. in waiting over three years to depose Plaintiff's husband;
- r. in failing to mitigate the damages caused by their acts and omissions;
- s. in failing to keep track of deadlines such as, but not limited to, discovery deadlines;
- t. in failing to promptly communicate with opposing counsel regarding settlement demands;
- u. in failing to abide by the requirements of applicable provisions of the South Carolina Code of Professional Conduct, including but not limiting to, failing to diligently pursue the representation of the client and failing to communicate with client;
- v. in failing to exercise that degree of care reasonable attorneys and a reasonable law firm would have exercised under the same or similar conditions, particularly those who hold themselves out as specialized in this area of the law; and
- w. in failing to communicate with Plaintiff.

75. The Defendants failed to adequately pursue claims which should have been made, interview witnesses, and failed to make adequate discovery requests including failure to promptly depose crucial witness and to make use of compelling evidence of Plaintiff's husband's adultery at the onset of the separation in 2003.

76. As a direct and proximate result of the Defendants' wrongful conduct, the Plaintiff has suffered foreseeable damages, has not contributed thereto and is entitled to recover actual damages, special damages, consequential damages, damages for emotional harm and anxiety to the extent the negligence affected the well being of Plaintiff and her children, attorney's fees,

costs, expenses, all according to applicable law in amounts to be determined at trial, as well as punitive damages.

77. Specifically as a direct and proximate result of the Defendants' wrongful conduct, the Plaintiff suffered the loss of the ability to pursue a claim for an award of permanent alimony, substantial loss of her share of the marital estate, loss of the opportunity to have marital assets protected until an accounting could be performed, and a decreased child support award in light of the delay in securing and authenticating a financial declaration from Plaintiff's husband.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract)

78. That Plaintiff adopts the allegations of the above paragraphs and incorporates the same herein by reference as if stated verbatim.

79. Defendants entered into a binding contract or agreement with Plaintiff.

80. Defendants breached or unjustifiably failed to perform their obligations under the contract, in all of the particulars alleged above.

81. Plaintiff suffered emotional and monetary damages as a direct and proximate result of the breach, including the loss of the opportunity to pursue various claims in the marital litigation against her husband.

82. As a direct and proximate result of the Defendants breach of the contract to provide legal services, the Plaintiff has suffered foreseeable damages, has not contributed thereto and is entitled to recover actual damages, special damages, consequential damages, attorney's fees, costs, expenses, all according to applicable law in amounts to be determined at trial as well as punitive damages.

83. Specifically as a direct and proximate result of the Defendants' wrongful conduct, the Plaintiff suffered the loss of the ability to pursue a claim for an award of permanent alimony,

substantial loss of her share of the marital estate, and a decreased child support award in light of the delay in securing and authenticating a financial declaration from Plaintiff's husband.

FOR A THIRD CAUSE OF ACTION
(Breach of Fiduciary Duty)

84. That Plaintiff adopts the allegations of the above paragraphs and incorporates the same herein by reference as if stated verbatim.

85. As attorneys for the Plaintiff, the Defendants stood in a fiduciary relationship with the Plaintiff.

86. The Defendants owed the Plaintiff a fiduciary duty and the duty of loyalty and honesty.

87. The Plaintiff had a right to rely on aforesaid duty and did in fact rely on it, all to the Plaintiff's foreseeable detriment.

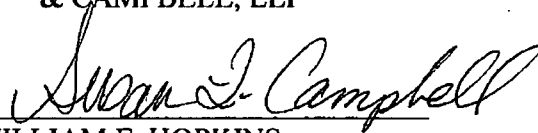
88. Specifically as a direct and proximate result of the Defendants' wrongful conduct, the Plaintiff suffered the loss of the ability to pursue a claim for an award of permanent alimony, substantial loss of her share of the marital estate, and a decreased child support award in light of the delay in securing and authenticating a financial declaration from Plaintiff's husband.

DEMAND FOR JURY TRIAL

89. Plaintiff hereby demands a jury trial on all issues so triable.

WHEREFORE, Plaintiff prays for judgment against the Defendants, jointly and severally, for actual damages, compensatory damages, attorney's fees, costs, and for such punitive damages as are allowed by law, and for such further relief as the Court deems just and proper.

McCUTCHEN BLANTON HOPKINS
& CAMPBELL, LLP



WILLIAM E. HOPKINS
SUSAN F. CAMPBELL
PAUL B. DEAL
1414 Lady Street (29201)
Post Office Box 11316
Columbia, South Carolina 29211-1316
Telephone: (803) 256-6152
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wehopkins@mbhclaw.com
scampbell@mbhclaw.com
pdeal@mbhclaw.com

December 11, 2009

ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Carolyn Mitchell Powell

Plaintiff,

vs.

Ashlin Blanchard Potterfield; J. Michael Taylor; Taylor/Potterfield; Golden, Taylor, Potterfield and Barron; Reid Smith; and Price, Bird, & Smith, P.A.

Defendants.

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

C/A No.: 2009-CP-~~40~~-_____

VERIFICATION

(Jury Trial)

JEANETTE W. MCBRIDE
C.C.P. & C.S.

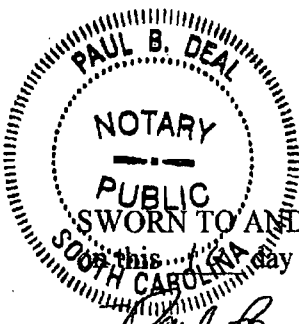
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RICHLAND COUNTY
FILED

PERSONALLY APPEARED BEFORE ME, the undersigned who being duly sworn, deposes and states that she has read the **Complaint** in the foregoing action and the statements contained therein are true to the best of her knowledge, information and belief.

Carolyn Mitchell

12/11/09



SWORN TO AND SUBSCRIBED before me
on this 11th day of December, 2009

Paul B. Deal

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires:

My Commission Expires September 25, 2019

STATE OF SOUTH CAROLINA }
COUNTY OF RICHLAND }
Carolyn Mitchell Powell, }
Plaintiff, }
vs. }
Ashlin Blanchard Potterfield; J. Michael }
Taylor; Taylor/Potterfield; Golden, Taylor, }
Potterfield and Barron; Reid Smith; and }
Price, Bird, & Smith, P.A., }
Defendants. }

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

**AFFIDAVIT OF
EXPERT OPINION OF
DR. GREGORY B. ADAMS**

PERSONALLY APPEARED before me Gregory B. Adams who, being duly sworn, deposes and says that:

1. It is my expert opinion, held to a reasonable degree of professional certainty, that the Verified Complaint in this matter alleges facts establishing that

A. attorney-client relationships existed between Ashlin Blanchard Potterfield, Esq., J. Michael Taylor, Esq., and Reid Smith, Esq. (the lawyers) and Carolyn Mitchell Powell (the client) at various times during the relevant periods from September 2003 to May 2007 (in accordance with the alleged involvement of the individual lawyers at various stages);

B. the scope of the representation encompassed all of the issues involved in the breakup of the client's marriage, including the divorce, custody and support issues regarding the two minor children of the marriage, separate support and maintenance for the client, and division of the marital property;

C. these attorney-client relationships created contractual, professional, ethical, and fiduciary duties from each of the lawyers and their respective law firms to Carolyn Mitchell Powell;

D. the lawyers and their law firms violated their duties to Ms. Powell in numerous ways, including the following violations of the South Carolina Rules of Professional Conduct (Rule 407, SCACR), each of which constitutes a failure to adhere to the standard of care required of a South Carolina lawyer representing a client in such circumstances:

- i. they failed to provide their client with competent advice and representation as required by Rule 1.1,
 - a. by failing to use the legal knowledge, skill, thoroughness, and preparation reasonably necessary, and
 - b. by violating the standard of care, which required them to render their services with the degree of skill, care, knowledge, and judgment usually possessed and exercised by members of the legal profession in South Carolina;

- ii. they failed to represent their client diligently, as required by Rule 1.3 and the standard of care, in that they were inexcusably dilatory
 - a. in filing and prosecuting the action in family court,
 - b. in protecting their client's rights by taking reasonably available legal steps to prevent her husband's dissipating, transferring, and secreting a substantial portion of the marital assets,
 - c. in advising her timely about the legal consequences of beginning a romantic relationship, and
 - d. in obtaining the execution of the January 21, 2005, partial property settlement agreement;
- iii. they failed to make reasonable efforts to expedite the litigation in the interests of their client, as required by Rule 3.2 and the standard of care;
- iv. they failed to communicate with their client promptly and reasonably as required by Rule 1.4 and the standard of care; and
- v. they failed to provide their client with candid advice based on their exercise of independent professional judgment as required by Rule 2.1 and the standard of care.

E. these violations proximately caused Ms. Powell considerable damages including loss of any right to separate maintenance and support and loss of

substantial value of the marital estate and her share of it due to the dissipation, transfer, and secreting of much of it by her husband during the pendency of the divorce litigation;

F. these violations of the South Carolina Rules of Professional Conduct also constituted breaches of the contracts between the lawyers and their law firms and their client, Ms. Powell, because providing competent, ethical legal advice and representation in accordance with the South Carolina Rules of Professional Conduct and the standard of care of South Carolina lawyers was an inherent provision of each of those contracts;

G. many of these violations of the South Carolina Rules of Professional Conduct also constituted breaches of the fiduciary duties that the lawyers and their law firms owed to their client, Ms. Powell.

2. The documentary evidence I have reviewed supports the allegations of the Verified Complaint. This evidence includes the kinds of factual sources customarily relied upon by experts in this field, such as a detailed timeline of documents and events, including retainer agreements; pleadings, motions, notices, and discovery in the underlying litigation; correspondence and emails between the attorneys and their client and with each other and opposing counsel; and other documents related to the representation and litigation.

3. My resume, attached as Exhibit A, demonstrates why federal and state courts, including the South Carolina Supreme Court and the South Carolina Court of Appeals, have held that I am qualified as an expert witness and thus am qualified to conduct the review required by S.C. Code Ann. §15-36-100(B).

A. I am a tenured law professor at the University of South Carolina School of Law, where I have been teaching since 1978. My subjects of expertise include lawyers' ethics and professional responsibility, corporate law, fiduciary duties, and contract law, as well as judicial ethics, agency, and partnership law.

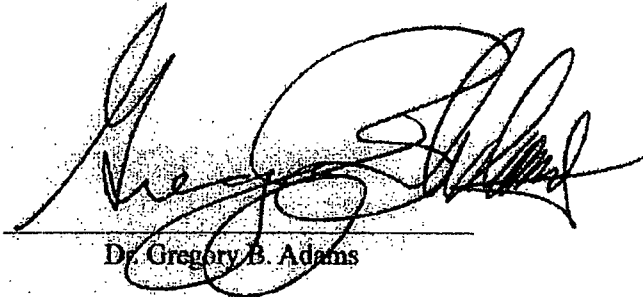
B. I have earned a J.S.D. (Doctor of Juridical Science) and an LL.M. from Columbia University School of Law, as well as my J.D. from Louisiana State University.

C. Federal and state courts in South Carolina have recognized my expertise, including the South Carolina Supreme Court in *State v. Morris*, 656 S.E.2d 359 (S.C. Supreme Court, 1/14/08) (holding that I am qualified as an expert witness and that my expert testimony was accurate and proper) and *Smith v. Haynsworth, Marion, McKay & Guerard*, 322 S.C. 433, 472 S.E.2d 612 (1996) (holding it was reversible error not to conclude that I was qualified as an expert witness on issues of lawyers' duties), and the Court of Appeals in *Ellis v. Davidson*, 358 S.C. 509,

595 S.E.2d 817 (Ct. App. 2004) (holding it was reversible error to discount my expert opinion in a legal malpractice case and to fail to give it efficacy). Additionally, three South Carolina Attorneys General, the South Carolina Secretary of State, and the United States Attorney for the District of South Carolina have relied upon my expertise to guide and assist them in significant criminal investigations and prosecutions, many of which targeted wrongdoing by lawyers or wrongdoing by corporate officers and directors.

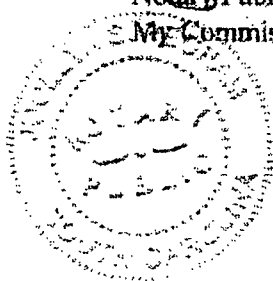
4. I have been retained as an expert witness by counsel for plaintiff. My expert opinions are based upon the evidence available to me at this time and are subject to expansion and modification as further evidence or issues develop.

Further the affiant sayeth not.


Dr. Gregory B. Adams

Sworn to and subscribed before me
this 11 day of December 2009.


Notary Public for South Carolina
My Commission Expires: May 14, 2017



DR. GREGORY B. ADAMS

University of South Carolina School of Law
Columbia, S.C. 29208

Professional Experience

Law Professor (tenured), University of South Carolina, 1978–present.

SUBJECTS TAUGHT: Professional Responsibility; Judicial Ethics; Legal Profession; Contracts; Corporate Law; Business Planning; Agency, Partnership & Limited Liability Companies; Antitrust; International Business Law; European Union (Common Market) Law.

Founding Director, Program on Judicial Ethics, Selection, Accountability, and Independence, University of South Carolina School of Law (2003–present).

Visiting Professor of Law, Pskov Volny University, Pskov, Russia, Spring 2001.

Visiting Professor of Law, University of Southampton, Southampton, England, Fall 1989.

Visiting Professor of Law, Rutgers University, Newark, NJ, 1983–1984.

Stagiaire, Commission of the European Communities (European Union), Brussels, Belgium, 1979.

Research Associate, Institute of European Studies, University of Brussels (U.L.B.), 1979.

Visiting Scholar, Faculté de Droit, Université Catholique de Louvain, Louvain-la-Neuve, Belgium, 1978.

Jervey Fellow in Foreign Law, Parker School, Columbia University, 1977–1979.

Assistant Professor, Southern University School of Law, 1975–1977.

Consultant, Louisiana Legislative Council, 1976–1977.

Attorney with Breazeale, Sachse & Wilson, Baton Rouge, LA, 1973–1975.

Education

J.S.D. 1986
Columbia University School of Law New York, New York
Dissertation: Control of Monopoly Power in Europe and the United States

LL.M. 1979
Columbia University School of Law New York, New York
Thesis: E.E.C. and U.S. Antitrust Regulation of Monopolists' Refusals to Deal

J.D. 1973
Louisiana State University Law Center Baton Rouge, LA
Order of the Coif; Louisiana Law Review; Moot Court Board; Winner, Robert Lee Tullis Moot Court Competition before the Louisiana Supreme Court.

B.S. 1977
Louisiana State University Baton Rouge, LA
Phi Kappa Phi

College of Arts & Science 1966–1968
Vanderbilt University Nashville, TN

Honors and Recognition

Outstanding Faculty Publications Award, University of South Carolina School of Law
(April 2006, Book, Runner Up)
Louisiana State University Law Center Hall of Fame
Who's Who in the World
Who's Who in America
Who's Who in American Law
Who's Who in American Education
Who's Who in the South and Southwest
Who's Who of Emerging Leaders in America
Who's Who in Law Education
Dictionary of Int'l Biography (Cambridge, U.K.)
Smith v. Haynsworth, Marion, McKay & Guerard, 322 S.C. 433, 472 S.E.2d 612 (1996) (holding GBA qualified as an expert witness; reversible error to rule otherwise)
State v. Morris, S.C. Supreme Court, Opinion 26418 (1/14/08) (holding GBA qualified as an expert witness and that GBA's expert testimony was accurate and proper)
Ellis v. Davidson, 358 S.C. 509, 595 S.E.2d 817 (Ct. App., 2004) (holding it was reversible error to discount GBA's expert opinion and fail to give it efficacy)
Davis v. Hamm, 300 S.C. 284, 387 S.E.2d 676 (Ct. App., 1989) ("excellent discussion of the ramifications of these statutes" by GBA in "Litigation of Corporate Law Disputes After the Recent Amendments of the Corporate Code," in Current Issues in Civil Litigation, a South Carolina Bar Continuing Judicial Legal Education Seminar 4/14/89)

Publications

South Carolina Corporate Practice Manual (2nd ed. 2005, S.C. Bar) (lead author, coauthors: Burkhard, Cleveland, Clark, Hellwig, Merline).
"Reflections on the Reactions to Proposed Rule 8.5: Consensus of Failure," 36 S. Texas Law Review 1101 (1995).
"Introductory Remarks to the Conference on the Commercialization of the Legal Profession," 45 S.C. L. Rev. 883 (1994) (with Nathan M. Crystal).
Report of the Proceedings, Conference on the Commercialization of the Legal Profession (with Nathan M. Crystal): "Summary of Discussion of Frankel Paper," 45 S.C.L. Rev. 901 (1994); "Summary of Discussion of Palay/Galanter Paper," 45 S.C.L. Rev. 929 (1994); "Summary of Discussion of Martyn Paper," 45 S.C.L. Rev. 961 (1994); "Summary of Discussion of Dimitriou Paper," 45 S.C.L. Rev. 999 (1994).
"The Ethical Lawyer," occasional column in the S.C. Trial Lawyer Bulletin since 1994.
"Suing Corporations and Those Behind Them," 1992 S.C. Trial Lawyer Bulletin 17.
South Carolina Corporate Practice Manual (S.C. Bar, 1989) (with Cleveland, Burkhard, McWilliams).
"European and American Antitrust Regulation of Pricing by Monopolists," 18 Vanderbilt Journal of Trans. Law 1 (1985).
"Antitrust Constraints on Single-Firm Refusals to Deal by Monopolists in the European Economic Community and the United States," 20 Texas Int'l L. J. 1 (1985).
"The 1981 Revision of the South Carolina Business Corporation Act," 33 S.C. L. Rev. 405 (1982).
"Inheritance Taxation of Trusts," in 11 L. Oppenheim & S. Ingram, Louisiana Civil Law Treatise, Trusts (1977).

Amicus Curiae Briefs

Ex Parte Strom, in re Collins Entertainment Corp. v. Columbia "20" Truck Stop, 343 S.C. 257, 539 S.E.2d 699 (2000) (establishing that attorney's duties to client continued until court granted motion relieving attorney as counsel of record).
Linder v. Insurance Claims Consultants, 348 S.C. 477, 560 S.E.2d 612 (2002) (on behalf of the S.C. Bar, clarifying scope of activities constituting the practice of law).
Brown v. Bi-Lo, 354 S.C. 436, 581 S.E.2d 836 (2003) (on behalf of the S.C. Trial Lawyers Association, protecting the confidentiality of physician-patient relationship).

Public Service

Invited Expert Witness, Judicial Merit Selection Study Committee, SC Senate (9/17/07)
Member, S.C. Bar, Professional Responsibility Committee, 1993-present (chair or member of numerous subcommittees, including Ethics 2000 Subcommittee; presented Ethics 2000 recommendations to S.C. Bar House of Delegates).
Member, S.C. Bar, Unauthorized Practice Committee, 1994, 2000-2003.
Member, S.C. Bar, Technology Committee, 1996-1998.
Ethics Consultant, South Carolina Trial Lawyers Association, 1994-present.
Founder and Vice-President, South Carolina Association of Ethics Counsel, 2000-present.
Expert Witness and advisor to the South Carolina Attorney General in the criminal investigation and prosecutions for securities fraud in connection with the failure of Carolina Investors and HomeGold Financial, 2003-2008.
Expert Consultant for the South Carolina Department of Health and Environmental Control, re: piercing the corporate veil to impose environmental liability under CERCLA, 1997-1999.
Reporter, South Carolina Uniform Commercial Code Article 2A (South Carolina Law Institute for the South Carolina General Assembly, 1996-2001).
Expert Witness and advisor to the South Carolina Attorney General in criminal prosecution of John O'Quinn, Esq. for unauthorized practice of law and illegal solicitation, 1996-1997.
Co-Reporter, Conference on the Commercialization of the Legal Profession, Charleston, S.C., May 1993.
Expert Witness for the United States before the Federal Grand Jury investigating securities fraud, May 1993.
Member, Governing Board, Center for Law, the Legal Profession, and Public Policy, 1991-93, 1998-2000.
Member, Blue Ribbon Committee on Corporate Law, South Carolina Secretary of State, 1991-1995.
Securities Law Expert for the South Carolina Attorney General in connection with the bankruptcy of Patriots Point Associates, 1989-91.
Advisor to the S.C. Deputy Securities Commissioner and the S.C. Senate Judiciary Committee on Corporate Law issues.
Co-Reporter, South Carolina Business Corporation Act of 1988 (South Carolina Law Institute for the South Carolina General Assembly, 1986-88).
Member, Louisiana State Law Institute, Civil Code Revision Committee, 1975-1977.

Presentations

- "Judicial Selection in the United States," S.C. Supreme Court Teachers Institute, Columbia, SC (6/23/08)
- "Corporate Lawyers as Fiduciaries," S.C. Bar Annual Convention, Charleston, SC (1/25/08)
- "My Heroes Have Always Been Lawyers and They Still Are, It Seems," Twelfth Annual Charleston County Probate Court Seminar, The Mills House Hotel, Charleston, SC (12/13/07)
- "Prosecutorial Ethics: Was the Duke Lacrosse Case an Aberration or the Tip of the Iceberg?," SCTL Annual Convention, Hilton Head Island (8/3/07).
- "Malpractice Liability of Estate-Planning Lawyers," Eleventh Annual Charleston County Probate Court Seminar, The Mills House Hotel, Charleston, S.C. (12/7/06).
- "Ethics for Trial Lawyers: How to Avoid Those Hidden Land Mines," S.C.T.L.A. Auto Torts Seminar XXIX, Ritz-Carlton, Buckhead, Atlanta, GA (12/2/06).
- "Ethical Issues for the Sports Attorney-Agent: Lessons from *Vortex v. Ware*," International Sport and Entertainment Management Conference, Metropolitan Convention Center, Columbia, SC (11/9/06).
- "Ethics in Workers Comp Practice: Negotiation," ASCCAWC Annual Convention, Grove Park Inn, Asheville, NC (11/4/06).
- "Probate Judges and Lawyers: Prohibition of *Ex Parte* Communications," Fourteenth Annual Probate Bench/Bar Conference, Columbia, SC (9/15/06).
- "The Future Regulation of Lawyer Advertising Under the Proposed S.C. Rules of Professional Conduct," SCTL Annual Convention, Hilton Head Island (8/4/06).
- "Free Speech and Judicial Selection: Implications of *White v. Republican Party*," Southeastern Association of Law Schools, The Breakers Hotel, Palm Beach, FL (7/20/06).
- "The New South Carolina Rules of Professional Conduct," Tenth Annual Charleston County Probate Court Seminar, The Mills House Hotel, Charleston, S.C. (12/15/05).
- "Ethical Use of Discovery Under the Workers' Compensation Act; Contact with Employer Witnesses; Use of Subpoenas in a Workers' Compensation Case; Frivolous Defenses: What to do About Them," ASCCAWC Annual Meeting, Grove Park Inn, Asheville, N.C. (11/4/05).
- "Applying the SC Code of Judicial Conduct to Workers' Compensation Commissioners: Lessons for Lawyers Practicing Before the Commission," SCWCEA Educational Conference CLE, Marriott Myrtle Beach Resort (10/24/05).
- "The New SC Rules of Professional Conduct: You Really Can't Do THAT Anymore!," SCWCEA Educational Conference, Marriott Myrtle Beach Resort (10/24/05).
- "Newly Revised Frivolous Procedures Act & Other Ethical Issues," SCTL Tort Reform Seminar, Columbia, S.C. (10/14/05).
- Moderator and Coordinator, S.C. Corporate Practice Seminar, S.C. Bar CLE, U.S.C. Law School (9/30/05). Speaker:
- "Ethical Issues in S.C. Corporate Law for the General Practitioner and the Corporate Lawyer:
 Ethical Issues Presented by Choices of Control Devices
 Ethical Issues Arising from Threats of Owner Liability
 The Big Ethical Question: Who Is The Client?"
- "The Code of Judicial Conduct: Does It Effect How We Practice Workers' Comp?," S.C. Bar CLE, U.S.C. Law School (8/26/05).
- "Ethics Seminar: The New Rules of Professional Conduct," SCTL Annual Convention, Hilton Head Island (8/5/05).
- "Ethics 2000: The New Rules of Professional Conduct — You Can't Do That Anymore!," C.L.E. Ethics Seminar, Richland County Bar Association (11/5/04).
- "Judicial Ethics Review," J.C.L.E. Ethics Seminar, S.C. Court Administration Magistrates' Training Program, Charleston, S.C. (8/18/04).

- "The New S.C. Lawyers' Oath," C.L.E. Seminar, S.C. Bar, Charleston, S.C. (6/25/04).
- "Judicial Ethics Review," J.C.L.E. Ethics Seminar, S.C. Court Administration Magistrates' Training Program, Columbia, S.C. (4/23/04).
- "Ethics 2000 and Lawyers' Fees," C.L.E. Ethics Seminar, S.C. Bar & S.C. Association of Ethics Counsel, Columbia, S.C. (11/15/03).
- "The Ethical Implications of *Brown v. Bi-Lo*," S.C. Workers Comp. Educational Ass'n Educational Conference, Kingston Plantation, Myrtle Beach, S.C. (10/20/03).
- "Ethics 2000: The New Rules of Professional Conduct & Multi-Jurisdictional Practice of Law," C.L.E. Ethics Seminar, Investors Title Insurance Company Seminars (9/17/03 Rock Hill, 9/12/03 Hilton Head Island).
- "Ethics 2000: The New Rules of Professional Conduct — You Can't Do That Anymore!," C.L.E. Ethics Seminar, S.C.T.L.A. Convention (8/8/03).
- "Political & Legal Ethics: The Pitfalls to Avoid," C.L.E. Ethics Seminar, S.C. Bar Annual Convention (Young Lawyers Division) (1/24/03).
- "Recent Developments in Legal Ethics," C.L.E. Ethics Seminar, S.C. Bar & S.C. Association of Ethics Counsel (12/14/02).
- "Current Ethical Issues in Real Estate Practice," C.L.E. Ethics Seminar, Security Title Insurance Company (11/8/02).
- "Ethics of Attorney's Fees for Domestic Law Attorneys," C.L.E. Ethics Seminar, S.C. Bar (9/20/02).
- "Discovery Abuse and Litigation Ethics," Paralegal Continuing Education Seminar, S.C.T.L.A. Convention (8/3/02).
- "Discovery Abuse, Litigation Ethics, Supervision and Other Horrors," C.L.E. Ethics Seminar, S.C.T.L.A. Conv. (8/2/02).
- "Ethical Issues in Attorney Marketing Under the Amended Rules," C.L.E. Ethics Seminar, S.C. Bar (7/26/02).
- "Ethics in the Practice of Criminal Law," C.L.E. Ethics Seminar, S.C. Bar (5/10/02).
- "Professional Ethics in the Real World: Communication with Witnesses," C.L.E. Ethics Seminar, Ass'n S.C. Claimants' Attorneys for Workers Comp. (5/3/02).
- "Lawyers and Paralegals Practicing Law When and Where They Shouldn't," C.L.E. Ethics Seminar, S.C. Bar and South Carolina Ass'n of Ethics Counsel (12/15/01).
- "Proposed Disclosure Rule and Goods Funds Statute in South Carolina," C.L.E. Ethics Seminar, S.C. Bar (8/17/01).
- "Recent Developments in Ethics and Professional Responsibility," C.L.E. Ethics Seminar, S.C.T.L.A. Convention (8/3/01).
- "Ethical Perils for Family Practitioners: Keeping Your License and Keeping Your Practice," C.L.E. Ethics Seminar, S.C. Bar (12/2/00).
- "Ethical Issues in Workers Compensation Practice," C.L.E. Ethics Seminar, S.C. Workers' Comp. Educational Ass'n, Kingston Plantation, Myrtle Beach, S.C. (10/23/00).
- "The Things That Make Paralegals Indispensable: Technology and the Future of the Practice of Law," Paralegal Continuing Education Seminar, S.C.T.L.A. Convention (8/5/00).
- "Recent Developments in Ethics and Professional Responsibility," C.L.E. Ethics Seminar, S.C.T.L.A. Convention (8/4/00).
- "The Internet — Legal Ethics in Cyberspace: Marketing on the Web and Communicating Via Email Under the Rules of Professional Conduct and the Amended South Carolina Rules Governing Advertising," SC Defense Trial Attorney's Association & SC Claim Manager's Association CLE at Grove Park Inn, Asheville, N.C. (7/29/00).
- "The Internet — Legal Ethics in Cyberspace: Marketing on the Web and Communicating Via Email Under the Rules of Professional Conduct and the Amended South Carolina Rules Governing Advertising," C.L.E. Ethics Seminar, S.C. Bar (4/28/00).

- "The Responsibility of Administrative Law Judges to Control Unethical and Unprofessional Conduct by Lawyers: Ethical Prohibitions, Remedies and Sanctions," ALJ CLE Seminar, Southern States Association of Administrative Law Judges (3/17/00).
- "S.C. Appellate Procedure: The New Relationship Between the Supreme Court and the Court of Appeals," Paralegal Continuing Education Seminar, Ass'n S.C. Claimant Attorneys for Workers Comp., Asheville, N.C. (1/22/00).
- "Professionalism: Advertising Ethically Under the Amended S.C. Rules of Professional Conduct," C.L.E. Ethics Seminar, S.C. Bar (1/14/00).
- "Multi-Jurisdictional Practice of Law: *Pro Hac Vice* Admission and Unauthorized Practice," C.L.E. Ethics Seminar, S.C. Bar (12/11/99).
- "Hot Issues in Ethics: Marketing Under the Rules of Professional Conduct and the Amended South Carolina Rules Governing Advertising," C.L.E. Ethics Seminar, S.C. Bar (10/29/99).
- "Ethical and Professional Responsibility Issues in Litigation: Discovery Abuse," C.L.E. Ethics Seminar, S.C. Bar and Univ. of South Carolina School of Law (12/12/98).
- "Multi-Jurisdictional Practice of Law: *Pro Hac Vice* Admission and Unauthorized Practice," C.L.E. Ethics Seminar, S.C. Bar (12/8/98).
- "Discovery Abuse: Bane of Professionalism? Ethical Prohibitions & Court-Ordered Sanctions," C.L.E. Ethics Seminar, S.C.T.L.A. Convention (8/14/98).
- "*Hedgepath & McCormick* and the Ethics of Ex-Parte Communication with Treating Physicians," Workers Comp. C.L.E. Seminar, S.C.T.L.A. Convention (8/14/98).
- "Legal Ethics for a Multi-State Law Firm," C.L.E. for a Major S.C. Law Firm (8/8/98).
- "Prudent Ethical Conduct after *Hedgepath*," Medical Staff, McLeod Hospital, Florence, S.C. (4/6/98).
- "What is the Effect of *Hedgepath* on Doctors' Duties to Workers' Comp Patients?" S.C. Workers Comp. Educational Ass'n Annual Meeting, Charleston, S.C. (2/22/98).
- "Confidentiality, Privilege, and the Attorney as Witness, Gossip, or Snitch," C.L.E. Ethics Seminar, S.C. Bar and Univ. of South Carolina School of Law (1/10/98).
- "Law Firm Breakups and Departing Lawyers," C.L.E. Ethics Seminar, S.C. Bar and University of South Carolina School of Law (12/13/97).
- "*Hedgepath* & Lawyers' Professional Conduct: Implications in Workers' Compensation Proceedings," C.L.E. Seminar, The Association of South Carolina Claimant Attorneys for Workers' Compensation, Asheville, N.C. (11/14/97).
- "Ethics: Judicial Immunity for Administrative Law Judges," J.C.L.E. Seminar, Chief Administrative Law Judges Conference, Charleston, SC (11/6/97).
- "*Hedgepath* and the Rules of Professional Conduct: Who Can We (and They) Talk to Now?" C.L.E. Ethics Seminar, S.C.T.L.A. Convention (8/15/97).
- "Ways to Get in Trouble: Old and New," C.L.E. Ethics Seminar, University of South Carolina School of Law (12/7/96).
- "Ethics for the Modern Lawyer on the Information Superhighway," C.L.E. Ethics Seminar, S.C.T.L.A. Convention (8/9/96).
- "Mobile Lawyers and Mobile Clients," C.L.E. Ethics Seminar, University of South Carolina School of Law (12/95).
- "Constitutional Restrictions on Regulation of Lawyer Advertising," House of Delegates, S.C. Bar (1/21/94).
- "Ethical Issues Facing Law Firms," C.L.E. Seminar, University of South Carolina School of Law (1/9/93).
- "Ethical Issues in Office Practice," C.L.E. Seminar, University of South Carolina School of Law (12/5/92).
- "Lawyer Television Advertising: A Video Presentation," U.S.C. Law School Faculty Ethics C.L.E. Seminar (10/22/92).

- "The Ethical Dilemma of Corporate Counsel," C.L.E. Seminar, Farm Credit Sys. General Counsels Conference (10/7/92).
- "Lawyer Advertising – The Great Debate," Moderator, C.L.E. Ethics Seminar, S.C.T.L.A. Convention (8/14/92).
- "Civil Litigation," in Ethical Issues in Litigation, C.L.E. Seminar, University of South Carolina School of Law (1/11/92).
- "Shareholders' Rights in Disputes with a Corporation and those in Control," in Planning for Business Corporations: A Guide for General Practitioners, C.L.E. Seminar (1/3/92).
- "Ethical Issues in Civil Litigation," in Legal Ethics and Professional Responsibility, a Video/C.L.E. Seminar (12/6/91).
- "A Walk Through the New South Carolina Rules of Professional Conduct," C.L.E., U.S.C. School of Law (1/12/91).
- "Corporate Litigation and Liabilities of Corporations, Directors, Officers, and Shareholders after the 1988 Revision of the South Carolina Business Corporation Act," in Current Issues in Civil Litigation, a C.J.E. Seminar (4/14/89).
- "Fundamental Corporate Changes and Dissenters' Rights under the South Carolina Business Corporation Act of 1988," in The New South Carolina Corporation Act, a Video/C.L.E. Seminar (12/16/88).

University and Community Service

- Parliamentarian, University of South Carolina School of Law Faculty, 2004-2007.
- Member, Dean Review Committee for the Dean of the College of Criminal Justice, 2003.
- Member, Faculty Manual Revision Committee, Faculty Senate, University of South Carolina, 1998-1999.
- Parliamentarian, University of South Carolina Faculty, 1997-2004.
- Member, Steering Committee, University of South Carolina Faculty Senate, 1997-2004.
- Faculty Senator, University of South Carolina, 1983-1985, 1995-1998, 2000-2003.
- Faculty Advisor, ABA National Appellate Advocacy Competition Team, University of South Carolina School of Law, 1995-1996.
- Faculty Advisor, ABA National Appellate Advocacy Competition Team, University of South Carolina School of Law, 1982-1983 (winner Regional Competition).
- Faculty Advisor, National Moot Court Competition Team, University of South Carolina School of Law, 1980-1981.
- Committee Chairman, BSA Troop 788, St. David's Episcopal Church, Columbia, SC 1996-2003.
- Scoutmaster & Founder, BSA Troop 788, St. David's Episcopal Church, Columbia, SC 1992-1996.
- Assistant Scoutmaster, Committee Chairman, Committee Member, BSA Troop 388, Windsor United Methodist Church, Columbia, SC 1986-1992.
- Junior Warden, Vestry, St. David's Episcopal Church, Columbia, SC 1984-1987.
- Chorister, Good Shepherd Episcopal Church, Columbia, SC 1999-2004.
- Chorister, St. David's Episcopal Church, Columbia, SC 1984-1998.
- Chairman, Christian Education Committee, St. Michael and All Angels Episcopal Church, Columbia, SC 1981-1983.
- President, Richland Northeast High School Parents, Teachers, Students Organization, Columbia, SC 1992-1997.
- Member, Richland School District Two Strategic Planning Committee, Columbia, SC 1995-96.
- Member, Richland School District Two New High School (Ridge View) Planning Committee, Columbia, SC 1993-1994.

STATE OF SOUTH CAROLINA }
COUNTY OF RICHLAND }
Carolyn Mitchell Powell, }
Plaintiff, }
vs. }
Ashlin Blanchard Potterfield; J. Michael }
Taylor; Taylor/Potterfield; Golden, Taylor, }
Potterfield and Barron; Reid Smith; and }
Price, Bird, & Smith, P.A., }
Defendants. }

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

**AFFIDAVIT OF
EXPERT OPINION OF
DR. GREGORY B. ADAMS**

PERSONALLY APPEARED before me Gregory B. Adams who, being duly sworn, deposes and says that:

1. It is my expert opinion, held to a reasonable degree of professional certainty, that the Verified Complaint in this matter alleges facts establishing that

A. attorney-client relationships existed between Ashlin Blanchard Potterfield, Esq., J. Michael Taylor, Esq., and Reid Smith, Esq. (the lawyers) and Carolyn Mitchell Powell (the client) at various times during the relevant periods from September 2003 to May 2007 (in accordance with the alleged involvement of the individual lawyers at various stages);

B. the scope of the representation encompassed all of the issues involved in the breakup of the client's marriage, including the divorce, custody and support issues regarding the two minor children of the marriage, separate support and maintenance for the client, and division of the marital property;

C. these attorney-client relationships created contractual, professional, ethical, and fiduciary duties from each of the lawyers and their respective law firms to Carolyn Mitchell Powell;

D. the lawyers and their law firms violated their duties to Ms. Powell in numerous ways, including the following violations of the South Carolina Rules of Professional Conduct (Rule 407, SCACR), each of which constitutes a failure to adhere to the standard of care required of a South Carolina lawyer representing a client in such circumstances:

- i. they failed to provide their client with competent advice and representation as required by Rule 1.1,
 - a. by failing to use the legal knowledge, skill, thoroughness, and preparation reasonably necessary, and
 - b. by violating the standard of care, which required them to render their services with the degree of skill, care, knowledge, and judgment usually possessed and exercised by members of the legal profession in South Carolina;

- ii. they failed to represent their client diligently, as required by Rule 1.3 and the standard of care, in that they were inexcusably dilatory
 - a. in filing and prosecuting the action in family court,
 - b. in protecting their client's rights by taking reasonably available legal steps to prevent her husband's dissipating, transferring, and secreting a substantial portion of the marital assets,
 - c. in advising her timely about the legal consequences of beginning a romantic relationship, and
 - d. in obtaining the execution of the January 21, 2005, partial property settlement agreement;
- iii. they failed to make reasonable efforts to expedite the litigation in the interests of their client, as required by Rule 3.2 and the standard of care;
- iv. they failed to communicate with their client promptly and reasonably as required by Rule 1.4 and the standard of care; and
- v. they failed to provide their client with candid advice based on their exercise of independent professional judgment as required by Rule 2.1 and the standard of care.

E. these violations proximately caused Ms. Powell considerable damages including loss of any right to separate maintenance and support and loss of

substantial value of the marital estate and her share of it due to the dissipation, transfer, and secreting of much of it by her husband during the pendency of the divorce litigation;

F. these violations of the South Carolina Rules of Professional Conduct also constituted breaches of the contracts between the lawyers and their law firms and their client, Ms. Powell, because providing competent, ethical legal advice and representation in accordance with the South Carolina Rules of Professional Conduct and the standard of care of South Carolina lawyers was an inherent provision of each of those contracts;

G. many of these violations of the South Carolina Rules of Professional Conduct also constituted breaches of the fiduciary duties that the lawyers and their law firms owed to their client, Ms. Powell.

2. The documentary evidence I have reviewed supports the allegations of the Verified Complaint. This evidence includes the kinds of factual sources customarily relied upon by experts in this field, such as a detailed timeline of documents and events, including retainer agreements; pleadings, motions, notices, and discovery in the underlying litigation; correspondence and emails between the attorneys and their client and with each other and opposing counsel; and other documents related to the representation and litigation.

3. My resume, attached as Exhibit A, demonstrates why federal and state courts, including the South Carolina Supreme Court and the South Carolina Court of Appeals, have held that I am qualified as an expert witness and thus am qualified to conduct the review required by S.C. Code Ann. §15-36-100(B).

A. I am a tenured law professor at the University of South Carolina School of Law, where I have been teaching since 1978. My subjects of expertise include lawyers' ethics and professional responsibility, corporate law, fiduciary duties, and contract law, as well as judicial ethics, agency, and partnership law.

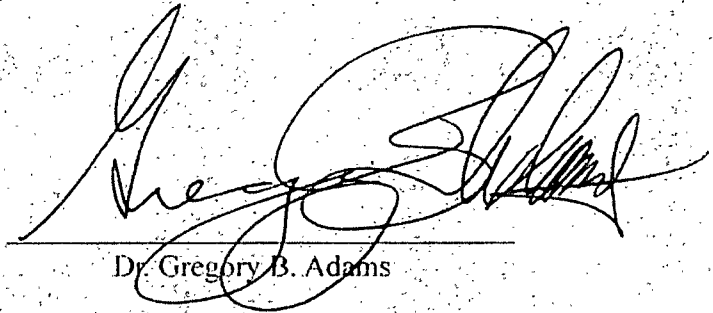
B. I have earned a J.S.D. (Doctor of Juridical Science) and an LL.M. from Columbia University School of Law, as well as my J.D. from Louisiana State University.

C. Federal and state courts in South Carolina have recognized my expertise, including the South Carolina Supreme Court in *State v. Morris*, 656 S.E.2d 359 (S.C. Supreme Court, 1/14/08) (holding that I am qualified as an expert witness and that my expert testimony was accurate and proper) and *Smith v. Haynsworth, Marion, McKay & Guerard*, 322 S.C. 433, 472 S.E.2d 612 (1996) (holding it was reversible error not to conclude that I was qualified as an expert witness on issues of lawyers' duties), and the Court of Appeals in *Ellis v. Davidson*, 358 S.C. 509,

595 S.E.2d 817 (Ct. App. 2004) (holding it was reversible error to discount my expert opinion in a legal malpractice case and to fail to give it efficacy). Additionally, three South Carolina Attorneys General, the South Carolina Secretary of State, and the United States Attorney for the District of South Carolina have relied upon my expertise to guide and assist them in significant criminal investigations and prosecutions, many of which targeted wrongdoing by lawyers or wrongdoing by corporate officers and directors.

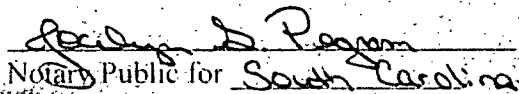
4. I have been retained as an expert witness by counsel for plaintiff. My expert opinions are based upon the evidence available to me at this time and are subject to expansion and modification as further evidence or issues develop.

Further the affiant sayeth not.



Dr. Gregory B. Adams

Sworn to and subscribed before me
this 11 day of December 2009.


Notary Public for South Carolina

My Commission Expires: May 14, 2017



DR. GREGORY B. ADAMS

University of South Carolina School of Law
Columbia, S.C. 29208

Professional Experience

Law Professor (tenured), University of South Carolina, 1978–present.
SUBJECTS TAUGHT: Professional Responsibility; Judicial Ethics; Legal Profession; Contracts; Corporate Law; Business Planning; Agency, Partnership & Limited Liability Companies; Antitrust; International Business Law; European Union (Common Market) Law.
 Founding Director, Program on Judicial Ethics, Selection, Accountability, and Independence, University of South Carolina School of Law (2003–present).
 Visiting Professor of Law, Pskov Volny University, Pskov, Russia, Spring 2001.
 Visiting Professor of Law, University of Southampton, Southampton, England, Fall 1989.
 Visiting Professor of Law, Rutgers University, Newark, NJ, 1983–1984.
 Stagiaire, Commission of the European Communities (European Union), Brussels, Belgium, 1979.
 Research Associate, Institute of European Studies, University of Brussels (U.L.B.), 1979.
 Visiting Scholar, Faculté de Droit, Université Catholique de Louvain, Louvain-la-Neuve, Belgium, 1978.
 Jervy Fellow in Foreign Law, Parker School, Columbia University, 1977–1979.
 Assistant Professor, Southern University School of Law, 1975–1977.
 Consultant, Louisiana Legislative Council, 1976–1977.
 Attorney with Breazeale, Sachse & Wilson, Baton Rouge, LA, 1973–1975.

Education

J.S.D.	1986
<i>Columbia University School of Law</i>	<i>New York, New York</i>
Dissertation: Control of Monopoly Power in Europe and the United States	
LL.M.	1979
<i>Columbia University School of Law</i>	<i>New York, New York</i>
Thesis: E.E.C. and U.S. Antitrust Regulation of Monopolists' Refusals to Deal	
J.D.	1973
<i>Louisiana State University Law Center</i>	<i>Baton Rouge, LA</i>
Order of the Coif; Louisiana Law Review; Moot Court Board; Winner, Robert Lee Tullis Moot Court Competition before the Louisiana Supreme Court.	
B.S.	1977
<i>Louisiana State University</i>	<i>Baton Rouge, LA</i>
Phi Kappa Phi	
<i>College of Arts & Science</i>	1966–1968
<i>Vanderbilt University</i>	<i>Nashville, TN</i>

Honors and Recognition

Outstanding Faculty Publications Award, University of South Carolina School of Law
(April 2006, Book, Runner Up)
Louisiana State University Law Center Hall of Fame
Who's Who in the World
Who's Who in America
Who's Who in American Law
Who's Who in American Education
Who's Who in the South and Southwest
Who's Who of Emerging Leaders in America
Who's Who in Law Education
Dictionary of Int'l Biography (Cambridge, U.K.)
Smith v. Haynsworth, Marion, McKay & Guerard, 322 S.C. 433, 472 S.E.2d 612 (1996) (holding GBA qualified as an expert witness; reversible error to rule otherwise)
State v. Morris, S.C. Supreme Court, Opinion 26418 (1/14/08) (holding GBA qualified as an expert witness and that GBA's expert testimony was accurate and proper)
Ellis v. Davidson, 358 S.C. 509, 595 S.E.2d 817 (Ct. App., 2004) (holding it was reversible error to discount GBA's expert opinion and fail to give it efficacy)
Davis v. Hamlin, 300 S.C. 284, 387 S.E.2d 676 (Ct. App., 1989) ("excellent discussion of the ramifications of these statutes" by GBA in "Litigation of Corporate Law Disputes After the Recent Amendments of the Corporate Code," in Current Issues in Civil Litigation, a South Carolina Bar Continuing Judicial Legal Education Seminar 4/14/89)

Publications

South Carolina Corporate Practice Manual (2nd ed. 2005, S.C. Bar) (lead author, coauthors: Burkhard, Cleveland, Clark, Hellwig, Merline).
"Reflections on the Reactions to Proposed Rule 8.5: Consensus of Failure," 36 S. Texas Law Review 1101 (1995).
"Introductory Remarks to the Conference on the Commercialization of the Legal Profession," 45 S.C. L. Rev. 883 (1994) (with Nathan M. Crystal).
Report of the Proceedings, Conference on the Commercialization of the Legal Profession (with Nathan M. Crystal): "Summary of Discussion of Frankel Paper," 45 S.C.L. Rev. 901 (1994); "Summary of Discussion of Palay/Galanter Paper," 45 S.C.L. Rev. 929 (1994); "Summary of Discussion of Martyn Paper," 45 S.C.L. Rev. 961 (1994); "Summary of Discussion of Dimitriou Paper," 45 S.C.L. Rev. 999 (1994).
"The Ethical Lawyer," occasional column in the S.C. Trial Lawyer Bulletin since 1994.
"Suing Corporations and Those Behind Them," 1992 S.C. Trial Lawyer Bulletin 17.
South Carolina Corporate Practice Manual (S.C. Bar, 1989) (with Cleveland, Burkhard, McWilliams).
"European and American Antitrust Regulation of Pricing by Monopolists," 18 Vanderbilt Journal of Trans. Law 1 (1985).
"Antitrust Constraints on Single-Firm Refusals to Deal by Monopolists in the European Economic Community and the United States," 20 Texas Int'l L. J. 1 (1985).
"The 1981 Revision of the South Carolina Business Corporation Act," 33 S.C. L. Rev. 405 (1982).
"Inheritance Taxation of Trusts," in 11 L. Oppenheim & S. Ingram, Louisiana Civil Law Treatise, Trusts (1977).

Amicus Curiae Briefs

Ex Parte Strom, in re Collins Entertainment Corp. v. Columbia "20" Truck Stop, 343 S.C. 257, 539 S.E.2d 699 (2000) (establishing that attorney's duties to client continued until court granted motion relieving attorney as counsel of record).

Linder v. Insurance Claims Consultants, 348 S.C. 477, 560 S.E.2d 612 (2002) (on behalf of the S.C. Bar, clarifying scope of activities constituting the practice of law).

Brown v. Bi-Lo, 354 S.C. 436, 581 S.E.2d 836 (2003) (on behalf of the S.C. Trial Lawyers Association, protecting the confidentiality of physician-patient relationship).

Public Service

Invited Expert Witness, Judicial Merit Selection Study Committee, SC Senate (9/17/07)

Member, S.C. Bar, Professional Responsibility Committee, 1993-present (chair or member of numerous subcommittees, including Ethics 2000 Subcommittee; presented Ethics 2000 recommendations to S.C. Bar House of Delegates).

Member, S.C. Bar, Unauthorized Practice Committee, 1994, 2000-2003.

Member, S.C. Bar, Technology Committee, 1996-1998.

Ethics Consultant, South Carolina Trial Lawyers Association, 1994-present.

Founder and Vice-President, South Carolina Association of Ethics Counsel, 2000-present.

Expert Witness and advisor to the South Carolina Attorney General in the criminal investigation and prosecutions for securities fraud in connection with the failure of Carolina Investors and HomeGold Financial, 2003-2008.

Expert Consultant for the South Carolina Department of Health and Environmental Control, re: piercing the corporate veil to impose environmental liability under CERCLA, 1997-1999.

Reporter, South Carolina Uniform Commercial Code Article 2A (South Carolina Law Institute for the South Carolina General Assembly, 1996-2001).

Expert Witness and advisor to the South Carolina Attorney General in criminal prosecution of John O'Quinn, Esq. for unauthorized practice of law and illegal solicitation, 1996-1997.

Co-Reporter, Conference on the Commercialization of the Legal Profession, Charleston, S.C., May 1993.

Expert Witness for the United States before the Federal Grand Jury investigating securities fraud, May 1993.

Member, Governing Board, Center for Law, the Legal Profession, and Public Policy, 1991-93, 1998-2000.

Member, Blue Ribbon Committee on Corporate Law, South Carolina Secretary of State, 1991-1995.

Securities Law Expert for the South Carolina Attorney General in connection with the bankruptcy of Patriots Point Associates, 1989-91.

Advisor to the S.C. Deputy Securities Commissioner and the S.C. Senate Judiciary Committee on Corporate Law issues.

Co-Reporter, South Carolina Business Corporation Act of 1988 (South Carolina Law Institute for the South Carolina General Assembly, 1986-88).

Member, Louisiana State Law Institute, Civil Code Revision Committee, 1975-1977.

Presentations

- "Judicial Selection in the United States," S.C. Supreme Court Teachers Institute, Columbia, SC (6/23/08)
- "Corporate Lawyers as Fiduciaries," S.C. Bar Annual Convention, Charleston, SC (1/25/08)
- "My Heroes Have Always Been Lawyers and They Still Are, It Seems," Twelfth Annual Charleston County Probate Court Seminar, The Mills House Hotel, Charleston, SC (12/13/07)
- "Prosecutorial Ethics: Was the Duke Lacrosse Case an Aberration or the Tip of the Iceberg?," SCTLA Annual Convention, Hilton Head Island (8/3/07).
- "Malpractice Liability of Estate-Planning Lawyers," Eleventh Annual Charleston County Probate Court Seminar, The Mills House Hotel, Charleston, S.C. (12/7/06).
- "Ethics for Trial Lawyers: How to Avoid Those Hidden Land Mines," S.C.T.L.A. Auto Torts Seminar XXIX, Ritz-Carlton, Buckhead, Atlanta, GA (12/2/06).
- "Ethical Issues for the Sports Attorney-Agent: Lessons from *Vortex v. Ware*," International Sport and Entertainment Management Conference, Metropolitan Convention Center, Columbia, SC (11/9/06).
- "Ethics in Workers Comp Practice: Negotiation," ASCCAWC Annual Convention, Grove Park Inn, Asheville, NC (11/4/06).
- "Probate Judges and Lawyers: Prohibition of *Ex Parte* Communications," Fourteenth Annual Probate Bench/Bar Conference, Columbia, SC (9/15/06).
- "The Future Regulation of Lawyer Advertising Under the Proposed S.C. Rules of Professional Conduct," SCTLA Annual Convention, Hilton Head Island (8/4/06).
- "Free Speech and Judicial Selection: Implications of *White v. Republican Party*," Southeastern Association of Law Schools, The Breakers Hotel, Palm Beach, FL (7/20/06).
- "The New South Carolina Rules of Professional Conduct," Tenth Annual Charleston County Probate Court Seminar, The Mills House Hotel, Charleston, S.C. (12/15/05).
- "Ethical Use of Discovery Under the Workers' Compensation Act; Contact with Employer Witnesses; Use of Subpoenas in a Workers' Compensation Case; Frivolous Defenses: What to do About Them," ASCCAWC Annual Meeting, Grove Park Inn, Asheville, N.C. (11/4/05).
- "Applying the SC Code of Judicial Conduct to Workers' Compensation Commissioners: Lessons for Lawyers Practicing Before the Commission," SCWCEA Educational Conference CLE, Marriott Myrtle Beach Resort (10/24/05).
- "The New SC Rules of Professional Conduct: You Really Can't Do THAT Anymore!," SCWCEA Educational Conference, Marriott Myrtle Beach Resort (10/24/05).
- "Newly Revised Frivolous Procedures Act & Other Ethical Issues," SCTLA Tort Reform Seminar, Columbia, S.C. (10/14/05).
- Moderator and Coordinator, S.C. Corporate Practice Seminar, S.C. Bar CLE, U.S.C. Law School (9/30/05). Speaker:
 - "Ethical Issues in S.C. Corporate Law for the General Practitioner and the Corporate Lawyer:
 - Ethical Issues Presented by Choices of Control Devices
 - Ethical Issues Arising from Threats of Owner Liability
 - The Big Ethical Question: Who Is The Client?"
- "The Code of Judicial Conduct: Does It Effect How We Practice Workers' Comp?," S.C. Bar CLE, U.S.C. Law School (8/26/05).
- "Ethics Seminar: The New Rules of Professional Conduct," SCTLA Annual Convention, Hilton Head Island (8/5/05).
- "Ethics 2000: The New Rules of Professional Conduct — You Can't Do That Anymore!," C.L.E. Ethics Seminar, Richland County Bar Association (11/5/04).
- "Judicial Ethics Review," J.C.L.E. Ethics Seminar, S.C. Court Administration Magistrates' Training Program, Charleston, S.C. (8/18/04).

- "The New S.C. Lawyers' Oath," C.L.E. Seminar, S.C. Bar, Charleston, S.C. (6/25/04).
- "Judicial Ethics Review," J.C.L.E. Ethics Seminar, S.C. Court Administration Magistrates' Training Program, Columbia, S.C. (4/23/04).
- "Ethics 2000 and Lawyers' Fees," C.L.E. Ethics Seminar, S.C. Bar & S.C. Association of Ethics Counsel, Columbia, S.C. (11/15/03).
- "The Ethical Implications of *Brown v. Bi-Lo*," S.C. Workers Comp. Educational Ass'n Educational Conference, Kingston Plantation, Myrtle Beach, S.C. (10/20/03).
- "Ethics 2000: The New Rules of Professional Conduct & Multi-Jurisdictional Practice of Law," C.L.E. Ethics Seminar, Investors Title Insurance Company Seminars (9/17/03 Rock Hill, 9/12/03 Hilton Head Island).
- "Ethics 2000: The New Rules of Professional Conduct — You Can't Do That Anymore!," C.L.E. Ethics Seminar, S.C.T.L.A. Convention (8/8/03).
- "Political & Legal Ethics: The Pitfalls to Avoid," C.L.E. Ethics Seminar, S.C. Bar Annual Convention (Young Lawyers Division) (1/24/03).
- "Recent Developments in Legal Ethics," C.L.E. Ethics Seminar, S.C. Bar & S.C. Association of Ethics Counsel (12/14/02).
- "Current Ethical Issues in Real Estate Practice," C.L.E. Ethics Seminar, Security Title Insurance Company (11/8/02).
- "Ethics of Attorney's Fees for Domestic Law Attorneys," C.L.E. Ethics Seminar, S.C. Bar (9/20/02).
- "Discovery Abuse and Litigation Ethics," Paralegal Continuing Education Seminar, S.C.T.L.A. Convention (8/3/02).
- "Discovery Abuse, Litigation Ethics, Supervision and Other Horrors," C.L.E. Ethics Seminar, S.C.T.L.A. Conv. (8/2/02).
- "Ethical Issues in Attorney Marketing Under the Amended Rules," C.L.E. Ethics Seminar, S.C. Bar (7/26/02).
- "Ethics in the Practice of Criminal Law," C.L.E. Ethics Seminar, S.C. Bar (5/10/02).
- "Professional Ethics in the Real World: Communication with Witnesses," C.L.E. Ethics Seminar, Ass'n S.C. Claimants' Attorneys for Workers Comp. (5/3/02).
- "Lawyers and Paralegals Practicing Law When and Where They Shouldn't," C.L.E. Ethics Seminar, S.C. Bar and South Carolina Ass'n of Ethics Counsel (12/15/01).
- "Proposed Disclosure Rule and Goods Funds Statute in South Carolina," C.L.E. Ethics Seminar, S.C. Bar (8/17/01).
- "Recent Developments in Ethics and Professional Responsibility," C.L.E. Ethics Seminar, S.C.T.L.A. Convention (8/3/01).
- "Ethical Perils for Family Practitioners: Keeping Your License and Keeping Your Practice," C.L.E. Ethics Seminar, S.C. Bar (12/2/00).
- "Ethical Issues in Workers Compensation Practice," C.L.E. Ethics Seminar, S.C. Workers' Comp. Educational Ass'n, Kingston Plantation, Myrtle Beach, S.C. (10/23/00).
- "The Things That Make Paralegals Indispensable: Technology and the Future of the Practice of Law," Paralegal Continuing Education Seminar, S.C.T.L.A. Convention (8/5/00).
- "Recent Developments in Ethics and Professional Responsibility," C.L.E. Ethics Seminar, S.C.T.L.A. Convention (8/4/00).
- "The Internet – Legal Ethics in Cyberspace: Marketing on the Web and Communicating Via Email Under the Rules of Professional Conduct and the Amended South Carolina Rules Governing Advertising," SC Defense Trial Attorney's Association & SC Claim Manager's Association CLE at Grove Park Inn, Asheville, N.C. (7/29/00).
- "The Internet – Legal Ethics in Cyberspace: Marketing on the Web and Communicating Via Email Under the Rules of Professional Conduct and the Amended South Carolina Rules Governing Advertising," C.L.E. Ethics Seminar, S.C. Bar (4/28/00).

- "The Responsibility of Administrative Law Judges to Control Unethical and Unprofessional Conduct by Lawyers: Ethical Prohibitions, Remedies and Sanctions," ALJ CLE Seminar, Southern States Association of Administrative Law Judges (3/17/00).
- "S.C. Appellate Procedure: The New Relationship Between the Supreme Court and the Court of Appeals," Paralegal Continuing Education Seminar, Ass'n S.C. Claimant Attorneys for Workers Comp., Asheville, N.C. (1/22/00).
- "Professionalism: Advertising Ethically Under the Amended S.C. Rules of Professional Conduct," C.L.E. Ethics Seminar, S.C. Bar (1/14/00).
- "Multi-Jurisdictional Practice of Law: *Pro Hac Vice* Admission and Unauthorized Practice," C.L.E. Ethics Seminar, S.C. Bar (12/11/99).
- "Hot Issues in Ethics: Marketing Under the Rules of Professional Conduct and the Amended South Carolina Rules Governing Advertising," C.L.E. Ethics Seminar, S.C. Bar (10/29/99).
- "Ethical and Professional Responsibility Issues in Litigation: Discovery Abuse," C.L.E. Ethics Seminar, S.C. Bar and Univ. of South Carolina School of Law (12/12/98).
- "Multi-Jurisdictional Practice of Law: *Pro Hac Vice* Admission and Unauthorized Practice," C.L.E. Ethics Seminar, S.C. Bar (12/8/98).
- "Discovery Abuse: Bane of Professionalism? Ethical Prohibitions & Court-Ordered Sanctions," C.L.E. Ethics Seminar, S.C.T.L.A. Convention (8/14/98).
- "*Hedgepath & McCormick* and the Ethics of Ex-Parte Communication with Treating Physicians," Workers Comp. C.L.E. Seminar, S.C.T.L.A. Convention (8/14/98).
- "Legal Ethics for a Multi-State Law Firm," C.L.E. for a Major S.C. Law Firm (8/8/98).
- "Prudent Ethical Conduct after *Hedgepath*," Medical Staff, McLeod Hospital, Florence, S.C. (4/6/98).
- "What is the Effect of *Hedgepath* on Doctors' Duties to Workers' Comp Patients?" S.C. Workers Comp. Educational Ass'n Annual Meeting, Charleston, S.C. (2/22/98).
- "Confidentiality, Privilege, and the Attorney as Witness, Gossip, or Snitch," C.L.E. Ethics Seminar, S.C. Bar and Univ. of South Carolina School of Law (1/10/98).
- "Law Firm Breakups and Departing Lawyers," C.L.E. Ethics Seminar, S.C. Bar and University of South Carolina School of Law (12/13/97).
- "*Hedgepath* & Lawyers' Professional Conduct: Implications in Workers' Compensation Proceedings," C.L.E. Seminar, The Association of South Carolina Claimant Attorneys for Workers' Compensation, Asheville, N.C. (11/14/97).
- "Ethics: Judicial Immunity for Administrative Law Judges," J.C.L.E. Seminar, Chief Administrative Law Judges Conference, Charleston, SC (11/6/97).
- "*Hedgepath* and the Rules of Professional Conduct: Who Can We (and They) Talk to Now?" C.L.E. Ethics Seminar, S.C.T.L.A. Convention (8/15/97).
- "Ways to Get in Trouble: Old and New," C.L.E Ethics. Seminar, University of South Carolina School of Law (12/7/96).
- "Ethics for the Modern Lawyer on the Information Superhighway," C.L.E. Ethics Seminar, S.C.T.L.A. Convention (8/9/96).
- "Mobile Lawyers and Mobile Clients," C.L.E Ethics. Seminar, University of South Carolina School of Law (12/95).
- "Constitutional Restrictions on Regulation of Lawyer Advertising," House of Delegates, S.C. Bar (1/21/94).
- "Ethical Issues Facing Law Firms," C.L.E. Seminar, University of South Carolina School of Law (1/9/93).
- "Ethical Issues in Office Practice," C.L.E. Seminar, University of South Carolina School of Law (12/5/92).
- "Lawyer Television Advertising: A Video Presentation," U.S.C. Law School Faculty Ethics C.L.E. Seminar (10/22/92).

- "The Ethical Dilemma of Corporate Counsel," C.L.E. Seminar, Farm Credit Sys. General Counsels Conference (10/7/92).
- "Lawyer Advertising – The Great Debate," Moderator, C.L.E. Ethics Seminar, S.C.T.L.A. Convention (8/14/92).
- "Civil Litigation," in Ethical Issues in Litigation, C.L.E. Seminar, University of South Carolina School of Law (1/11/92).
- "Shareholders' Rights in Disputes with a Corporation and those in Control," in Planning for Business Corporations: A Guide for General Practitioners, C.L.E. Seminar (1/3/92).
- "Ethical Issues in Civil Litigation," in Legal Ethics and Professional Responsibility, a Video/C.L.E. Seminar (12/6/91).
- "A Walk Through the New South Carolina Rules of Professional Conduct," C.L.E., U.S.C. School of Law (1/12/91).
- "Corporate Litigation and Liabilities of Corporations, Directors, Officers, and Shareholders after the 1988 Revision of the South Carolina Business Corporation Act," in Current Issues in Civil Litigation, a C.J.E. Seminar (4/14/89).
- "Fundamental Corporate Changes and Dissenters' Rights under the South Carolina Business Corporation Act of 1988," in The New South Carolina Corporation Act, a Video/C.L.E. Seminar (12/16/88).

University and Community Service

- Parliamentarian, University of South Carolina School of Law Faculty, 2004-2007.
- Member, Dean Review Committee for the Dean of the College of Criminal Justice, 2003.
- Member, Faculty Manual Revision Committee, Faculty Senate, University of South Carolina, 1998-1999.
- Parliamentarian, University of South Carolina Faculty, 1997-2004.
- Member, Steering Committee, University of South Carolina Faculty Senate, 1997-2004.
- Faculty Senator, University of South Carolina, 1983-1985, 1995-1998, 2000-2003.
- Faculty Advisor, ABA National Appellate Advocacy Competition Team, University of South Carolina School of Law, 1995-1996.
- Faculty Advisor, ABA National Appellate Advocacy Competition Team, University of South Carolina School of Law, 1982-1983 (winner Regional Competition).
- Faculty Advisor, National Moot Court Competition Team, University of South Carolina School of Law, 1980-1981.
- Committee Chairman, BSA Troop 788, St. David's Episcopal Church, Columbia, SC 1996-2003.
- Scoutmaster & Founder, BSA Troop 788, St. David's Episcopal Church, Columbia, SC 1992-1996.
- Assistant Scoutmaster, Committee Chairman, Committee Member, BSA Troop 388, Windsor United Methodist Church, Columbia, SC 1986-1992.
- Junior Warden, Vestry, St. David's Episcopal Church, Columbia, SC 1984-1987.
- Chorister, Good Shepherd Episcopal Church, Columbia, SC 1999-2004.
- Chorister, St. David's Episcopal Church, Columbia, SC 1984-1998.
- Chairman, Christian Education Committee, St. Michael and All Angels Episcopal Church, Columbia, SC 1981-1983.
- President, Richland Northeast High School Parents, Teachers, Students Organization, Columbia, SC 1992-1997.
- Member, Richland School District Two Strategic Planning Committee, Columbia, SC 1995-96.
- Member, Richland School District Two New High School (Ridge View) Planning Committee, Columbia, SC 1993-1994.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
~~COUNTY OF RICHLAND~~) ~~FIFTH JUDICIAL CIRCUIT~~

Carolyn Mitchell Powell,) Civil Action No.: 2009-CP-40-8705
)

Plaintiff,)
)

vs.)
)

Ashlin Blanchard Potterfield; J. Michael)
Taylor; Taylor/Potterfield; Golden, Taylor)
Potterfield and Barron; Reid Smith; and)
Price, Bird & Smith, P.A.,)

Defendants.)
)

ANSWER OF DEFENDANTS
REID SMITH AND
PRICE, BIRD & SMITH, P.A.

Defendants Reid Smith and Price, Bird & Smith, P.A., responding to the allegations contained in the Complaint, hereby answer and allege as follows:

1. Except as is specifically admitted below, each allegation of the Complaint is denied.

FOR A FIRST DEFENSE TO ALL CAUSES OF ACTION

2. These Defendants admit, upon information and belief, the allegations contained in Paragraph 1.

3. These Defendants admit only so much of the allegations contained in Paragraph 2 as allege that defendants Ashlin Blanchard Potterfield, Esquire and J. Michael Taylor, Esquire have practiced in association with each other in Richland County, South Carolina. The remaining allegations contained in Paragraph 2 call for a conclusion of law and therefore these allegations are denied.

4. These Defendants admit, upon information and belief, the allegations contained in Paragraph 3.

5. These Defendants admit the allegations contained in Paragraph 4.

~~6. Responding to the allegations contained in Paragraph 5, these Defendants~~
admit that GTPB and defendant Ashlin Potterfield represented Plaintiff in various family law matters, but these Defendants lack information sufficient to form a belief as to the financial details and arrangements of the representation. The remaining allegations contained in Paragraph 5 are denied.

7. These Defendants admit, upon information and belief, the allegations contained in Paragraph 6.

8. These Defendants lack information sufficient to form a belief as to the allegations contained in Paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20 and therefore these allegations are denied.

9. Responding to the allegations contained in Paragraph 21, these Defendants affirmatively state that they did not file the alleged Complaint for separate support and maintenance, styled as *Powell vs. Powell* 2004-DR-40-3081 but crave reference to the alleged Complaint, which speaks for itself. These Defendants deny any allegations which are inconsistent with the provisions of the referenced Complaint. The remaining allegations contained in Paragraph 21 are denied.

10. Responding to the allegations contained in Paragraph 22, these Defendants crave reference to the alleged Reply which speaks for itself and deny any inconsistent allegations. The remaining allegations contained in Paragraph 22 are denied. These Defendants affirmatively state, however, that they did not prepare or file the alleged Reply.

11. These Defendants lack information sufficient to form a belief to the
~~allegations contained in Paragraphs 23 and 24 and therefore these allegations are denied.~~

12. Responding to the allegation contained in Paragraph 25, these Defendants admit, upon information and belief, that Plaintiff received a partial settlement in the amount of \$400,000.00 from plaintiff's husband. These Defendants affirmatively state that they were not retained as attorneys for Plaintiff at this time and did not participate in plaintiff's acceptance of the settlement. The remaining allegations contained in Paragraph 25 are denied.

13. Responding, these Defendants lack information sufficient to form a belief as to the allegations contained in Paragraphs 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, and 47 and therefore these allegations are denied.

14. Responding to the allegations contained in Paragraph 48, these Defendants admit that their service to Plaintiff is outlined in Smith's engagement letter to Plaintiff, which speaks for itself. The remaining allegations contained in Paragraph 48 are denied.

15. These Defendants admit the allegations contained in Paragraphs 49 and 50.

16. Responding to the allegations contained in Paragraph 51, these Defendants crave reference to the alleged "Asset Summary" which speaks for itself. Any allegations contained in Paragraph 51 which are inconsistent with the terms of the "Asset Summary" are denied. The remaining allegations contained in Paragraph 51 are denied.

17. Responding to the allegations contained in Paragraph 52, these Defendants crave reference to the "Asset Summary" which speaks for itself. Any allegations

contained in Paragraph 52 which are inconsistent with the "Asset Summary" are denied.

~~All other allegations contained in Paragraph 52 are denied.~~

18. These Defendants admit the allegations contained in Paragraph 53.

19. Responding to the allegations contained in Paragraph 54, these Defendants lack information sufficient to form a belief as to the filings made in Family Court and therefore these allegations are denied. These Defendants affirmatively state that the scope of representation of Plaintiff is indicated in Smith's engagement letter to plaintiff, which speaks for itself. Any allegations inconsistent with the referenced engagement letter are denied. Any remaining allegations are denied.

20. These Defendants deny the allegations contained in Paragraph 55.

21. These Defendants lack information sufficient to form a belief as to the allegations contained in Paragraph 56 and therefore these allegations are denied.

22. These Defendants admit only so much of these allegations contained in Paragraph 57 as allege that Defendant Smith deposed Plaintiff's husband and that defendant Taylor was present during this deposition. To the extent the allegations contained in Paragraph 57 call for an interpretation or summary of the deposition, these Defendants crave reference to the deposition transcript which speaks for itself. All remaining allegations are denied.

23. These Defendants deny the allegations contained in Paragraphs 58, 59, and 60.

24. These Defendants admit only so much of the allegations contained in Paragraph 61 as allege that Cantzon Foster began representing Plaintiff in January, 2007.

These Defendants lack information sufficient to form a belief as to the remaining
~~allegations contained in Paragraph 61 and therefore these allegations are denied.~~

25. Responding to the allegations contained in Paragraph 62, these Defendants crave reference to the alleged Notice of Representation, which speaks for itself. To the extent the allegations contained in Paragraph 62 make allegations inconsistent with the Notice of Representation, these allegations are denied. All other allegations contained in Paragraph 62 are denied.

26. These Defendants lack information sufficient to form a belief as to the allegations contained in Paragraphs 63, 64, 65, 66, 67, and 68 and therefore these allegations are denied.

27. These Defendants admit only so much of these allegations contained in Paragraph 69 as allege that Plaintiff agreed to a settlement of her domestic case and that on May 2, 2007, a final decree of divorce was granted by Judge Ann Jones. These Defendants deny the remaining allegations contained in Paragraph 69.

28. Responding to the allegations contained in Paragraph 70, the allegations contained above are realleged and incorporated by reference.

29. The allegations contained in Paragraph 71 call for a conclusion of law and therefore these allegations are denied.

30. These Defendants deny the allegations contained in Paragraphs 72, 73, 74, 75, 76, and 77.

31. Responding to the allegations contained in Paragraph 78, the allegations contained above are realleged and incorporated by reference.

32. The allegations contained in Paragraph 79 call for a conclusion of law and
~~therefore these allegations are denied.~~

33. These Defendants deny the allegations contained in Paragraphs 80, 81, 82,
and 83.

34. Responding to the allegations contained in Paragraph 84, the allegations
contained above are realleged and incorporated by reference.

35. The allegations contained in Paragraphs 85, 86, and 87 call for a
conclusion of law and therefore these allegations are denied.

36. These Defendants deny the allegations contained in Paragraphs 88 and 89.

FOR A SECOND DEFENSE

37. Each allegation contained above is realleged and incorporated by
reference.

38. The Complaint fails to state a claim for which relief can be granted.

FOR A THIRD DEFENSE

39. Each allegation contained above is realleged and incorporated by
reference.

40. Any negligence of these Defendants, which is denied, was abrogated by
the intervening and unforeseeable negligence of third parties such that the injury of
Plaintiff, if any, is the result of such third parties actions or inactions.

FOR A FOURTH DEFENSE

41. Each allegation contained above is realleged and incorporated by
reference.

42. The alleged injuries and damages, if any, resulted from the conduct, ~~actions, or inactions of Plaintiff, so that the principles of contributory negligence,~~
comparative fault, and/or assumption of risk apply.

FOR A FIFTH DEFENSE

43. Each allegation contained above is realleged and incorporated by reference.

44. The Complaint fails to allege facts sufficient to entitle Plaintiff to an award of exemplary or punitive damages. Moreover, an award of punitive damages against these Defendants would violate the Excessive Fines Clause of the Eighth Amendment of the United States Constitution and the applicable provisions of the Constitution of the State of South Carolina.

FOR A SIXTH DEFENSE

45. Each allegation contained above is realleged and incorporated by reference.

46. The claims of Plaintiff are barred under the doctrines of unclean hands, laches, waiver, estoppel and/or res judicata.

FOR A SEVENTH DEFENSE

47. Each allegation contained above is realleged and incorporated by reference.

48. Plaintiff has failed to mitigate her damages, if any.

FOR AN EIGHTH DEFENSE

49. Each allegation contained above is realleged and incorporated by reference.

50. The claims of Plaintiff are barred by the doctrine of accord and satisfaction.

FOR A NINTH DEFENSE

51. Each allegation contained above is realleged and incorporated by reference.

52. To the extent Plaintiff's claims are based upon actions or inactions that occurred on or before February 2006, these claims must fail because these Defendants did not provide legal services to Plaintiff during this time period.

FOR A TENTH DEFENSE

53. Each allegation contained above is realleged and incorporated by reference.

54. To the extent Plaintiff received settlement amounts in connection with the alleged matter, recovery in this action is reduced or barred in whole or in part by the equitable defense of set-off.

FOR AN ELEVENTH DEFENSE

55. Each allegation contained above is realleged and incorporated by reference.

56. Plaintiff has failed to file and serve an affidavit which complies with the requirements of S.C. Code Ann. §15-36-100. Therefore, this claim should be dismissed.

FOR AN TWELTH DEFENSE

57. Each allegation contained above is realleged and incorporated by reference.

58. The claims of Plaintiff are barred by way of collateral estoppel and/or
~~issue preclusion.~~

FOR AN THIRTEENTH DEFENSE

59. Each allegation contained above is realleged and incorporated by reference.

60. The claims of Plaintiff are barred by virtue of Plaintiff's misrepresentations.

FOR AN FOURTEENTH DEFENSE

61. Each allegation contained above is realleged and incorporated by reference.

62. Each allegation contained above is realleged and incorporated by reference.

63. If multiple Defendants are found to be jointly responsible for the injuries of Plaintiff, the liability for these Defendants must be limited in accordance with applicable law governing contribution and indemnity.

These Defendants reserve the right to assert any additional defenses which may arise as discovery progresses or otherwise in the course of this litigation.

WHEREFORE, having fully answered and asserted affirmative defenses, Defendants Reid Smith and Price, Bird & Smith, P.A., pray that this matter be dismissed, with costs and attorneys' fees, and for such other and further relief as is just and proper.

[Signature page follows]

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: 
J. Calhoun Watson
1340 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

**Attorneys for Defendants Reid Smith and Price,
Bird, Smith & Boulware, P.A.**

Columbia, South Carolina
February 22, 2010

CERTIFICATE OF SERVICE

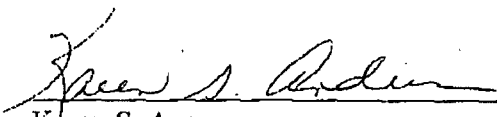
I, the undersigned, of the law offices of Sowell Gray Stepp & Laffitte, L.L.C., attorneys for *Defendants Reid Smith and Price, Bird & Smith, P.A.*, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: **ANSWER OF DEFENDANTS REID SMITH AND PRICE,
BIRD & SMITH, P.A.**

Counsel Served:

Susan F. Campbell, Esquire
William E. Hopkins, Jr., Esquire
Paul B. Deal, Esquire
McCutchen Blanton Hopkins & Campbell, LLP
Post Office Box 11316
Columbia, SC 29211
Attorneys for Plaintiff

Charles E. Hill, Esquire
Turner Padgett Graham & Laney P.A.
Post Office Box 1473
Columbia, SC 29202
**Attorneys for Defendants Ashlin Blanchard Potterfield,
J. Michael Taylor, and Taylor/Potterfield**



Karen S. Answers

February 22, 2010

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CAROLYN MITCHELL POWELL,

Civil Action No.: 09-CP-40-8705

Plaintiff,

vs.

**ANSWER OF DEFENDANTS
POTTERFIELD, TAYLOR, &
TAYLOR/POTTERFIELD
(JURY TRIAL DEMANDED)**

ASHLIN BLANCHARD POTTERFIELD; J.
MICHAEL TAYLOR; TAYLOR/POTTERFIELD;
GOLDEN, TAYLOR, POTTERFIELD AND
BARRON; REID SMITH; AND PRICE BIRD &
SMITH, P.A.,

Defendants.

The defendants Ashlin Blanchard Potterfield, J. Michael Taylor, and Taylor/Potterfield, answering the complaint of the plaintiff, would respectfully show unto the court:

1. These defendants deny each and every allegation contained in said complaint, except as hereinafter specifically admitted.
2. These defendants lack knowledge or information sufficient to form a belief as to the allegations of paragraph 1.
3. These defendants admit the first sentence of paragraph 2. Answering the second sentence of paragraph 2, defendant Taylor limits his practice to family law, but does not hold himself out as a "legal specialist" in the field of matrimony law.
4. Answering paragraph 3, these defendants admit so much of same as may be construed to allege that they were formerly members of the firm of Golden, Taylor, Potterfield and Barron. These defendants would show that partnership is now defunct.
5. Paragraph 4 does not pertain to these defendants and does not require a response.

6. Answering paragraph 5, these defendants would show that plaintiff initially conferred with defendant Potterfield on or about June 23, 2003, and executed some documents at that time. These defendants admit that on or about September 5, 2003, plaintiff paid defendant Potterfield a retainer fee of \$3,000.

7. These defendants admit the allegations of paragraph 6.

8. These defendants deny paragraph 7, as stated. These defendants admit that defendant Potterfield was generally engaged to serve as counsel to plaintiff in the family law matter between plaintiff and Conrad Powell.

9. These defendants lack knowledge or information sufficient to form a belief as to the allegations of paragraph 8 and therefore deny same.

10. Answering paragraph 9, these defendants generally deny any allegation of failure to protect marital assets, and would show that judgments and strategies pertaining to the distribution of marital assets and other aspects of the matter were discussed and agreed upon between plaintiff and defendants.

11. Answering paragraph 10, these defendants admit that plaintiff provided a private investigator report.

12. These defendants deny the allegations of paragraph 11.

13. These defendants lack knowledge or information sufficient to form a belief as to the allegations of paragraph 12 and therefore deny same and demand strict proof thereof.

14. These defendants deny the allegations of paragraph 13 as stated. The complaint filed by defendants on behalf of plaintiff in the Richland County Family Court specifically included a prayer for alimony. These defendants would show that whether to pursue an award of

alimony was a matter of judgment and strategy in which plaintiff participated and to which she agreed.

15. Answering paragraphs 14 and 15, these defendants admit only so much of same as may be construed to allege that plaintiff provided documents from time to time regarding marital assets, financial needs, and her husband's assets. Any allegations of paragraphs 14 and 15 inconsistent with this response are denied.

16. These defendants admit only so much of paragraph 16 as may be construed to allege that the first filing with the Richland County Family Court was the summons and complaint filed August 27, 2004. These defendants would show that when to file this pleading was a matter of judgment and strategy in which plaintiff participated and to which she agreed.

17. These defendants deny paragraphs 17, 18, 19 and 20 as stated. These defendants would show that they were in negotiations with counsel for Conrad Powell regarding housing and other assets of the marital estate, with the knowledge and consent of the plaintiff.

18. These defendants admit the allegations of paragraphs 21 and 22.

19. These defendants deny paragraphs 23 and 24 as stated. These defendants would show that they were in negotiations with counsel for Conrad Powell regarding housing and other assets of the marital estate, with the knowledge and consent of the plaintiff.

20. These defendants admit so much of paragraph 25 as alleges that on January 21, 2005, they accepted, on behalf of plaintiff, the amount of \$400,000 from plaintiff's husband, but would show that this payment was an advance on equitable distribution.

21. Answering paragraphs 26 and 27, these defendants deny same as stated.

22. These defendants deny paragraph 28, as it is an inaccurate statement of the law.

23. Answering paragraphs 29 through 33, inclusive, these defendants admit only that defendant Potterfield consented to the order filed March 17, 2005, in which Conrad Powell withdrew his motion for *pendente lite* relief. The remaining allegations of these paragraphs are denied as stated. These defendants would show that decisions regarding property settlement and discovery were matters of judgment and strategy in which plaintiff participated and to which she agreed.

24. These defendants deny the allegations of paragraphs 34 and 35.

25. Answering paragraph 36, these defendants are uncertain as to when an itemized billing may have been sent. These defendants deny that there was any unearned fee, as the retainer was a minimum advance.

26. Answering paragraphs 37 and 38, these defendants admit that attorney Taylor assumed the handling of plaintiff's domestic case in April, 2005, and would show that the amount of the retainer paid was \$10,000. The remaining allegations of paragraphs 37 and 38 are denied.

27. Answering paragraph 39, these defendants admit that plaintiff wrote a letter to defendant Taylor dated May 12, 2005, which speaks for itself.

28. Answering paragraph 40, these defendants admit that interrogatories and requests for production were served on Conrad Powell on or about this time.

29. Answering paragraph 41, these defendants admit that neither party had provided formal Financial Declarations at that time, and that such documents should be exchanged.

30. Answering paragraphs 42 through 47, inclusive, these defendants deny same as stated. These defendants would show that decisions regarding marital assets, property settlement

and discovery were matters of judgment and strategy in which plaintiff participated and to which she agreed.

31. Answering paragraph 48, these defendants admit that, at about the time alleged, these defendants associated Reid Smith as additional counsel.

32. Paragraphs 49 through 53, inclusive, do not pertain to these defendants.

33. Answering paragraphs 54 and 55, these defendants deny same as alleged. These defendants would show that decisions regarding court filings, marital assets, property settlement and discovery were matters of judgment and strategy in which plaintiff participated and to which she agreed.

34. Answering paragraph 56, these defendants deny any implication that there was a lack of communication between these defendants and plaintiff.

35. Answering paragraph 57, these defendants admit only that defendant Taylor was present during the deposition of Conrad Powell.

36. Paragraphs 58 and 59 do not pertain to these defendants.

37. Answering paragraph 60, these defendants would show that decisions regarding court filings, marital assets, property settlement and discovery were matters of judgment and strategy in which plaintiff participated and to which she agreed.

38. These defendants admit the allegations of paragraph 61.

39. Paragraph 62 does not pertain to these defendants.

40. These defendants deny the allegations of paragraphs 63 and 64.

41. Answering paragraph 65, these defendants would show that any pursuit of a claim for alimony was a matter of judgment and strategy in which plaintiff participated and to which she agreed. Further, plaintiff's admitted adultery precluded the pursuit of a claim for alimony.

42. These defendants lack knowledge or information sufficient to form a belief as to the allegations of paragraphs 66 through 68, inclusive, and therefore deny same and demand strict proof thereof.

43. Answering paragraph 69, these defendants admit that plaintiff voluntarily consented to, and acknowledged as fair, the "complete property, support and custody agreement" approved by the Honorable Ann Gue Jones in the "Final Decree of Divorce and Order Approving Agreement," filed May 2, 2007. The remaining allegations of paragraph 69 are denied.

44. Answering paragraph 70, these defendants reiterate their responses to paragraphs 1 through 69 as if set forth herein verbatim.

45. These defendants admit the allegations of paragraphs 71 and 73.

46. These defendants deny the allegations of paragraphs 72, 74, 75, 76 and 77.

47. Answering paragraph 78, these defendants reiterate their responses to paragraphs 1 through 77 as if set forth herein verbatim.

48. Answering paragraph 79, these defendants admit so much of same as may be construed to allege that plaintiff signed a fee contract on or about September 17, 2003.

49. These defendants deny the allegations of paragraphs 80 through 83, inclusive.

50. Answering paragraph 84, these defendants reiterate their responses to paragraphs 1 through 83 as if set forth herein verbatim.

51. Answering paragraphs 85 and 86, these defendants admit they were in a fiduciary relationship with plaintiff only to the extent that such relationship may be imposed by law as a result of the attorney-client relationship. These defendants deny any additional or separate fiduciary relationship.

52. Answering paragraph 87, these defendants deny any detriment to plaintiff.

53. These defendants deny the allegations of paragraph 88.

54. Answering paragraph 89, these defendants join in the demand for a jury trial.

55. FURTHER ANSWERING SAID COMPLAINT, these defendants would show that their representation of plaintiff was within the standard of care required of attorneys practicing in the field of matrimonial law, including the appropriate exercise of professional judgment with regard to matters including court filings, marital assets, property settlement and discovery.

56. FURTHER ANSWERING SAID COMPLAINT, these defendants would show that plaintiff's claims, or a portion of them, are barred by the applicable statute of limitations.

57. FURTHER ANSWERING SAID COMPLAINT, these defendants would show that paragraphs 78 through 83, inclusive, denominated as a cause of action for breach of contract, fail to state facts sufficient to constitute a claim, in that the sole claim arising out of alleged professional negligence is in tort.

58. FURTHER ANSWERING SAID COMPLAINT, these defendants would show that plaintiff freely and voluntarily entered into a complete property, support and custody agreement on or about April 27, 2007, with advice of counsel; that she represented to the court in sworn testimony that she had sufficient knowledge of Conrad Powell's financial condition to knowingly enter into the agreement; that she permanently waived any claim to alimony as a provision of the agreement; that she consented to a permanent division of the marital assets; that she represented to the court that the agreement was fair to her and to Conrad Powell; and that she asked the court to approve the settlement. This agreement constitutes a complete and knowing settlement of the marital dispute with Conrad Powell, and a waiver of any claims against these

defendants, for which reason these defendants are not liable to the plaintiff in any sum whatsoever.

59. FURTHER ANSWERING SAID COMPLAINT, these defendants would show that plaintiff has accepted the benefits of the complete property, support and custody agreement entered into on or about April 27, 2007, and her consent to and acceptance of the agreement constitutes a ratification of defendants' actions on her behalf, for which reason these defendants are not liable to the plaintiff in any sum whatsoever.

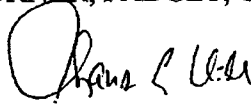
60. FURTHER ANSWERING SAID COMPLAINT, these defendants would show that, throughout these defendants' representation of her, plaintiff engaged in inappropriate, detrimental, and unlawful conduct, which adversely affected these defendants' ability to represent her and to negotiate effectively on her behalf, for which reason these defendants are not liable to the plaintiff in any sum whatsoever.

61. FURTHER ANSWERING SAID COMPLAINT, these defendants would show that, even if they were negligent, grossly negligent, reckless, wanton, and/or willful (hereinafter incorporated herein by the inclusive term "negligent"), which is not admitted but specifically denied, then plaintiff was also negligent, and the negligence of plaintiff combined, concurred and contributed with the negligence, if any, of these defendants, as a proximate cause of plaintiff's alleged injuries and damages, and that plaintiff's negligence was greater than 50% of the total negligence in the matter, so that her claim is barred by the doctrine of contributory negligence; alternatively, that if plaintiff's negligence was 50% or less of the total negligence in the matter, that her claim must be reduced pro rata by the doctrine of comparative negligence.

62. FURTHER ANSWERING SAID COMPLAINT, these defendants would show that any claim for plaintiff to recovery of alimony was barred by her own voluntary, intentional entry into an adulterous relationship without prior notice to these defendants.

WHEREFORE, having fully answered, these defendants pray that the complaint, as to them, be dismissed, with costs.

TURNER, PADGET, GRAHAM & LANEY, P.A.



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*Attorneys for Defendants Ashlin Blanchard
Potterfield; J. Michael Taylor; and,
Taylor/Potterfield*

Columbia, South Carolina
February 19, 2010

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CAROLYN MITCHELL POWELL,

Plaintiff,

Civil Action No.: 09-CP-40-8705

vs.

CERTIFICATE OF SERVICE

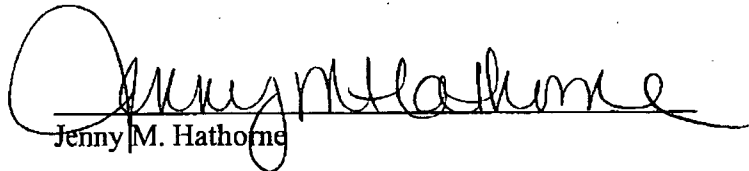
ASHLIN BLANCHARD POTTERFIELD;
MICHAEL TAYLOR; TAYLOR/POTTERFIELD;
GOLDEN, TAYLOR, POTTERFIELD AND
BARRON; REID SMITH; AND PRICE BIRD &
SMITH, P.A.,

Defendants.

I, the undersigned employee of Turner, Padget, Graham & Laney, P.A., attorneys for defendant, do hereby certify that I have this day served a copy of the foregoing Answer of Defendants Potterfield, Taylor and Taylor/Potterfield in connection with the above-referenced case by placing a copy of the same in the United States Mail, postage prepaid, to the following address(es):

William E. Hopkins, Jr., Esquire
Susan F. Campbell, Esquire
Paul B. Deal, Esquire
1414 Lady Street (29201)
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*Attorneys for Smith and
Price Bird & Smith, P.A.*


Jenny M. Hathorne

Columbia, South Carolina
February 19, 2010

State of South Carolina

Court of Common Pleas

County of Richland

2009-CP-40-08705

Carolyn Mitchell Powell

:

-VS-

:

TRANSCRIPT OF RECORD

:

Ashlin B. Potterfield,

:

J. Michael Taylor, et al.

:

March 16, 2012

Columbia, South Carolina

B E F O R E:

The Honorable R. Knox McMahon, Judge.

A P P E A R A N C E S:

Thomas Pendarvis, Esquire
Attorney for the Plaintiff

Charles E. Hill, Esquire
Attorney for the Defendants

Daphne D. Helms
Circuit Court Reporter

1 **The Court:** Thank you. Good morning. Please be seated.
2 Thank you very much. All right. Let's see. Mr. Hill?

3 **Mr. Hill:** Yes, sir.

4 **The Court:** This is your motion?

5 **Mr. Hill:** It is.

6 **The Court:** All right. This is -- do you have the
7 caption?

8 **Court Reporter:** Yes, sir.

9 **The Court:** All right. I'll be glad to hear from you.

10 **Mr. Hill:** Thank you, sir. Judge McMahon, this is a
11 case of alleged legal malpractice arising out of marital
12 litigation. I represent the defendants, Ashlin Potterfield
13 and Michael Taylor. Mr. Taylor is here with us this morning.

14 They were originally in the practice of Harvey Golden,
15 Ms. Potterfield and Mr. Taylor, and as Mr. Golden's practice
16 wound down, they formed their own partnership, their own
17 firm, Taylor/Potterfield. In the underlying marital
18 litigation, Mrs. Carolyn Powell initially retained Ms.
19 Potterfield to represent her, and then later on she switched
20 to Mr. Taylor in the same firm.

21 We have done substantial discovery in this case. It's
22 been pending since December of 2009. As the Court knows,
23 there are four elements to a legal malpractice claim. First,
24 attorney/client relationship. Second, breach of duty by the
25 attorney. Third, damage to the client and, fourth, proximate

1 cause of damage by the breach of duty.

2 Based on discovery, three of our defenses have been
3 established as a matter of law and are the subjects of our
4 motions today. Our motion -- the statute of limitations ran
5 as to Ms. Potterfield. Secondly, there is no expert
6 testimony that Mr. Taylor breached any duty that he owed to
7 Ms. Powell and, third, there's no proof of any damages
8 resulting to Mrs. Powell.

9 We filed our motion for summary judgment back in
10 December on the first two grounds: The statute of
11 limitations and no evidence against Mr. Taylor. Then in
12 February we had additional grounds to arise, so we amended
13 our motion and added the third grounds pertaining to the lack
14 of damages. If Your Honor does not have a copy of our
15 amended motion for summary judgment---

16 **The Court:** I do. I have it; yes, sir.

17 **Mr. Hill:** Thank you, sir.

18 **The Court:** That's the one filed 16 February?

19 **Mr. Hill:** February 16th, yes, sir.

20 **The Court:** Yes, sir, I have that one.

21 **Mr. Hill:** Good. In preparation for the argument today,
22 I have prepared a brief chronology that I'd like to share
23 with the Court.

24 **The Court:** All right. Yes, sir.

25 **Mr. Hill:** Certainly a lot has gone on in this case.

1 This chronology does not purport to cover everything, but I
2 just am giving you the dates that are pertinent to the
3 grounds for our motion which are largely dependent on the
4 timeline.

5 On September 17, 2003, Carolyn Powell retained Ashlin
6 Potterfield to represent her in the marital dispute with her
7 husband, Conrad. She paid a retainer to Ms. Potterfield. In
8 December of 2003 Mr. And Mrs. Powell separated.

9 In August of 2004 Ms. Potterfield filed the complaint
10 initiating the marital litigation in the Richland County
11 family court. On April the 1st of 2005 Carolyn Powell
12 separately retained Michael Taylor to assume her
13 representation and paid him a separate retainer, and Ashlin
14 Potterfield did not do any work in the case after April 1st
15 of 2005, and this basically gives rise to our first grounds
16 for summary judgment.

17 When we filed our original motion in December, we
18 attached excerpts from the depositions of Ms. Potterfield,
19 Mr. Taylor, and Ms. Powell. Ms. Potterfield said that she
20 last worked on the matter on April 1st of 2005. Mr. Taylor
21 testified that Ms. Potterfield was out of the picture after
22 April 1st of 2005, and Ms. Powell, the plaintiff, confirmed
23 that she had no communication with Ms. Potterfield after that
24 date.

25 There is no evidence that Mrs. Powell looked to Ms.

1 Potterfield for any further representation after that date of
2 April 1, 2005, and after paying a separate retainer to Mr.
3 Taylor. So any deviation from the standard of care by Ms.
4 Potterfield had to have occurred by April 1, 2005.

5 Picking up on the chronology again, in January of 2007
6 Carolyn Powell formally terminated Michael Taylor and
7 retained new counsel, Mr. Cantzon Foster, who is in a
8 separate law firm. On April 27th of 2007 Mr. and Mrs. Powell
9 entered into a consent, a negotiated complete property
10 support and custody agreement. This was not anything that
11 was ordered by the Court. This is something that Mr. and
12 Mrs. Powell agreed to and basically completed the case.

13 On May the 2nd of 2007 they appeared before the
14 Honorable Anne Gue Jones here in family court, and she heard
15 the evidence of the order and entered an order adopting the
16 agreement as the order of the Court. In this hearing Mrs.
17 Powell acknowledged to the Court under oath that she had
18 sufficient knowledge of her husband's finances to be able to
19 enter into a -- file a settlement that was fair, just, and
20 reasonable.

21 In December of 2009 this present lawsuit was filed: The
22 summons and complaint against Ms. Potterfield, Mr. Taylor,
23 and their firm. Originally Mrs. Powell was represented by
24 Bill Hopkins and Susan Campbell as her attorneys. Now, the
25 significance of that is that the suit was brought against Mr.

1 Taylor within three years of his representation, but it was
2 not brought within three years of Ms. Potterfield's work on
3 the case, the last date of which was April of 2005.

4 In November of 2010 Mr. Pendarvis was substituted as
5 counsel for the plaintiff, and Mr. Hopkins and Ms. Campbell
6 were relieved. On April 19, 2011, Mr. Pendarvis took the
7 deposition of the defendant, Michael Taylor, in this case.

8 On September 16, 2011, Mr. Pendarvis named Grady Brown,
9 an attorney in Beaufort, as his expert witness for the
10 plaintiff, and he submitted a report that Mr. Brown had
11 written. This report of September 12, 2011, is fairly
12 extensive; it's about six or seven pages long. Mr. Brown
13 says in that report that he had been furnished only the
14 depositions of Carolyn Powell and Ashlin Potterfield, and he
15 makes this statement in this report. Quote: My review was
16 not intended to determine the nature or the extent of any
17 damages Ms. Powell may have incurred as a result of
18 representation by the Taylor/Potterfield law firm, end quote.

19 **The Court:** That's the letter attached to the affidavit?

20 **Mr. Hill:** That's correct, Your Honor.

21 **The Court:** All right. Thank you.

22 **Mr. Hill:** On -- as soon as we'd gotten this
23 supplementary responses to discovery listing Mr. Brown as an
24 expert, we contacted Mr. Potter -- Mr. Pendarvis' office and
25 arranged to take Mr. Brown's deposition, and on September 23

1 we served that deposition notice. This was a deposition that
2 was scheduled by agreement between our offices.

3 On November 16 we took Mr. Brown's deposition, and I had
4 filed the transcript of that deposition with the clerk, Ms.
5 Lee. I noticed in preparing for the deposition and in
6 reading his report he consistently referred to Ashlin
7 Potterfield in what he felt were her deviations from the
8 standard, but he didn't make any comments regarding Michael
9 Taylor. So I asked him in his deposition, "Do you have any
10 opinion that Mr. Taylor deviated from the standard of care?"
11 And he said, "No." That's on page 92 on his deposition and
12 reiterated on page 93.

13 On page 98 he said, "I can't testify to any deviation by
14 Mr. Taylor." Quote, I never read his deposition, end quote.
15 And again I asked him about the statement that he had made in
16 his report about that he was not going to be a witness with
17 regard to damages, and I asked him if the statement he had
18 made in his report continued to be correct as of the date of
19 his deposition, and he said that that was true. That's on
20 pages 47 and 48 of his deposition.

21 So when we completed the deposition of Mr. Brown on
22 November 16, 2011, there were two things that were very
23 clear. First, Mr. Brown was not an expert on damages, and
24 Mr. Pendarvis and Ms. Powell, the plaintiff, would need
25 somebody else to testify regarding damages. And, secondly,

1 Mr. Brown was only an expert against Michael Taylor and not
2 against Ashlin Potterfield.

3 About a week after that deposition, Mr. Pendarvis and I
4 met with Judge Barber in chambers. At this point the case
5 was two years old, and we needed to do something about
6 scheduling the trial. So Mr. Pendarvis and I had worked out
7 a scheduling order that we submitted to the Court and that
8 Judge Barber approved. It's important to say that this is
9 something that Mr. Pendarvis and I worked together on and
10 submitted an agreement to Judge Barber.

11 That scheduling order imposed a deadline of February the
12 13th, 2012, for the plaintiff to name any additional experts.
13 Mr. Pendarvis sent me a letter on December 9th saying that he
14 had now submitted Michael Taylor's deposition to Grady Brown
15 for review. I thought that was kind of curious since the
16 deposition had been taken back in April and was not submitted
17 to Mr. Brown prior to his deposition. On December the 27th
18 then we filed this motion for summary judgment, again on the
19 basis that there was no expert testimony regarding any
20 deviation from the standard of care by Michael Taylor and
21 that the statute of limitations had run as to Ashlin
22 Potterfield.

23 February 13th came and went, the deadline established by
24 the scheduling order, and there was no -- no additional
25 experts named by the plaintiff. Since Mr. Brown was unable

1 to give any testimony with regard to the essential element of
2 damages, we filed an amended motion for summary judgment on
3 the grounds that the plaintiff had no evidence that the
4 plaintiff would have obtained a more favorable settlement but
5 for the alleged negligence of the defendants.

6 I think I need to digress here a little bit and tell the
7 Court a little bit about the issues in the underlying divorce
8 case. Mr. Powell is engaged in the antique business. He has
9 an antique store. I think he's still in business on the
10 corner of Gervais and Huger Streets. This is -- admittedly
11 by him was never particularly successful.

12 **The Court:** Gervais and Huger?

13 **Mr. Hill:** Uh-huh.

14 **The Court:** Where the Publix is at or Gervais and
15 Blossom?

16 **Woman in the courtroom:** Huger and Blossom.

17 **The Court:** Gervais and Blossom?

18 **Woman in the courtroom:** Huger and Blossom.

19 **The Court:** Blossom and Huger.

20 **Woman in the courtroom:** Yes.

21 **Mr. Hill:** I'm sorry.

22 **The Court:** I know it wasn't -- I know generally where
23 you're talking about. I know it wasn't the Publix.

24 **Mr. Hill:** Right.

25 **The Court:** What used to be the old printing press.

1 **Mr. Hill:** That's right.

2 **The Court:** Okay. I'm with you.

3 **Mr. Hill:** Again, that business was not particularly
4 successful, and Mr. And Mrs. Powell lived off of the assets
5 that they had. Mr. Powell had sold some stock several years
6 earlier. He had invested the money. He was involved in
7 several businesses, some with his brother and some with his
8 accountant.

9 In the underlying divorce action, as is typical I guess
10 of those kinds of cases, there was a lot of rancor between
11 the parties, and Mrs. Powell was very vehement that she
12 suspected her husband was hiding his assets, that he was
13 dissipating the marital estate, and that he was diverting
14 marital funds to his businesses. So that was an issue
15 throughout the underlying litigation.

16 In this case I took the deposition of Ms. Powell and I
17 asked her -- now, by this time, of course, the divorce case
18 was over and settled and the settlement agreement had been
19 entered into. I asked her if she was ever able to come up
20 with any evidence, any documentation, anything that she could
21 point us to, that Mr. Powell, her former husband, had done
22 any of this hiding or dissipating of assets, and basically
23 she said, "No, that's why I hired lawyers. I can't point you
24 to anything specific."

25 Now, when Mr. Taylor was representing Ms. Powell, he

1 retained Reid Bird -- Reid Smith here in Columbia with Bird
2 and Smith. Mr. Smith has expertise in financial matters.
3 He's handled bankruptcy cases. And Mr. Taylor brought Mr.
4 Smith on board to investigate these financial issues that
5 arose, and Mr. Bird did extensive work on that. He had some
6 documentation as to Mr. Powell's finances that Mrs. Powell
7 had surreptitiously taken from Mr. Powell's safe at the
8 outset of the matter and given to Ms. Potterfield actually.

9 So starting from that, they investigated. Mr. Bird
10 investigated the finances. He and Mr. Taylor actually went
11 to Conrad Powell's attorney's office and went through several
12 bankers boxes of financial records. Mr. Bird identified all
13 the businesses that Mr. Powell had been involved in. He went
14 to the Secretary of State, pulled all of the documents on
15 those businesses. He searched the records of Richland
16 County, Lexington County, all of the counties where Mr.
17 Powell had business interests including up in North Carolina
18 and Asheville. He did an extensive search of all of those
19 things.

20 When Conrad Powell's deposition was taken in the
21 underlying case, Mr. Bird actually took it and asked him
22 extensive questions about his finances. He investigated his
23 tax returns, his financial statements, and at the end of all
24 of this investigation when we took Mr. Bird's deposition in
25 this case, he testified he was -- that although Ms. Powell

1 was suspicious of her husband's activities with regard to the
2 finances, he was never able to undercover any evidence of any
3 dissipation or diversion of financial assets.

4 The last deposition we took in this case was that of
5 Cantzon Foster who is the attorney that replaced Taylor and
6 Potterfield representing Mrs. Powell. He also testified that
7 he was not able to develop any evidence of any diversion of
8 the funds. He testified that he would have liked to have
9 continued in that matter and had planned or thought about
10 hiring a forensic accountant to do that work and basically
11 cover the same ground that Mr. Smith had already done, but
12 the case settled before that was done.

13 With that background, I cite to the Court two cases that
14 we primarily rely on, and these are cited in our amended
15 motion for summary judgment. These cases are in the -- I
16 guess what can be called the settle-and-sue scenario where
17 the plaintiff settles a case and then sues the lawyer for
18 malpractice. These two cases are directly on point of what
19 we're involved in here today, and they are dispositive of
20 this matter. The Hall versus Fedor case is an interesting
21 case. It's sort of a fun case to read. Pete Hall was a
22 person here in town and---

23 **The Court:** What was the name?

24 **Mr. Hill:** Pete Hall.

25 **The Court:** Pete Hall?

1 **Mr. Hill:** Yes, sir. Hall versus Fedor. He was
2 arrested on a suspicion of doing some drug business or
3 something like that, and the police confiscated \$40,000 from
4 his house. He hired my friend Dave Fedor to represent him,
5 and Dave somehow was able to cut a deal with the solicitor's
6 office whereby the charges were dropped against Mr. Hall and
7 all the money was refunded.

8 **The Court:** That's a great deal.

9 **Mr. Hill:** Pretty good deal.

10 **The Court:** Yes, sir.

11 **Mr. Hill:** But Mr. Hall wasn't happy with that, so he
12 sued Mr. Fedor for malpractice, and Mr. Fedor moved for
13 summary judgment and Judge Casey Manning granted that motion,
14 and it was affirmed by the Court of Appeals. In affirming
15 the outcome of that case, the grant of summary judgment, the
16 Court said, "The plaintiff must show he or she most probably
17 would have been successful in the underlying suit if the
18 attorney had not committed the alleged malpractice." Quote,
19 Hall could satisfy the most probably requirement and defeat
20 Fedor's summary judgment motion by establishing he most
21 probably would have received a larger settlement than
22 \$30,000, end quote.

23 After reviewing the evidence before the Court on the
24 motion for summary judgment, the Court concluded that Hall,
25 quote, was not damaged because there is no evidence showing

1 that he would have recovered more than \$30,000 in a
2 settlement. There is no evidence in the record to show that
3 Hall most probably would have received in excess of \$30,000
4 but for Fedor's alleged negligence. So that's the Hall case.

5 The second case that we rely on is named John Doe versus
6 Gedney Howe. That arises out of a sexual molestation case
7 that was brought against Porter-Gaud School down in
8 Charleston. Apparently there was a teacher there over a
9 period of time who molested several students.

10 The underlying case was settled for \$88,000. There were
11 some other cases arising out of that same situation that
12 settled for more favorable amounts. So this particular John
13 Doe sued Mr. Howe and his firm complaining that other victims
14 got more favorable settlements than he did, so they were sued
15 for malpractice. Again, same scenario we have here: A
16 motion for summary judgment, an allegation being that there's
17 insufficient proof of damages.

18 The Court said a couple of important things with
19 relation to this case. First of all, it said that the
20 question of the success of the underlying case was a matter
21 of law for the Court and appropriate for a decision on
22 summary judgment, and secondly it required that in this kind
23 of a case the plaintiff must explicitly show a monetary
24 amount by which but for the alleged negligence of the
25 defendants, the plaintiff could have recovered a more

1 favorable settlement.

2 In that case the plaintiff introduced evidence of what
3 amounts the other cases had settled for. Of course, that's
4 not sufficient. There's lots of reasons that people settle
5 cases, and that doesn't cover it.

6 The plaintiff's expert in that case never explicitly
7 stated that Doe most probably would have recovered more than
8 \$88,000 if he had other counsel. The plaintiff contended
9 that he did not need expert testimony regarding the amount
10 that would be recovered, that it was enough to say he most
11 probably would have been successful. The Court disagreed and
12 said you've got to come forward with a specific amount of
13 money.

14 Again, I emphasize that these were summary judgment
15 cases. They're of the exact same posture that we're in
16 today. The plaintiff lost those cases because he was unable
17 to submit any proof of damages. These two cases are cited in
18 Professor Wilcox and Crystal's annotation on legal
19 malpractice in their commentary on the rules of professional
20 responsibility.

21 Now, here's where we are in this case. Mr. Brown
22 testified in his deposition, the plaintiff's expert, that he
23 had no opinion with regard to damages. Now, earlier this
24 week Mr. Pendarvis filed an affidavit of Mr. Brown, and again
25 he doesn't offer any real opinion on damages. He says it

1 would have been beneficial if Taylor and Potterfield had
2 preserved and protected assets. The assets could have been
3 preserved or controlled and settlement negotiations could
4 have proceeded accordingly, but he doesn't give any numerical
5 value as to what the case could have been settled for if
6 Taylor and Potterfield had done what he thought they should
7 have done. He does not even state the result of the
8 underlying case would have been more successful, much less
9 offer an opinion as to the dollar value. We think that's a
10 fatal flaw in this case, and under the Hall and Doe decisions
11 we're entitled to summary judgment on that basis alone.

12 Now, as I say, earlier this week Mr. Brown submitted -
13 excuse me - Mr. Pendarvis submitted the affidavit of Grady
14 Brown, and I want to talk about that for a little bit. That
15 was filed on March the 12th. We strongly submit that that
16 affidavit is entitled to no consideration whatsoever in this
17 hearing, and to buttress that argument I need to refresh the
18 chronology a little bit pertaining to Mr. Brown.

19 It turns out that Mr. Brown was actually retained by Mr.
20 Pendarvis in this case as an expert on November the 15th of
21 2010, five days after Mr. Pendarvis appeared as counsel and
22 was substituted as counsel in this case. We know that
23 because of the retention letter that was in Mr. Brown's file
24 that's attached as an exhibit to his deposition. So Grady
25 Brown was on board with Mr. Pendarvis as his expert from the

1 get-go.

2 Again, Michael Taylor's deposition was taken on April
3 the 19th. Five months after that deposition was taken, Grady
4 Brown wrote his report. He says the only materials he was
5 furnished were the depositions of Ms. Potterfield and Ms.
6 Powell. So Taylor's deposition had been taken five months
7 earlier. Brown makes no reference to it whatsoever in his
8 report.

9 Again, we noticed Mr. Brown's deposition and we took it
10 on November the 16th, and he said he had no opinion regarding
11 any negligence of Michael Taylor. In fact, plaintiff's
12 counsel did not furnish Mr. Brown with Taylor's deposition
13 until several weeks after his deposition. Now he comes into
14 court two days before this motion was scheduled to be heard,
15 four days before today, filing an affidavit saying that now
16 all of a sudden Mr. Brown has an opinion that Michael Taylor
17 deviated from the standard of care.

18 Your Honor, we submit that when a party notices a
19 deposition and when a party presents an expert to be deposed
20 on his opinions at a date that's been agreed upon by the
21 parties, the expectation is that that expert has reviewed the
22 available evidence, he's formulated his opinions, and he's
23 ready to be questioned on them. For whatever reason, the
24 plaintiff in this case chose not to supply Mr. Brown with Mr.
25 Taylor's deposition taken five months earlier. The

1 deposition wasn't left open pending further investigation.

2 We earnestly contend that we had a right to rely on Mr.
3 Brown's opinions as expressed at the time of his deposition,
4 and we filed our motion for summary judgment in reliance on
5 what he testified to. The plaintiff should not be permitted
6 to submit new opinions of Mr. Brown four months after his
7 deposition was taken, three months after a motion was filed
8 based on that deposition, and two days before the motion was
9 scheduled to be heard. So we formally move that Mr. Brown's
10 affidavit of March 12th, 2012, be stricken and be disallowed
11 in this record.

12 So in summary, Your Honor, where we are is we believe
13 that Ashlin Potterfield is entitled to summary judgment on
14 the basis that the statute -- the three-year statute of
15 limitations has run as to her. Secondly, there's no
16 cognizable evidence of any deviation from the standard of
17 care as to Michael Taylor and, third, that there is no
18 evidence whatsoever that plaintiff could have obtained a more
19 favorable financial disposition but for the alleged
20 negligence of Taylor/Potterfield. Again, we assert the cases
21 of Hall and Doe are dispositive, and I'll be glad to give the
22 Court copies of those cases.

23 **The Court:** All right. Yes, sir. Thank you, Mr. Hill.

24 **Mr. Hill:** I'll give you two. Thank you, sir.

25 **The Court:** Thank you. Thank you very much, Mr. Hill.

1 Mr. Pendarvis?

2 **Mr. Pendarvis:** Thank you, Your Honor. Good morning.
3 May it please the Court?

4 **The Court:** Good morning.

5 **Mr. Pendarvis:** We do need to put everything in context
6 here. This case is set for trial in July. Discovery is not
7 complete. There is a consulting expert that's working on --
8 a forensic expert that's going to be consulting with Mr.
9 Brown as to the exact amount of damages.

10 So I want to start with the context that in the line of
11 cases, Baughman versus AT&T and many others, discovery is not
12 complete. There are some information that's been disclosed
13 in discovery, documents, individuals that have not been
14 deposed that our consulting expert is -- a forensic economist
15 is speaking with who will be consulting with Mr. Brown.

16 Now, the deadline in the scheduling order that was so
17 focused in the defendant's motion describes a deadline to
18 identify experts. It doesn't establish any deadlines to
19 amend opinions. It doesn't establish any deadlines to -- for
20 other discovery. It only identifies the addition of experts,
21 and Mr. Brown is a competent longstanding family court
22 practitioner who deals with forensic economists every day as
23 part of his family court practice. And so as to the
24 suggestion that plaintiffs are duty-bound to establish today
25 a specific amount of damages, it's just not consistent with

1 the law or the scheduling order.

2 Now, one thing you didn't hear one word about is the
3 affidavit that was filed with the complaint. Dr. Gregory B.
4 Adams, a law professor at the University of South Carolina,
5 filed -- an affidavit from Dr. Adams was included with the
6 complaint when the complaint was filed. On Page 3, carrying
7 on to Page 4, Dr. Adams, after describing a summary of the
8 violations -- and I think I've provided Your Honor with a
9 copy of that affidavit---

10 **The Court:** Yes, sir. I just had it. I was just
11 looking for it.

12 **Mr. Pendarvis:** ---yesterday.

13 **The Court:** Just a moment. I just had it up here. I
14 have it.

15 **Mr. Pendarvis:** You do?

16 **The Court:** Yes, sir.

17 **Mr. Pendarvis:** Beginning on the third page of the
18 affidavit, Your Honor, the paragraph with capital E. at the
19 very bottom.

20 **The Court:** Yes, sir.

21 **Mr. Pendarvis:** Dr. Adams has given his opinion that the
22 violations described in the foregoing pages of this affidavit
23 resulted in approximate damage, considerable damages,
24 including the loss of any separate maintenance and support,
25 loss of substantial value of the marital estate, and her

1 share of it due to the dissipation, transfer, and secreting
2 of much of it by her husband during the pendency of the
3 divorce litigation. So we have expert testimony,
4 unchallenged -- unchallenged expert testimony establishing an
5 amount of damages that at this point, Your Honor, is in the
6 process of being quantified by a consulting expert who will
7 be -- as Your Honor knows, an expert like Grady Brown, an
8 expert like Dr. Adams, are entitled to rely on information
9 obtained and developed through consulting experts. So to the
10 suggestion that there's a requirement that hasn't been
11 satisfied today as developed through this scheduling order,
12 it's just not consistent with the scheduling order itself or
13 the law of this state.

14 Also, Your Honor -- so at this point there's a material
15 dispute of fact as to the specific amount of damages. It's
16 going to be the plaintiff's burden obviously at trial to
17 convince a jury how much that damage is and what she is
18 seeking in terms of the specific amount of damage, but to the
19 question of fact as to the amount of damages, that is
20 squarely established by Dr. Adams' opinion on Page 3 of his
21 affidavit, 3 and 4.

22 Also, clearly established is the questions of fact as to
23 the standard -- whether these lawyers met the standard of
24 care. It's interesting, Your Honor, in the way that these
25 motions -- defendants' motions seek to segregate these

1 lawyers. There is an absolute -- fair to discuss at all the
2 fact that they are partners in a law firm. The joint and
3 several liability between these law partners is described --
4 and I outlined this in the memorandum I submitted to the
5 Court earlier on -- I think it's on Pages 6 and 7, maybe even
6 carries over into 8 of the memorandum.

7 One thing that didn't happen in the underlying lawsuit,
8 Your Honor, is -- well, let me back up just a second. Ms.
9 Powell retains this law firm, Ashlin Potterfield and the law
10 firm of Taylor and Potterfield, to represent her in this
11 matter. Eventually a lawsuit is filed, keeping in mind this
12 was an almost four-year representation on what my client has
13 described in her deposition as an urgent need to get this
14 divorce. She was frustrated and she kept consistently
15 calling and contacting these lawyers to do something, to do
16 something. They didn't file a complaint for an extraordinary
17 amount of time, as outlined in Mr. Brown's affidavit and in
18 his letter. But the point being, Your Honor, is that the law
19 firm was hired. The law firm is a party to this case, and
20 the two lawyers in this law firm filed pleadings in the
21 divorce case.

22 There was never a Rule 11(b) motion terminating Ms.
23 Potterfield's representation of this client, of her client.
24 Now, whether lawyers in a law firm share work and this lawyer
25 has got primary responsibility and the second lawyer takes

1 over primary responsibility doesn't resolve or terminate the
2 attorney/client relationship. There is no evidence
3 whatsoever that any Court until 2007 when Mr. Foster took
4 over the representation -- until that point, there's no
5 evidence in the record that the -- that any Court ever
6 terminated the relationship between Mrs. Powell, the
7 plaintiff in this lawsuit, and the client of these -- of
8 these lawyers in the domestic matter ever until 2007. This
9 case was filed in 2009, clearly meeting the three-year
10 statute of limitations for legal malpractice matters.

11 So we contend that there are genuine issues of material
12 fact in dispute as to the existence of the attorney/client
13 relationship. Dr. Adams in his affidavit also, Your Honor,
14 says on the first page of the affidavit that an
15 attorney/client relationship existed between Ms. Potterfield,
16 Mr. Taylor, Reid Smith, and the plaintiff in this case, Ms.
17 Carolyn Powell.

18 So there is a material issue of fact as to the existence
19 of attorney/client relationship. There is no evidence in the
20 record as to the termination of that representation for Ms.
21 Potterfield, so the statute -- the suggestion that there's
22 just some phantom termination of this relationship just
23 because Mr. Taylor began doing the primary work on the file
24 is simply not consistent with the law and the facts.

25 And, Your Honor, for the very reason that -- for the

1 suggestion that Mr. Brown's affidavit should be stricken,
2 there's certainly no obligation for the plaintiff to outline
3 their entire case or -- until there was a suggestion that Mr.
4 Taylor wasn't part and party to the claims in this lawsuit,
5 there really wasn't a need to push a lot of Mr. Taylor's
6 involvement into the expert arena. The real focus of this
7 entire complaint, Your Honor, deals with the extraordinary
8 length of time that took place during this representation.

9 The, I guess you could say, damage control that Mr.
10 Taylor did not do is the focus of Mr. Brown's recent
11 affidavit, is just that: Damage control that could have been
12 done to mitigate some of the damages that were initially
13 caused by Ms. Potterfield's failure to prosecute this case in
14 a timely fashion which is the focus of the lawsuit.

15 Now, once the case got going, the suggestion that Mr.
16 Taylor met his standard of care by associating a bankruptcy
17 attorney that's not a forensic accountant and doesn't
18 routinely do the forensic accounting work that is regularly
19 done in family court to quantify the marital estate is simply
20 again damage control. There were things that could have been
21 done, Mr. Brown opines, to better protect and better develop
22 the financial picture of the marital estate.

23 Mr. Cantzon Foster's deposition -- and when I finish,
24 Your Honor, I'm going to hand up the transcript from those.
25 Those are all the originals that we have that were filed with

1 the court earlier this week. But Mr. Cantzon Foster
2 testified essentially this: He's got an emotionally-crippled
3 plaintiff who's been in an intense divorce for almost four
4 years or right at four years when the client comes to him to
5 take over the representation. He said he could not under
6 oath as a lawyer in his deposition -- he said I couldn't -- I
7 couldn't recommend that she accept the settlement terms. He
8 got involved in January, and the matter was settled by April
9 or May of that same year.

10 Based on -- and by the way, Your Honor, I did hand up
11 the order denying summary judgment in the first motion for
12 summary judgment that was filed in this case, and the point
13 that they try to make in that case is -- in that motion for
14 summary judgment was that she said she approved the
15 settlement in the family court when the matter was settled in
16 May of '07 and, therefore, she should be precluded from
17 asserting damages claims in this malpractice lawsuit because
18 she told the family court judge she was, you know, accepting
19 the terms of the settlement.

20 What Mr. Foster -- back to Mr. Foster's deposition is
21 Mr. Foster would have recommended that Ms. Powell proceed
22 with allowing him to do all the forensic work that was
23 necessary to quantify and better establish the marital
24 estate, but she emotionally could not take it. The testimony
25 was from Ms. Powell -- Ms. Powell and from Mr. Foster was she

1 just wanted to get it over and that after the marital
2 domestic matter was settled, she then engaged counsel and
3 proceeded with this malpractice lawsuit.

4 So the point of it is is that these defendant lawyers in
5 this case led this lady down a primrose path for four years
6 and didn't do what was necessary to properly prepare this
7 case for settlement or trial in a family court matter, and
8 for that reason Mr. Foster wasn't able to proceed with that.
9 And so that's the basis of the claims in the lawsuit is the
10 delay, and the primary party involved in that delay is Ms.
11 Potterfield.

12 Mr. Taylor's work was not as much -- there was some
13 delay in his time, too. He was involved for almost two years
14 when he was doing most of the work for the client. So Mr.
15 Brown has certainly been disclosed. Mr. Brown is looking at
16 evidence that's been developed in this case. His opinions
17 are within his expertise. He has opinions as to Mr. Taylor's
18 errors, and when we have the final reports and materials
19 developed from the consulting expert, Mr. Brown, per the
20 rules of procedure -- interrogatories will be supplemented.
21 His opinions as to damages will be incorporated into his
22 expertise, and if they wish to take his deposition again on
23 the new opinions, we certainly are willing to do that. The
24 same would be if there was another damages expert that had
25 been identified.

1 So we've got until July to get the case ready.
2 Discovery is not complete. We believe the motion for summary
3 judgment should be denied, and the specifics that were in the
4 Doe v. Howe case and the -- and the Hall case, Your Honor,
5 are just simply not at -- we're not at that juncture in this
6 lawsuit for there to be a ruling on the discovery that's not
7 yet complete.

8 **The Court:** Thank you.

9 **Mr. Pendarvis:** Thank you, Your Honor.

10 **The Court:** Thank you very much.

11 **Mr. Pendarvis:** And, Your Honor, if you don't mind, I
12 will pass up -- these were filed early -- the originals that
13 were in the plaintiff's possession were filed earlier this
14 week, but for Your Honor's benefit. I've got copies of the
15 deposition of Ms. Powell.

16 **The Court:** All right.

17 **Mr. Pendarvis:** The deposition of -- make sure I get
18 this right before I tell you. This is the deposition of --
19 just a second. Let me look at my own page. Mr. Foster. The
20 deposition of Mr. Brown. The deposition of Ms. Potterfield.
21 The deposition of Mr. Taylor and the deposition of Mr. Reid
22 Smith.

23 **The Court:** All right. Thank you.

24 **Mr. Pendarvis:** Thank you, Your Honor.

25 **The Court:** Yes, sir.

1 **Mr. Pendarvis:** Any further questions?

2 **The Court:** No, sir.

3 **Mr. Pendarvis:** Thank you.

4 **The Court:** Mr. Hill?

5 **Mr. Hill:** Your Honor, do you have a copy of the amended
6 scheduling order?

7 **The Court:** I do not. I have the file back there, but I
8 didn't bring that out.

9 **Mr. Hill:** May I hand a copy up?

10 **The Court:** Yes, sir. Sure.

11 **Mr. Hill:** Give me just a moment, Your Honor.

12 **The Court:** Yes, sir. Let me look at it also. Thank
13 you.

14 (Pause in proceedings.)

15 **Mr. Hill:** The second paragraph of the amended
16 scheduling order reads as follows: "Plaintiff has previously
17 disclosed Gregory Adams and Gary Brown as expert witnesses.
18 Plaintiff shall identify any additional expert witnesses by
19 February 13, 2012, and shall simultaneously provide the
20 experts' resumes together with the opinions as to which they
21 are expected to testify." That's what that order provides.

22 I again emphasize that this is an order that Mr.
23 Pendarvis and I worked on together. In fact, the original --
24 this was done in the interim between Mr. Brown's deposition
25 and our status conference with Judge Barber, and I sent Mr.

1 Pendarvis a proposed order. The original deadlines I had in
2 the proposed order were a little bit earlier than this.
3 Paragraph one said deposition of -- the order they had signed
4 says, "Deposition shall be completed by January 31st. I
5 think I had December 31st." In paragraph two I said,
6 "Additional experts by January 13th." The final order says
7 February 13th, and the reason for that is this.

8 I'm going to hand up a letter that Mr. Pendarvis sent to
9 me on November the 11th, 2011. It says, "Thank you for the
10 proposed amended scheduling order. We believe it will be
11 difficult to complete depositions before December 31. Our
12 November and December calendar is at capacity. With the
13 holidays, we believe it would be very difficult to get the
14 deponents to commit. We feel that extending all the dates on
15 the proposed amended scheduling order by 30 days will allow
16 us ample time after the holidays to complete depositions and
17 move forward accordingly." So this is an order that was --
18 the time was stretched out at Mr. Pendarvis' request, and we
19 presented it to Judge Barber and he signed, and I'll come
20 back to that order in a little bit.

21 Mr. Pendarvis referred to the fact that there was an
22 earlier motion for summary judgment. Mr. Bird was originally
23 named as a defendant in this lawsuit. He was represented by
24 Cal Watson with the Sowell Gray law firm. He's no longer a
25 party to the case. Mr. Watson decided to make a motion for

1 summary judgment on the grounds of judicial estoppel and
2 collateral estoppel based on Mrs. Powell's affirmance in the
3 hearing before Judge Jones in the family court that she
4 accepted the terms of the settlement and that the settlement
5 was fair, just, and reasonable.

6 That motion was made by Mr. Watson. I joined in the
7 motion. Judge Cooper heard the motion and denied it.
8 There's certainly nothing that prohibits us from bringing a
9 separate motion for summary judgment on entirely different
10 grounds. We didn't assert anything about damages in that
11 motion.

12 Mr. Pendarvis argues that he is not obliged today --
13 he's not obliged today to present any evidence on damages.
14 That's not what the Hall case says and that's not what the
15 Doe case says. In those two cases the defendants moved for
16 summary judgment, and the plaintiffs were not forthcoming as
17 to damages testimony, and summary judgment was granted and
18 summary judgment was affirmed.

19 Now, let me talk a little bit about the affidavit of
20 Greg Adams. That affidavit was filed with the complaint in
21 accordance with Section 15-36-100 which, of course, is the
22 statute that was passed in 2005 that says if you're going to
23 bring a professional negligence action, you have to support
24 it by the affidavit of an expert. That affidavit is dated
25 December 11, 2009, and was filed with the complaint at that

1 time. We have not heard another word from Professor Adams.

2 In plaintiff's memorandum that was submitted to the
3 Court this week he says, quote, subsequent discovery has not
4 diminished Dr. Adams' opinions that defendants breached the
5 standard of care in plaintiff's underlying divorce matter,
6 end quote. That bald statement is just completely
7 unsupported.

8 Since Adams gave his affidavit to support the filing of
9 the complaint back in December of 2009, depositions of
10 Carolyn Powell, Ashlin Potterfield, Michael Taylor, Reid
11 Smith, Grady Brown, and Cantzon Foster have all been taken.
12 Voluminous documents have been produced in discovery. We
13 filed an affidavit of our expert, Ken Lester. Mr. Adams has
14 not updated his affidavit to address any of that. We urge
15 that a pre-suit affidavit filed solely for the purpose of
16 compliance with the statute is not sufficient given the full-
17 blown record that now exists to defeat summary judgment.
18 That affidavit carries no weight, given all that's happened
19 since that time.

20 Secondly, Mr. Adams' affidavit doesn't address the issue
21 of damages from a quantifiable standpoint whatsoever. He
22 doesn't address what was the value of the underlying
23 settlement. He doesn't address what the value was of any
24 different settlement that could have been obtained. And I
25 wanted to point out to the Court that this settlement

1 agreement that Mr. And Mrs. Powell entered into was a very
2 comprehensive agreement. It's about 24 pages long.

3 It talks about some money that Mr. Powell will give to
4 his wife, the support that he will give her with regard to
5 medical care, that he will pay for the undergraduate college
6 education of the parties' two daughters, that he will bail
7 Mrs. Powell out of a very unfortunate purchase she made of a
8 horse stable in Aiken during the divorce matters, and he
9 agreed to undertake the mortgage, her mortgage obligation, on
10 that. There's that 24-page agreement. There's an attachment
11 to that, and there's an exhibit to the attachment having to
12 do with residential real estate that the parties own.

13 Nobody has ever put a pencil to paper that I'm aware of
14 to figure out what is the value of that underlying
15 settlement. It was a very complex settlement, and it would
16 take somebody with some substantial financial acumen to
17 quantify what the value of that settlement is. There's no
18 evidence in the record to that effect.

19 The plaintiff would have to not only determine what the
20 value of the underlying settlement was but also provide
21 evidence that but for the alleged negligence that value would
22 have been exceeded. Mr. Foster testified in his deposition
23 that he thought that settlement was extremely favorable to
24 Mrs. Powell. So, again, we have no quantification as is
25 required by the Hall case and the Gedney Howe case of the

1 value of damages.

2 Finally, with regard to Professor Adams, the substantive
3 issues in this case have to do with family law and the
4 handling of marital litigation. His C.V. lists his claimed
5 areas of expertise; family law is not amongst them. He cites
6 three appellate decisions in which the courts have
7 acknowledged his expertise. They are not family law cases.

8 It's interesting that Mr. Brown's recent affidavit of
9 March 12 gives no reason whatsoever for why he now claims to
10 have an opinion regarding damages that he didn't have when he
11 wrote his report or when he gave his deposition. The
12 plaintiff can't create an issue of fact by submitting
13 inconsistent and contradictory statements by the same expert.

14 Now, finally, Your Honor, I want to go back to that
15 scheduling order. If the testimony of Brown and Adams does
16 not satisfy the essential element of proof of damages - and I
17 think we've covered that - then time is up. It was up on
18 February the 13th, and the plaintiff is out of court. That
19 is why we amended our summary judgment motion to specifically
20 include the grounds that plaintiff has failed to produce
21 expert damages testimony as required by those two cases.

22 Judge Barber's scheduling order is the law of this case.
23 Plaintiff has not sought to have it amended or modified. He
24 has not -- the plaintiff is not entitled to ignore this
25 order. The thrust of our motion is to enforce the order.

1 Our clients have relied upon that order and that deadline in
2 defending this case. We've made strategic and financial
3 decisions based on that deadline. We have not and will not
4 consent to any extension or any additional time for the
5 plaintiff to come up with any new damages expert that has not
6 been disclosed in accordance with that deadline.

7 Your Honor, this case is two years and three months old.
8 These allegations have weighed heavily on Mr. Taylor and Ms.
9 Potterfield. Mr. Pendarvis has been in this case for over a
10 year. Mr. Pendarvis is well versed in the law of legal
11 malpractice. He has known that he's going to have to come
12 forward with damages testimony, and he has not done so.

13 We would be severely prejudiced at this point in time if
14 he's now allowed to finally come forward with a damages
15 expert and then we've got to assess that and discover it and
16 then hire somebody else to look at that and develop a
17 response to it. The order should be upheld. There's no
18 damages testimony, and we're entitled to summary judgment.
19 Thank you, sir.

20 **The Court:** Thank you, Mr. Hill. Anything---

21 **Mr. Pendarvis:** Your Honor, may I make a brief rebuttal?

22 **The Court:** Sir?

23 **Mr. Pendarvis:** Might I beg the Court's indulgence for a
24 very briefly rebuttal to that statement?

25 **The Court:** Yes, sir. Certainly.

1 **Mr. Pendarvis:** Your Honor, the scheduling order doesn't
2 say there's no more -- there's a discovery cutoff. Counsel
3 for both parties were involved in that. There's no discovery
4 cutoff. It just says no new experts. It doesn't say an
5 expert can't further develop their opinion based on the
6 evidence that's developed.

7 One critical, critical witness whose deposition has not
8 been taken - the defendants have chosen not to take - is Mr.
9 Conrad Powell. And what if Mr. Conrad Powell comes into
10 court and he's entitled -- he's been named in the discovery
11 and says things about his financial disclosure and says
12 things about the marital estate that's inconsistent with the
13 work that these defendant lawyers barely did to develop the
14 damages in the marital estate in this case? What if Mr.
15 Conrad Powell's cooperating with people to disclose assets?
16 That's not prohibited by the scheduling order.

17 So the suggestion of this deadline date in February to
18 identify new experts is simply inapplicable to the issues and
19 the requirements for the plaintiff to establish her damages
20 in this case. So we submit that the scheduling order
21 sufficiently allows all parties to this case to continue
22 developing their -- for their case.

23 It's set, per an agreement with Judge Barber, for trial
24 in July. So there's plenty of time for everybody to prepare
25 themselves for trial. There's no prejudice to the defendants

1 to have an expert identify new additional opinions based on
2 the continuing development of the evidence. This happens in
3 state court every day. I tried a case in this very courtroom
4 earlier this month, and we were getting new opinions from the
5 experts the week before the trial, the very week before the
6 trial. And to suggest that this case has not taken a heavy
7 toll on Mrs. Powell is just inconsistent with her testimony
8 and inconsistent with the fact that she has been involved in
9 this matter to get her day in court in family court since
10 2003 and it's 2012 now.

11 One thing, too -- I do want to just talk briefly on the
12 Crowley versus Harvey and Battey case that's cited in the
13 order that denied summary judgment. There is -- it's
14 appropriate for a party to, in essence, mitigate their
15 damages and accept whatever they can get, and in this case in
16 the marital settlement with her husband, yes, it was
17 extensive. Yes, it was lengthy. But was it complete? Was
18 it a fair settlement? Under the circumstances it was because
19 there wasn't time left under the family court rules and Mrs.
20 Powell's emotional status to proceed with what the two years
21 or so Mr. Foster testified it would take to finally develop
22 the true marital estate picture. Nothing further, Your
23 Honor. Thank you.

24 **The Court:** Thank you. Thank you. I took your point to
25 be, Mr. Hill, the -- not only the date of February 13th as

1 much as the phraseology after that of simultaneously
2 providing the resumes together with opinions as to which they
3 are expected to testify, that that would be a deadline date
4 for those opinions also.

5 **Mr. Hill:** Yes, Your Honor.

6 **The Court:** So, of course, Mr. Pendarvis's is that
7 opinions can change or evolve. I take it that's his
8 position, even if it changes up to the date of trial, and
9 that the -- the argument that discovery is not complete, that
10 argument wouldn't overcome the deadline thing that's in the
11 amended scheduling order. That's your position.

12 **Mr. Hill:** Yes, sir.

13 **The Court:** All right. I'm not going to -- I'm
14 obviously not going to take any of the original file anywhere
15 or back to Lexington with me, but besides the depositions
16 that y'all have handed up and the cases y'all have handed up,
17 the various motions, affidavits of experts and all, is there
18 anything else that y'all would have that you would like me to
19 look at in that regard?

20 **Mr. Hill:** Not from the defendants, Your Honor.

21 **The Court:** Mr. Pendarvis?

22 **Mr. Pendarvis:** I'll be glad to get you a copy of the
23 case. The citing of the text of it is relevant to the
24 Crowley case that I talked about cited in that memorandum---

25 **The Court:** Are you talking about Harvey?

1 **Mr. Pendarvis:** Crowley versus Harvey.

2 **The Court:** I can get that.

3 **Mr. Pendarvis:** And the text of it's relevant. It's
4 quoted in the order that I did pass up to Your Honor earlier
5 this week.

6 **The Court:** That's Judge Cooper's order?

7 **Mr. Pendarvis:** Yes, sir.

8 **The Court:** Yes, sir.

9 **Mr. Pendarvis:** Yes, Your Honor.

10 **The Court:** That's all right. I can get that. Is there
11 any more factual material y'all want me to look at?

12 **Mr. Pendarvis:** And, Your Honor, just so the record is
13 clear, earlier when we were meeting in chambers to schedule
14 this hearing today, just so the record is clear, I passed up
15 to Your Honor a memorandum in opposition to Taylor/
16 Potterfield defendants' second motion and amended second
17 motion for summary judgment, a copy of the affidavit of the
18 expert opinion of Dr. Gregory B. Adams, a copy of the
19 affidavit of H. Grady Brown, Esquire, and I believe a copy of
20 the order -- yes, a copy of the order Judge Cooper issued
21 denying defendants' motions for summary judgment.

22 **The Court:** All right. Thank you.

23 **Mr. Pendarvis:** Thank you, Your Honor. Let me know if
24 you need anything else.

25 **The Court:** All right. Thank you. Well, I'll take it

1 under advisement. If y'all would provide by e-mail proposed
2 orders both to my law clerk and simultaneously to each other.
3 How much time do y'all want to submit the orders?

4 **Mr. Pendarvis:** It would be helpful if I had two weeks,
5 Your Honor. I just -- I've got some stuff going on with that
6 trial that I just finished.

7 **The Court:** Is that sufficient?

8 **Mr. Hill:** Yes, sir. That would be fine.

9 **The Court:** Is it too far out?

10 **Mr. Hill:** No, sir.

11 **The Court:** Let's say -- today is the 16th, so we'll say
12 by March 31st? Is that all right? Is that all right?

13 **Mr. Hill:** Yes, sir. I will point out to the Court that
14 another requirement of Judge Barber's order is that the case
15 be mediated by March the 31st.

16 **The Court:** Oh.

17 **Mr. Hill:** And we, in fact, have mediation scheduled for
18 next week. I think that probably -- I'm just thinking off the
19 top of my head now -- that that mediation will probably --
20 will not be meaningful until Your Honor is able to rule, so I
21 would...

22 **The Court:** And I'll tell you my schedule. Quite
23 frankly, I'm on vacation next week, but I'm not out of town.
24 I'm not out of Lexington, but I'm on vacation. The next week
25 I'm in chambers. I don't mind trying to get it out quicker

1 at all, but I don't like to promise because when I'm out for
2 a week I never know exactly what's going to face me the week
3 of the 20th. That would be the week of the 26th anyway.

4 **Mr. Hill:** I think probably - and, again, I'm just
5 talking off the top of my head - that we would probably need
6 to have maybe a sort of a pro forma mediation next Wednesday
7 when it's scheduled and simply state that we're awaiting a
8 ruling from the Court.

9 **Mr. Pendarvis:** That and, Your Honor, Mr. Hill and I had
10 talked about that after this hearing today going to see Judge
11 Barber and get maybe an amendment to that scheduling order to
12 accommodate---

13 **The Court:** If you settle it, let me know.

14 **Mr. Pendarvis:** Well, if that's all right, Your Honor,
15 we could certainly tell the Court -- I mean, I'm believing
16 Charlie and I are -- Mr. Hill and I are going to try to see
17 if Judge Barber has a moment to discuss the scheduling.

18 **The Court:** Sure.

19 **Mr. Pendarvis:** If that gets amended, we certainly could
20 let Your Honor know that.

21 **Mr. Hill:** But here's the point that---

22 **The Court:** Excuse me. I understand Judge Barber is not
23 here today.

24 **Mr. Pendarvis:** Oh, he's not? Okay. That takes care of
25 that.

1 **Mr. Hill:** Here is the point I want to make. I want to
2 put this on the record. I don't want to be put into the
3 position of backing off my position on that scheduling
4 order's requirement of expert disclosure. Now, Mr. Pendarvis
5 has represented to the Court today that he's got somebody
6 looking at the financial aspect.

7 Frankly, I've heard that conversation before, and it's
8 never been forthcoming. But the point is that I'm not
9 waiving or relinquishing my reliance on the scheduling
10 order's deadline, and I will not consent to an extension of
11 the deadline for the purposes of additional expert
12 disclosure.

13 **The Court:** And, of course, you do have that on the
14 record, and I don't think I have any jurisdiction over the
15 scheduling order anyway. I've got jurisdiction when I walk
16 out of here today, and obviously judge -- and even wouldn't
17 -- even then wouldn't have it over the scheduling order.
18 That would be up to the chief civil administrative judge,
19 Judge Barber. It's his order, and it's his order to amend.

20 **Mr. Hill:** Yes, sir.

21 **The Court:** So I don't think I can change it or alter
22 it. I don't think you're waiving anything, Mr. Hill.

23 **Mr. Hill:** Thank you, sir.

24 **The Court:** All right.

25 **Mr. Pendarvis:** Just for the record, too, all we're

1 talking about is the mediation, not the remaining aspects of
2 the scheduling order.

3 **The Court:** Right. And like I say, I don't think I've
4 got any jurisdiction over any of the scheduling order. I
5 think that's entirely up to Judge Barber. I think I have the
6 issue to review for purposes of summary judgment motions.

7 **Mr. Hill:** Exactly.

8 **The Court:** But I don't have any authority to change or
9 amend any dates in it at all. Okay?

10 **Mr. Pendarvis:** Thank you, Your Honor.

11 **The Court:** All right. Thank y'all. Thank y'all very
12 much.

13 **Mr. Hill:** Thank you, Judge.

14 (Whereupon, the proceedings were concluded. There were
15 no exhibits introduced.)
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25

I, the undersigned Daphne D. Helms, official court reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the circuit court for Richland County, South Carolina, on the 16th of March, 2012.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

September 26, 2012

Daphne D. Helms, court reporter

STATE OF SOUTH CAROLINA)
)
 : IN THE COURT OF COMMON PLEAS
 COUNTY OF RICHLAND) Case No. 2009-CP-40-8705
)
 CAROLYN MITCHELL POWELL,)
)
 Plaintiff,)
) DEPOSITION OF:
 -vs-) CAROLYN MITCHELL POWELL
)
 ASHLIN BLANCHARD POTTERFIELD;))
 J. MICHAEL TAYLOR, TAYLOR/)
 POTTERFIELD; GOLDEN, TAYLOR)
 POTTERFIELD and BARRON REID)
 SMITH; and PRICE, BIRD &)
 SMITH, P.A.,)
)
 Defendants.)

Given before Elaine G. McLeod, Court Reporter and
 Notary Public at the Law Office of Turner, Padgett,
 Graham & Laney, P.A., 1901 Main Street, 17th Floor,
 Columbia, South Carolina, on Thursday, January 27, 2011,
 commencing at 10:09 a.m.

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Powell, Carolyn

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1 It was stipulated by and between counsel
2 for the parties that this deposition is taken
3 pursuant to notice and that all questions as
4 to notice are waived; that all objections,
5 save as to the form of the question, are
6 reserved until the time of trial; that the
7 deposition is taken pursuant to the South
8 Carolina Rules of Civil Procedure, for the
9 purposes allowed therein; and that the
10 deponent was explained her right to read
11 and sign the deposition and did not waive
12 that right.

13 MR. HILL: This is Charlie Hill
14 representing Ashlin Potterfield, Michael
15 Taylor and Taylor Potterfield. I need to
16 state for the record at the outset of the
17 deposition that I received late yesterday
18 afternoon correspondence and documents
19 from Mr. Pendarvis dated January 26 which
20 transmitted Plaintiff's Supplemental
21 Responses to our Request for Production
22 and in the cover letter Mr. Pendarvis
23 mentions that we will be receiving a
24 compact disc containing documents with a
25 Bates range of 7890 to 8200. Obviously,

1 at this time, we have not received that CD
2 and those documents so we're going forward
3 with the deposition today with the
4 stipulation and your understanding that
5 upon receipt and review of those documents
6 it may be necessary to resume the
7 deposition at a subsequent time.

8 MR. PENDARVIS: That's fine.

9 (Carolyn M. Powell, being duly sworn,
10 testified as follows:)

11 DIRECT EXAMINATION BY MR. HILL:

12 Q. State your full name, please.

13 A. Carolyn Mitchell Powell.

14 Q. Ms. Powell, my name is Charlie Hill. I
15 represent Ashlin Potterfield and Michael Taylor.
16 I'm going to be taking your deposition today.
17 The rules of court require of me that I advise
18 you of a couple of ground rules. I know you've
19 given a deposition in the past, but,
20 nevertheless, I need to state a couple of
21 things.

22 Number one is that I anticipate that we
23 are going to be here for a while today. We have
24 a lot of ground to cover, as I'm sure that you
25 understand. But it's not an endurance contest.

Powell, Carolyn

1 At anytime you want to take a break all you have
2 to do is ask me and I'll be glad to accommodate
3 you. You have to answer the question that's on
4 the table at that time, but if you want to take
5 a break please let me know. The only caveat of
6 that is is that you're not allowed to discuss
7 your testimony with anyone during the break. Do
8 you understand that?

9 A. I do.

10 Q. Okay. And, secondly, if you do not understand
11 my question please ask me to rephrase it or
12 restate it, I'll be happy to try to do so so
13 that you and I are communicating and that you
14 understand my question. You're not allowed to
15 ask Mr. Pendarvis or anybody else for a
16 clarification of my question. And that goes for
17 any other attorney that may be asking the
18 questions this afternoon or this morning.

19 A. I understand, Mr. Hill.

20 Q. Okay. Very good. Thank you. Give me your full
21 name please. Well, you already did that so
22 that's not necessary.

23 Ms. Powell, I want to begin with a date of
24 reference of April 27, 2007 when you entered
25 into the property settlement agreement with

1 Conrad Powell. Where were you living at that
2 time?

3 A. I was living in Aiken at the time.

4 Q. What address?

5 A. At - gosh, it was South Boundary. I don't
6 remember the exact address.

7 Q. And was that a rental house?

8 A. That was a rental house.

9 Q. It was a house, not an apartment?

10 A. It was a house, correct.

11 Q. Okay. And who was living there with you at that
12 time?

13 A. My two children, Alexandra and Morgan.

14 Q. And the oldest child was a Senior in high school
15 at that point?

16 A. She was a Senior in high school.

17 Q. And which school was that?

18 A. That was Aiken Preparatory School.

19 Q. And where was the youngest child?

20 A. She was also at Aiken Preparatory School in
21 tenth grade.

22 Q. Okay. Now, how long did you continue living on
23 South Boundary in Aiken?

24 A. I lived on South Boundary until, I believe that
25 was August of 2007.

- 1 Q. And what did you do then?
- 2 A. Moved to Wheat Street. 2931 Wheat Street.
- 3 Q. That's in Columbia?
- 4 A. In Columbia, sorry.
- 5 Q. And did you rent that house?
- 6 A. No, that was a house I purchased.
- 7 Q. Okay. Who did you buy the house from?
- 8 A. I cannot remember the sellers' names at this
- 9 moment, but Whitmore sold me the house, Coldwell
- 10 Banker. And that's all on the record.
- 11 Q. And what attorney handled the closing?
- 12 A. Cantzon Foster. Actually, that would have been
- 13 the buyer's choice, or the seller's choice. I
- 14 can't remember, I'm sorry. I was buying the
- 15 house so it would have been the seller's choice.
- 16 I cannot remember the attorney's name.
- 17 Q. What was the purchase price?
- 18 A. Seven seventy-five.
- 19 Q. And how much of that was the down payment?
- 20 A. Four hundred and fifty.
- 21 Q. Do you have the documents from that closing?
- 22 A. Not in my possession at this moment, but I do.
- 23 Q. Okay. And did your two daughters move with you
- 24 there?
- 25 A. They did.

1 Q. How long did you continue living at 2931 Wheat
2 Street?

3 A. I sold Wheat Street March of 2010. March 15th to
4 be exact.

5 Q. And did you live there continuously from August
6 of 2007 until March of 2010?

7 A. I did, Mr. Hill.

8 Q. Okay. And who did you sell the property to in
9 March of 2010?

10 A. Again, I'm sorry, I'm not good with remembering
11 names of people I don't know.

12 Q. What attorney handled the closing?

13 A. I've forgotten that as well. I can tell you if
14 I had a few minutes to think about it.

15 Q. Well, if it comes to you while we're talking -

16 A. I'll tell you. I can't remember.

17 Q. And what was the sale price?

18 A. I believe five eighty-five.

19 Q. Five eighty-five?

20 A. Uh-huh.

21 Q. And do you have the documents from that closing?

22 A. I have the documents. Not with me, but I do.

23 Q. Okay. And upon sale of that residence where did
24 you move to?

25 A. I moved into a guest house of a friend, which is

1 currently where I reside.

2 Q. And what is that address?

3 A. I can't tell you the address, but it is Forest
4 Hills. The name of the owner is Jenna McMahon
5 and Mark Cotterill.

6 Q. Jenna McMahon and?

7 A. And Mark Cotterill, right. It's Cambridge Lane,
8 but I don't remember the exact address. I don't
9 use the address for correspondence.

10 Q. What do you use as a mailing address?

11 A. PO Box 11511, Columbia, South Carolina, 29211.

12 Q. And you've been living in this guest house on
13 Cambridge Lane since March of 2010?

14 A. I have.

15 Q. Was there a foreclosure on the Wheat Street
16 property?

17 A. There was not a foreclosure. I was struggling
18 at the end of - shortly before I sold the house
19 and I was behind in the mortgage but there
20 wasn't a foreclosure.

21 Q. What did you net out of that sale?

22 A. Just under a hundred thousand, I believe is
23 correct, but I can't remember the exact amount,
24 Mr. Hill.

25 Q. Okay. So you've lived at the guest house on

1 Cambridge Lane continuously since March of 2010?

2 A. I have.

3 Q. You have not had any other addresses other than
4 the ones that you've told me about?

5 A. I have not.

6 Q. Okay. Now, tell me about Mary Morgan. She was
7 a Senior in high school in 2007. Did she
8 graduate from Aiken Prep?

9 A. She did graduate from Aiken Prep.

10 Q. And that would have been in May or June -

11 A. That would have been May of 2007 as
12 Valedictorian of her class, I might add.

13 Q. Congratulations. Where did she go from there?

14 A. Morgan attended the College of Charleston that
15 Fall in their honors program, too. I'm going to
16 brag on Morgan.

17 Q. And how long did she remain at College of
18 Charleston?

19 A. She was in classes for two years. She currently
20 is taking a break, but on and off for two years
21 at the College of Charleston.

22 Q. Okay. So she would have been at College of
23 Charleston for the 2007-2008 school year and
24 then 2008-2009 school year?

25 A. Right. Now, she took a couple of breaks in

1 there, but I don't remember the exact dates.

2 Q. So she's not currently enrolled in college?

3 A. She's not currently enrolled right now. She's
4 living in Charleston, however.

5 Q. Is she employed?

6 A. Not currently, she's looking.

7 Q. Has she been employed?

8 A. She has.

9 Q. What has she done?

10 A. She worked for Earth Fare for a time and for
11 Fast and French Downtown Charleston. And she
12 also worked for her father over the summer in
13 Columbia, South Carolina.

14 Q. What did she do for her father?

15 A. Errands, shopkeeper, answering phones.

16 Q. In what business?

17 A. Chic Antiques, Huger Street.

18 Q. Does she have any plans to your knowledge to
19 resume her education?

20 A. She does.

21 Q. What does she plan to do?

22 A. Well, she hasn't made definite plans at this
23 time, but she's trying to make that decision.
24 She just underwent a career assessment with a
25 counselor in Charleston.

1 Q. Who paid the tuition for her to attend College
2 of Charleston?

3 A. Primarily she attended the College of Charleston
4 through scholarships. She had the Presidential
5 Scholarship, the Palmetto Scholarship, and
6 whatever balance was left for tuition and
7 residence her father paid.

8 Q. Do you have any information as to what amounts
9 he paid toward her education?

10 A. I do not.

11 Q. Do you know the amounts of the scholarship and
12 other financial aid that she received?

13 A. I'm sorry, I can't remember.

14 Q. Who would have that information?

15 A. Her father and Morgan.

16 Q. Can you give me Morgan's current residence
17 address?

18 A. 319-B King Street.

19 Q. Is that an apartment?

20 A. It's an apartment.

21 Q. Okay. Tell me about Alexandra. In 2007 she
22 would have been, what, in the tenth grade?

23 A. She was in the tenth grade.

24 Q. What has gone on with her since then?

25 A. Alexandra moved to Columbia for her last two

1 years in high school.

2 Q. Where did she go?

3 A. She attended Heathwood and graduated from
4 Heathwood in 2009.

5 Q. What has she done since then?

6 A. She enrolled in the School of Visual Arts in New
7 York where she's currently attending.

8 Q. I'm not familiar with that, can you tell me a
9 little bit about it?

10 A. It's an art school, one of the top art schools
11 in New York City.

12 Q. When did she begin classes there?

13 A. The Fall of 2009.

14 Q. Is that a four-year college?

15 A. It is.

16 Q. Do you end up with a bachelors degree?

17 A. I'm not sure if they call it a bachelors degree
18 at the School of Visual Arts. There probably is
19 some graduate studies you can do as well there.
20 I'm not - I couldn't really answer that
21 question.

22 Q. Okay. Has she been enrolled continually there
23 since 2009?

24 A. She has. She took a small break the Spring of
25 last year and reentered in the Fall. She had

1 some health issues at the time.

2 Q. Does she live on campus?

3 A. She has an apartment.

4 Q. Who has paid her tuition to the School of Visual
5 Arts?

6 A. Her father.

7 Q. Does she have any scholarship or financial aid?

8 A. She does have financial aid.

9 Q. Would that be a loan?

10 A. Primarily based on my income because I have
11 custody, both girls I did have custody so they
12 were considered under my income.

13 Q. But Conrad has paid that as well?

14 A. He's paid the difference.

15 Q. And are you knowledgeable of what amounts he may
16 have paid?

17 A. I'm not.

18 Q. Are you knowledgeable with regard to any
19 financial aid she receives?

20 A. I don't know the exact amounts. It varies from
21 year to year. I can't remember the exact
22 amounts.

23 Q. Do you have any paperwork on that?

24 A. I do. The first year probably about twenty
25 thousand. This year really hasn't been

1 finalized so I don't have the exact amounts, but
2 I can get that.

3 Q. Okay. Do you live alone on Cambridge Lane?

4 A. I do.

5 Q. Has anybody ever lived there with you other than
6 your daughters?

7 A. No, I have not.

8 Q. Since April of 2007 have you been employed?

9 A. I have been employed.

10 Q. Tell me about that.

11 A. I do design work as an assistant designer with a
12 friend of mine who's head designer in projects.
13 We've worked together for 20 years.

14 Q. Who is that?

15 A. Karen Eberhart, E-B-E-R-H-A-R-T.

16 Q. Where does she live?

17 A. She lives in Atlanta.

18 Q. Are you an employee of hers?

19 A. Not an employee. She brings me in as an hourly
20 assistant when she needs me.

21 Q. And what are your earnings from that employment?

22 A. From?

23 Q. Are you paid, I guess, by the job?

24 A. It's by the job so there's not a set - it's not
25 like I make a set salary.

1 Q. I understand. Can you give me an estimate of
2 your income for 2010 from that employment?

3 A. It would have been under ten thousand. I can't
4 remember exactly.

5 Q. I believe you and Conrad last filed joint tax
6 returns in 2002. Would that be correct? Or
7 maybe it was 2003, I'm not sure.

8 A. I believe 2002, but I'm not a hundred percent.
9 We may have filed together in 2003. But 2002
10 for sure. That's probably - you're probably
11 correct there.

12 Q. And since that time have you filed separate tax
13 returns?

14 A. I have.

15 Q. Do you do those yourself or does somebody assist
16 you with that?

17 A. I have someone assist me.

18 Q. Who is the person that helps you with your
19 taxes?

20 A. Gosh, I'm having a hard time with names today.
21 I can give you that information. He's an
22 accountant, he's here. I have not filed in the
23 last two years.

24 Q. So you think you've filed in 2003 through 2008?

25 A. Right. Well, I would have filed -- right. I

1 would have filed through 2008. That would have
2 been the last filing.

3 Q. And do you have copies of those tax returns?

4 A. I do. I'm sorry, I just can't remember the last
5 filing. We file in arrears so I'm trying to
6 catch up, but 2007 or 2008. I would have had to
7 provide information for the school financial
8 offices.

9 Q. Did you have to file affidavits with either
10 College of Charleston or the School of Visual
11 Arts regarding your financial status when the
12 children applied for scholarships or financial
13 aid?

14 A. What do you mean by an affidavit?

15 Q. Any kind of financial disclosure.

16 A. Whatever is required on the FAFSA forms.

17 Q. Did you maintain copies of those?

18 A. I did, I do have copies

19 Q. We attempted to take your deposition back in
20 November and it was postponed. I think that was
21 during the time you were changing counsel and I
22 was also informed that you had been overseas on
23 a trip. Where did you go?

24 A. I went to Italy.

25 Q. And how long was that trip?

- 1 A. Three weeks.
- 2 Q. Who did you go with?
- 3 A. A family, Leone. Rick and Sue Leone, L-E-O-N E.
- 4 Q. Where do they live?
- 5 A. Sue lives in Texas. Rick has homes in
- 6 Pennsylvania, Atlanta and Houston.
- 7 Q. How did you come to know those folks?
- 8 A. I met Rick, gosh, about a year ago and got to
- 9 know him and later the family and he invited me
- 10 to go with his sister to be his assistant. He's
- 11 in a wheelchair and help document some things
- 12 for the family business. And they've become
- 13 really good friends.
- 14 Q. Would you regard that as a business trip or was
- 15 it -
- 16 A. Business trip. Well, business/pleasure. We
- 17 worked for a week and toured for the other two.
- 18 Q. What was the work?
- 19 A. Rick's company is a business that's based in
- 20 Pennsylvania and they have offices in Italy and
- 21 they have offices - well, actually Italy is -
- 22 they have a minor partnership in Italy and in
- 23 Shanghai, China.
- 24 Q. What's the name of his company?
- 25 A. Wow. Bonnie Forge.

1 Q. In January of 2007 I know that you and your
2 daughters had four horses, I believe; is that
3 correct?

4 A. June of '97?

5 Q. I'm sorry, 2007.

6 A. Oh, 2007.

7 Q. In January of 2007 and maybe in April of 2007, I
8 don't know.

9 A. We did have four horses.

10 Q. Okay. Now, I don't know much about horses. Are
11 horses titled in somebody's name? What's the
12 ownership of horses?

13 A. The horses don't have to be titled, but most of
14 the time they are titled.

15 Q. Who owned those four horses?

16 A. Morgan owned two. Actually, Morgan owns three
17 horses. Currently she owns two because we sold
18 one, but at that time she owned three. And
19 Alexandra owned one.

20 Q. So the title, so to speak, of those horses were
21 in those girls' names?

22 A. Right. The bill of sales, titles, whatever you
23 would like to call them.

24 Q. Okay. What is the status of those four horses
25 now?

- 1 A. One - actually two are in Gastonia, North
2 Carolina. One is going to Charleston in two
3 weeks. And the two mares are in pasture in
4 Eastover, South Carolina.
- 5 Q. So the girls continue to own those four horses?
- 6 A. They do.
- 7 Q. Same four?
- 8 A. Same four.
- 9 Q. You haven't acquired any or sold any in that
10 time?
- 11 A. Well, we acquired one. I think we sort of did
12 an -- I guess you would call it an exchange. We
13 sold one and purchased another. That happens in
14 the horse business. But we have still four.
15 Not the exact four, but the two mares are still
16 there. Smiley, Ali's horse, is still with us,
17 but Morgan has a new horse as of a couple years
18 ago and we sold her horse that she was riding
19 before we acquired the second horse.
- 20 Q. Is that what you call a like-kind exchange?
- 21 A. Basically, yes.
- 22 Q. Did she make any money, lose any money on the
23 sale?
- 24 A. You never make money on horses, I don't think,
25 but I would say it was probably an equal

1 exchange all things considered.

2 Q. Has Conrad continued to pay for the upkeep of
3 the horses?

4 A. Conrad helped taking care of the horses through
5 the time Ali graduated from high school and then
6 that became my burden. I support the horses
7 currently.

8 Q. Okay. So she would have graduated from high
9 school, you told me, in 2009?

10 A. That's correct.

11 Q. Okay. So when was the date that the burden of
12 the horses switch from Conrad to you?

13 A. I don't remember the exact date. There was just
14 a time he decided he didn't want to pay for
15 horses anymore.

16 Q. Up until that period of time do you have any
17 record as to the amount he paid with regard to
18 the horses?

19 A. I do not. I don't.

20 Q. Who would he have paid?

21 A. He would have paid the people where they're
22 boarded.

23 Q. And who is that?

24 A. At the time it was the Becker family. He would
25 have those records.

1 Q. The Becker family?

2 A. Uh-huh.

3 Q. They are where?

4 A. In Eastover. Alice J. Becker.

5 Q. So any monies that Conrad paid with regard to
6 the horses from 2007 to 2009 would have been to
7 the Beckers?

8 A. It would have been, right. Correct.

9 Q. Anybody else?

10 A. Not that I'm aware.

11 Q. And what are you currently paying with regard to
12 the horses?

13 A. I pay seven hundred a month for the two geldings
14 and four fifty a month for the mares.

15 Q. Some of you people that know about horses will
16 have to explain that to me.

17 A. That's basically feed. They eat a lot.

18 Q. You gave a deposition in the divorce action,
19 Powell versus Powell, back in January of 2007
20 and I have a transcript of that deposition. As
21 I recall, you reserved the right to read and
22 sign the transcript which is a right anybody has
23 when they give a deposition. My question to you
24 is do you recall whether you made any changes?

25 A. I did not.

1 Q. Do you have a copy of that transcript?

2 A. I do. Not with me, but I have a copy.

3 Q. But you didn't make any corrections, changes,
4 additions to that transcript?

5 A. Not that I recall, I did not.

6 Q. Okay. I understand from the materials that have
7 been furnished to me that you and Conrad had
8 some marital litigation back in 1996, 1997. Can
9 you tell me who represented who in that
10 litigation?

11 A. John McDougall represented me and, gosh, I can't
12 remember Conrad's attorney's name either. I'm
13 having a hard time remembering attorney names.

14 Q. Most attorneys are ultimately forgettable.

15 A. Well, I won't respond to that one.

16 Q. Was actual suit papers filed in that litigation,
17 or in that matter?

18 A. There were papers filed. I can't tell you -- I
19 can't remember what papers were filed at this
20 time. That was a long time ago, Mr. Hill.

21 Q. Who brought the action? Who was the plaintiff
22 in that action?

23 A. My husband.

24 Q. And did he sue you for divorce, or for separate
25 maintenance, or for what?

1 A. I don't remember that either, but he brought the
2 action.

3 Q. What were his grounds?

4 A. I don't remember that either, I'm sorry.

5 Q. Where was the action brought?

6 A. In Columbia, South Carolina.

7 Q. Did you give any testimony in that matter?

8 A. Explain what you mean by testimony.

9 Q. Deposition.

10 A. No, we never got to that point. We reconciled
11 within the year, Mr. Hill.

12 Q. Was there any court hearing?

13 A. No, there was not. Well, no, I don't remember
14 any. There was very little other than
15 paperwork, initial paperwork. I mean, I don't
16 remember much about that time. I mean, I
17 remember enough about what happened, but in
18 terms of the legal filings, I don't recall.

19 Q. Was there a financial declaration filed by
20 either party?

21 A. I'm sorry, Mr. Hill, I really don't remember
22 much about the legal proceedings at all in '97.
23 I remember the emotional side if you'd like to
24 hear that.

25 Q. Well, tell me about the emotional side.

1 A. I'm just saying it was not a good time. But I,
2 I certainly have the papers and I can certainly
3 review them and we can talk about that.

4 Q. What papers do you have?

5 A. In my possession? Any papers that were - I
6 have all the documentation, but I have not
7 reviewed those papers since '97.

8 Q. Well, I'm going to request that you provide
9 those to Mr. Pendarvis for him to provide them
10 to me. So I just want to put you on notice of
11 that so that you don't lose them or something in
12 the interim.

13 Did you sign any kind of retention
14 agreement with Mr. McDougall at that time?

15 A. I did. I would have signed a fee agreement with
16 Mr. McDougall. And let me say, I may not have
17 everything. We may have to request those papers
18 from Mr. McDougall. I may not have the complete
19 file.

20 Q. Well, I can only ask for what you have.

21 A. Yeah, I didn't say I had the complete file. I
22 do have some papers from, you know, around that
23 time, but I don't - I haven't really revisited
24 those papers since '97, but you are welcome to
25 what I do have.

1 Q. Would you give consent to Mr. McDougall
2 releasing those papers to me through your
3 attorney?

4 MR. PENDARVIS: We'll have to consult
5 about that.

6 MR. HILL: Okay.

7 Q. Was there an issue of extramarital affairs in
8 that litigation?

9 A. There was, yes.

10 Q. Did you contend that your husband had engaged in
11 extramarital affairs at that time?

12 A. I did.

13 Q. Did you disclose that to Mr. McDougall?

14 A. I did.

15 Q. Now, the next date that I want to sort of
16 establish as a point of reference is August 26
17 of 2004 when the suit papers were filed in the
18 Carolyn Powell versus Conrad Powell litigation.

19 As of that time, August 26, 2004, what
20 businesses did you or Conrad Powell have?

21 A. Are you asking in 2004?

22 Q. 2004. Specifically in August of 2004.

23 A. We had Chic Antiques on Huger Street, 602 Huger
24 Street. And we had the business on Gervais
25 Street, 929 Gervais Street.

1 Q. What entity owned Chic Antiques?

2 A. What do you mean by entity?

3 Q. What individual, what business, what
4 corporation.

5 A. It's complicated. I really don't have clear
6 answers for you on that because it's, I believe,
7 a partnership, it had officers.

8 Q. Conrad testified in his deposition that Chic
9 Antiques was owned equally by Terry Powell and
10 him. Do you have any reason to dispute that?
11 Or any basis to dispute that?

12 A. Again, it's complicated. I believe that they
13 own the property equally, but the business
14 itself is a partnership. And I believe you have
15 to have a partnership filing. That's what
16 little I know about corporations. But their
17 claim is to own it equally.

18 Q. So Terry Powell and Conrad Powell equally owned
19 the business through Chic Antiques?

20 A. According to Conrad and Terry Powell they own it
21 equally.

22 Q. Now, again, according to Conrad's deposition
23 testimony, 929 Gervais was owned by Columbia
24 Management Group, which was a entity consisting
25 of Terry Powell, Tim Tyler and Conrad Powell.

1 Do you have any information to the contrary?

2 A. I can't - that has changed since that time. I
3 don't believe Tim Tyler is part of that
4 corporation any longer. But in 2004 that was
5 probably correct on paper.

6 Q. Okay. And what businesses were operating out of
7 929 Gervais as of August of 2004?

8 A. That would have been Chic Antiques and part of
9 the building was leased to Paul Sloan Interiors.

10 Q. What was the business at -

11 A. Of course, there was also - I'm trying to
12 remember, give me a minute. 2004, August. The
13 Gallery. I was in the Gallery as well. The
14 Gallery2, which was a business I owned. That's
15 a lot of years, Mr. Hill, I have to go back and
16 revisit.

17 Q. I understand, take your time.

18 A. The Gallery would have been in existence at the
19 time, too.

20 Q. When did that business originate?

21 A. 2003. 2002, actually.

22 Q. And that was originally you and Ms. Crawford; is
23 that right?

24 A. Originally me and Ms. Crawford owned that. Ms.
25 Crawford gave me her half of the business about

1 a year later, so I owned the entire business.

2 Basically doing business as Chic Antiques. It
3 was under that umbrella.

4 Q. So was Gallery2 simply a name and you operated
5 out of the space of Chic Antiques?

6 A. Gallery2 was the name under the Chic Antiques'
7 umbrella, correct.

8 Q. Okay. And there was no separate business entity
9 organized for Gallery2?

10 A. Basically it operated as The Village Rugs did at
11 the time when we had a rug business and we were
12 under Chic Antiques. The same business license.

13 Q. Why did you retain Ashlin Potterfield to
14 represent you?

15 A. Because I had decided - I retained Ms.
16 Potterfield because I needed someone to
17 represent me and my children in a divorce with
18 my husband.

19 Q. Did you interview anybody else before you
20 decided to hire Ms. Potterfield?

21 A. I asked friends for recommendations and she was
22 highly -- her firm was highly recommended to me.
23 I had consulted once before with Mr. Golden in
24 '97 and I felt that she was capable of getting
25 me to a divorce fairly and would, you know,

1 protect my interest and that of my children. I
2 had a lot of trust in, in the firm.

3 Q. Did you interview anybody else? Any other
4 attorneys?

5 A. I did not.

6 Q. Who recommended Ms. Potterfield to you?

7 A. That would have been Bunni Crawford.

8 Q. Do you recall when your initial meeting was with
9 Ms. Potterfield?

10 A. The initial meeting was sometime in the mid part
11 of June of 2003.

12 Q. And what did you and she discuss at that time?

13 A. I explained to Ms. Potterfield the reasons why I
14 was seeking her legal counsel, I had decided not
15 to remain in my marriage, and that was pretty
16 much our conversation. We talked about the
17 issues and why I wanted a divorce and she agreed
18 to represent me if I chose to retain her at some
19 later date. I did not retain her that day.

20 Q. Why not?

21 A. I wanted to try and have some conversations with
22 Conrad and see if we could, you know, the two of
23 us work things out agreeably without having to
24 hire attorneys and bring outside people into our
25 marriage.

1 Q. Was anybody else present with that initial
2 conversation with Ms. Potterfield in June 2003?

3 A. I believe Bunni was there.

4 Q. I'm sorry?

5 A. I believe Bunni Crawford was there, if I
6 remember correctly.

7 Q. And she participated in that meeting?

8 A. I know she went with me to Ms. Potterfield's
9 office. I can't - at this point I don't
10 remember exactly that she participated in the
11 conversation. I think the conversation was
12 between me and Ms. Potterfield.

13 Q. And then you had a subsequent meeting with Ms.
14 Potterfield?

15 A. I did not have a meeting with Ms. Potterfield
16 after that, no.

17 Q. When did you retain her?

18 A. It would have been in September of '03.

19 Q. But you did not have a meeting with her at that
20 time?

21 A. I did not. I took - I actually hand delivered
22 her the retainer and a letter to Ms.
23 Potterfield. I don't remember if she was out of
24 the office. I think she might have been out of
25 town at the time.

1 Q. Okay. Did you talk to any other attorneys about
2 representing you between June and September?

3 A. I did not.

4 Q. Ms. Powell, I'm now going to spend some time
5 going through with you the Complaint that was
6 filed in this case and asking you some questions
7 about the allegations in the Complaint. And
8 I'll be glad to give you a copy of that.

9 We can start with paragraph eight on page
10 two of the Complaint. It states, "Soon after
11 the representation began Plaintiff's husband
12 sold a valuable commercial property referred to
13 as the South Carolina School of Home Building.
14 Plaintiff believed that Defendant Potterfield
15 would take, protect the proceeds from the sale
16 of that building." Paragraph nine, "Upon
17 information and belief Potterfield did not
18 protect those assets."

19 Who owned that building?

20 A. I don't remember who was on the record of deed.

21 Q. Would you dispute that Columbia Management Group
22 held the title to the building?

23 A. That sounds correct.

24 Q. Did you have any ownership interest in that
25 building?

1 A. I did as a partner in my marriage. It was
2 property.

3 Q. Insofar as title, you didn't have title to the
4 building?

5 A. My name was not on the building, no.

6 Q. Okay. And as of that time what was Conrad
7 Powell's interest in Columbia Management Group?

8 A. Mr. Hill, I believe at that time it was probably
9 Terry and Conrad and Tim Tyler.

10 Q. So you believe Conrad's interest would have been
11 one-third?

12 A. If that were the case.

13 Q. Do you know what disposition was made of
14 whatever proceeds Conrad got out of the sale of
15 that building?

16 A. I do not.

17 Q. You attended his deposition in the marital
18 litigation, did you not?

19 A. I did.

20 Q. He testified in that deposition that he used his
21 proceeds from that sale, which was about three
22 hundred thousand dollars, in part to fund the
23 four hundred thousand dollars that was paid to
24 you in January of 2005. Do you have any
25 evidence to the contrary?

1 A. I have no evidence of what he did with the money
2 from the proceeds of any of his sales of
3 property, of marital property.

4 Q. You have no evidence to refute his testimony to
5 that effect?

6 A. I, I don't have his records. I don't know what
7 he did with the proceeds from this sale.

8 Q. In paragraphs 14 and 15 of the Complaint,
9 specifically paragraph 14 you say that you
10 provided Ms. Potterfield and Mr. Taylor with
11 multiple documents, evidence, and the existence
12 of valuable marital assets as well as the net
13 worth of the husband. What documents do you
14 refer to in that paragraph?

15 A. Mr. Hill, there are a lot of documents that I
16 provided that would have been - I mean, over
17 the period of the time that Potterfield and
18 Taylor represented me there was so many
19 documents and so many letters I can't - there's
20 no way I can sit here and tell you each document
21 by memory. But I can promise you over the years
22 I provided tons and tons and letters and phone
23 calls about information that I would have had at
24 the time.

25 Q. Well, we'll look at some of those documents in a

1 little while, but I wanted to know if you had
2 any specific recollection of anything that you
3 furnished.

4 A. You know, again, that's over a long period of
5 time.

6 Q. So you don't have any specific recollection of
7 anything that you can point me to with regard to
8 paragraph 14 at this time?

9 A. I can't.

10 Q. Would the same be true with regard to the
11 allegation in paragraph 15 which states your
12 belief that your husband was hiding assets
13 through family members and business ventures?

14 A. Again, I can't tell you what documents, but I've
15 provided a lot of information over the years to
16 back that belief up.

17 Q. As of August of 2004 what real estate do you
18 contend constituted marital property?

19 A. As of August 2004?

20 Q. Uh-huh.

21 A. Any piece of property that had my husband's name
22 on it would have constituted marital property
23 except for his family home in Reidsville, which
24 he inherited.

25 Q. In paragraph 20 of the Complaint you state that

- 1 at least three homes were owned by the couple.
- 2 A. I'm sorry, which?
- 3 Q. Paragraph 20.
- 4 A. 20.
- 5 Q. I would assume that one of those homes would
- 6 have been 3912 Kenilworth?
- 7 A. Right, that's correct.
- 8 Q. And another would have been 3505 Devine?
- 9 A. Right.
- 10 Q. What would the third one have been?
- 11 A. At that time there was a beach house on Atlantic
- 12 Avenue.
- 13 Q. Now, as of August 2004 who was living at
- 14 Kenilworth?
- 15 A. I was and with my children.
- 16 Q. Had Conrad previously lived at that residence?
- 17 A. He had.
- 18 Q. And he left there in December of 2003?
- 19 A. In 2003, correct.
- 20 Q. All right. And in August of 2004 who was living
- 21 in Devine Street?
- 22 A. Conrad Powell.
- 23 Q. By himself?
- 24 A. By himself, I assume.
- 25 Q. Okay. And is that where he moved to in December

1 of 2003?

2 A. Correct.

3 Q. Prior to December of 2003 was that house rental
4 property?

5 A. It was on the market, for sale.

6 Q. Okay. Were all of these houses titled in
7 Conrad's name?

8 A. They were titled in Conrad's name.

9 Q. How long had the family lived at Kenilworth?

10 A. In 2004? Gosh. I suppose that was going on our
11 third year in Kenilworth. We moved from Devine.
12 I don't remember. I don't recollect the exact
13 year and month.

14 Q. Now, the Kenilworth property was sold in
15 September of 2004 and some question has been
16 raised with regard to the mortgages on that
17 property. Do you have any question about a
18 second mortgage to NBSC on the Kenilworth home?

19 A. I was not aware of any mortgages except for the
20 original mortgage on Kenilworth at that time.

21 Q. Are you aware that both mortgages were paid off
22 in full at the time the property was sold?

23 A. I would assume that would have to happen.

24 Q. Do you have any evidence of anything that
25 happened with regard to that second mortgage

1 between August of 2004 and when the property was
2 sold in September of 2004?

3 A. Mr. Hill, my name wasn't on the mortgage; I do
4 not have those records.

5 Q. In paragraph 18 of the Complaint you allege that
6 Ms. Potterfield convinced you to move with your
7 daughters out of the marital home.

8 A. Tell me again.

9 Q. 18.

10 A. 18. That's correct.

11 Q. Elaborate on that for me.

12 A. 18. Oh, this was after - where did I go?
13 Right, been out of the country. Ms. Potterfield
14 basically told me that - because the home was
15 in the name of Conrad Powell and, of course, it
16 was under contract at the time I returned that
17 the courts would most likely allow him to sell
18 it. I did not have a choice but to try to
19 relocate my family.

20 Q. You said you had been on a trip, where was that?

21 A. I went on a church trip to Ireland for ten days
22 and during that time my husband put our home
23 under contract to sell.

24 Q. And was that the sale that was consummated on
25 September 15?

1 A. Of 2004?

2 Q. Four.

3 A. Correct.

4 Q. Okay. Anything else that you can recall about
5 the conversation with Ms. Potterfield about the
6 move and sale of the home?

7 A. She told me that I would, I would be allowed to
8 find a place to move my children and take the
9 proceeds from the sale of the home. There are
10 letters from me to Ms. Potterfield during those
11 months. There was definitely communication
12 about the fact that - I mean, just
13 communication about my trying to locate a
14 suitable home during those months.

15 Q. Where did you move to from Kenilworth?

16 A. Mr. Hill, the house closed in September, Conrad
17 was living in one of the houses we owned, the
18 other house was at the beach. I moved the girls
19 and myself into the building, 929 Gervais
20 Street.

21 Q. And how long did you continue to live there?

22 A. We were there for about three months.

23 Q. Where were the children in school at that time?

24 A. Morgan was at Dreher and Ali was at Hand,
25 Alexandra.

1 Q. Up until that time had they always been in
2 public school?

3 A. They both had always been at public school. We
4 had, we had looked at private schools for Ali
5 early on and off because she was having more of
6 a difficult time in public school than Morgan.
7 But they were both in public school pretty much
8 from the beginning, yes.

9 Q. In paragraph 24 of the Complaint you talk about
10 the sale of beach house. That's Pawleys Island?

11 A. Correct.

12 Q. And, again, that house was solely in his name?

13 A. It was.

14 Q. He testified in his deposition that the net
15 proceeds from the sale of that house were about
16 1.7 million dollars and that he put a million
17 dollars of that in escrow looking toward a
18 possible tax-free exchange and he put seven
19 hundred thousand dollars in a separate account
20 at NBSC and he said that seven hundred thousand
21 dollars was part of what he lived on and part of
22 what he supported you with subsequent to that
23 sale. And, again, you were there at that
24 deposition and my question to you is do you have
25 any evidence to refute Mr. Powell's testimony in

1 that regard?

2 A. That was not my testimony, Mr. Hill. He did not
3 share his records with me at the time.

4 Q. So you have no evidence to the contrary?

5 A. I wouldn't have evidence as to what he did with
6 the money, no.

7 Q. Now, on January 21 of 2005 Mr. Powell paid you
8 four hundred thousand dollars by way of a
9 partial property settlement. Tell me how that
10 came about.

11 A. What came about, Mr. Hill?

12 Q. The payment of four hundred thousand dollars in
13 January of 2005. What were the discussions that
14 led up to that? How did that happen?

15 A. Well, again, I had been pleading with my
16 counsel, my attorney, to help me get funds to
17 find a suitable home for my children. And we
18 had no income whatsoever. I had no way to
19 support my children, buy food for them, even
20 rent a home, so I was in desperate need. We
21 were living in two rooms in a building. And so
22 I'm sure those discussions between the two
23 attorneys came about. I mean, there are letters
24 documenting my concerns and how distressed and
25 upset I was at the time. I had no means to do

1 anything. I couldn't even feed my children.

2 Q. Did Ms. Potterfield negotiate that advance on
3 your behalf?

4 A. I don't know what you mean by negotiate. I know
5 that there was an offer on the table for four
6 hundred thousand dollars as property, as partial
7 property settlement, but if there was any
8 negotiation it was to force me out of the
9 building where I had my business and gallery.
10 So in order to have funds to support my children
11 -- I don't know what you mean by negotiation. I
12 believe Ms. Sherman came to her with the offer
13 of that as a partial property settlement and
14 they worked it out. They didn't include me in
15 the negotiations, if that's what you mean,
16 except in the end I agreed to move out of the
17 gallery so that I could support my children.
18 And I had no other choice.

19 Q. Did you go to court to get that four hundred
20 thousand dollars?

21 A. No, there was never a hearing. In spite of the
22 fact there should have been.

23 Q. Do you agree that the purpose of that money was
24 so you could obtain housing for you and your
25 children?

1 A. No, I do not. I agreed that it was a partial -
2 what do you mean agree? According to the
3 attorneys?

4 Q. What was your understanding of why you were
5 being given four hundred thousand dollars?

6 A. From what I recollect, Ms. Sherman felt that
7 that should go toward housing, but there was no
8 additional support allocated at the time.

9 Q. Well, what support was Mr. Powell giving you at
10 that point in time? And by support I mean to
11 you and your children.

12 A. He wasn't, he wasn't giving us any support at
13 the time, Mr. Hill.

14 Q. In January of 2005?

15 A. In January of 2005.

16 Q. Let me show you in paragraph 27 of the Complaint
17 that the art gallery was your only existing
18 source of support. The art gallery was never
19 profitable, was it, Ms. Powell?

20 A. It was becoming profitable. It was only into
21 its third year. As my understanding of most
22 businesses, and I think you might agree, it
23 takes at least three years to get a new business
24 profitable. You don't always start making money
25 in the beginning, but that was - that was how I

1 made a living was working in our family business
2 and Chic Antiques was part of the Gallery, it
3 wasn't just the Gallery. So the Gallery itself
4 might not have been making money at the time,
5 but it was beginning to break even. But I -
6 still my income came from Chic Antiques and the
7 design work that I did through Chic Antiques for
8 almost 20 years.

9 Q. And were you paid by Chic Antiques?

10 A. I was paid by Chic Antiques. From the day I
11 walked into the business I was an officer of
12 Chic Antiques. We went on a buying trip on our
13 honeymoon for Chic Antiques. We actually took a
14 loan out for Chic Antiques right before I got
15 married.

16 Q. What was your office?

17 A. My office was at -

18 Q. You said you were an officer.

19 A. I was, I was Secretary, I believe. But I was an
20 officer in the business.

21 Q. Were you paid a salary, or commission, or what?

22 A. It was random. I would take a salary and
23 sometimes commission. When we needed funds we
24 would - I would just - I would pay - my
25 husband and I would pay ourselves from the

1 business. And we would loan the business money
2 and then we would be repaid back money. That's
3 just how we ran the business. The Gallery that
4 was at Gervais Street was part of that. So the
5 answer to your question is, yes, I did lose my
6 only source of income.

7 Q. Do you recall what your income was from Chic
8 Antiques in 2003?

9 A. I do not.

10 Q. Would that be reflected in your tax returns?

11 A. I'm not, I'm not sure. 2003 primarily was spent
12 on running the Gallery. I may not have taken
13 checks in 2003 from Chic Antiques, but I don't
14 remember, Mr. Hill. Obviously, if I had, if it
15 had been imputed in taxes with Chic Antiques I
16 would have included that in my taxes.

17 Q. Were you given a W-2 from Chic Antiques?

18 A. That's typically how our taxes were filed. My
19 husband always filed the taxes. He kept the
20 books.

21 Q. Ms. Powell, I want to show you a document that
22 we prepared and attached as an exhibit to our
23 Answers to Plaintiff's Interrogatories in this
24 case. It's entitled "Exhibit A" and it's dated
25 July 1, 2010. And take a second to look at

1 this, but my first question is have you seen
2 this document before?

3 A. Tell me again where this document was
4 originated.

5 Q. This is an exhibit to our Answers to Plaintiff's
6 Interrogatories dated July 1 of 2010. The
7 Answers were dated July 1 of 2010.

8 A. And what is your question?

9 Q. Have you seen this before?

10 A. I have.

11 Q. In this document we attempted to make a
12 chronological listing of documents,
13 correspondence, pleadings, notes, memos,
14 conferences, billing entries, calendar entries
15 with regard to the marital litigation and a part
16 of this is listing any communications that we
17 could document between you and, first, Ms.
18 Potterfield and, subsequently, you and Mr.
19 Taylor. And my question to you is do you refute
20 any of these communications that we have listed
21 in this document?

22 MR. PENDARVIS: Form, objection.

23 Answer it, if you can.

24 A. I would have to have time to absorb this, Mr.
25 Hill, to revisit it, I'm sorry.

1 Q. So you have not looked at it from the standpoint
2 of being able to say, yes, I had that meeting
3 or, no, I didn't have that meeting? Anything of
4 that nature?

5 A. I have not line item gone through this document.
6 I mean, again, I have read the document, but I
7 - there's been a lot of documents and a lot of
8 information.

9 Q. Well, one of your allegations in the Complaint
10 is, as I understand it, is you complain that
11 there was a lack of communication between you
12 and Attorneys Potterfield and Taylor.

13 A. Right..

14 Q. And so what we have attempted to do here is set
15 forth what the evidence is of those
16 communications from a documentary standpoint.
17 So that's the purpose of my question is do you
18 contest or refute any of the evidence that we
19 have accumulated here with regard to those
20 communications?

21 A. Under the present circumstances, Mr. Hill, I can
22 tell you that I communicated greatly with my
23 counsel. There were a lot of phone calls and a
24 lot of written documentation from me pleading
25 and begging my counsel to get my case - to file

1 the Complaint and move my case forward and get
2 me to, you know, a divorce. So I can tell you
3 that. I cannot answer at this very moment if
4 each one of these entries is indeed correct.

5 Q. Okay. How did the change in counsel from Ms.
6 Potterfield to Mr. Taylor occur?

7 A. I'm sorry?

8 Q. Tell me about changing from Ms. Potterfield to
9 Mr. Taylor as your counsel.

10 A. What is it you want me to say, Mr. Hill? The
11 change -

12 Q. Why?

13 A. You would have to ask Taylor Potterfield that
14 question. My recollection is that they felt
15 that Mr. Taylor was a stronger litigator and
16 might could move the case forward.

17 Q. Are you saying it was their decision to change?

18 A. I'm saying it was, it was their recommendation
19 that he was the stronger of the two in a
20 litigation situation if were going that route at
21 that time. That's what I remember. That it was
22 a - it was a decision made internally and they
23 asked for - I believe I paid another -- I guess
24 a fee was due at the time. I wrote a check to
25 Mr. Taylor at that time for ten thousand dollars

1 and I think he - my understanding of that is he
2 took the lead role. But I considered Taylor
3 Potterfield as one entity representing me from
4 the time I hired the firm. I'm not - that's
5 all I know, that's my answer. I don't know what
6 it is you're looking for.

7 Q. Were you dissatisfied in any way with the way
8 Ms. Potterfield handled your case?

9 A. When I hired Ms. Potterfield I had my complete
10 trust and faith in her and I did through the
11 entire divorce proceedings that she was going to
12 get this divorce finalized as quickly and, and
13 represent my family and protect me. That's why
14 I hired her because I couldn't do it myself. I
15 hired attorneys to represent me, Mr. Hill, and I
16 - there's plenty of written communication with
17 Ms. Potterfield to, to back that up. Tons of
18 phone calls. Whatever it took to get us there
19 that's what I needed that firm to do. And, you
20 know, when Mr. Taylor came on as, I guess, as
21 lead attorney at that time, you know, I felt
22 that it would happen. You know, it was getting
23 it maybe to the front burner finally. But, yes,
24 I had, I had trust in that firm when I hired
25 them. Now, was I distraught and emotionally

1 disturbed that it took so long to get there? Of
2 course. I mean, I can't tell you how hard this
3 was on my family. There's not enough time to
4 describe that to you.

5 Q. Do you contend that Ms. Potterfield mishandled
6 your case?

7 A. Under the circumstances I would have to say she
8 did.

9 Q. How? In what way did she mishandle it?

10 A. I'm just saying that under the current
11 circumstances, as I understand where we are now,
12 that there were things that could have been done
13 that would have gotten us, gotten my divorce
14 final much sooner.

15 I mean, I'm just saying at the time I
16 hired Ms. Potterfield and Mr. Taylor I had
17 complete faith that they would get the job done.
18 I had no reason to doubt that at some point a
19 divorce would be finalized and I would be fairly
20 treated and retain the assets that rightfully
21 belonged to me.

22 Q. Do you contend that Ms. Potterfield gave you bad
23 legal advice?

24 A. I would have to say today, Mr. Hill, in light of
25 the circumstances where I am now, yes.

1 Q. And what was the bad advice that she gave you?

2 A. Mr. Hill, you know, you have the documents. I
3 mean, the written - I'm just saying I can't, I
4 can't sit before you today and tell you exactly
5 what the bad advice was. I'm just saying after
6 - when I hired Mr. Foster I think I realized,
7 you know, the things that could happen and it
8 didn't have to be that way. It didn't have to
9 be the way it was. I begged Ms. Potterfield and
10 Taylor to get me to the forefront and I believed
11 they could get me there up until the time I
12 hired Mr. Foster. I put my faith in them. And
13 I expressed the importance of protecting me and
14 my family in multiple letters and gave them all
15 the information they needed to get me there.
16 That's all I can say is that -

17 Q. What did Mr. Foster do differently?

18 A. Mr. Foster got my divorce. I mean, got it
19 finalized. I mean, you're talking about years
20 of emotional stress and trying to survive with
21 two children who didn't have a home until Mr.
22 Foster took on my case. Not a real home. What
23 they considered their own. I did the best I
24 could with the advice that I had and with the
25 representation I had. You're talking about

1 years and years of having no resolution so I
2 guess Mr. Foster gave me, at least, a divorce.

3 Q. After Mr. Taylor assumed your representation, I
4 believe that date was April the 1st of 2005, did
5 you have any further communication with Ms.
6 Potterfield?

7 A. After Taylor took my case on? Not that I
8 remember, Mr. Hill.

9 Q. Do you know whether Mr. Taylor played any role
10 in your marital litigation prior to April of
11 2005?

12 A. I would assume that as partners they would
13 communicate with each other and talk about their
14 cases. You know, I remember the initial
15 conversation with Ms. Potterfield when she said
16 that when I hire her I hire the team. And I
17 believe it's in their literature.

18 Q. Paragraph 38 of your Complaint you say that Mr.
19 Taylor made representations to you that a change
20 of attorneys would provide relief to your
21 concerns about inactivity. Tell me about that.

22 A. Tell me where you're reading from.

23 Q. Paragraph 38.

24 A. 38. Will you please ask the question again?

25 Q. Yes. Tell me what Mr. Taylor told you.

1 A. Mr. Taylor just understood that it had been
2 years and I had been communicating with Ms.
3 Potterfield to file a Complaint and that had not
4 been done. And he assured me that when I first
5 met with him that he would move this case
6 forward and it would be on his front burner.
7 That's what I remember.

8 Q. In paragraph 46 of the Complaint you state some
9 numbers for the value of the marital estate.
10 Are these based on Conrad Powell's financial
11 statements?

12 A. Those are based on his financial statements
13 alone in this years.

14 Q. Do you have any explanation as to how the value
15 of the estate declined from seven million
16 dollars in 2002 to two million, eight hundred
17 thousand dollars in 2003?

18 A. I don't. I would like to.

19 Q. In paragraph 57 of the Complaint you refer to
20 Mr. Powell's deposition testimony in December of
21 2006 where Mr. Powell testified that he had been
22 living off the sale of marital assets since the
23 parties separation in 2003. Wasn't it basically
24 true that you and he lived off the sale of
25 assets even prior to the separation?

- 1 A. Explain living off assets.
- 2 Q. Well, Mr. Powell was not a salaried employee of
- 3 anybody for many years; isn't that correct?
- 4 A. Chic Antiques. He took a salary, just as I did,
- 5 when he needed it.
- 6 Q. Okay. That was just a draw from the business?
- 7 A. A draw, if you want to call it a draw.
- 8 Q. Right. But insofar as income from his prior job
- 9 at the University, for example, that had been
- 10 many years ago.
- 11 A. Correct.
- 12 Q. He didn't have a regular job other than Chic
- 13 Antiques for which he had an income.
- 14 A. Correct.
- 15 Q. And the draws from Chic Antiques were not
- 16 sufficient to support you and him, were they?
- 17 A. They were - what do you mean sufficient? At
- 18 what time?
- 19 Q. 2002, 2003.
- 20 A. Why were they not sufficient?
- 21 Q. He came into a substantial amount of money from
- 22 the sale of stock in Wheels.
- 23 A. We did come into money from the sale of Wheels,
- 24 but we did not live off that money. That money
- 25 was invested, Mr. Hill.

1 Q. And those investments made money, did they not?

2 A. Well, of course they did.

3 Q. So you deny that you and Mr. Powell, when you
4 were living together as husband and wife, relied
5 on income from those investments? The sales of
6 those investments to support yourselves?

7 A. From that sense we did, but that is an income
8 based on our investments. We would take what we
9 considered a salary or a draw from the business
10 if we needed to. In that sense I suppose you're
11 correct.

12 Q. There's a letter, we'll look at it in a little
13 bit, that's dated January 19, 2006 in which you
14 relieved Mr. Taylor as your counsel. I'm
15 assuming that that was a typographical error and
16 that should have been dated January 19, 2007.
17 Do you recall that letter?

18 A. Tell me that -

19 Q. It's a letter that you wrote to Mr. Taylor
20 relieving him as counsel.

21 A. The letter I would have written to Mr. Taylor
22 relieving him would have been in 2007.

23 Q. Okay. Did you have any discussions with him
24 leading up to that?

25 A. Mr. Taylor?

1 Q. Yes.

2 A. No, I did not.

3 Q. Did you advise him that you were dissatisfied
4 with his services and you were thinking about
5 relieving him?

6 A. The last conversation I believe I had with Mr.
7 Taylor was probably -- I don't remember, but it
8 was -- he was still representing me and I still
9 believed that he was going to get papers filed
10 for me to get divorced and we were in the
11 process of trying to determine what the marital
12 assets were. I never had a discussion with him
13 after that. We -- I decided after going through
14 another Christmas again without resolution to my
15 case in the new year that I would consult with
16 another attorney. I didn't have that
17 conversation at the time with Mr. Taylor, no.

18 Q. Paragraph 64 of the Complaint.

19 A. I'm sorry, 64?

20 Q. Yes. States, "Defendant Taylor led Plaintiff to
21 believe that because this September 2005
22 relationship began long after the parties
23 separation it would not bar an alimony claim."
24 Of course, that's referring to the relationship
25 with Mr. Young. What did Mr. Taylor tell you?

1 A. He just felt that it would not be an issue in
2 the divorce claim or for alimony. That it had
3 happened long after the initial separation and
4 some filings. He also said that the four
5 hundred thousand that I had received as partial
6 settlement, property settlement, would also
7 protect me and any issue regarding alimony.
8 That we would get, that we would -- it would not
9 be an issue.

10 Q. When did you have that discussion?

11 A. That would have been -- you have the dates.
12 September. That would have been actually
13 whenever he and I first talked about the fact
14 that I, I was in a relationship. And this was
15 before we were aware of any, you know, private
16 investigative reports.

17 Q. In paragraph 66 of the Complaint you say that
18 after you relieved Potterfield and Taylor you
19 learned that if there had been a formal signing
20 of a partial property settlement in January 2005
21 your claim for permanent alimony would not have
22 been barred. Who gave you that information?

23 A. Who gave me the information in paragraph 66?

24 Q. Yes, ma'am.

25 A. I would say that would be the counsel I retained

1 following relieving Potterfield and Taylor.

2 Q. That would be Mr. Foster?

3 A. I believe so, Mr. Hill. And it certainly would
4 have been backed up by current counsel. It was
5 Mr. -- no, it's okay, I'm sorry. I believe that
6 should answer your question.

7 Q. What proof did you have of Conrad Powell's
8 alleged adultery as of August 26, 2004?

9 A. I had a private investigative report.

10 Q. In Mr. Powell's deposition in the divorce action
11 he denied any adulterous relationship at that
12 time, did he not?

13 A. I believe he did.

14 Q. And you understand that even though you had some
15 evidence he denied the relationship and that
16 would have been an issue that would have had to
17 have been decided by the Court?

18 A. If you say so.

19 Q. And the reason for my question is paragraph 74C
20 of the Complaint. You allege that as part of
21 the alleged negligence of Taylor Potterfield
22 that they did not seek an expedited divorce
23 hearing under South Carolina law. Do you
24 contend that you would have been entitled to an
25 expedited divorce hearing at that time?

1 A. Absolutely.

2 Q. On what basis?

3 A. Adultery.

4 Q. Which was contested by Mr. Powell.

5 A. It wasn't contested at the time.

6 MR. WATSON: Charlie, when you get to a
7 stopping point can we take about a one-
8 minute break?

9 MR. HILL: Sure. I'm fine anytime. We
10 can stop right now.

11 (Deposition went off the record.)

12 Q. (By Mr. Hill) Ms. Powell, back on the Complaint.
13 I'm looking at paragraph 74H which you allege
14 that Taylor Potterfield failed to protect
15 marital assets each time Plaintiff's husband
16 sold marital assets during the parties
17 separation. And my question is what marital
18 assets do you contend Conrad Powell sold after
19 August of 2004?

20 A. What assets were sold?

21 Q. Uh-huh.

22 A. I can't tell you the dates of the property he
23 sold.

24 Q. I'm not looking for dates. What properties were
25 sold?

1 A. I mean, again, we're talking over seven years
2 here. I don't remember exactly dates of any
3 property that he sold. I couldn't give you that
4 information off the top of my head.

5 Q. Is it fair to say that you're not aware of any
6 property that he sold after August 2004 that
7 would have been considered marital property?

8 A. That's not fair to say at all. I'm just saying
9 that I wouldn't necessarily have been privileged
10 to, you know, when things were sold and, you
11 know, what assets we did have that I wasn't
12 aware of. I wouldn't have that information
13 necessarily.

14 Q. But as we sit here today you can't identify any
15 particular piece of property that was sold by
16 Mr. Powell after August of 2004?

17 A. After August of 2004?

18 Q. Uh-huh.

19 A. Well, the beach house was one.

20 Q. Okay.

21 A. That was a big one. The interstate building was
22 sold before that time. Again, there were -- I
23 wasn't aware of -- I can't recollect any other
24 property that I'm aware of that was sold.

25 Q. Well, since you entered into the Settlement

1 Agreement in April of 2007 have you become aware
2 of any other properties that Mr. Powell disposed
3 of that you weren't aware of at that time?

4 A. We didn't have time to do any investigative
5 searches for assets. I mean, at that time we
6 had just started the conversation about hiring a
7 forensic accountant and that had not been done
8 at the time of my divorce. Are you asking at
9 the time my divorce was final or at the time I
10 hired Mr. Foster?

11 Q. Well, let's talk about both of those. Between
12 the time that you hired Mr. Foster -- and I'm
13 trying to remember. That was January 2007, I
14 believe?

15 A. That would have been the middle of January of
16 2007.

17 Q. Okay. And the time you entered into the final
18 divorce agreement, the Property Settlement
19 Agreement in April of 2007, what investigation
20 of assets was done?

21 A. As I said, we had just began the conversation --
22 we had just identified a forensic accountant and
23 had just started that process, Mr. Hill.

24 Q. And who was the forensic accountant that you
25 hired?

1 A. We didn't hire, we had talked about her. There
2 was no one hired.

3 Q. Was that Ms. Amos?

4 A. I believe so.

5 Q. Did you talk with her?

6 A. No, I didn't. We were in the process of hiring
7 her when we finalized the divorce papers.

8 Q. So would it be fair to say that after you hired
9 Mr. Foster you did not develop any additional
10 information regarding marital assets?

11 A. I believe that, you know, what we had at the
12 time was what Mr. Smith had put together and he
13 shared that with Mr. Foster. But we felt we
14 needed to hire a forensic accountant to move
15 forward with the case because we didn't believe
16 we had all the information at least to to know
17 the facts. But we did not move forward with
18 that, as you know.

19 Q. So instead of hiring the forensic accountant you
20 went forward with entering into the Settlement
21 Agreement in April of 2007?

22 A. That's correct.

23 Q. Mr. Powell testified in his deposition that he
24 voluntarily paid child support of fifteen
25 hundred and seventy-five dollars a month. And I

1 don't believe you disputed that. My question to
2 you is when did that begin?

3 A. I believe some time in February of 2005.

4 Q. Now, in addition to that he paid for your and
5 your children's health insurance?

6 A. He did continue the health insurance.

7 Q. And that was on top of the fifteen seventy-five?

8 A. Yes, sir.

9 Q. What vehicles did he furnish you after February,
10 or starting in February 2005?

11 A. I have the same vehicle I've had for ten years.
12 It's a 2007 (sic) Lexus 450 that I've had for
13 ten years.

14 Q. How about for the oldest child?

15 A. He bought Morgan a used Jeep when she turned 16,
16 I believe, which would have been 2005.

17 Q. And he paid for the upkeep of that vehicle?

18 A. He did.

19 Q. Including insurance?

20 A. He did.

21 Q. He paid for your medical and dental expenses?

22 A. I didn't have any medical or -- I had some
23 dental, but I believe he paid a portion for it
24 before that period of time but after that, no.

25 Q. He paid for the children's?

1 A. He did.

2 Q. Did they have orthodontics?

3 A. They did. Not Morgan, she has perfect teeth,
4 but Alexandra did.

5 Q. And Conrad paid for that?

6 A. He did.

7 Q. Who did that?

8 A. Dr. Boyd.

9 Q. In?

10 A. Columbia.

11 Q. Do you have any idea how much that was?

12 A. Few thousand, but I can't tell you the exact
13 amount.

14 MR. WATSON: I could probably add
15 testimony on that.

16 MR. HILL: All of us could, I betcha.

17 Q. He paid expenses for boarding the horses?

18 A. When are we talking about, Mr. Hill?

19 Q. From February 2005 forward.

20 A. No, sir, not -- I mean, forward to when? He
21 was not paying for boarding the horses. There
22 was a period of time -- you know, I really, I
23 would have to go back and think about that
24 because he paid -- he was paying for boarding up
25 to a point and then he was not. I don't believe

1 he was paying for horses during that time.

2 Q. Where did you move after moving out of the
3 apartment at -

4 A. I rented a cottage in Aiken for a short time and
5 a barn. And because I didn't have funds for a
6 period there were no funds to rent anything
7 because I ran out of funds, I lived for a short
8 time with a friend of mine in Augusta, the girls
9 and I, and then we moved from there back to
10 Aiken. But I was -- yeah, a rental cottage for
11 a short time in Aiken and then with a friend of
12 mine for a short time after that.

13 Q. Can you give me a date from when you left
14 Gervais Street to go to the cottage in Aiken?

15 A. It would have been after Christmas in 2004, so
16 early some time in January.

17 Q. And did the girls change school at that time?

18 A. They did. Morgan had transferred to Aiken Prep
19 and Ali followed not long after that.

20 Q. Did you inform Mr. Powell that you were moving
21 and taking the girls to Aiken?

22 A. We didn't actually move. We actually rented --
23 when we rented the cottage we were still
24 traveling back to school in Columbia and when I
25 moved, when I put Morgan -- when Morgan moved

1 schools into Aiken Prep he knew about that, yes.
2 And when Ali wanted to make the change as well
3 he knew about that. So does that answer your
4 question?

5 Q. Your testimony is that you informed Mr. Powell
6 before you moved the girls to Aiken?

7 A. Yes.

8 Q. What was the address of the cottage in Aiken?

9 A. You know, before computers and phones keeping
10 information I could keep these numbers in my
11 head. I believe it's 245 Greenville Street,
12 Northeast, Northwest, I don't remember.

13 Q. And how long did you stay there?

14 A. We rented the cottage, I believe, some time in
15 February and we were there until, through
16 Morgan's graduation in 2007. We moved into a
17 cottage on South Boundary some time during that
18 -- I don't know the exact dates, but basically
19 we were there for two years.

20 Q. So you were on Greenville Street from about 2005
21 to 2007?

22 A. Whatever that time was. And the only reason I
23 didn't stay there for another year was that I
24 didn't want to sign another year's lease so I
25 found something for month to month. So

1 basically two years, yes.

2 Q. And what was your rent on Greenville Street?

3 A. Fifteen hundred.

4 Q. And then you moved to South Boundary?

5 A. Correct.

6 Q. In 2007?

7 A. Some time in 2007, right.

8 Q. Is that where you were living at the time the
9 divorce became final?

10 A. That's correct.

11 Q. And you lived there from 2007 to when?

12 A. Until August of 2007.

13 Q. And that's when you moved to Wheat Street?

14 A. Moved to Wheat Street, right. I believe we've
15 already discussed that.

16 Q. Yes. You said something about a barn. When did
17 you get into a barn?

18 A. We leased the barn the early part of 2005 for a
19 year.

20 Q. And is that the barn that you ended up buying?

21 A. It is, yes.

22 Q. So was it a lease with an option to buy?

23 A. It was.

24 Q. And how much was the lease?

25 A. Fifteen hundred a month.

1 Q. And that ran from when to when?

2 A. I don't remember the exact dates of the lease.
3 We rented it, I believe, in the Spring of 2005,
4 so it would have gone to the Spring of the next
5 year.

6 Q. So in 2005 in to part of 2006 you were paying
7 fifteen hundred dollars a month rent for a house
8 and fifteen hundred dollars a month to lease the
9 barn?

10 A. Correct.

11 (FAX DATED SEPTEMBER 19, 2003 FROM MS.
12 POWELL TO MS. POTTERFIELD MARKED AS
13 DEFENDANT'S EXHIBIT NO. 1 FOR
14 IDENTIFICATION.)

15 Q. I'm going to go through some documents with you
16 now, Ms. Powell. I'm handing you what I've
17 marked as Defendant's Exhibit One. I'll give
18 you a minute to look at this.

19 A. Okay.

20 Q. Do you recall this document?

21 A. I do.

22 Q. What is it?

23 A. I'm sorry?

24 Q. What is it? You just need to identify it.

25 A. The document I'm holding? It is a communication

1 I had with Ms. Potterfield.

2 Q. And it has a fax line at the time indicating the
3 fax was from Village Antiques.

4 A. I was in Asheville at the time.

5 Q. I'm sorry?

6 A. I was in Asheville, Terry's brother's business
7 at the time.

8 Q. That's Village Antiques?

9 A. That's correct.

10 Q. And it's dated September 19, 2003. Would that
11 have been the date that you sent it to Ms.
12 Potterfield?

13 A. That's correct.

14 Q. Okay. And on the second page you mention that
15 you went into Mr. Powell's safe and found some
16 notes regarding what apparently was his views on
17 the issues of separation as faxed to his
18 accountant.

19 A. Correct.

20 Q. Did you go into Mr. Powell's safe with his
21 consent?

22 A. I did. I go into, I go into his safe all the
23 time at the time we were married and together,
24 not separated. It was -- yeah, always - all
25 the time.

- 1 Q. Was his safe locked?
- 2 A. Sometimes it was, sometimes it wasn't.
- 3 Q. Did you have the combination?
- 4 A. There's not a combination, there's a key.
- 5 Q. Did you have a key?
- 6 A. I did. I knew where it was. He kept it in a
- 7 drawer in his desk.
- 8 Q. Was he aware that you obtained the next couple
- 9 pages of documents?
- 10 A. Probably not.
- 11 Q. Okay. And these next few pages of notes was
- 12 that Mr. Powell's handwriting?
- 13 A. It is his handwriting.
- 14 Q. And you furnished these documents to Ms.
- 15 Potterfield?
- 16 A. Yes.
- 17 Q. And what was the purpose of giving her these
- 18 documents?
- 19 A. So that she would have an idea of how my husband
- 20 was thinking at the time?
- 21 Q. And these documents have a listing of the real
- 22 estate owned that we've already discussed; is
- 23 that correct?
- 24 A. Some of which we discussed, yes.
- 25 Q. There's also one named Devonshire.

1 A. Right, yes. That's a property that we bought
2 for resale and was under contract at the time.

3 Q. Okay. Now, from time to time you gave Ms.
4 Potterfield and Mr. Taylor some additional
5 information regarding your husband's assets, did
6 you not?

7 A. I did actually. I gave her a lot of
8 information.

9 (FAX REGARDING MR. POWELL'S NOTES TO
10 TIM TYLER MARKED AS DEFENDANT'S EXHIBIT
11 NO. 2 FOR IDENTIFICATION.)

12 Q. I want to show you the document that I marked as
13 Exhibit Two. Take a minute to look at that
14 please, ma'am.

15 A. Okay.

16 Q. Do you recall that document?

17 A. I do.

18 Q. And just identify what this is.

19 A. It's notes between Conrad and his accountant,
20 our accountant at the time, regarding the 2003
21 filing.

22 Q. After the cover sheet there is a handwritten
23 page that says, "Tim", and it looks like it's
24 signed by the initial C. Do you recognize that
25 as Mr. Powell's handwriting?

- 1 A. Tell me again where you're talking about?
- 2 Q. End of -
- 3 A. It appears to be his handwriting.
- 4 Q. And the next page there's some handwriting that
- 5 starts out "CW". Do you recognize that
- 6 handwriting?
- 7 A. I don't recognize that handwriting.
- 8 Q. Then the typed documents -
- 9 A. I'm assuming that's Tim Tyler, but I don't know.
- 10 Sorry.
- 11 Q. Okay. The typed document appears to be a
- 12 schedule of assets and equity of Mr. Powell
- 13 dated December 31, 2003 to which a lot of
- 14 handwritten notations have been made. Do you
- 15 recognize the handwriting of the notations?
- 16 A. I do.
- 17 Q. Whose is that?
- 18 A. That still looks like Conrad's.
- 19 Q. Okay. Did you provide this document to Taylor
- 20 Potterfield?
- 21 A. I did.
- 22 Q. When did you give it to them?
- 23 A. I would imagine about the same time I gave her
- 24 the other document.
- 25 Q. I'm sorry?

1 A. It would have been -- it should have been the
2 same period as the other document. It would
3 have had to have been after. But some time in
4 those months following I would have given this
5 to her.

6 Q. And you gave this to Ms. Potterfield?

7 A. If I had it, and I'm assuming I did, I would
8 have given it to her, yes.

9 (LETTER DATED OCTOBER 14, 2004 FROM
10 MS. SHERMAN TO MS. POTTERFIELD MARKED AS
11 DEFENDANT'S EXHIBIT NO. 3 FOR
12 IDENTIFICATION.)

13 Q. I'm going to hand you what I've marked as
14 Exhibit Three. This is a letter by Attorney
15 Sherman to Ms. Potterfield and I'll give you a
16 minute to take a look at it. It's dated October
17 14, 2004.

18 A. Okay.

19 Q. Do you recognize this letter?

20 A. I do.

21 Q. Have you seen it before?

22 A. I have.

23 Q. In this letter of Ms. Sherman who is
24 representing your husband at the time discusses
25 several things, one of which was the James W.

1 Smith real estate check in the amount of ten
2 thousand two hundred and eleven dollars. And I
3 think a copy of that check was attached to the
4 letter. Did you negotiate that check?

5 A. Did I keep the check of the ten thousand? Yes,
6 I did.

7 Q. And she also talks in here about your changing
8 the amounts on some checks that Mr. Powell had
9 written to you. Changing five hundred dollar
10 checks to fifteen hundred dollars on several
11 occasions, changing one check from one thousand
12 dollars to two thousand dollars. Did you do
13 that?

14 A. Mr. Hill, I would have to see the checks that
15 you're questioning, number one. But throughout
16 my marriage there were opportunities that I did
17 and times when I did change numbers, my husband
18 changed numbers on checks, with his permission.
19 And there is a letter to, if you have the
20 complete file, which I assume that you do, to
21 Ashlin explaining that and from Ashlin to Ms.
22 Sherman explaining that that's the way we did
23 business. Just as we lived off assets we would
24 -- I would sign his name to checks, we would
25 change the check numbers. He was out of town a

1 lot. Sure, it happened during the entire
2 marriage, but you would have to show me the
3 checks you're questioning for me to tell you
4 whether it was -- no, I did not change all those
5 checks. But the ones that -- and there were
6 checks he changed the numbers on. But, no. You
7 know, during this time maybe one or two checks.

8 Q. But the checks were -

9 A. But they were done with his permission.

10 Q. The copies of the checks were attached to this
11 exhibit, correct?

12 A. I'm just saying that, you know, there might have
13 been one or two and I would have to go through
14 -- I'd have to go back through and remember why
15 we would have changed one. He was out of town,
16 the girls needed something more than he was
17 giving. You know, he would give me money to pay
18 bills with and I would say, well, we need an
19 extra thousand and I might change the check with
20 his permission.

21 Q. It would be fair to say that Ms. Sherman took
22 some issue with that, wouldn't it?

23 A. Ms. Sherman took issue with a lot of things,
24 yes, Mr. Hill.

25 Q. And she took an issue with the fact that you

1 were changing the amounts on checks that Conrad
2 Powell wrote.

3 A. Obviously she was.

4 Q. And she took issue with the fact that you signed
5 Mr. Powell's name to the ten thousand dollar
6 real estate check and you negotiated those
7 funds.

8 A. She took issue with a lot of things that had no
9 bearing or she should not have taken issue to.
10 This letter was explained by my attorney at the
11 time, Ms. Potterfield, and by me to Ms.
12 Potterfield and she explained to Ms. Sherman,
13 you know, the issues. So this was not something
14 that hadn't occurred in 15 years of marriage,
15 the whole time. I understand why Ms. Sherman
16 might take issue, but she had no reason to take
17 issue.

18 Q. And then the third thing that's discussed in
19 this letter is the escrow check from Washington
20 Mutual on the Kenilworth house in the amount of
21 sixteen thousand dollars.

22 A. Right.

23 Q. And you took possession of that check and
24 negotiated it?

25 A. I did with my husband's consent and knowledge.

1 How else was I supposed to live during the time
2 I had no money and no home and my children
3 didn't have a place to live, Mr. Hill? And Ms.
4 Sherman and my counsel was aware of that. And
5 there was a letter to Ms. Sherman to that
6 affect, if you would like to read that letter.
7 Those were the only funds that I had to live on,
8 Mr. Hill.

9 (MEMO DATED NOVEMBER 4, 2004 FROM MS.

10 POWELL TO MS. POTTERFIELD MARKED AS

11 DEFENDANT'S EXHIBIT NO. 4 FOR

12 IDENTIFICATION.)

13 Q. I'm going to hand you what I've marked as
14 Defendant's Exhibit Four.

15 A. Okay.

16 Q. Do you recognize this document?

17 A. I do.

18 Q. Did you write it?

19 A. I did.

20 Q. This was a memo from you to Ms. Potterfield?

21 A. Yes, it was.

22 Q. Okay. You say in here that Conrad wrote checks
23 to you of approximately fifty thousand dollars
24 over nine months and that would have been from
25 when to when?

1 A. I believe it would have been in the year of
2 2004.

3 Q. Okay. And you say that doesn't include the two
4 checks we just talked about? The ten thousand
5 dollar check from Smith Realty and the escrow
6 account from Kenilworth?

7 A. Correct.

8 Q. And you say, "In addition Conrad paid most of
9 the household bills, mortgage payments, electric
10 and gas, telephone, cable, groceries."

11 A. Right.

12 Q. And then you make the comment, "He would be
13 hundred percent better off paying me child
14 support at the highest going rate." What do you
15 mean by that?

16 A. We were trying to determine an amount of
17 support, I'm sure, of what was fair and
18 equitable at the time reflecting mine and my
19 girls style of living. And we were trying to
20 determine what it would cost for me to survive.

21 Q. And so this was the basis for your requesting
22 five thousand dollars a month of child support?

23 A. That's what I was trying to determine what I
24 needed.

25 Q. And what is this document that's attached to it?

1 The second page?

2 A. It looks like a check log. I don't really know
3 what it is. It must have been just a check log
4 from my bank account.

5 (LETTER DATED 12/13/2004 FROM WACHOVIA
6 TO MS. POWELL MARKED AS DEFENDANT'S
7 EXHIBIT NO. 5 FOR IDENTIFICATION.)

8 Q. Let me hand you what I've marked as Exhibit
9 Five. Do you recognize this?

10 A. I do.

11 Q. This is a letter from Wachovia Bank to you dated
12 December 13, 2004 basically asking you to pay
13 back the sixteen thousand dollars from that
14 escrow check; is that correct?

15 A. That's correct.

16 Q. Did you discuss this with Ms. Potterfield?

17 A. I did.

18 Q. Was there some threat of criminal prosecution
19 associated with this?

20 A. I believe that might have been the opposing
21 counsel, something from her.

22 Q. Did Ms. Potterfield assist you in resolving this
23 issue with Wachovia?

24 A. She wrote letters explaining to Ms. Sherman
25 certainly, you know, that I had a right to this

1 check.

2 Q. Whatever came of this issue with Wachovia?

3 A. It was dropped and the money was returned to my
4 account.

5 Q. Was Ms. Potterfield instrumental in that?

6 A. She certainly helped resolve the issue with Ms.
7 Sherman at the time.

8 (NOTES PREPARED BY MS. POWELL MARKED
9 AS DEFENDANT'S EXHIBIT NO. 6 FOR
10 IDENTIFICATION.)

11 Q. I'm handing you what I've marked as Exhibit Six.
12 Do you recognize this document?

13 A. I do.

14 Q. Did you prepare it?

15 A. I did.

16 Q. Now, one of the reasons I handed you this, Ms.
17 Powell, is because it's not dated and I wanted
18 you to help me put an approximate date on it.

19 A. It would have been -- it had to be around the
20 time that Kenilworth was being sold, so probably
21 just after I retained Ms. Potterfield.

22 Q. So this would have been around September 2004?

23 A. Right. It would have been, yeah, in the Fall of
24 2004.

25 Q. Number 1D says, "Housing is an important issue

1 as the girls both want to live outside the city
2 for the next few years so they can have their
3 horses and other pets." Were you contemplating
4 going to Aiken at that time?

5 A. No, not at all. I wasn't looking at Aiken at
6 this time. I mean, this could have even been -
7 I mean, this had to be early before the house
8 closed so, you know, again, that day would have
9 been late Summer, early September on this
10 document. So it was, you know, when we first
11 started discussing trying to get a property
12 settlement and separate maintenance and the
13 divorce filing done. This was all during those
14 initial talks to move that forward.

15 Q. And this is a document you provided to Ms.
16 Potterfield?

17 A. Right.

18 Q. The last page you have some notes about Columbia
19 Management and you say, "I do not look on Tim as
20 owning 33 percent of anything but they may use
21 him on paper until Conrad and I settle." What
22 do you mean by that?

23 A. Exactly what I stated.

24 Q. I don't understand.

25 A. What it means is that Tim was never considered a

1 part of any ownership of that property in our
2 marriage.

3 Q. Well, from a legal standpoint was he a one-third
4 owner?

5 A. Not ever. Of Huger Street?

6 Q. Columbia Management.

7 A. Columbia Management? I'm sorry. Columbia
8 Management, he was early, but there was plenty
9 of conversation before we separated and after
10 about buying Tim out and getting him out of that
11 business and they did eventually.

12 Q. When?

13 A. I don't know the exact dates, but, you know, we
14 wanted Tim out of the business when I was - you
15 know, before we separated. That was a
16 discussion we had, and Terry had, the three of
17 us.

18 Q. Did he remain part of the business up until the
19 time of the property settlement in April 2007?

20 A. I don't know that. My guess is they got him
21 out. I don't know when. I really don't have
22 those papers. I don't know when that all
23 transpired, but he's not part of any of that
24 now, as far as I understand. I can't tell you
25 when that occurred. All I can say is that what

1 I put here is, you know, absolutely true.

2 (LETTER DATED APRIL 22, 2005 TO MR.
3 TAYLOR FROM MS. POWELL MARKED AS
4 DEFENDANT'S EXHIBIT NO. 7 FOR
5 IDENTIFICATION.)

6 (LETTER DATED JANUARY 30, 2005 TO MR.
7 TAYLOR FROM MS. POWELL MARKED AS
8 DEFENDANT'S EXHIBIT NO. 8 FOR
9 IDENTIFICATION.)

10 Q. I'm going to hand you what I've marked as
11 Exhibit Seven. And I'm going to go ahead and
12 hand you Exhibit Eight at the same time.

13 A. Okay.

14 Q. Are these documents you prepared?

15 A. They are.

16 Q. Is that your signature on the first page of
17 Exhibit Seven?

18 A. It is.

19 Q. And on the first page of Exhibit Eight?

20 A. It is, I believe.

21 Q. And these are draft financial statements that
22 you provided to Michael Taylor?

23 A. Right. Correct.

24 Q. And you worked these up?

25 A. I did.

1 Q. And what was the purpose of providing this
2 information to Mr. Taylor?

3 A. Mr. Taylor asked for them.

4 Q. Did you understand that these would be used with
5 regard to a financial settlement in the divorce
6 proceeding?

7 A. I assumed that was the purpose for trying to
8 establish what I knew at the time.

9 Q. And was this for the purpose of supporting what
10 your requests were insofar as financial support?

11 A. It was a draft to try to determine what that
12 request would be.

13 Q. On the first one, April 15, 2005, you list rent
14 expenses of three thousand dollars, fifteen
15 hundred for the house, fifteen hundred for the
16 barn. On the second one that's dated January of
17 2006 you list the barn expense as two thousand
18 and the rent of fifteen hundred. Did the rent
19 on the barn go up?

20 A. In 2006 I owned the barn, it wasn't rented.

21 Q. And what was the basis for claiming two thousand
22 dollars expense for the barn?

23 A. That's what it cost to hire help to take care of
24 the barn with as many horses as I had at the
25 time.

1 Q. One the first one, April of 2005, you have a
2 line for entertainment that included horse
3 shows, approximately five hundred dollars times
4 six. So that would be horse shows six times a
5 year?

6 A. Right.

7 Q. And where would those be?

8 A. They're all over the state and usually between
9 South Carolina up to Kentucky. That was very
10 low actually.

11 Q. The five hundred dollars?

12 A. Uh-huh.

13 Q. I would think so. And you would do this six
14 times a year?

15 A. If we did -- these were probably based on just
16 local shows. Obviously, you can't go out of the
17 state for that sort of money. We tried.

18 Q. Who all would go on these?

19 A. The trainer, my children and my horses.

20 Q. On the April 15, 2005 under "Schedule B,
21 Incidentals" you have horse supplies a thousand
22 dollars. Is that a thousand dollars a month?

23 A. Oh, yeah, that's feeding the horses and their
24 supplies, right.

25 Q. Okay. Now, on both of these documents you have

1 a listing of property. On the April 15, 2005
2 you show property; money in savings account,
3 three hundred and fifty thousand dollars; value
4 of stocks and bonds, five hundred thousand
5 dollars. This is property that's in Mr.
6 Powell's name that you consider marital
7 property? Is that what that is?

8 A. I'm trying to get there, sorry. That would have
9 been, right, my share of stocks and bonds that I
10 knew that we had at one time, or at that time, I
11 mean. And stocks and bonds. And then the three
12 fifty would have been at that time I guess part
13 of the original property settlement, partial
14 property settlement.

15 Q. The four hundred thousand dollars?

16 A. Right.

17 Q. So that would have been three hundred and fifty
18 thousand dollars that you had in your account?

19 A. Right. The stocks were just something I was
20 estimating based on what I knew.

21 Q. And then on the second one, January 30, 2006,
22 you have money in the savings account of fifty
23 thousand dollars.

24 A. Right. That would have been almost a year
25 later.

1 Q. So from April 15, 2005 to January 30, 2006 you
2 had spent three hundred thousand dollars of that
3 four hundred thousand dollar advance?

4 A. It appears so, but I also -- somewhere Mr.
5 Taylor would also have a breakdown of where that
6 money went.

7 Q. Okay.

8 A. Again, these were drafts.

9 (LETTER DATED MAY 10, 2005 FROM MS.
10 SHERMAN TO MS. POTTERFIELD MARKED AS
11 DEFENDANT'S EXHIBIT NO. 9 FOR
12 IDENTIFICATION.)

13 Q. I'm going to show you what I've marked as
14 Exhibit Nine. Are you familiar with this
15 letter, Ms. Powell?

16 A. I am.

17 Q. You've seen this before?

18 A. I have.

19 Q. This is a letter from Attorney Sherman to Ms.
20 Potterfield dated May 10 of 2005 in which Ms.
21 Sherman is addressing your proposal to buy the
22 stable in Aiken for three hundred eighty-five
23 thousand dollars. And you ended up doing that,
24 did you not?

25 A. I did.

1 Q. Okay. And Ms. Sherman says in this letter your
2 client, referring to you, has asked my client,
3 referring to Mr. Powell, if he would purchase
4 the stable. Did you ask him to do that?

5 A. I did.

6 Q. What was his response?

7 A. Obviously no.

8 Q. In the second paragraph Ms. Sherman says that
9 Mr. Powell told Ms. Powell that he was not
10 interested in funding the purchase of a stable.
11 He told me that she gave him the worse cursing
12 he had ever received in his life. Do you recall
13 that?

14 A. Mr. Hill, I don't curse and it's rarely that I
15 raise my voice.

16 Q. So you deny that?

17 A. I deny that.

18 Q. And on the next page the top of the introduction
19 to the second paragraph Ms. Sherman says, "I do
20 not mind doing what I can to get this case
21 settled but it certainly does not make my job
22 any easier when my client tells me that he is
23 subjected to ranting and raving and cursing from
24 your client." And you saw this letter from Ms.
25 Sherman?

1 A. I did.

2 Q. And you saw it at about the time that it was
3 written?

4 A. I'm sure I did.

5 Q. Do you deny that your actions in this regard
6 made settlement discussions difficult?

7 A. Mr. Hill, yes, I deny that that would have
8 anything to do with settlement discussions.
9 That's, that's ridiculous.

10 (TITLE TO REAL ESTATE MARKED AS
11 DEFENDANT'S EXHIBIT NO. 10 FOR
12 IDENTIFICATION.)

13 Q. Exhibit 10 is a copy of some of the documents
14 pertaining to the purchase of the barn property.
15 Do you recognize those documents?

16 A. I do.

17 Q. And this was two and a half acres located on
18 Mead Avenue in Aiken; is that right?

19 A. That's correct.

20 Q. And you bought - these documents indicate that
21 this transaction was closed on May 11, 2005?

22 A. I would say that's correct.

23 Q. Second page?

24 A. Yeah, I'm assuming all that information is
25 correct. That these are a copy of the actual

1 records.

2 Q. Okay. And to finance this property you signed a
3 promissory note in the amount of three hundred
4 eighty seven thousand, four hundred and seventy-
5 five dollars?

6 A. I did.

7 Q. And that was to Sun Equities Lending Group?

8 A. Correct.

9 Q. So basically the entire amount of the purchase
10 price of the property was financed?

11 A. It was.

12 Q. And this is the same property that you had been
13 renting for a while?

14 A. The same property I rented for a year, yes.

15 Q. Why did you buy this property?

16 A. Because my girls and I loved the barn. It was
17 what we considered the only home we had at the
18 time and it was home to their horses. This barn
19 and those horses saved their lives, so we were
20 very attached to it. We didn't have a real
21 home. We rented a cottage that they weren't
22 happy with and it just became a place for them
23 to retreat and their home. And we still are
24 passionate about this barn.

25 Q. Are there any living quarters associated with

1 the barn?

2 A. No, they're not. It's restricted against any
3 building or living quarters being placed there.
4 It's a historic property in Aiken.

5 (REAL ESTATE LISTING REGARDING AIKEN
6 PROPERTY MARKED AS DEFENDANT'S EXHIBIT NO.
7 11 FOR IDENTIFICATION.)

8 Q. Okay. I marked this as 11. Is this a picture
9 of the barn?

10 A. It is. It's not a very good one, but it is.

11 Q. No, it's not.

12 (AERIAL SHOT OF AIKEN PROPERTY MARKED
13 AS DEFENDANT'S EXHIBIT NO. 12 FOR
14 IDENTIFICATION.)

15 Q. And Exhibit 12 is an aerial shot; is that
16 correct?

17 A. I would assume.

18 Q. What are the other facilities, structures that
19 are in that picture?

20 A. Is this an IQ test?

21 Q. No, I just want to know what's there.

22 A. Well, let me see. Let me find the barn.

23 Q. I think it's probably that little "A" there.

24 A. This would be houses, other horse property.
25 This is the barn that's right in the middle of

1 the historic training grounds for the
2 thoroughbreds and the polo fields and the jump
3 fields. It's probably one of the most historic
4 sites in downtown Aiken.

5 Q. The oval structure is that a polo field?

6 A. That would be the polo field and that's where
7 the polo players practice and where we could
8 ride and train when it wasn't being used. We
9 have a -- we actually have a gate that comes out
10 from the barn into the polo field and into the
11 dirt roads. You know, this is all horse
12 property pretty much around. It's a beautiful
13 little site.

14 Q. We'll come back to that in a little bit.

15 A. Okay.

16 (HANDWRITTEN MEMO DATED 8/2/05 FROM
17 MR. POWELL TO MS. POWELL MARKED AS
18 DEFENDANT'S EXHIBIT NO. 13 FOR
19 IDENTIFICATION.)

20 Q. I'll hand you what I've marked as Exhibit 13.

21 Do you recognize this document, Ms. Powell?

22 A. Oh, yes, I do.

23 Q. This appears to be a handwritten memo from Mr.
24 Powell to you dated August the 2nd of 2005; is
25 that correct?

1 A. It appears to be.

2 Q. And in this document Mr. Powell expresses his --
3 well, he says he's extremely disappointed that
4 the girls are going to private school instead of
5 public school.

6 A. Right.

7 Q. Is that the essence of this letter?

8 A. That's the essence of all this.

9 Q. Okay. And he points out that they've been in
10 public schools before and that he basically
11 objects to them going to private schools.

12 A. He did at the time, but he changed that tune
13 later.

14 Q. Okay. He says in this letter, though, that if
15 you enrolled them in private schools this Fall
16 do not expect him to pay their tuition. Is that
17 what he said?

18 A. That's what he said.

19 Q. Is that what he did?

20 A. That's what he did.

21 Q. Okay. So he did not pay for them to go to
22 private school -

23 A. No, he did not.

24 Q. - in August of 2005?

25 A. No, he did not.

1 Q. Who paid that?

2 A. I paid it.

3 Q. Out of what funds?

4 A. The partial property settlement.

5 Q. And when did Mr. Powell begin paying private
6 school tuition?

7 A. I believe he helped maybe the last year the
8 girls were there. He paid half of it one year
9 from my best recollection.

10 Q. That would have been in?

11 A. 2007. 2006-2007, I believe he helped with that.

12 Q. Would it be fair to say that up until that time
13 that this was a point of disagreement between
14 you and him?

15 A. That would be fair to say that was a point of
16 disagreement from the beginning of putting our
17 girls in school, if you want to go back that
18 far.

19 MR. HILL: Do y'all want to take out
20 for lunch? It's good with me.

21 (Deposition went off the record.)

22 Q. (By Mr. Hill) Ms. Powell, are you good to go?

23 A. I'm good.

24 (LETTER DATED FEBRUARY 22, 2006 FROM
25 MS. POWELL TO MR. TAYLOR MARKED AS

DEFENDANT'S EXHIBIT NO. 14 FOR
IDENTIFICATION.)

Q. Let me hand you what I've marked as Defendant's
Exhibit Number 14.

A. Okay.

Q. Do you recognize this as a document that you
sent to Michael Taylor on February 22 of 2006?

A. That's what it appears to be.

Q. Do you recall this document?

A. Yeah, I vaguely do. A response to a Marne
Sherman letter.

Q. You say 2003 and 2004 taxes are currently being
drafted. Are you talking about your Federal tax
returns?

A. My personal tax return, yes.

Q. And were those ever done?

A. Yes, they were.

Q. And do you have copies of those?

A. Not with me, but I can find them.

Q. And number five says, it's talking about
insurance. You say something about insurance.
"The barn requires fire insurance now that major
renovations had been 50 percent completed."
What renovations were being done to the barn?

A. I renovated - when I bought the barn there were

1 some areas that were in great disrepair and I
2 hired someone to do renovations for me to bring
3 the barn up to standard.

4 Q. And how much money was spent doing that?

5 A. I would say off the top of my head, seventy-five
6 to a hundred thousand.

7 Q. And what was the source of that money?

8 A. Again, from the partial property settlement.

9 Q. From the four hundred thousand dollars?

10 A. Correct.

11 Q. Did you borrow or finance any of that money?

12 A. I did not.

13 Q. Who did you pay the money to?

14 A. It would have been - Willie Key was the primary
15 person doing the work.

16 Q. And when was that work completed?

17 A. I think it was, oh, gosh, I had to be some time,
18 I believe, in 2006.

19 Q. Do you have any documents reflecting the
20 payments to Willie Key?

21 A. I may have some in, you know, one of my file
22 boxes. I would have to look. I don't know.
23 Some of my storage boxes are missing I know when
24 I was looking for paperwork. But I would say I
25 probably have some, I'm not sure I have all.

1 Q. Okay. Did you enter into a contract for those
2 repairs to be done?

3 A. There was no contract. Willie Key, he's a well-
4 known and very reputable person whose done a lot
5 of restorations and building fences in Aiken and
6 so we pretty much had a -- you know, as he
7 finished, completed a job, I would pay him as he
8 finished the work or ordered supplies so I paid
9 that bill.

10 Q. Did he give you a statement like on a weekly or
11 a monthly basis?

12 A. Yeah, typically it was, you know, on a monthly
13 basis.

14 Q. You say in number 11, "I'm in the process of
15 completing a financial declaration." This was
16 for the purposes of the domestic litigation?

17 A. This is what Mr. Taylor had asked me to do, yes.

18 Q. Okay. And you say there are no current accounts
19 receivable and payables prior to 2006. That's
20 with regard to the Gallery, or what?

21 A. Let me catch up to where you are.

22 Q. Number 12.

23 A. I'm not sure. I'd have to see the questions. I
24 was obviously answering questions from a Marne
25 Sherman letter. I can't really answer that

1 without seeing that letter.

2 (LETTER DATED FEBRUARY 22, 2006 FROM
3 MS. SHERMAN TO MR. TAYLOR MARKED AS
4 DEFENDANT'S EXHIBIT NO. 15 FOR
5 IDENTIFICATION.)

6 Q. Here's Exhibit 15 which is a two-page document.

7 A. Okay.

8 Q. This is a letter from Ms. Sherman to Mr. Taylor
9 dated February 23, 2006 and she is supplementing
10 Mr. Powell's prior Answer to Interrogatories to
11 include some additional witnesses. I just need
12 to know who these people are. Who is David
13 McCraw?

14 A. He was someone who worked for Paul Sloan who is
15 a tenant in 929 Gervais Street building.

16 Q. What would he know about your conduct and
17 behavior?

18 A. I have no idea.

19 Q. Who is Meri McNall?

20 A. Someone who worked for my husband.

21 Q. What would she know about you?

22 A. I guess you would have to ask her or him. I
23 don't know her.

24 Q. You don't know that person?

25 A. I do not know her.

- 1 Q. Jim Prater?
- 2 A. Jim Prater is an old friend of Conrad's.
- 3 Q. Mark Cotterill?
- 4 A. He's an old family friend.
- 5 Q. And that's the guest house that you're living in
- 6 now?
- 7 A. That is.
- 8 Q. I know who Mr. Young is and Mr. Terry Powell.
- 9 Who is Lou Ann Marley?
- 10 A. Again, she's an old friend of Conrad's.
- 11 Q. Paul Covey?
- 12 A. He's a bartender in Aiken.
- 13 Q. Says he can testify about his relationship with
- 14 you. Did you have a relationship with Mr.
- 15 Covey?
- 16 A. He was a bartender. He served me a drink
- 17 occasionally.
- 18 Q. Was that it?
- 19 A. That is it.
- 20 Q. Jean Paul Gautier?
- 21 A. Jean Paul Gautier did some training with some of
- 22 my horses. He is a trainer and he once drove a
- 23 carriage in Aiken. And he was a friend.
- 24 Q. Did you have any relationship with him?
- 25 A. He was a friend and he trained. That's all.

1 Q. Stacie Driggers?

2 A. That is a sister of one of my best friends.

3 I've never spent much time with Stacie. . She's a
4 friend -- I mean, she's a sister of Kim Penland,
5 Kim Walker now.

6 (LETTER DATED MAY 19, 2006 FROM MR.

7 SMITH TO MR. TAYLOR MARKED AS DEFENDANT'S

8 EXHIBIT NO. 16 FOR IDENTIFICATION.)

9 Q. I want to hand you Exhibit 16.

10 A. Okay.

11 Q. Do you recognize this document?

12 A. I do.

13 Q. This was a document that was prepared by Reid
14 Smith and furnished to Michael Taylor on May 19
15 of 2006.

16 A. Right.

17 Q. And Mr. Taylor associated Mr. Smith as counsel
18 representing you in this litigation against your
19 husband; is that correct?

20 A. He did.

21 Q. And the purpose of Mr. Smith's association was
22 to work on the financial aspect of the case; is
23 that correct?

24 A. At this time, right, it was.

25 Q. Okay. Mr. Smith prepared a rather extensive

1 document, several pages long, and I am not going
2 through that page by page, but were you
3 furnished a copy of this document shortly after
4 it was prepared?

5 A. I assume that I was, Mr. Hill, but I don't know
6 when exactly. I can't tell you when I got a
7 copy of this.

8 Q. Okay. Did you study it?

9 A. If I had it I studied it.

10 Q. You don't deny having it?

11 A. I'm just saying I -- I mean, I would have to
12 take time to make sure. Again, we're talking,
13 you know, a lot of information and a lot of
14 years and I can't say a hundred percent
15 acknowledge that I've seen every document. But,
16 you know, the information obviously was
17 generated through conversations with Mr. Smith.
18 So I really - I can't say a hundred percent
19 that I have a copy of this.

20 Q. To your knowledge, what were Mr. Smith's sources
21 for the material that he set forth in this
22 document?

23 A. Partly information I shared with him. It was
24 based on what I knew or had at the time.
25 Partly, I would say, on information that Mr.

1 Taylor provided and his own research.

2 Q. Did you provide to Mr. Smith, either directly or
3 through Mr. Taylor, all the information that you
4 were aware of with regard to your husband's
5 assets?

6 A. I gave both of them all the information that I
7 had.

8 Q. This document subsequently was furnished to Mr.
9 Foster when he took your representation; is that
10 true?

11 A. Again, I can't answer that question. I don't
12 know.

13 Q. I thought you told me earlier that when Mr.
14 Foster started representing you that he had this
15 document that Mr. Smith had prepared.

16 A. I didn't say -- I've just now seen this
17 document. How would I have said that earlier?

18 Q. Okay. Well, are you aware of any other report
19 that Mr. Smith prepared that goes into the
20 analysis of your husband's financial situation
21 other than this one?

22 A. He worked on some support and I'm sure he
23 provided Mr. Foster with information, but I
24 can't tell you exactly what format he did that
25 in.

1 Q. Is there anything in this report that you
2 believe is inaccurate insofar as a statement of
3 your husband's financial situation?

4 A. I can't answer that without having absorbed the
5 whole document, Mr. Hill. I mean, what this
6 appears to be to me is a draft, a working
7 document, not an absolute this is, you know,
8 this is what I found. I think even Mr. Smith
9 would tell you that there are a lot of holes and
10 a lot of information we didn't have. He was not
11 a forensic accountant.

12 Q. What information did you not have?

13 A. I would like to know myself.

14 Q. Well, how can you tell us what we need to know
15 if you don't know what you don't have?

16 A. Because I don't think we ever did have all the
17 answers, Mr. Hill. That's my point. We spent
18 months and years and documents and time and
19 pleadings to find that information. No one ever
20 attempted before, I think, at least Mr. Reid
21 tried to help, to find out what the true
22 information was, what the true assets were, what
23 the marital estate was. I provided what I could
24 and I can just say that there was never, never a
25 total assessment of marital assets.

1 Q. Mr. Powell's deposition was taken.

2 A. It was.

3 Q. He was asked about assets in that deposition.

4 A. I'm sure he was.

5 Q. You were there.

6 A. Correct.

7 Q. Mr. Tyler's deposition was taken.

8 A. Right.

9 Q. Did you attend that deposition?

10 A. I did.

11 Q. And he was asked questions about Mr. Powell's
12 financial situation?

13 A. He was.

14 Q. And he answered those questions. So, Ms.
15 Powell, where else is there to look, who else is
16 there to talk to?

17 A. I would like to know that myself. That's for
18 the experts to tell me. I don't know. I'm not
19 a forensic accountant.. I'm not an accountant,
20 period. I'm not an attorney, Mr. Hill. I don't
21 know, but I know that we do not have all the
22 information at any point before my divorce was
23 final.

24 Q. But you don't know what information was missing?

25 A. No. At this time I can't really tell you what

1 was missing. I would, you know, I would be,
2 again, giving you an idea and trying to -- for
3 my own personal information and what I knew make
4 a statement that would still have to followed by
5 research and evaluations of the marital estate.
6 That was just never done. I mean, my saying
7 that something is true obviously should be taken
8 seriously, but I still wouldn't have current
9 appraisals, I didn't have access to inventory, I
10 didn't have access to records. I provided to my
11 attorneys everything I had in my possession and
12 what I believed to be true.

13 Q. Well, if you were to retain, and apparently you
14 had some discussions with Mr. Foster about this,
15 if you were to retain a forensic accountant
16 where would you tell that person to look beyond
17 what Mr. Smith has done and materials you've
18 provided to Mr. Taylor, the deposition testimony
19 of Mr. Powell, the deposition testimony of Mr.
20 Tyler, where else would you tell him to go?

21 A. You're suggesting that Mr. Tyler and my husband
22 would give you all the factual information.

23 Q. They took an oath to tell the truth, Ms. Powell,
24 that's all I know.

25 A. Maybe the right questions weren't asked. Maybe

1 the person asking questions wasn't qualified to
2 ask the questions. I don't know. I'm not an
3 attorney and I don't want to argue that point
4 here. I'm telling you that we did not locate
5 all the assets. No, we did not. I gave -- I
6 spent months and years pleading and trying to
7 get this to the forefront, trying to get a fair
8 assessment. Early on I did try to make just a
9 -- judge that for myself. That wasn't my job,
10 that was my attorneys' job. I hired them to
11 represent them. I hired them to fight for me.
12 Why am I supposed to be telling them what I need
13 and what I need for support?

14 Q. Are you able to tell me today of any assets that
15 were not discovered at the time that you entered
16 into the final Settlement Agreement in April of
17 2007?

18 A. I don't know what the question is referring to.
19 What I'm telling you is that the marital estate
20 was not -- these were just basically drafts of
21 information that was given basically from what I
22 had and from whatever Conrad and Tim Tyler were
23 willing to provide. But, you know, maybe the
24 right questions weren't answered, I don't know.
25 But I'm just saying that what you see before you

1 now is not the entire marital estate.

2 Q. But you are unable to tell me where the rest of
3 the marital estate is.

4 A. Because I would like to have that opportunity to
5 determine what that is.

6 Q. You have a suspicion that there was something
7 else out there?

8 A. Of course I do.

9 Q. Do you have any evidence?

10 A. I haven't hired anyone to find it for me at this
11 point. I've hired counsel to give me advice. I
12 did hire counsel, if you remember, in 2003 to do
13 this job for me and I trusted them to do it.

14 (LETTER DATED JANUARY 17, 2006 FROM
15 MS. POWELL TO MR. TAYLOR MARKED AS
16 DEFENDANT'S EXHIBIT NO. 17 FOR
17 IDENTIFICATION.)

18 Q. Let me hand you what's marked as Exhibit 17 and
19 we eluded to this earlier. This is a letter
20 that you wrote to Mr. Taylor terminating his
21 representing. And the date on the letter is
22 January 17, 2006, but I believe we can agree
23 that that's a typographical error.

24 A. I would have to agree to that.

25 Q. And it's 2007?

1 A. Right, 2007. I agree that would be an error.

2 Q. Did you communicate with Mr. Taylor any before
3 you sent him this letter that you were going to
4 terminate him?

5 A. This letter you just handed me?

6 Q. Uh-huh.

7 A. No, I didn't, this was the only communication.

8 Q. Had you communicated with him earlier that you
9 were dissatisfied with his representation?

10 A. No, not at all. I mean, I was frustrated, but I
11 did not -- you know, there was no communication
12 with him before this letter. This letter was
13 the only form of communication.

14 Q. Do you think that Mr. Taylor gave you
15 inappropriate or incorrect legal advice?

16 A. Before 2007 or after?

17 Q. Well, up until the time that you terminated him
18 in January of 2007.

19 A. Well, I felt that Michael was going to get this
20 job done and the divorce final and that he was
21 giving me the advice he needed to give me. And
22 I followed his advice. I gave -- if he asked me
23 for something I gave it to him. I trusted him
24 to get it -- I knew he was capable of doing it.
25 Michael Taylor is capable of getting this case

1 resolved and in a fair way to me and my family
2 and I believed that and I trusted him to do
3 that.

4 Q. So why did you terminate Mr. Taylor?

5 A. Because, Mr. Hill, I had to go through one more
6 Christmas without a home for my children and I
7 needed to get it resolved. Sorry.

8 MR. PENDARVIS: Do you want to take a
9 minute?

10 (Deposition went off the record.)

11 Q. (By Mr. Hill) Am I to understand then that the
12 reason that you terminated Mr. Taylor was
13 because of your frustration that the divorce
14 matter had not been finalized?

15 A. I was frustrated that I didn't have closure and
16 I just needed an end to it. I had begged my
17 attorneys for years to file a Complaint and get
18 me to the end of this. I mean, my letters are
19 documented, my calls and letters. I made that
20 very clear from the beginning. So, yes, I was
21 frustrated that there was another year that I
22 was facing.

23 Q. But you don't contend that he gave you any bad
24 legal advice?

25 A. I'm not saying that. I'm saying that, you know,

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Q. Let me try to make the question as simple as I can, Ms. Powell. You have sued Ms. Potterfield and Mr. Taylor for legal malpractice. I'm trying to understand what the basis of your assertions that they have committed legal malpractice is.

A. You have my attorneys' correspondence for that matter so I think you have your answers, or at least a start.

Q. Well, I'm not looking for the legalese. I'm looking for your explanation of why you were dissatisfied with Ms. Potterfield and Mr. Taylor to the extent that you have brought a legal malpractice case against them.

A. I really can't put that in one sentence, Mr. Hill, in one - that's -- I mean, obviously that's how I feel at the moment. I can't -- and I'm not qualified to put that in terms for you to understand. But I think that's for my attorneys to do. I don't think that's my job to explain to you unless you can tell me how that is.

Q. I just want to know what you think they did wrong.

1 A. Mr. Hill, are you kidding me? We could -- you
2 know, this case drug on and drug on and drug on
3 for years and years. I believed in my attorneys
4 and Michael Taylor to get a resolution at the
5 end that was fair to me. I did believe that and
6 I believed it up until the time I hired Mr.
7 Foster.

8 So, I mean, the evidence is in front of
9 you. I've -- I mean, I don't know what else to
10 say to you. I mean, I think that's a job for my
11 counsel to answer for you. I just - I never,
12 never got closure. I never -- and I begged and
13 pleaded. Under the circumstances that's all I
14 can say. I mean, I -- I think you have what you
15 need to know. I don't really know what the
16 question is and how to answer it.

17 (AFFIDAVIT OF CAROLYN POWELL MARKED AS

18 DEFENDANT'S EXHIBIT NO. 18 FOR

19 IDENTIFICATION.)

20 Q. I'm going to hand you what's been marked as
21 Exhibit 18.

22 A. Okay.

23 Q. Is that your signature on page five of this
24 document?

25 A. It is.

1 Q. And this is an Affidavit that was filed in the
2 Family Court on March the 16th of 2007. Do you
3 recall the reason that this Affidavit was filed?

4 A. It was to try to get, try to get the attention
5 of the Court and get some relief, support for
6 me.

7 Q. Was this in preparation for a hearing that the
8 Court held, I believe, on March 17?

9 A. It could be.

10 Q. I know that you signed this document. Was it
11 prepared by your attorney at the time, Mr.
12 Foster?

13 A. I'm trying to get to that. Was this just a
14 court filing?

15 Q. I believe that's Mr. Foster's notarization next
16 to your signature.

17 A. Gotcha. Yeah, it was. I'm sorry. Yeah, that's
18 what I was trying to find.

19 Q. Now, attached is Exhibit A to that document and
20 I think you eluded to this earlier.

21 A. Right.

22 Q. It's your statement of the disbursement of funds
23 that had been provided you previously which was
24 four hundred thousand dollars was the advance,
25 the ten thousand dollars was, I guess, the beach

1 property. What was the three thousand dollars?

2 A. Tell me where you're getting that. Where are
3 you?

4 Q. The top of Exhibit A.

5 A. Oh, I'm sorry. I would imagine just based on my
6 memory the ten thousand was part of tuition that
7 Conrad wanted me to take as property settlement.

8 Q. How about the three thousand?

9 A. Probably the same thing. Must have been
10 something he paid for the girls. I'm just
11 saying based on my memory.

12 Q. Okay. Now, in this listing of disbursements you
13 mentioned inventory for art and design business
14 for a hundred thousand dollars.

15 A. Right.

16 Q. Tell me about that.

17 A. I, you know, I took part of the money of the
18 property settlement and was buying, as I'd done
19 from the beginning of my marriage, just to buy
20 and sell antiques and represent artists. That's
21 what I do to make a living. And so I was
22 beginning to build an inventory so that I could
23 re-open my business and start over.

24 Q. Where was this inventory being kept?

25 A. It was being kept in storage in Aiken.

1 Q. And do you still have the inventory?

2 A. I do.

3 Q. It has not been sold?

4 A. It has not.

5 Q. What does it consist of?

6 A. Furniture, art, accessories, lighting. Just
7 things, like, you know, I would buy.

8 Q. And over what period of time was this bought?

9 A. Pretty much from probably 2005 until - I mean,
10 I still add to that collection, to that
11 inventory.

12 Q. You list ninety-six thousand dollars for horses.
13 That would be over what period of time?

14 A. My guess is this was during the entire time from
15 the time that I was awarded property settlement,
16 partial property settlement, to the time of this
17 hearing that I paid for.

18 Q. I roughly added this up to be about five hundred
19 thousand dollars. Where did the balance of that
20 money come from?

21 A. From work that I did, from income that I
22 produced. I think in this somewhere I even
23 bought and sold a carriage and I made some money
24 there, so that's probably included in that.
25 But, overall, this was a pretty much clear, true

1 estimate of the money I'd spent, gosh, three
2 years. Actually two years. Whatever period of
3 time that was. 2005. Yeah, so about two and a
4 half, two years. And you've got to remember
5 that some of this money he gave me back, like
6 the ten thousand. I mean, he, you know, -- and
7 I don't know, I can't give you details in here
8 because I'd have to go back and look at it
9 again, but that probably didn't include the
10 money that maybe he -- the ten thousand or the
11 three thousand.

12 Q. You're saying that you may have received
13 additional money from Conrad other than what's
14 specified?

15 A. Well, no, it's specified there, but I'm saying I
16 didn't take that into account in this amount so
17 I'm sorry. Yeah, it was, it was the best
18 estimate that I had at the time.

19 Q. So you think you had a hundred thousand dollars
20 in earned income during that period of time?

21 A. Not so much earned. I would have re-invested it
22 is what typically I would do if I bought and
23 sold anything I just re-invested it into
24 inventory. So it just shows up, you know, as a
25 plus in inventory. So that's probably what I'm

1 seeing there. What I bought. If I sold
2 anything I would put that back into inventory.
3 Or the inventory might have been more than I
4 paid for it because that's just part of the way
5 that business runs. You pay ten dollars for
6 something and sell it for five thousand that's
7 profit but it's still value in inventory.

8 (AFFIDAVIT OF CONRAD POWELL MARKED AS
9 DEFENDANT'S EXHIBIT NO. 19 FOR
10 IDENTIFICATION.)

11 Q. I'm going to hand you Exhibit 19. At the same
12 time you filed your Affidavit Mr. Powell filed
13 this Affidavit. This has got a date stamp of
14 March 16, 2007 was when it was filed with the
15 Court.

16 A. Right.

17 Q. Have you seen this Affidavit before?

18 A. I have.

19 Q. I want to ask you to comment on some of the
20 things that he has in here. He says with regard
21 to custody of the children that you and he had
22 pretty well been able to work out custody and
23 visitation and that has not been a problem.

24 A. Right.

25 Q. Do you agree with that?

1 A. I would say that that's what's written here.

2 Q. Was custody and visitation an issue?

3 A. Mr. Hill, you know, over the course of seven,
4 you know, however many, five years, yeah, I'm
5 sure there were issues with everything. That's
6 what people do.

7 Q. Under "Child Support" he says I've been paying
8 Carolyn fifteen hundred and eighty-five dollars
9 a month without a Court Order in effect and I've
10 been doing this at least two years. Is that
11 accurate?

12 A. As I said, he started in February of -- I gave
13 you that information, Mr. Hill. It started in
14 February of 2005 and through whatever this
15 document is.

16 Q. March 2007.

17 A. Well, I guess that's relatively on point.

18 Q. It says, in addition, he's been paying health
19 and dental insurance for both the girls and for
20 Carolyn, for the car insurance for Mary Morgan,
21 Alexandria and Carolyn, medical and dental bills
22 for both girls and Carolyn. Is all of that
23 true?

24 A. Oh, yeah. Not all of it, but, you know,
25 probably. I mean, this is Conrad's statement.

1 I mean, this I what -- I'm not privileged to see
2 his records.

3 Q. I understand this is his statement.

4 A. So I can't really -

5 Q. I'm simply asking you whether you agree with it
6 or not.

7 A. I can agree it's his statement, how about that?

8 Q. Well, is his statement accurate with regard to
9 what I just read to you?

10 A. Mr. Hill, I'm not -- I don't have privilege to
11 his records. I can't -- I'm not going to say
12 something is correct if I don't have records to
13 back it up.

14 Q. You know whether or not he paid the health and
15 dental insurance for you and the children.

16 A. He's paid health and dental, I've said that
17 before. We've already discussed that. He's
18 paid health and dental for the girls, not for
19 me. He paid health for me during that time,
20 but I cannot tell you that that's an accurate
21 amount. And he paid, you know, the fifteen
22 eighty-five for those two years.

23 Q. In about the middle of that page, page two, he
24 says for the year 2005 I wrote checks to Carolyn
25 and to third parties for the children in the

1 amount of twenty-six thousand five hundred and
2 sixty-five dollars. Do you have any reason to
3 doubt the accuracy of that statement?

4 A. I can't confirm any of that. I don't have his
5 records.

6 Q. It says for the year 2006 expenditures I paid on
7 behalf of the children, including the monthly
8 child support, was a hundred and twenty-one
9 thousand dollars. Do you dispute that?

10 A. I certainly can't confirm it.

11 Q. Do you have any evidence?

12 A. I don't have his records or evidence that he
13 paid these amounts. And he's estimating here
14 anyway.

15 (COMPLETE PROPERTY, SUPPORT AND
16 CUSTODY AGREEMENT MARKED AS DEFENDANT'S
17 EXHIBIT NO. 20 FOR IDENTIFICATION.)

18 Q. I'm going to hand you what's been marked as
19 Exhibit 20 which is a copy of the Complete
20 Property, Support, and Custody Agreement dated
21 April 27, 2007. Is that your signature on page
22 21 of that document?

23 A. It is.

24 Q. Who are those people who signed as witnesses?

25 A. Kim Penland is a friend of mine and Conrad's. I

1 can't really read the second one, you'll have to
2 help me out.

3 Q. I have no idea. It looks like Robert somebody.

4 A. I have no idea either. Don't know. Who is it?

5 I don't remember.

6 Q. Do you recall signing this document?

7 A. I do.

8 Q. Do you recall reviewing the document before it
9 was signed?

10 A. I do.

11 Q. Do you know who prepared the document?

12 A. It would have been - sorry, I'm just reading.

13 Q. That's all right.

14 A. I'm still trying to find the date that you were

15 -

16 Q. It's on the front page.

17 A. The date filed was May 2nd. You said something
18 about April?

19 Q. The last paragraph on the front page.

20 A. Of course, sorry.

21 Q. That's all right.

22 A. I'm sorry. It would have been Mr. Foster.

23 Q. So this document was signed while you were being
24 represented by Mr. Foster?

25 A. Correct.

1 Q. And Mr. Foster drafted the document?

2 A. He did.

3 Q. Did he review it with you prior to it being
4 signed?

5 A. He did.

6 Q. This document was signed following a hearing
7 before Judge Jacobs on March the 14th. Do you
8 recall that hearing?

9 A. I do recall that hearing.

10 Q. Who attended that hearing?

11 A. Myself and my attorney, Conrad and his attorney.

12 Q. Mr. Smith?

13 A. I believe he was there.

14 Q. Do you recall Judge Jacobs making a ruling with
15 regard to the amount of child support Conrad
16 would have to pay?

17 A. He did that day but it was until we could
18 finalize. It was an interim, I don't think it
19 was meant to be set in stone, but he did set
20 child support that day and sent us away to work
21 on the rest.

22 Q. Do you recall what he set as child support?

23 A. I really don't. It was less than he had been
24 paying.

25 Q. It was less than what Conrad was already paying?

1 A. I believe so.

2 Q. Were you surprised at that?

3 A. No, because he was going by -- I mean, that was
4 the first time I've been in front of a judge or
5 even had an opportunity to share anything, so I
6 wasn't surprised based on the type of hearing it
7 was.

8 (Mr. Bird enters the room.)

9 Q. Did Mr. Foster tell you to expect that?

10 A. Perhaps he did.

11 Q. You don't recall?

12 A. I'm sure if I think about it I would recall, but
13 I'm sure -- I mean, he prepared me for the
14 hearing and it wasn't a surprise.

15 Q. Were you disappointed in the outcome of the
16 hearing?

17 A. No, I wasn't.

18 Q. You were satisfied as to what the Judge ordered
19 for child support?

20 A. No, I didn't say that. I just, I was happy to
21 be in front of a judge. He could have told me
22 to go milk cows or something and I probably
23 would have been happy.

24 Q. What happened between the time of the hearing on
25 March 14 and the Agreement of April 27 that you

1 have before you?

2 A. We discussed hiring a forensic accountant and
3 spending possibly another year or two doing
4 discovery and re-doing my case basically and
5 emotionally I wasn't able to do it. I, I didn't
6 want to go through another two years waiting for
7 my case to be resolved and my divorce to be
8 final.

9 Q. You understand that that Order would continue in
10 effect until a settlement agreement was reached?

11 A. What Order? I'm sorry, what Order?

12 Q. The Child Support Order from Judge Jacobs on
13 March 14.

14 A. I'm sure I did, but I'm sure we would have been
15 back in court. In fact, I thought -- I think we
16 were scheduled to go back before him. This was
17 just a preliminary hearing; it wasn't -- I never
18 thought that was a set-in-stone hearing. It was
19 just to get it before a judge.

20 Q. What did you think the basis would be to argue
21 to the Judge it should be changed?

22 A. I can't - obviously I can't answer that.

23 Q. What influence did the Judge's decision have on
24 the terms that you agreed to in the settlement?

25 A. Didn't have anything to do with it. I was -- I

1 mean, nothing. I was -- it was more because I
2 couldn't -- I was so emotionally beaten down,
3 Mr. Hill, I couldn't take anymore. I don't know
4 how to say that any clearer. And at that point
5 I could not take another year and even another
6 six months.

7 Q. This agreement required Mr. Powell to pay
8 certain amounts and I was provided some
9 information yesterday from your attorneys as to
10 some amounts that had been paid with respect to
11 the child support and expense obligation. It
12 also required Mr. Powell to pay educational
13 costs for the children, and we've discussed
14 that. Is there anything else about that that he
15 has paid?

16 A. I'm sorry, what's the question?

17 Q. Educational expense for the children.

18 A. All right. Please rephrase that. Where are
19 you?

20 Q. I'm on page seven of the Settlement Agreement.

21 A. So can you restate the question, please?

22 Q. Uh-huh. Paragraph C says, "Husband shall pay
23 educational costs for the children including
24 school tuition." You told me about the College
25 of Charleston.

1 A. Right.

2 Q. And you told me about the New York School.

3 A. Right.

4 Q. Has he fulfilled his obligations with regard to
5 that part of the Settlement Agreement?

6 A. He has so far. Well, yes, so far.

7 Q. That reminds me, when you all came back to
8 Columbia in 2007 and the youngest child went to
9 Heathwood.

10 A. Right.

11 Q. Who paid for that?

12 A. Conrad paid for that.

13 Q. And how much was that?

14 A. Around eighteen thousand a year. I forget what
15 the tuition is.

16 Q. And how many years was that?

17 A. Two.

18 MS. POWELL: I'm sorry, you'll have to
19 excuse me.

20 MR. HILL: That's all right.

21 (Deposition went off the record.)

22 Q. (By Mr. Hill) Go to the back of this document.
23 It's labeled Exhibit A.

24 A. Okay.

25 Q. Is that your signature?

1 A. It is.

2 Q. And this is, I guess, an exhibit to the
3 Separation Agreement.

4 A. That's correct.

5 Q. And it says that, or to the Property Agreement,
6 it says that in consideration for Conrad Powell
7 paying the sum of four hundred thirty-five
8 thousand dollars to Sun Equities. Was that the
9 mortgage balance on the -

10 A. That was the mortgage balance, correct, that he
11 paid.

12 Q. Now, the mortgage started out as being three
13 hundred and eighty-five thousand dollars, so is
14 this accrued interest?

15 A. It was the accrued payments. My best
16 recollection of this was probably interest and
17 like quarterly type payments that were due. I'm
18 not sure without looking at the original
19 document. Basically whatever was owed on the
20 property.

21 Q. Did you ever make any payments on the mortgage?

22 A. I did not.

23 Q. To your knowledge, was this four hundred and
24 thirty-five thousand dollars paid?

25 A. It was paid. The barn is free and clear.

1 Q. You still hold title to the barn?

2 A. I do, but as you see that money will come back
3 to Conrad when the barn is sold.

4 Q. And what is the current status of the barn?

5 A. It's on the market, which it has been.

6 Q. It's been on the market for how long?

7 A. It's been on the market technically since this
8 Agreement.

9 Q. Since April of 2007?

10 A. Correct.

11 Q. Any offers been made?

12 A. Low offers.

13 Q. Low offers?

14 A. Yes. It's a sign of the times, but it will
15 sell.

16 Q. Are you continuing to use the stable?

17 A. I lease it currently.

18 Q. And who gets the lease money?

19 A. I do. I pay the taxes as well.

20 Q. How much do you get for the lease?

21 A. Fifteen hundred a month.

22 Q. And that's been for how long?

23 A. I'm trying to remember if I was leasing it at
24 this time. This is going on the second year
25 that it's leased. I don't have the lease

1 agreement, so I don't remember exact dates, Mr.
2 Hill.

3 Q. This talks about listing the property at five
4 hundred and ninety-five. Is that what it's
5 still listed as?

6 A. Yes, it's five ninety-nine, but basically that's
7 where he -- Conrad, he knows -- we talk about
8 it. He knows what's good and he agrees with the
9 price. We've had conversations about that.

10 Q. Okay. And then there's another page, a
11 handwritten page. Whose writing is this?

12 A. It looks like Conrad's. I don't know, let me
13 see. It is Conrad's writing.

14 Q. This apparently is kind of an amendment to -

15 A. Amendment to the amendment?

16 Q. Right. This says Conrad to advance twenty-five
17 thousand on April the 2nd, twenty thousand of
18 which applies to the mortgage payoff upon
19 receipt of letter from attorney stating this
20 agreement. I'm not sure I understand what that
21 means?

22 A. I can't tell you. I don't understand what all
23 this is either.

24 Q. Okay.

25 A. That would be, that would be the way my husband

1 thinks. I have no idea.

2 Q. Well, you signed this document.

3 A. I think -- well, yeah. I'm just saying this was
4 basically all connected. He didn't make it very
5 clear, did he. I guess I understood it at the
6 time. I'd have to regroup and read it again.
7 What is the question?

8 Q. Well, down in paragraph 2D of this it says,
9 "Devine Street mortgage will not be paid off
10 until stable is sold." I think the Devine
11 Street property is -

12 A. The Devine Street property is actually sold and
13 all the mortgages are paid off with that.

14 Q. Back on page nine of the Settlement Agreement
15 itself there's a paragraph about the Devine
16 Street property. It says, "Husband shall assist
17 wife with payoff on the mortgage of the barn
18 property. Clark barn property should be listed
19 to be sold for at least five hundred and fifty
20 thousand dollars. Husband shall transfer clear
21 title to the Devine Street property within five
22 days after the sale of the Clark barn property.
23 Husband may continue to have possession of
24 Devine Street property until July 7. Wife will
25 be permitted to take possession of the Devine

1 Street property no later than July 8, 2007." So
2 tell me what happened with regard to all of
3 this.

4 A. That's a very good question. Basically, we
5 changed all this after everything was filed and
6 done and I don't have that in front of me. The
7 girls refused to move into Devine Street, this
8 is the short answer, and I bought Wheat Street
9 and somehow we made all those numbers work as a
10 swap. And without looking at it, that document,
11 he basically kept the mortgage on Devine Street,
12 which was paid off when Devine Street sold, we
13 moved into Wheat Street, I kept title of both
14 properties. But he - I'm trying to remember
15 exactly how all that transpired. There's
16 another note outside of this.

17 Q. There's another document?

18 A. A document, exactly, that would explain all
19 that.

20 Q. Do you have that?

21 A. Not with me, but I'm sure I can get it for you.
22 I'm surprised you don't have it, but I guess it
23 wasn't attached to this. I guess I thought it
24 was. But it was after the fact because this was
25 done in April and the girls were adamant about

1 not moving into Devine Street and so we worked
2 something else out between us. I don't know if
3 that's important to you or not.

4 Q. Well, it is, yes. Who held the title to Devine
5 Street?

6 A. It was in my name.

7 Q. As of when?

8 A. I guess these -- isn't that what they're
9 requiring here. But there was a mortgage and he
10 maintained the mortgage on it. The mortgage was
11 paid off.

12 Q. Now, I'm getting lost. When was Devine Street

13

14 A. Trust me, I'm lost, too.

15 Q. When was Devine Street purchased?

16 A. Devine Street was part of the marital property
17 from, gosh, years before all this. Conrad was
18 actually living in Devine Street, if you
19 remember.

20 Q. Okay. So when he moved out that's where he
21 moved to, Devine Street?

22 A. Right. Correct.

23 Q. All right. And I thought we established before
24 that that deed was in his name?

25 A. It was, but he deeded it to me at some point.

- 1 Q. When was that?
- 2 A. This was after this.
- 3 Q. So now you've sold Devine Street?
- 4 A. Devine Street sold, correct, in 2008, I believe,
5 or '09, I can't remember now myself. I think it
6 was 2008.
- 7 Q. And the mortgage was paid off?
- 8 A. The mortgage was paid off.
- 9 Q. And how much did you net?
- 10 A. Devine Street? Wow. Not a lot, maybe -- I
11 really don't want to be quoted on this, but,
12 again, it was well under a hundred thousand. I
13 can't give you those figures.
- 14 Q. And do you have the documentation from that
15 closing?
- 16 A. I do. Somewhere in the Request for Production I
17 remember - I've provided, I thought, all the
18 mortgage information to your client already. Am
19 I correct?
- 20 Q. I have a box, but if it's in there I've
21 overlooked it.
- 22 A. Well, I think it's there because I think I gave
23 every closing I had. You should have a copy of
24 it, Mr. Hill.
- 25 Q. This 15 Gibbes Court that never happened?

1 A. That never happened. It was a house I looked
2 at.

3 Q. Okay. I have one more set of documents I need
4 to go through with you, please, ma'am.

5 (LETTER DATED OCTOBER 29, 2004 FROM
6 MS. POWELL TO MS. POTTERFIELD MARKED AS
7 DEFENDANT'S EXHIBIT NO. 21 FOR
8 IDENTIFICATION.)

9 Q. This has been marked as Defendant's Exhibit 21.

10 A. Okay. What is your question?

11 Q. This is a document that's dated October 29,
12 2004. It has your name under it, it's not
13 signed, but is this a document that you provided
14 to Ashlin Potterfield?

15 A. It is.

16 Q. And on the second page of the document it's
17 captioned "Settlement Offer". Are those the
18 terms that you were proposing to Ms. Potterfield
19 as a settlement of this case?

20 A. That was my draft of a settlement at the time.
21 And it should be the theme of this whole divorce
22 proceedings with my counsel. Most of the -- the
23 front part of this letter I had to repeat so
24 many times I can't tell you. But, yes, in the
25 beginning I was trying to make sure my children

1 didn't live homeless and could continue in the
2 town, in Columbia. This was an offer to get
3 this job done and settled quickly.

4 Q. So your settlement demand at that time was two
5 million dollars in cash?

6 A. That's what it says.

7 Q. Child support of twenty-five hundred dollars per
8 child. Number eight was a quarter of the
9 selling price of Gallery2.

10 A. Right. I felt that was my half of Conrad's
11 half.

12 Q. Number nine was -

13 A. The marital estate.

14 Q. Number nine was the purchase of two more horses;
15 is that right?

16 A. Uh-huh.

17 Q. You say cost of keeping the horses should be
18 equally shared as part of child support. How do
19 horses come under child support?

20 A. Because that's support for your children.
21 People -- I mean, it's the same thing as a sport
22 or taking a driver's education class....

23 Q. Number 11 says, "All litigation records to
24 include the separation and filings in 1997 to be
25 permanently sealed." Why were you asking for

1 that?

2 A. I didn't want my children to ever read anything
3 negative about their father.

4 Q. And to revisit that for a minute, you said that
5 Conrad Powell brought that divorce action; is
6 that right?

7 A. This action?

8 Q. No, the 1997 action.

9 A. Yeah, he did.

10 Q. And what were his grounds?

11 A. I really -- I don't remember, they were so
12 ridiculous. I don't remember.

13 Q. Did he accuse you of adultery in that
14 litigation?

15 A. I think he -- you know, I promise you I don't
16 remember what he accused me of it was so
17 ridiculous, but I'm sure he accused me of
18 something.

19 Q. And did you counterclaim against him?

20 A. Of course I did.

21 Q. And did you accuse him of adultery?

22 A. Of course I did.

23 Q. And did you have discussions with your attorney
24 about that?

25 A. I did.

1 Q. How long did that litigation go on before it was
2 stopped?

3 A. A few months. Mr. Hill, we reconciled within
4 that year, but, you know, it was basically just
5 beginning.

6 Q. I'm going to hand you what I'm going to mark as
7 Exhibit 22.

8 (LETTER DATED NOVEMBER 18, 2004 FROM
9 MS. POTTERFIELD TO MS. SHERMAN MARKED AS
10 DEFENDANT'S EXHIBIT NO. 22 FOR
11 IDENTIFICATION.)

12 A. I thought that other was the last document.

13 Q. Oh, I said we were starting on a new set.

14 A. You're just full of surprises today.

15 Q. Have you ever believed an attorney when he said
16 he had just one more question?

17 A. I'm not even going there.

18 Q. Do you recognize this document?

19 A. I mean, yes, to start with I do. I was still
20 reading, I'm sorry.

21 Q. Sure. That's all right.

22 A. I do recognize the document.

23 Q. Okay. And is this basically Ms. Potterfield's
24 letter to Attorney Sherman sort of reiterating
25 what we've just been through as your settlement

1 posture at that time? I don't think she
2 specifically mentions two million dollars.

3 A. She doesn't really address all of that in this
4 letter. This is a letter written by Ms.
5 Potterfield without my seeing the letter. I
6 only - I haven't - before it was written and
7 sent to Ms. Sherman.

8 Q. Let me correct myself. In paragraph six on the
9 second page she says, "In lieu of receiving any
10 of the above property Conrad to pay two million
11 dollars."

12 A. Right. So she does put that in there. Anyway,
13 yeah, my guess is that she took what I had given
14 her and put it in a letter to, in letter form
15 obviously. I assume that's what she did.

16 Q. Thank you.

17 A. I would like to add, though, if you don't mind,
18 that it really doesn't represent what I was
19 saying and feeling at the time. It's taken from
20 that, but it's not an accurate reiteration of
21 what I was trying to get across to Ms.
22 Potterfield at the time.

23 Q. Well, what's inaccurate?

24 A. It's just -- it's not - you know, it's the
25 phrasing. I'm obviously saying that I want this

1 to get in front of the court. I want papers to
2 be filed. I want the Complaint filed. I want
3 to get this done. Okay? And so she doesn't
4 really -- she doesn't transfer the emotion and
5 the mood and the intent of what I was offering
6 here. I think she paraphrased it and - but,
7 there, you have it.

8 Q. Exhibit 23.

9 (LETTER DATED JANUARY 5, 2005 FROM MS.

10 SHERMAN TO MS. POTTERFIELD MARKED AS

11 DEFENDANT'S EXHIBIT NO. 23 FOR

12 IDENTIFICATION.)

13 A. Okay.

14 Q. This is a letter from Attorney Sherman to
15 Attorney Potterfield dated January 5, 2005. Do
16 you recognize this letter?

17 A. I do.

18 Q. And this is a settlement proposal that Attorney
19 Sherman sets forth. It talks about the younger
20 child is to live with Mr. Powell for the rest of
21 the year to complete Hand Middle School. Was
22 that an acceptable alternative?

23 A. I'm sorry, what was the question?

24 Q. It talks about the younger child. I guess
25 that's Alexandria?

1 A. Right.

2 Q. To live with Mr. Powell for the remainder of the
3 school year so she can complete this year at
4 Hand Middle School. Was that acceptable? It's
5 on page one of the letter.

6 A. No, I know where it is, but that was only
7 acceptable if Ali had decided that she'd wanted
8 to stay at Hand when she was struggling and she
9 did not. so. That, no, it was not acceptable at
10 the time of this letter.

11 Q. Number three he is suggesting that he pay a
12 thousand dollars for child support for the older
13 daughter. Was that acceptable?

14 A. In my opinion, there is nothing acceptable about
15 this letter.

16 Q. It talks about in paragraph number seven that
17 Mr. Powell is willing to advance four hundred
18 thousand dollars by way of equitable
19 distribution upon condition that you vacate the
20 living quarters in Mais Qui by January 31st,
21 2005.

22 A. I didn't agree. You know, none of this is of my
23 making.

24 Q. I understand this is Ms. Sherman's proposal.

25 A. Right.

1 Q. But that was not acceptable to you?

2 A. That was totally not acceptable to me.

3 (LETTER DATED JANUARY 11, 2005 FROM
4 MS. SHERMAN TO MS. POTTERFIELD MARKED AS
5 DEFENDANT'S EXHIBIT NO. 24 FOR
6 IDENTIFICATION.)

7 Q. Let me hand you Exhibit 24. This is another
8 letter from Ms. Sherman to Ms. Potterfield dated
9 January 11, 2005. It starts out by saying,
10 "It's my understanding that Alexandra will be
11 returned from Aiken today, January 11. It is my
12 further understanding for the remainder of the
13 school year Alexandra will live with Mr. Powell
14 so she can finish the year at Hand Middle
15 School."

16 A. That was, like, maybe a brief week or two when
17 Ali was considering and she -- we talked about,
18 we talked about her staying with her father if
19 she wanted to stay at Hand Middle School, but
20 she did not. She adamantly wanted to -- she was
21 struggling at Hand and made the decision that
22 she needed to be with her sister in a smaller
23 school setting. So, I mean, that was the
24 decision at the time and obviously it must have
25 happened right around this letter because she

Powell, Carolyn

1 started school pretty much in Aiken in January.
2 So I don't know where this fell through the
3 loop, but that was a discussion we had, I will
4 say that, because I did want to make it easy for
5 Alexandra if she could excel and be happy in
6 Columbia.

7 Q. The last paragraph of page one, again,
8 reiterates the willing to pay the four hundred
9 thousand dollars on the condition that you
10 vacate the Mais Qui property. It says that you
11 have not paid rent for two years, you've caused
12 disharmony among the owners, and that your
13 moving to Aiken and absenting yourself from
14 Columbia and if you continue to stay they plan
15 to charge you as a holdover tenant.

16 A. That's laughable. There's nothing in that that
17 I agree to. That was not of my making. That's
18 Ms. Sherman's rantings and my husband's.

19 (RESPONSE FROM MS. POWELL DATED

20 JANUARY 15, 2004 MARKED AS DEFENDANT'S

21 EXHIBIT NO. 25 FOR IDENTIFICATION.)

22 Q. Exhibit 25.

23 A. There's your letter.

24 Q. This one is not signed. Is this a document that
25 you prepared?

1 A. It was one I gave to Ms. Potterfield.

2 Q. Okay.

3 A. That was an explanation of the letter you just
4 handed me.

5 Q. All right.

6 (LETTER DATED FEBRUARY 2, 2005 FROM
7 MS. POTTERFIELD TO MS. SHERMAN MARKED AS
8 DEFENDANT'S EXHIBIT NO. 26 FOR
9 IDENTIFICATION.)

10 Q. Exhibit 26. This is a letter from Ms.
11 Potterfield to Attorney Sherman. It shows a
12 copy going to you. She says that she
13 understands the beach house is under contract.
14 "Please confirm that the proceeds will be
15 deposited in your escrow account. We are still
16 willing to resolve this case on a permanent
17 basis." Did you see this letter?

18 A. I did.

19 Q. And did you agree with what Ms. Potterfield had
20 set forth there?

21 A. I don't know that I saw the letter until after
22 it was there, but I assumed that it meant that
23 the proceeds from the sale of the beach house
24 would be frozen but we all know the end result
25 of that.

(LETTER DATED FEBRUARY 8, 2005 FROM
MS. SHERMAN TO MS. POTTERFIELD MARKED AS
DEFENDANT'S EXHIBIT NO. 27 FOR
IDENTIFICATION.)

Q. Exhibit 27. This is a letter from Ms. Sherman
to Ms. Potterfield dated February 8 of 2005.
Are you familiar with this letter?

A. I am.

Q. She says that she's advised her client that the
proceeds from the beach house should be
deposited in an escrow account. She says that
her client is willing to resolve the case on a
permanent basis, invites an offer of settlement,
and then she goes on to state what she
understands to be Mr. Powell's settlement offer
which would be one point one five zero million
in cash, of which four hundred thousand has
already been paid, support of five thousand a
month for one year, four thousand a month for
the second year, two thousand a month for years
three and four, paying for the girls' college
education, equitable division of the personal
property. Was that proposal, offer of Mr.
Powell acceptable to you?

A. No.

Powell, Carolyn

1 Q. Why not?

2 A. Does it look like the offer I put on the table?

3 (LETTER DATED FEBRUARY 22, 2005 FROM
4 MS. POTTERFIELD TO MS. SHERMAN MARKED AS
5 DEFENDANT'S EXHIBIT NO. 28 FOR
6 IDENTIFICATION.)

7 Q. Exhibit 28 is a letter from Ms. Potterfield to
8 Ms. Sherman dated February 22, 2005. It shows a
9 copy going to you. Do you recall this letter?

10 A. I do recall the letter.

11 Q. She is responding to that letter we just looked
12 at, the letter of February 8. She says, "This
13 is close to what they discussed with regard to a
14 permanent settlement. The monthly money is less
15 than what they discussed and less than what the
16 girls need for their expenses. Please have him
17 provide her with some money for the girls."
18 Does that state your position at that time?

19 A. Not hardly. These are inter-memos between
20 attorney to attorney, as you know, Mr. Hill.
21 And they were both working on drafts of a
22 settlement. I gave the parameters of my
23 settlement. Beyond that, I wanted to go to
24 court and let -- I'm just saying, no, it was
25 not, very obviously not what I asked for.

1 Q. What did you think going to court would
2 accomplish?

3 A. That's not even a question that can be answered
4 right now. You know, I'm just saying that was
5 my offer, you read it, we just read it together,
6 and you saw between attorneys' communications.
7 And so what I got from that was at least they
8 were talking about a settlement to put on the
9 table that maybe we could -- that just went
10 away.

11 Q. Did you have discussions with Ms. Potterfield
12 and Mr. Taylor with regard to the pros and cons
13 of a negotiated settlement versus the pros and
14 cons of what a court would likely order?

15 A. No, I never had that discussion. I had very few
16 discussions with Ms. Potterfield. Most of our
17 communication was through my letters to her and
18 her letters between Marne and herself. There
19 was never a discussion about that, no.

20 Q. There was never a discussion about the
21 likelihood that a negotiated settlement would be
22 more favorable to you than what the Court would
23 order?

24 A. Mr. Hill, I wanted a negotiated early settlement
25 so that I could move forward and my children

1 would have a home. The years of doing this I
2 lost assets, I lost a business, I lost my home,
3 my children lost their home. Do I need to go
4 on? So I understood what it meant to get this
5 on the table and done early.

6 (LETTER DATED MARCH 23, 2005 FROM MS.

7 SHERMAN TO MS. POTTERFIELD MARKED AS

8 DEFENDANT'S EXHIBIT NO. 29 FOR

9 IDENTIFICATION.)

10 Q. I'll hand you Exhibit 29. This is Ms. Sherman
11 to Ms. Potterfield dated March 23 of 2005. It
12 says, "Please consider the following as Mr.
13 Powell's offer of settlement." Are you familiar
14 with this letter?

15 A. The contents are familiar. I haven't revisited
16 this in a while, but, yes.

17 Q. The second page, paragraph four, "Unallocated
18 Support". I think this is a reiteration of what
19 was offered previously, five thousand a month
20 for a year, four thousand for a year, two
21 thousand for two years. Was that agreeable to
22 you?

23 A. No.

24 Q. Under number six, "Equitable Distribution", Mr.
25 Powell is willing to pay one million one hundred

1 fifty thousand dollars in cash, four hundred
2 thousand, which has already been advanced,
3 deducting from the settlement sixteen thousand
4 which your client received from Washington
5 Mutual and deducting twenty-five thousand for
6 the horses your client got from Ed Caughman."
7 Tell me about that.

8 A. What's the question, Mr. Hill?

9 Q. About the twenty-five thousand dollars for the
10 horses you got from Mr. Caughman.

11 A. In a nutshell, we exchanged -- Mr. Caughman owed
12 us seventy-five thousand, or a hundred thousand,
13 I forget the exact amount, and I was allowed to
14 take the horses, the cost of the horses for the
15 girls off of that sum, which would have been
16 technically my share of the loan to Mr. Caughman
17 out of the marital funds. That's the short
18 version, I guess. The only version, I think.

19 Q. She says at the top of the last page, "I still
20 have no idea of the value of the household
21 contents and personal property which your client
22 has either in her possession or stored in the
23 trailers at the antique store." Did you ever do
24 a written inventory of the property in the
25 storage trailers?

1 A. At some point I did a draft out of my head. I
2 never had a physical inventory because I didn't
3 have access to the property and I would have had
4 to pull everything out of the storage units.
5 But, basically, Ms. Potterfield answered this
6 issue with Ms. Sherman. It was personal
7 property. That's all it was. We answered that
8 on more than one occasion, I promise you. And
9 if I did anything it was a draft out of pure
10 memory.

11 Q. Are those trailers still there?

12 A. No, Mr. Hill, they were moved to the house on
13 Wheat Street. They were personal property.
14 It's used furniture and my children's
15 possessions.

16 Q. And there was not any inventory?

17 A. There's no inventory.

18 Q. Artwork?

19 A. No inventory. It was all personal property.

20 Q. And you were aware of that from 2003 forward?

21 A. I was. And so was my husband and so was Ms.
22 Sherman (sic). Or Ms. Potterfield, thank you.
23 All of them.

24 Q. The last paragraph of this letter says, "Mr. and
25 Ms. Powell had lived for the majority of the

1 years of their marriage is that assets have been
2 liquidated and sold and they lived on the monies
3 provided by the liquidation of assets." Is that
4 erroneous?

5 A. That's whatever -- that's what you guys keep
6 telling me.

7 Q. Well, that's a question to you, Ms. Powell. Is
8 that accurate?

9 A. As you -- I mean, it is one definition of
10 assets. I mean, I probably take issue to the
11 way it's stated, but, yeah, I guess we could
12 argue that all day. I mean, certainly we lived
13 off the money we made together, sweat and blood.
14 Sorry.

15 (LETTER DATED APRIL 1, 2005 FROM MS.
16 POWELL TO MS. POTTERFIELD MARKED AS
17 DEFENDANT'S EXHIBIT NO. 30 FOR
18 IDENTIFICATION.)

19 Q. Exhibit 30. Do you recognize this document, Ms.
20 Powell?

21 A. I do.

22 Q. Is that your signature on the second page?

23 A. It is.

24 Q. Is this your handwriting?

25 A. It is.

1 Q. And this is your reply to the letter of Ms.
2 Sherman that we looked at a minute ago?

3 A. I'm assuming it was the one. I just received it
4 on April 1st.

5 Q. And that letter was dated the 23rd that we just
6 looked at?

7 A. Right.

8 Q. Of March. You state in this memo to Ms.
9 Potterfield that it's apparent that neither my
10 husband or his attorney intends to be equitable
11 or fair and you characterize Ms. Sherman's
12 statement as garbage; is that correct?

13 A. Looks like that's the word there.

14 (LETTER DATED APRIL 20, 2005 FROM MS.
15 SHERMAN TO MS. POTTERFIELD MARKED AS
16 DEFENDANT'S EXHIBIT NO. 31 FOR
17 IDENTIFICATION.)

18 Q. Exhibit 31 is Ms. Sherman's letter to Ms.
19 Potterfield dated April 20. She says, "Some
20 time ago, I sent you an offer of settlement and
21 I have not heard any response. My client has
22 asked me to withdraw that offer so please accept
23 this as notice that the offer is withdrawn." Do
24 you recall this letter?

25 A. I do.

1 Q. She also makes allegations about you stealing
2 property of the marital estate, but I don't
3 think it's necessary for us to get into that.

4 A. Thank you.

5 (LETTER DATED MAY 12, 2005 FROM MS.

6 POWELL TO MR. TAYLOR MARKED AS DEFENDANT'S

7 EXHIBIT NO. 32 FOR IDENTIFICATION.)

8 Q. Exhibit 32. Is this a letter that you wrote to
9 Mr. Taylor on May 12, 2005?

10 A. It is.

11 Q. And is that, I guess, an abbreviated signature
12 of yours on the second page?

13 A. That was real abbreviated.

14 Q. It looks like a "C"?

15 A. It is a "C". I'll accept it as mine.

16 Q. Okay. And you are reiterating your settlement
17 issues here. And, again, you start out with a
18 cash demand of two million dollars; is that
19 right?

20 A. I didn't waive from that, did I. And that's
21 right.

22 Q. And you wanted fifty-five hundred dollars a
23 month for five years as support; is that
24 correct?

25 A. That's correct.

(LETTER DATED JANUARY 30, 2006 FROM
MS. POWELL TO MR. TAYLOR MARKED AS
DEFENDANT'S EXHIBIT NO. 33 FOR
IDENTIFICATION.)

Q. Exhibit 33.

A. There's a bunch of chicken scratch on this one.

Q. This appears to be a letter that you wrote to
Mr. Taylor on January the 30th of 2006 to which I
would represent to you he has added some
marginal notes that I'm going to ask you about.
The language of the letter itself, is this a
letter that you sent to him?

A. This is a letter sent to respond, I'm sure, to
some of Marne Sherman's rantings. Or actually
it looks like interrogatories.

Q. Right. In paragraph four of the first page you
say, "Might I remind Ms. Sherman that I am part
legal owner of Columbia Management Group."
Explain to me your position in that regard.

A. Item four?

Q. Uh-huh. About two-thirds of the way down.

A. Because I owned the marital assets. All the
properties we owned whether they were in my
husband's name are ours together.

Q. So you are asserting this by way of your

1 interest in the marital estate?

2 A. Correct. I mean, we considered - not just
3 that, we considered everything we owned we owned
4 together, Mr. Hill.

5 Q. Well, you say you are part legal owner of
6 Columbia Management Group.

7 A. Well, I just mean there are a couple of other -
8 as you know, Terry and Tim Tyler were involved
9 in the Columbia Management Group. At least Tim
10 for a while.

11 Q. On the second page, last paragraph, you say,
12 "Lastly, I am in agreement that this case needs
13 to be resolved. Here's how. Write a check to
14 me in the amount of 1.6 million dollars which
15 reflects the two million previously asked for as
16 non-negotiable property settlement less the four
17 hundred thousand dollars I already received and
18 adequate child support of five thousand dollars
19 a month for five years." So that was your
20 settlement position as of January 30, 2006?

21 A. That was my response to the Interrogatories.
22 And, once again, years as being worn down to the
23 point I was tired of fighting this battle for
24 myself and so I was trying to get it to the
25 table. There is a common theme here.

(LETTER DATED SEPTEMBER 17, 2003
REGARDING OFFICE PROCEDURES TO MS. POWELL
MARKED AS DEFENDANT'S EXHIBIT NO. 34 FOR
IDENTIFICATION.)

Q. Exhibit 34.

A. Yes, I do have this letter.

Q. Do you recognize this document?

A. I do.

Q. This is on the letterhead of Golden, Taylor,
Potterfield & Barron. It's dated September 17,
2003. It's addressed to you. It includes such
things as office procedures, billable time,
hourly rates, retainer, etcetera. And the last
page, is that your signature?

A. It is, I believe. I believe it is.

Q. And dated September 17, 2003?

A. That's the date that's on here, I didn't date
it, though.

Q. Okay. And I believe you told me previously that
this is the time that you retained - this is
the date that you retained Ms. Potterfield?

A. There is a letter in the file that has the check
dated and the letter, the cover letter along
with the draft to her on - the date that I
actually gave her that check should be

Powell, Carolyn

1 documented, whether it was the 17th or the 23rd,
2 I don't remember off the top of my head. But, I
3 mean, it was along that time.

4 (FEE CONTRACT MARKED AS DEFENDANT'S
5 EXHIBIT NO. 35 FOR IDENTIFICATION.)

6 Q. Exhibit 35.

7 A. Okay.

8 Q. This is the Fee Contract between Carolyn Powell
9 and Ashlin Potterfield. Do you recognize this
10 document?

11 A. I do.

12 Q. Is that your signature on the second page?

13 A. That is my signature.

14 (FEE AGREEMENT AND ACKNOWLEDGMENTS
15 MARKED AS DEFENDANT'S EXHIBIT NO. 36 FOR
16 IDENTIFICATION.)

17 Q. Exhibit 36. Do you recognize this document?

18 A. I do.

19 Q. The first page says, "I was referred to Ms.
20 Potterfield by Bunni Crawford."

21 A. That's correct.

22 Q. Is that your handwriting?

23 A. That is my handwriting.

24 Q. And the last page, is that your signature?

25 A. I believe so.

1 Q. And the date of June 23, is that in your
2 handwriting?

3 A. That actually looks like my handwriting. That
4 must have been my first meeting with her before
5 I retained her actually. It was.

6 (PROSPECTIVE CLIENTS INFORMATION SHEET
7 MARKED AS DEFENDANT'S EXHIBIT NO. 37 FOR
8 IDENTIFICATION.)

9 Q. Exhibit 37. Do you recognize this document?

10 A. I recognize it from the files, but I didn't
11 recognize it initially, but I recognize it
12 recently.

13 Q. Okay. Is that your signature on the last page?

14 A. To be honest with you, I'm not sure. It
15 doesn't, it doesn't appear to look like the way
16 I sign, but I can't say. It doesn't appear to
17 be the way I sign, but it looks like the
18 document was on the same date as the one you
19 handed me previously.

20 Q. Is that your handwriting that has the date of
21 June 23, '03?

22 A. None of that looks like my signature or the
23 date. I dated the one before. No, the
24 signature and the date don't look like mine at
25 all, but I'm just putting that there. It's not,

1 it's not the way I sign my name. It looks -
2 the documents, obviously, if I saw both of them
3 would have presented at that first meeting, am I
4 correct?

5 Q. I think that's a valid assumption.

6 A. Right. And that meeting was probably 10 or 15
7 minutes. I mean, the only thing I remember
8 coming away with was the fee agreement and a
9 sheet explaining how to write my novel.

10 Q. Do you deny that that's your signature on this
11 Exhibit?

12 A. I'm just going to state that it doesn't appear
13 to be my signature.

14 Q. Well, I need to know whether or not you deny
15 that that's your signature on Exhibit 37.

16 A. I'm not sure. I can't deny it. If I signed it
17 that way I've never signed my name that way
18 before. I would have had to have signed it in
19 another frame of mind. All I'm saying is if you
20 compare the two signatures they're not alike.
21 But I can't, I can't deny or say that because
22 I'm not sure.

23 Q. Do you recall the document?

24 A. I don't recall this document. I recall this one
25 because I wrote on it.

1 MR. PENDARVIS: And you are referring
2 now to Exhibit 36.

3 A. I'm sorry, 36. I do remember this one. I wrote
4 on this one. I took away a retainer agreement
5 and that was all. And I didn't even take this
6 document with me. I didn't leave with either of
7 these documents. That's why I remember them.
8 But I took the novel sheet and a fee agreement
9 sheet and that was all I left with that day. So
10 this is the first time other than recently going
11 through documents I have seen this document that
12 I can recall. That's all I'm saying. And I
13 don't know if I signed it. I mean, it's asking
14 me to put my initials on every page, why I
15 wouldn't I have done that because if I'm told to
16 do something I do it, especially if an attorney
17 tells me. One that I hire and trust even though
18 I hadn't hired them.

19 MR. HILL: Can we take a short break?

20 MR. PENDARVIS: Sure.

21 (Deposition went off the record.)

22 Q. (By Mr. Hill) Ms. Powell, as they say, I have
23 some more questions.

24 A. Okay.

25 Q. I also have some oceanfront property in Arizona.

1 A. Yeah, I'll talk to you about that afterwards.

2 Q. Ms. Powell, is Conrad Powell aware of this
3 lawsuit against the attorneys?

4 A. He does have some knowledge of it, yes.

5 Q. Have you discussed it with him?

6 A. I have not.

7 Q. How does he have knowledge of it?

8 A. He just knows that I retained someone to
9 represent me in the case. I mean, that's all I
10 can tell you is that I did share that with him.

11 Q. How often do you see Conrad now?

12 A. When the kids are around, a lot. I was with him
13 pretty much for a couple of weeks. Almost a
14 daily basis when my children are both in town.
15 But other than that, you know, rarely. Maybe
16 once every few months. When we talk it's about
17 the girls.

18 Q. Where does he live?

19 A. He's lives on Hollywood. Shandon. 1710
20 Hollywood.

21 Q. Does she still operate Chic Antiques?

22 A. He does.

23 Q. Does he have any other business, to your
24 knowledge?

25 A. To my knowledge, as a business that primarily.

1 I'm not aware of anything else.

2 Q. Has his obligation under the Settlement
3 Agreement of April 2007, insofar as funds to you
4 are concerned, has that expired?

5 A. Do you mean do I receive support from him?

6 Q. Yes.

7 A. No, I receive no support from him.

8 Q. When was the last time you received any support
9 from him?

10 A. That would have been when Ali started college in
11 August of 2009.

12 Q. Okay. And that was support that he was paying
13 pursuant to the terms of the Settlement
14 Agreement?

15 A. Correct.

16 Q. Has he provided you with any funds since that
17 time?

18 A. No, he hasn't.

19 Q. No money outside of the Settlement Agreement?

20 A. No, not at all. I wish. Could you get him to?

21 Q. Have you paid a retainer to Mr. Pendarvis?

22 A. You mean has money exchanged between the two of
23 us?

24 Q. Yes.

25 A. No.

1 Q. Have you signed a Fee Agreement with him?

2 A. I have.

3 Q. Have you paid him any fees to this point?

4 A. Not at this point.

5 Q. Have you met with any consultants that may
6 testify as expert witnesses in this case?

7 A. I have not.

8 Q. Have you been interviewed by anybody about this
9 case other than Mr. Pendarvis and previously Ms.
10 Campbell and Mr. Hopkins?

11 A. I'm sorry, say that one more time.

12 Q. Sure. Have you been interviewed by anyone about
13 this case other than the attorneys that have
14 represented you?

15 A. Oh, no. No, not at all.

16 Q. What was your understanding as to why Ms.
17 Campbell and Mr. Hopkins withdrew from your
18 representation?

19 MR. PENDARVIS: I'm going to instruct
20 the witness not to answer that question as
21 closed communications.

22 MR. HILL: Okay.

23 MR. PENDARVIS: Do I need to file a
24 motion on that?

25 MR. HILL: No.

1 Q. On the two residences, let me go back to that
2 one more time, on Devine and Kenilworth?

3 A. That's correct.

4 Q. Did you -

5 A. The last two residences.

6 Q. - and your family ever live in Devine?

7 A. Yes, we did.

8 Q. For what period of time?

9 A. It was for a couple of years before we moved
10 into Kenilworth. We lived in Kenilworth going
11 on three years, so that would have been around
12 2000. I don't remember the exact dates.

13 Q. What was the reason for moving from Devine to
14 Kenilworth?

15 A. Because we wanted to buy it. It was a divorce
16 sale and a good buy. We liked the house better,
17 we bought it, and put Devine Street on the
18 market and it just didn't sell.

19 Q. And you lived in Kenilworth for how long?

20 A. Going on probably the third year by the time it
21 sold. We had just moved into it - again, I
22 don't remember the exact dates, but we lived
23 there for two, going on three years.

24 Q. Was that house ever on the market?

25 A. It was never on the market. You mean, at my

1 time?

2 Q. While you and your family were living there.

3 A. Right, I gotcha. Yeah, it has been on the
4 market. No, not until my husband put it on the
5 market when I was in Ireland on the church trip.

6 Q. Did you object to him putting it on the market?

7 A. I did.

8 Q. Did you tell him that?

9 A. I did.

10 Q. Did you tell him you didn't want it sold?

11 A. I did.

12 Q. Did you tell Ms. Potterfield you didn't want it
13 sold?

14 A. I did.

15 Q. You were happy living there?

16 A. I was. And my girls were happy. I didn't feel
17 I had a choice.

18 Q. Ms. Powell, have you attempted to do any sort of
19 financial calculation as to what money damages
20 you contend you are due in this case?

21 A. No, I haven't. Mr. Hill, I haven't.

22 Q. Has anybody done that on your behalf, to your
23 knowledge?

24 A. To put a number?

25 Q. Yes.

1 A. Not that I'm aware of at this point.

2 Q. Do you contend that you could have received a
3 better financial settlement than the one you got
4 on April the 27th of 2007 if you had been
5 represented by other counsel?

6 A. You mean if I had hired someone other than -

7 Q. If you had been represented by counsel other
8 than Ms. Potterfield and Mr. Taylor. In other
9 words, do you contend that because of whatever
10 deficiencies they may have had in representing
11 you that you got a worse settlement than you
12 could have come out with with other counsel?

13 A. Obviously, that's subjective, but I would say
14 without a doubt. Yeah, without a doubt.

15 Q. And how would you calculate that?

16 A. I think I got a pretty raw deal in the end, Mr.
17 Hill.

18 Q. You think the settlement that you got in April
19 of 2007 was not good?

20 A. It was nothing like what I even started out
21 with, much less what it might have been. So,
22 yeah, I would say in five years almost - you
23 know, going on five years of going through all
24 the trauma and the emotional - you know, not
25 having a home and not having - yeah, just all

1 that. Just the emotional trauma of going
2 through the years and the paperwork and
3 everything.

4 Q. Well, I'm going to ask you about the emotional
5 aspect, but right now I'm trying to focus on the
6 financial.

7 A. I know. I'm just saying that certainly if I
8 hired - that's a - I'm not sure that question
9 - that is just so subjective. I mean,
10 certainly I could, you know, maybe hire another
11 bad attorney, but if I hired legal counsel and I
12 think I would do that I would certainly be
13 better educated. But, yes, I would have come
14 out better if we had just taken my original
15 offer on the table a month after I hired Taylor
16 Potterfield, Potterfield Taylor. I don't know
17 which way you guys go with that.

18 Q. You would have come out better if somebody had
19 agreed to pay you the original offer? Is that
20 what you're saying?

21 A. If we had just settled or taken it to court in
22 the beginning, sure. I mean, I would have -
23 and not dragged me through three or four years
24 of this paper trail.

25 Q. Has anybody told you that the Court would have

1 ordered a better settlement than the one you
2 got?

3 A. I just -

4 MR. PENDARVIS: Object to the form to
5 the extent it asks for any communications
6 from her counsel.

7 A. Right. Mr. Hill, I'm just saying intuitively -
8 let's just say intuitively that I got half what
9 I got in the end. Let's just say I settled for
10 whatever they were offering me back, okay? This
11 is - I can't do this game. I mean, it's not -
12 because it's hard for me to separate the
13 emotional trauma of what I went through for four
14 years and put a price on that. Can you put a
15 price on five years of hell? Can anybody?

16 Q. And so that's a large part of what your
17 complaint of is in this case?

18 A. That's a big part of it. But, no, I wasn't
19 treated - I was - my house was taken away from
20 me, my business was taken away from me, my means
21 of support was taken away from me. My dignity
22 was taken away from me. That -- I mean, really?
23 I don't know how else to say that, Mr. Hill.
24 I'm not trying to be dramatic here, but I lost
25 everything and I'm just now building that back.

1 Q. But you have no way of affixing a dollar amount
2 to that?

3 A. I don't think anybody - I don't know how to do
4 that right now. But I can tell you that I
5 wasn't treated fairly and I didn't get what was
6 rightfully mine and what I worked for for almost
7 20 years and what I gave up and for all that
8 just to go away in a paper shuffle is just
9 somehow unfair to me, whatever figure you put on
10 it. But, yes, I think that there's a lot out
11 there that we didn't have on the table. I was
12 just trying to make sure my children's life
13 stayed the same.

14 MR. HILL: Thank you. That's all the
15 questions I have. Do you want to swap?

16 MR. WATSON: Yes.

17 MS. POWELL: What?

18 MR. PENDARVIS: Mr. Watson gets to ask
19 you some questions.

20 MS. POWELL: Oh, we're not done?

21 Sorry. It was a pleasure, Mr. Hill.

22 CROSS-EXAMINATION BY MR. WATSON:

23 Q. Ready?

24 A. Uh-huh.

25 Q. Ms. Powell, my name is Cal Watson, I'm also a

1 lawyer. I represent Reid Smith and his law
2 firm.

3 A. Okay.

4 Q. Mr. Hill has asked you a lot of questions and
5 I'm going to jump around a little bit because he
6 asked some things I was interested in and some
7 things I'm going to ask you that maybe he
8 didn't.

9 A. Of course.

10 Q. Let me start off by asking you this, I've looked
11 over the Complaint, what is it that you are
12 claiming that Reid Smith and his firm did wrong?

13 A. I guess, essentially that I felt that, or at
14 least I feel now that Reid wasn't really the
15 most qualified to find the assets and to
16 establish the marital estate. But I followed
17 the lead of my attorney into keeping him as that
18 person in my divorce situation. To establish,
19 you know, the marital assets.

20 Q. Anything else?

21 A. No, that's my issue. I don't think that was
22 done. I mean, I, I - what I'm trying to say is
23 I don't believe Reid Smith was qualified really
24 to give us the answers we really needed. So in
25 that sense - I don't know if that answered your

1 question, but I'm just trying to say that I
2 think he was a fish out of water and I didn't
3 really understand that as well as I should have,
4 I guess.

5 Q. Okay. You said he's not the most qualified to
6 give you the answers to the questions you
7 wanted?

8 A. Well, going into it when Mr. Taylor, you know,
9 brought him in to, you know, to assess the
10 marital estate, I mean, I felt that he could get
11 us all the answers we needed. I didn't realize
12 that his, his scope was limited as it probably
13 was.

14 Q. What did you believe his scope to be?

15 A. Well, I think he was trying to sort through it
16 and try to see what was, what was still there in
17 terms of the marital assets. I mean, you know,
18 I believe that in good faith Reid was trying to
19 do a good job and I trusted him, you know, to
20 represent me.

21 Q. What answers were you seeking that you did not
22 get from Reid?

23 A. The value of the marital estate.

24 Q. And do you believe that the -- I think it was
25 Exhibit Number 14. Was it 16? Look back at -

1 well, you should have them all there. It was
2 Exhibit 16.

3 A. 16?

4 Q. Just let me know when you get to 16, I have a
5 question first before we get to that question.

6 A. I have it.

7 Q. Are you there?

8 A. Yes.

9 Q. Look on page two, if you will, at the bottom
10 next to the left of Reid's signature. Do you
11 see that "CC: Carolyn Powell"?

12 A. Correct.

13 Q. Now, you testified earlier you weren't certain
14 that you had received a copy of this letter and
15 report. Does seeing a "CC" to you refresh your
16 recollection?

17 A. Yeah, he obviously copied it to me. It's just
18 been a while.

19 Q. Right. So do you believe that you received a
20 copy of this letter on or near May 19th, 2006
21 when he mailed -

22 A. Yeah, I believe that if he copied me that I
23 would have received it.

24 Q. Okay. And if you received it back on or near
25 May 19th, 2006 would you have spent time looking

1 through his findings and his timeline -

2 A. Yeah, of course.

3 Q. - and summaries?

4 A. Right.

5 Q. Do you need a minute to look at it now because I
6 do have some questions?

7 A. No, it's - I mean, I can probably answer them.
8 I just saw this as a draft, obviously, not a
9 final document.

10 Q. Why do you believe it was a draft? Is the word
11 "draft" anywhere written on here? Am I missing
12 that?

13 A. Well, what is it titled? It's not titled at
14 all, it's just a timeline analysis. You know, I
15 guess this was his report on what he felt that,
16 you know, was there.

17 Q. Okay. Let me ask you this, Ms. Powell: Can you
18 point out something on this report, an asset
19 that Reid did fail to identify?

20 A. I, I don't think you can do that specifically.
21 I think that the issue here is that if you are
22 even reading his language he's pressed for time,
23 we're all pressed for time trying to get this to
24 the table and so we're not - you know, somehow
25 I never thought this was a full evaluation of

1 the marital estate. I thought, in my opinion,
2 in my conversations with Reid, that it was a
3 sort of overall view to give to Mr. Taylor and
4 let Mr. Taylor respond to it and see if we
5 needed more information to move forward. There
6 was never - I never thought this was a final
7 analysis of the assets ever.

8 Q. Are you aware of a marital asset that is not
9 referenced in this report? The question is what
10 did he miss?

11 A. I, I would, again, I'd have to look at it
12 because I - it's not so much even missing maybe
13 an asset, it's the valuation of that asset and
14 maybe not giving an accurate value of it, or not
15 finding an asset that maybe we don't know about.
16 We didn't, we didn't have the time or the
17 luxury, I guess, according to Reid and Mr.
18 Taylor, to hire a forensic accountant for
19 whatever reason. He felt that Reid could give
20 him what he needed. I'm just saying that all of
21 this is timelines, it's not really value.

22 Q. Well, look at the asset summary beginning on
23 page 327.

24 A. This is just what we knew and nowhere does it
25 even go into Chic Antiques and inventory.

1 There's no - I'm just saying there are holes in
2 this everywhere. We didn't see if there was
3 something else out there we didn't know about.
4 And what did he do with the money that was
5 supposed to be in a CD? There was just a lot of
6 unanswered questions.

7 Q. And that's what I want to talk to you about, the
8 unanswered questions, because you've said he
9 wasn't qualified and that somehow he missed an
10 asset. To try to defend him -

11 A. Right.

12 Q. - I need to know what assets he missed and
13 where he made mistakes in this report or any
14 other work he -

15 A. I understand where you're coming from. You
16 know, I don't know where it falls in terms of -
17 you know, I just think that - I didn't realize
18 until I met with Cantzon Foster how important a
19 forensic accountant is when you are looking for
20 things and assessing marital estates, okay? I
21 had no idea. So you've got to remember I'm
22 coming into it from a better educated client
23 than I was when Reid and I -- and Reid's not a
24 marital - I mean, he never told me that he was
25 a marital - he was a CPA and he specializes in

1 bankruptcies. So I trusted Taylor and Reid to
2 tell me, obviously, what was there, if they
3 could find it. I mean, I'm not a CPA.

4 Q. And I don't expect for you to, but you've
5 alleged and you've said today -

6 A. And what I'm saying is there are assets out
7 there that we didn't - I always looked at this
8 as a working document not one that was, okay,
9 this is what we believe is here. I felt Reid
10 was presenting to Mr. Taylor what he had found
11 and then let's -- if we're going to go after
12 more assets, or we need to find more information
13 than Mr. Taylor would have directed, I guess,
14 Mr. Smith to do that.

15 Q. Right. And Mr. Smith had conversations with you
16 about other documents he was looking to you to
17 get, correct?

18 A. Right. I mean, I'm sure, but I don't remember
19 off the top of my head. I'd have to know what
20 those documents were.

21 Q. Did you receive some emails from him asking
22 specifically for documents?

23 A. We, we emailed back and forth. I'd have to know
24 what document. But we did. He communicated
25 with me and if there was something I could

1 provide I did provide it to him.

2 Q. But sitting here today and looking at this
3 report, can you tell me one asset that you
4 either knew about then or have since discovered
5 that's not detailed in what has been marked as
6 Defendant's Exhibit Number 16?

7 A. Well, no, because that discovery, that type of
8 discovery hasn't been done. But we did talk
9 about - I mean, Reid and I talked about some
10 other things like the inventory that had never
11 been done at either of the locations. That's a
12 big thing.

13 But I really think that this - I'm just
14 saying this was a working document, it was never
15 meant to be this is what we're going to base our
16 -- you know, what we're going to ask for on the
17 table. I never looked at it like that.

18 Q. So I think the answer to my original question
19 was, no, there's really not an asset you can
20 tell me about today that should have been in
21 this document whether a working draft or not?

22 A. Well, I did tell you, I mean, the inventory I
23 think should have been in there.

24 Q. Inventory? And that's the inventory of what?

25 A. Of the businesses.

1 Q. Okay.

2 A. I mean, I always did feel that should be part of
3 a financial disclosure.

4 Q. Anything else?

5 A. I, I felt that we would continue discussions
6 about this and this was, this was sort of a
7 baseline to see if we could determine what was
8 there and if we decided to make some settlement
9 offer based on this, what it would be. But we
10 never got, in my opinion, all the answers and I
11 think Reid was working under a deadline trying
12 to get Mr. Taylor some answers so that we would
13 know - you know, May of 2006, so this had been
14 going on for a while.

15 Q. Right.

16 A. For years.

17 Q. But Reid was only obtained -

18 A. Not with Reid, I'm not saying. I'm saying I'm
19 just, I'm worn out by it. I'm just trying to
20 give all the information that I have. But, you
21 know, we didn't look at it, you know, where that
22 money went after, you know. The CD, what
23 happened to that? You know, was that used to
24 purchase something else? I'm just saying there
25 are probably - I mean, we could sit here and

1 probably tear this apart, but I just felt it was
2 a working document and sort of a baseline of
3 what Reid thought the marital assets were. I'm
4 not saying -- you know, I don't know how to put
5 it any other way.

6 Q. So other than the inventory of businesses that
7 you've mentioned is there anything else today
8 other than the fact that you thought it was a
9 working document -

10 A. Even then that was a big issue for me. And it
11 should have been on here.

12 Q. Anything else?

13 A. We're talking big - we're not talking a few
14 hundred thousand dollars here.

15 Q. I didn't intend to express that. I'm just
16 trying to get a list of the things you think
17 should have been listed in this document that
18 were not.

19 A. Well, we were still at the point of discovery,
20 so I don't, I don't know. We just, we were just
21 - this is what I knew, you know.

22 Q. Okay.

23 A. This was the information I fed to Reid. I mean,
24 I think he found some, a couple of ownerships
25 Conrad was involved in that I didn't know about.

1 We never uncovered what the real stock, you
2 know, that was still around, how much was lost
3 in that not being around.

4 Q. So is it a fair statement that this was accurate
5 at the time?

6 A. No, because it still doesn't put all the issues
7 of the marital assets. I wasn't going to pull a
8 number out of my head. I mean, all I could do
9 is say there is inventory that needs to be
10 taken. We need to know what that is.

11 Q. Okay. I got that.

12 A. Okay. But so this can't be accurate without
13 that on here.

14 Q. Okay. So you've got inventory that's an issue.

15 A. Right.

16 Q. You contend it's not in here.

17 A. Right. And, and whatever happened to the money
18 that was taken and put in - is that still
19 there? We never confirmed whether it was even
20 still here. We were just -

21 Q. I'm not following you.

22 A. We were just trying to determine, I think, - I
23 said this is a baseline value of the marital
24 estate from the beginning.

25 Q. But I don't follow what this money is that was

1 taken in and out and up and down.

2 A. If you sell a property you put that money
3 somewhere and if you buy another piece of
4 property with that then that becomes another
5 asset. That's the same thing we're talking
6 about as living off assets.

7 Q. Okay. Did you look at the timeline of all the
8 sales and the various -

9 A. I did then, I haven't just now. So what is your
10 question? I mean, obviously, I'm not answering
11 your question.

12 Q. The question is I want to know why you think
13 this - if you think it's deficient and, if so,
14 why.

15 A. Well, it is deficient.

16 Q. Okay. We've got that, yes. Now, why?

17 A. Well, I pointed out one thing.

18 Q. We've got the inventory of businesses.

19 A. And because, because we didn't look for anything
20 else, we just looked at what was in front of us
21 and what we knew.

22 Q. Okay. So you said we didn't look for anything
23 else. Have you discovered since May 19th, 2006
24 anything else?

25 A. No, I haven't had anyone trying to do that for

1 me.

2 Q. So there's nothing else? Is it fair to say
3 there's nothing else that you later learned
4 about that should have been in this report other
5 than what you've already told me?

6 A. Not that I can say off the top of my head right
7 this minute.

8 Q. Is there anybody anywhere I can ask that
9 question to and get an answer?

10 A. Well, no, since you've sat through the whole
11 testimony, my responses with Mr. Hill you know
12 that even Mr. Foster and I didn't go that route
13 to look for, I mean, to try to value even the -
14 that's where we were going, but we didn't.

15 Q. Because you decided not to pursue a forensic
16 accounting by Tracy Amos?

17 A. Right, because I didn't want to spend another
18 two years in the court system.

19 Q. Right. But that doesn't have anything to do
20 with -

21 A. No, I know that. I'm just saying he would have
22 been the only - but, no, I haven't hired anyone
23 to go look for - I mean, you know, no. I don't
24 know. But I do know there is stuff and, and
25 we'll find that out.

1 Q. Okay. And one thing that Mr. Hill was very good
2 about that I'm not good about is talking over,
3 not talking over the witness and I've just did
4 it or you did it to me.

5 A. Right.

6 Q. So let's - I just want to remind you that while
7 I'm talking be sure to not talk so that the
8 court reporter can make -

9 A. Sure.

10 Q. - sure we have a clear record. And I'll try my
11 best to do the same.

12 A. Okay.

13 Q. Okay. You mentioned right before that that
14 there was other stuff, correct?

15 A. Right before what?

16 Q. Right before we talked about talking over each
17 other.

18 A. I'm just saying that there's no way I can say
19 what that is unless you go looking.

20 Q. Okay. Unless someone goes looking.

21 A. Unless someone goes looking.

22 Q. Is someone looking?

23 A. Not at the - well, not - we're not talking
24 about now, we're talking about Reid. We
25 weren't, I mean, we weren't at that point

1 looking, we were trying to establish what we
2 knew.

3 Q. Right. Reid's job was to look at the assets
4 with the information that he was given by you
5 and anyone else involved in the case.

6 A. I'm not saying that was his job, I'm saying
7 that's what he did. His job would have been
8 dictated by Mr. Taylor. Perhaps you can ask Mr.
9 Taylor what his job was, but I'm saying that
10 that - I expected at some point for perhaps
11 Reid or Mr. Taylor to want to take us the next
12 step and find out what holes we were missing.

13 Q. Okay. But to your knowledge, today, you don't
14 know what those holes are other than, -

15 A. Other than what I gave you.

16 Q. - other than what you just said a moment ago
17 about the inventory of businesses?

18 A. Well, not without totally reabsorbing this whole
19 document again and me having time to do that. I
20 think he got as much information as I had at the
21 time.

22 Q. Okay. Did you hire Reid Smith?

23 A. Mr. Taylor hired Reid Smith.

24 Q. But Reid Smith had been representing you
25 previously?

1 A. He was representing me, right, in another case,
2 but Mr. Taylor felt that because he was familiar
3 with, I guess, some of my issues that he would
4 be -- because he felt confident to represent me
5 in the marital asset side that it would be
6 easier to keep him on board. This is my
7 paraphrasing what Mr. Taylor had said.

8 Q. Okay. And just so we're clear, you're not
9 asserting claims in this suit related to any
10 other litigation other than your divorce?
11 Anything else that Reid did for you in the other
12 legal actions he representing -

13 A. Are you talking about other than my divorce
14 case?

15 Q. Yes.

16 A. No, not at all.

17 Q. I just want to make sure we're only talking
18 about the work -

19 A. We're only - yes.

20 Q. - that Reid did -

21 A. Yeah, this, right, right, right. No.

22 Q. Let me just repeat it so we have a clear record.

23 A. Sorry.

24 Q. I just want to make clear that the only
25 allegations you're making in this suit relate to

1 the work that Reid did in connection with your
2 divorce case as opposed to any other legal
3 matters he may have handled for you.

4 A. Correct.

5 Q. Okay. And I also want to make it clear, and I
6 think I understand this, but are you seeking
7 relief against Reid Smith or his law firm for
8 any actions or inactions, or events, actions,
9 issues, factual developments that occurred
10 before he was retained on February 22nd, 2006?

11 A. I'm not sure how to answer that.

12 Q. Are you seeking any relief, or have you asserted
13 claims that relate to things that happened
14 before you retained him as a lawyer?

15 A. Relief in my marriage?

16 Q. No, I'm sorry, relief in this case. Are you
17 claiming any of your causes of action where
18 there are claims against Reid or his law firm,
19 do they -

20 A. Go back to the beginning with Taylor
21 Potterfield?

22 Q. Yes.

23 A. I'm not sure how they can. I would think that
24 he came in at a time when it had already been
25 going on for years. I mean, I think where we

1 are is that it would have to be related to when
2 he showed up unless for some reason he wasn't
3 given - I mean, he should have been given
4 information that he was - I'm not really sure
5 how to answer that question, but -

6 Q. I think you understand that all I'm trying to -

7 A. I understand it, I'm just not sure how to answer
8 it.

9 Q. Are you trying to assert any claims against Reid
10 for things that happened before he was your
11 lawyer?

12 A. Before he was my lawyer? No.

13 Q. Is the answer no?

14 A. Before Reid was my lawyer am I trying to say -
15 in other words, anything that happened in the
16 divorce case prior to that?

17 Q. Correct. Because we've talked today about
18 things back to 2003.

19 A. Right.

20 Q. And I'm just trying to get a pinpoint as to what
21 you and I need to talk about.

22 A. I hear what you're saying. Well, I mean, what
23 is the liability of an accountant to assess the
24 marital estate? Does that go back to the
25 beginning or does it pick up where he comes in?

1 I would say that that should be relevant to
2 when, you know, the Court sees it as his
3 responsibility would be my only claim against -
4 or my only issues against Reid.

5 Q. Okay. Let me ask it this way: Are you saying
6 that Reid had any responsibility for the actions
7 of the other lawyers before February 22nd, 2006
8 when he was retained? You've said a whole lot
9 today about the things that are your issues,
10 your allegations.

11 A. Right, right.

12 Q. And we're talking about more than one lawyer.
13 I'm just trying to pinpoint the time when you -

14 A. No, I understand, but the thing -

15 MR. PENDARVIS: You need to let him
16 finish his question.

17 A. I'm sorry.

18 Q. Pinpoint the time that we're talking about. I
19 mean, do you disagree or dispute that he was
20 retained - I mean, you alleged it in your
21 Complaint on February 22nd, 2006.

22 A. Right, he was retained by Taylor to come in.
23 Whatever date he was retained, is that what
24 you're asking me?

25 Q. Well, that was in your Complaint, February 22nd,

1 2006.

2 A. Right. So that would have been when he would
3 have came into the marital asset side.

4 Q. That's what you've said in your Complaint.

5 A. Right, right. Well, the only thing I will ask
6 - the only way I can understand what you're
7 asking me better is to say, well, what is the
8 responsibility of someone coming in in the
9 middle of a case as a forensic accountant? Are
10 they just responsible for uncovering assets?
11 Are they responsible for information that was
12 gathered before that might be incorrect and
13 needed to be corrected? I don't know. I really
14 don't know how to answer that question because
15 I'm not really - I'm not an attorney, I don't
16 know the constraints of the law and how that
17 affects - you know, it's sort of like, you
18 know, once you come into a team, you know, we
19 are all working together, are you responsible
20 for the behavior of your team before you showed
21 up or are you just responsible for what you
22 bring to the table when you come in to play?

23 Q. What's your answer to that?

24 A. I don't think I can answer it.

25 Q. So you don't know sitting here today whether you

1 are asserting claims against Reid for the
2 actions or inactions of your other lawyers
3 before February 22nd, 2006 when Reid was
4 retained?

5 A. I don't think that Reid can be accountable for
6 my attorneys not taking action and establishing
7 the marital estate from the start. I don't
8 think it's his fault, if that's what you're
9 asking me.

10 Q. Until February 22nd.

11 A. Until he came in to - until he came in. And
12 maybe that's wrong, but that's how, that's what
13 I feel. I certainly think he could have said,
14 hey, Yo, you guys, what are you doing.

15 Q. When did you first retain Reid as a lawyer in
16 any case?

17 A. He was representing me in the foreclosure on the
18 barn with the person who I obtained a loan from.
19 And so he came in to - he was referred to me
20 for that reason.

21 Q. And you were satisfied with his legal
22 representation of you in that case, or at least
23 you expressed that to him, correct?

24 A. Right, right. Yeah, I think he did -

25 Q. With respect to his work in your divorce action,

1 did you ever once express any dissatisfaction to
2 Reid Smith regarding his performance, his
3 analysis, his characterization of the assets of
4 Conrad Powell?

5 A. Well, what I expressed to Reid was that we had
6 not uncovered everything and that there were
7 some holes and we needed to fill those holes.
8 The thing is, he was working under a deadline to
9 give -- Mr. Taylor wanted to have some idea of
10 what the marital assets were in 2006, if you can
11 imagine. So he brought Reid in to do that so
12 that he had at least an idea of where we needed
13 to start. I think what happened was that then
14 that just got on the back burner, like things
15 have throughout this case, and we never got back
16 to the table. It was never intended to be an
17 absolute assessment of the marital estate. Mr.
18 Taylor wanted an idea of what the assets were.
19 He had no clue what the assets were in 2006.
20 Potterfield had no clue what the assets were in
21 2006.

22 Q. So it was not your intent at that point for Reid
23 to uncover everything, your intent was to get a
24 working document?

25 A. No, no, I wanted a working document, but, no. I

1 intended -- I wanted everything uncovered. It
2 wasn't, like, okay, well, we're just going to go
3 with this. No. What I'm trying to say is Reid
4 had a working document and we never got back to
5 it is all I can tell you.

6 Q. You never had any discussion with Reid or
7 Michael or Cantzon after May 19th, or when it
8 originally came out on or near May 19th, 2006?

9 A. Well, certainly, but, I mean, Cantzon obviously
10 knew that there were holes in that because he
11 recommended that we hire Tracy Amos.

12 Q. And you declined to hire her?

13 A. Well, we were in the process of hiring her. I
14 didn't decline, I just couldn't - when I knew
15 it was going to take another year to two years
16 to get this case settled, to get my divorce
17 final, I emotionally couldn't handle it and we
18 didn't hire Ms. Amos.

19 Q. Whose decision was it not to hire Ms. Amos?

20 A. It was my decision to try to work out an
21 agreement and get it final and if we had not
22 been able to do that then we would have hired
23 Ms. Amos. We had her on standby, basically.
24 And, as you see, we worked out a very - a
25 settlement.

1 Q. But if you wished for Ms. Amos to be hired she
2 would have been hired, correct?

3 A. Of course.

4 Q. Okay. And if you decided you wanted to try to
5 move forward to a settlement and not hire her
6 that's what your lawyer, Cantzon Foster, would
7 have done?

8 A. Cantzon just knew what duress I was under and
9 that I couldn't - that emotionally I wasn't
10 able. He was following my direction because he,
11 you know, he just knew I couldn't take much more
12 of the stress of going through all this.

13 Q. So he was following your direction at that
14 point?

15 A. He was following my direction. He did, you
16 know, tell me that we were leaving - he knew
17 that we were leaving things on the table, I'm
18 sure. But, I mean, he wouldn't know that until
19 we hired Amos. But I'm saying that he
20 recommended that we hire a forensic accountant
21 to really dig and assess the marital estate.

22 Q. Okay. And that was Tracy Amos was the one that
23 you declined to hire?

24 A. I didn't decline to hire her because I didn't
25 think she would find something, I declined to

1 hire her because I needed closure.

2 Q. Let me read to you, and I only have one copy,
3 you may have a copy over there of your
4 Complaint.

5 A. I'm not sure which one.

6 Q. You say on paragraph 57, can you take a look at
7 that, please?

8 A. Right.

9 Q. Do you see that? "On or about December 13th,
10 2006 Defendant Smith took the deposition of
11 Plaintiff's husband wherein Plaintiff's husband
12 admitted that he had been living off the sale of
13 marital assets since the parties separation in
14 2003. Defendant Taylor was present during this
15 deposition." Do you remember the deposition of
16 Conrad Powell?

17 A. I do.

18 Q. And you were present as well, correct?

19 A. Right, correct.

20 Q. Move on to 58. "Defendant Smith failed to fully
21 explore and discern the extent of Plaintiff
22 husband's transfers and dilution of marital
23 assets." Do you see that allegation?

24 A. Right, I do see that.

25 Q. Can you tell me what you meant by that when you

1 alleged that?

2 A. What I've been trying to say for the last few
3 minutes is that we did not, we did not discover
4 everything, or find everything, or ask all the
5 right questions. We just didn't. It was a
6 working document. We did a deposition based on
7 a working document that was never, that was
8 never intended to be an assessment of the
9 marital estate.

10 Q. What questions do you think should have been
11 asked that were not asked?

12 A. The same thing I just tried to articulate, which
13 I'm not doing a very good job of obviously. We
14 knew certain assets existed, we knew they were
15 sold. We didn't know what happened to the money
16 after they were sold. We didn't know about the
17 trail that would have followed all of his
18 assets, where that money went. Whether it was
19 spent, whether it was still there, whether it
20 had been transferred into another asset. We
21 didn't have those - I'm just saying we didn't
22 have the information we were seeking in the
23 marital estate.

24 Q. Do you contend or believe that Conrad Powell
25 lied during his deposition?

1 A. I will say that he didn't full share everything.

2 Q. Do you have evidence or any proof or facts that

3 -

4 A. I don't want to get into his deposition and
5 saying whether he lied or didn't lie or was
6 sharing everything. Of course he wasn't sharing
7 everything. And of course there are some
8 stretches of the truth. I don't think it's my
9 place here to go into that.

10 Q. Well, if you are alleging that Reid Smith didn't
11 ask the right questions -

12 A. Well, he didn't. He asked what the inventory
13 was of - when we went into that would have been
14 the time to say, you know, let's find out what
15 he thinks the value of all that was. If he did
16 it's on the transcript, but that doesn't mean it
17 was accurate. We didn't have an expert go and
18 tell us what that was. I'm going to believe
19 Conrad to tell me what his assets are? Really?

20 Q. Well, he testified under oath, correct?

21 A. Correct.

22 Q. He filed tax returns, correct?

23 A. Correct.

24 Q. He filed a financial statement with the Court,
25 correct?

1 A. Of course.

2 Q. Isn't it possible that there was no other
3 property to find?

4 A. Isn't it possible that you manipulate papers
5 when your accountant happens to be a drug addict
6 that happens to be a partner of yours?

7 Q. Isn't it possible that there is no other
8 property to find?

9 A. That could be a - no. That could be a
10 possibility. I'll give you anything as a
11 possibility. We didn't look so how do I know
12 that.

13 Q. Okay. It is possible that there was nothing
14 else; is that right?

15 A. No, it's not possible there's nothing else
16 because I have already put on the table what
17 there was that we didn't ask for.

18 Q. I'm talking about the assets that you believe
19 were hidden. You've said from early this
20 morning that there have been hidden assets -

21 A. Well, there are hidden assets.

22 Q. - but you can't -

23 A. The inventory is hidden assets, you know.

24 Q. Okay. And what else?

25 A. I think there's property that he's invested in

1 and tied up that I don't know about.

2 Q. Can you tell me today what that property is?

3 A. No, I can't tell you what that is. I can tell
4 you that it most likely exists.

5 Q. Okay. What is the basis for your belief -

6 A. Because I know how -

7 Q. Wait, let me finish.

8 A. I'm sorry.

9 Q. What is the basis for your statement that it
10 most likely exists? Facts? Papers? Evidence?
11 Other -

12 A. Because I know how -

13 Q. - people?

14 A. I'm sorry. Tell me when you're finished. I'm
15 sorry.

16 Q. I'm done.

17 A. Because I know how my husband operates and his
18 brother operates and Tim Tyler operates.

19 Q. Okay. Anything else?

20 A. And that I know, you know, that he didn't
21 accurately state if he gave an inventory. He
22 may have given what Tim, what he puts on the
23 books, but that is not an accurate inventory.
24 To get an accurate inventory you've got to have
25 someone do an inventory.

1 Q. Any proof, though? Any facts, papers,
2 witnesses?

3 A. Not at this time.

4 Q. Okay. At Conrad Powell's deposition did you ask
5 Reid to ask additional questions?

6 A. That wasn't my job to ask, to find the assets.

7 Q. I understand that, but if you were sitting at
8 his deposition and you believed he was deficient
9 in some way in asking the questions did you give
10 him questions just like somebody gave me this
11 piece of paper with a question? Did you give
12 him any questions that you believe would get at
13 the heart of this gut feeling that you have?

14 A. You know, we talked about it beforehand and I
15 would have to look at my list of things that I
16 wanted him to ask. I don't remember without
17 looking at those notes.

18 Q. Do you have those notes?

19 A. I'm not sure, I haven't seen them recently. I
20 did ask Reid for copies of our correspondence
21 and things we were working on together that I,
22 you know, didn't have copies of before this
23 litigation started.

24 Q. But the notes you just referred to that you
25 would have to look at to see -

1 A. Oh, we would be sitting in a conference room
2 talking and making notes and I didn't always
3 have copies of those notes.

4 Q. What were you planning to look at to see if Reid
5 covered the things that you thought that he
6 should in that -

7 A. When we met before the deposition -

8 MR. PENDARVIS: Let him finish.

9 Q. - in that deposition?

10 A. We met before and talked about it and I
11 expressed issues, so I didn't have that list in
12 front of me.

13 Q. Did you write those issues down?

14 A. We did together, but I'm not sure I have a copy.

15 Q. Can you go back and look at your records and if
16 you have a copy -

17 A. I will.

18 Q. - give it to Mr. Pendarvis so that he can
19 produce it?

20 A. I certainly will.

21 Q. Okay. So let me get back to my original
22 question. At the deposition of Conrad Powell
23 did you give Reid any feedback or input either
24 during the deposition or at breaks that he was
25 not asking the questions that you wished him to

1 ask or suggest other areas of inquiry that he
2 might want to pursue so that you felt like he
3 had covered everything with Conrad Powell on his
4 financial status?

5 A. I will have to say that I don't think I was even
6 aware that I could ask Reid a question during
7 that deposition.

8 Q. At breaks did you discuss topics with him?

9 A. No. I never felt that that was my job.

10 Q. So you didn't know that you could talk to your

11 -

12 A. No, I honestly did not. We talked about all
13 this before.

14 Q. Okay. Did you indicate to Reid after the
15 deposition that he had done a good job?

16 A. You know, I honestly can't remember what I did
17 say to Reid after it was over. I remember Reid
18 saying something about the fact that, you know,
19 we discovered that there was, I don't know how
20 you put this in legal terms, but there was
21 mingling of our money into the business. His
22 premarital business location, the Chic Antiques,
23 that we established that there was definitely
24 the commingling of funds in that business since
25 the beginning. So that was the big thing. And

1 everybody went off in their corners and talked
2 and I don't believe we really had a real
3 conversation following that. But I'm not sure I
4 would know what a good job is because it's my
5 first rodeo.

6 Q. So you deny today that you told Reid he'd done a
7 good job at the deposition of Conrad Powell?

8 A. I don't deny it.

9 MR. PENDARVIS: Object to the form.

10 A. Could you rephrase that?

11 Q. Do you deny today that you told Reid following
12 Conrad Powell's deposition that Reid had done a
13 good job asking questions in the deposition?

14 A. I honestly don't remember saying that.

15 Q. So you do deny it?

16 A. I'm not - I'm saying that I don't remember
17 saying that to him. I don't really remember our
18 conversation except, you know, I might have said
19 thank you or - that would have been a lot for
20 me to say.

21 Q. You did a good job?

22 A. (No response.)

23 Q. Let me ask you this, Ms. Powell. I've looked at
24 the allegations of the Complaint, the one I just
25 read to you about Reid's handling of Conrad

1 Powell's deposition, and then the other
2 allegation is that he prepared this asset
3 summary. It doesn't necessarily indicate in
4 your Complaint that, I don't believe, that the
5 summary or analysis that Reid did was
6 insufficient. In fact, you indicate that he
7 questioned the veracity of Conrad Powell and
8 that he also discovered that Conrad was
9 attempting to conceal or move marital assets.
10 Those are allegations in the Complaint. Is
11 there anything else in this case that you seek
12 because of any actions or inactions of Reid
13 Smith?

14 A. Other than what you have in front of you?

15 Q. Uh-huh.

16 A. No.

17 Q. I just want to make sure that everything,
18 everything you claim Reid did or didn't do I
19 know about.

20 A. Right.

21 Q. We talked about the fact that you didn't think
22 he was qualified to prepare this asset summary
23 and the financial analysis. You thought he
24 didn't handle Conrad's deposition in the way you
25 believe he should have. And that, I believe,

1 you said there was some issues as to he was not
2 the most qualified to perform the work that he
3 performed for you. I just want to make sure I
4 understand -

5 A. What I need you to understand what's in the
6 Complaint is after the fact. You know, that's
7 after I left Taylor Potterfield and knew what a
8 forensic accountant was, okay? That's real
9 different. I was more educated. You know, so I
10 might in my ignorance or stupidity, you know, -

11 Q. This is the Complaint you filed last year.

12 A. I understand the Complaint. But I'm saying that
13 at the time that Reid was performing those
14 duties it didn't occur to me, or I didn't have
15 the knowledge Taylor Potterfield did that he
16 wasn't qualified to do what he did.

17 Q. I understand that you're saying today in the
18 context of -

19 A. Right.

20 Q. - in the context of the Complaint you filed
21 last year that Reid Smith, in your view, wasn't
22 qualified to do the work that he was doing for
23 you in your divorce, correct?

24 A. Under the circumstances, as we sit today, after
25 I left Taylor Potterfield and I understood what

1 a forensic accountant does then I would have to
2 say that.

3 Q. And you also say that he failed to discover some
4 assets that you believe are out there, but you
5 don't have any facts, proof or witnesses -

6 A. We failed to look, okay?

7 Q. But failed to look and -

8 A. Right, he failed to look.

9 Q. - and sitting here today you do not know that
10 there were assets had he looked because you
11 don't have any facts, witnesses or papers,
12 correct?

13 A. Well, I do have the knowledge of inventory. I
14 have that. I don't, but I do know just, you
15 know, again, based on business practices of my
16 husband I'm highly suspicious that there are
17 other things there.

18 Q. Right. And I got that, you're highly
19 suspicious.

20 A. Right.

21 Q. But that wasn't the question I asked you.

22 A. But I don't have those facts to give you today,
23 no.

24 Q. Okay. Right. Okay. Now, let's look at the
25 Final Agreement. And I think we've marked that

1 as well. I believe that's Defendant's Exhibit
2 20. Take a look at that. Pull that back out,
3 please.

4 A. Okay.

5 Q. I believe you indicated and we established last
6 time that you had signed this document and had
7 read it, correct?

8 A. Correct.

9 Q. And I think we established that Cantzon Foster
10 drafted it, or that's what your testimony was;
11 is that right?

12 A. That's right.

13 Q. Let's look at page three, if you will, three of
14 21.

15 A. All right.

16 Q. Look at the paragraph that begins, it looks like
17 it's the third full paragraph, that begins,
18 "Whereas both parties acknowledge that each is
19 familiar with the financial ability, income,
20 expenses, assets and liabilities of the other."
21 Do you see that?

22 A. I see that.

23 Q. Did you read that when you signed this
24 agreement?

25 A. I did read it.

1 Q. And did you discuss it with Cantzon Foster who
2 drafted this document?

3 A. That's where I was at the time and with the
4 knowledge that I had that's all I could do.

5 Q. Did you discuss it with Cantzon Foster that
6 particular provision?

7 A. I mean, he explained to me that that's - you
8 know, that we were giving up the opportunity to
9 hire a forensic accountant, sure.

10 Q. Okay. And that was part of the Agreement that
11 you signed; is that right?

12 A. At that, at that - here, you mean?

13 Q. Yes.

14 A. Well, I obviously signed it.

15 Q. Okay. Let's look -

16 A. I'll have to say that we didn't really explore
17 that duress part.

18 Q. You'd have to say what?

19 A. That we didn't really explore the duress part.

20 Q. But that was part of the Agreement that you
21 signed, correct?

22 A. I did sign it, of course, yes.

23 MR. WATSON: Let's mark this as
24 Defendant's, we'll just keep going,
25 Defendant's 38.

1 (TRANSCRIPT OF RECORD DATED MAY 2,
2 2007 MARKED AS DEFENDANT'S EXHIBIT NO. 38
3 FOR IDENTIFICATION.)

4 Q. I've handed you what's been marked as
5 Defendant's Exhibit Number 38. And this is a
6 transcript of your final hearing on May 2nd,
7 2007. Do you remember the final hearing?

8 A. I do.

9 Q. Do you remember testifying?

10 A. I do.

11 Q. Do you remember taking an oath at the time you
12 testified to tell the truth?

13 A. I did.

14 Q. Look starting on page, let's see, page three and
15 the Court asked you if you had read the
16 Agreement before you signed it and what did you
17 say?

18 A. "I did."

19 Q. And was that a true statement?

20 A. Of course it was true. Everything in here is,
21 you know, a true statement, but it doesn't mean
22 that I wasn't under duress at the time.

23 Q. Okay. Did you tell the Court you were under
24 duress?

25 A. No, I didn't. I don't think I even knew how bad

1 things were.

2 Q. Well, let's look down at the question about
3 halfway down page four where the Court says,
4 "Has anyone forced, threatened or coerced you to
5 cause you to enter into this Agreement?"

6 A. No, at that time no one did. I was - it was a
7 sense of a relief that I was finally in a
8 courtroom and somebody would finally give me
9 what I'd been trying to get for years. And so,
10 yes, this was definitely true at that time.

11 Q. Okay. Is it now not true? You say it was true
12 at the time when you testified.

13 A. It was true when I testified. I'm saying that I
14 wanted it over and I, you know, so I had to
15 agree to all this to get it over.

16 Q. Did you testify truthfully at your hearing on
17 May 2nd, 2007?

18 A. I testified truthfully the way I felt that day.

19 Q. You testified -

20 A. That was, that was my, my - that was my state
21 of mind at the moment to get the divorce final.
22 So, yes, I testified to all - you read the
23 testimony. I testified in truth that day. That
24 doesn't preclude the fact that I wasn't
25 represented fairly.

1 Q. Okay. Well, let's look at the other questions.
2 Look ahead of that. "Have you entered into the
3 Agreement freely and voluntarily?"

4 A. I did.

5 Q. And that was truthful?

6 A. I stood in front of a judge, I said all of this
7 was truthful on the day I stood in front of a
8 judge and did this.

9 Q. Look at page five.

10 A. What's the question?

11 Q. Do you see at the top where the Court says, "Do
12 you believe you have sufficient knowledge of Mr.
13 Powell's current financial condition to allow
14 you to knowingly enter into this Agreement?" Do
15 you see that?

16 A. I do see that.

17 Q. And what was your answer?

18 A. I'm sure it was I do.

19 Q. Okay. And so you agreed with the Court that you
20 had sufficient knowledge of your husband's
21 current financial condition that you could
22 knowingly enter into the Settlement Agreement,
23 right?

24 A. I had what my attorneys presented to me was the
25 financial information.

1 Q. Did you believe on May 2nd or before that you did
2 not have sufficient knowledge of Mr. Powell's -

3 A. Not, not -

4 Q. Wait, let me finish. You did not have
5 sufficient knowledge of Mr. Powell's financial
6 condition that would allow you to knowingly
7 enter into a Settlement Agreement?

8 A. I had the knowledge that day, but, I mean, we
9 had what we knew about it and so that is what I
10 was saying.

11 Q. But is that what the Court was asking you?

12 A. They were saying, you know, did I believe that I
13 have sufficient knowledge. What does sufficient
14 knowledge mean of his current financial
15 condition?

16 Q. And you said yes.

17 A. I had what I had. I didn't - I mean, I didn't
18 say, well, I haven't had time to go and find the
19 rest of it. I had what we had been able to
20 uncover to that point.

21 Q. But is that what the Court asked you?

22 A. Well, that's what I believe it was asking me.
23 That was his current condition. It didn't say
24 do you understand what his financial condition
25 was at the beginning of the marriage, you know,

1 when you got separated. It didn't ask me any
2 other point, it asked me on that day.

3 Q. So as of May 2nd, 2007 is your testimony that you
4 had sufficient knowledge of Mr. Powell's current
5 financial condition that would allow you to
6 knowingly enter into the Settlement Agreement?

7 A. It was all I had. What else could I have said?

8 Q. Well, you could have - did you tell the truth?

9 A. I did tell the truth. I didn't have any other
10 information at that time.

11 Q. Okay.

12 A. I had his current financial information by
13 everybody. Mr. Reid had given it to me through
14 Mr. Taylor, Mr. Taylor through Cantzon. What we
15 had I had and that was his current -- to my
16 knowledge, that was his current financial
17 information.

18 Q. And did you believe that information you had
19 that day was sufficient to allow you to enter
20 into the Settlement Agreement?

21 A. Obviously I did, I guess. I don't know what you
22 - I don't how to answer that. Sufficient to,
23 to get it over with. It was sufficient enough
24 for me at that moment, yes.

25 Q. Okay. Did you ever on the day of your final

1 hearing ask the Judge any questions about other
2 assets or enough time to find other assets, or
3 convey to the Court your -

4 A. What day are we talking about now?

5 Q. May 2nd, 2007 at your final hearing. Did you
6 ever convey to the Court your intuition that
7 your knowledge of your husband's business
8 practices might mean that there were hidden
9 assets that had not been uncovered?

10 A. I wouldn't have thought that that would have
11 been the place to do that. That I could have
12 done that.

13 Q. You should have done that?

14 A. No, I said I wouldn't have known that that was
15 even something I could do.

16 Q. Didn't the Court ask you if you had any
17 questions?

18 A. Yeah, but - I, you know, I agreed to this
19 because I wanted it over. And I had - what
20 information we had I decided to go with it at
21 that point. I mean, I don't know what else to
22 say or how else to say it. Does that mean I
23 think that, you know, I got a fair settlement?
24 No, but I accepted it.

25 Q. Did the Court ask you - let me see what the

1 Court asked you.

2 A. Well, it didn't ask me if you would have settled
3 two years before now would you be more happy.

4 It just asked me if I had sufficient knowledge
5 that day if I was - I mean, it asked -

6 Q. Do you see that question where it says, "Do you
7 believe this is fair to you and Mr. Powell?"
8 And you said, "Yes"?

9 A. If I had said no I would not have gotten a
10 divorce that day, but I did on that day. I was
11 ecstatic that my divorce was going to be final,
12 so, yes.

13 Q. Was that a truthful answer on May 2nd?

14 A. On May 2nd it was a truthful answer.

15 Q. Okay. So on May 2nd -

16 A. I was happy.

17 Q. You were happy and you thought the Agreement was
18 fair per your testimony in the Court, correct?

19 A. I thought that this document was an accurate
20 statement of how I felt the day I walked into
21 court.

22 Q. Your testimony was truthful? Is that your
23 testimony is today?

24 A. The testimony is always truthful. I don't know
25 what you're trying to ask me.

1 Q. If you were telling the truth.

2 A. I was telling the truth. I'm just saying, you
3 know, -

4 Q. Give me a second, I have another document I want
5 to look up.

6 MR. WATSON: Let me mark this quickly
7 before we go to the next one as
8 Defendant's - whatever the next exhibit
9 is. 39.

10 (AFFIDAVIT OF TRACY AMOS MARKED AS
11 DEFENDANT'S EXHIBIT NO. 39 FOR
12 IDENTIFICATION.)

13 Q. Do you know what this is?

14 A. This is the Affidavit.

15 Q. Of Tracy Amos?

16 A. Right.

17 Q. Have you seen this before today?

18 A. I really don't remember it, but I'm assuming
19 that it was when Cantzon Foster spoke with her
20 about hiring her, but I didn't realize we had
21 hired her.

22 Q. Do you know if that was filed with the Court?

23 A. It doesn't look like anything - I mean, I
24 haven't seen it in any of my documents.

25 Q. Do you see in paragraph four where Ms. Amos says

1 that you need the benefit and assistance of a
2 financial expert?

3 A. Right.

4 Q. Do you see that?

5 A. I do.

6 Q. And it's your belief that this was filed with
7 the Court?

8 A. This is the first time I've seen it, so I don't
9 know.

10 Q. So you don't know if the Court actually - this
11 was part of the Court file?

12 A. I can't tell you. I know that Cantzon Foster
13 had spoken with her about representing me and we
14 had not paid her a retainer. That's what I do
15 know.

16 Q. Okay. Look at Defendant's Exhibit Number 18, if
17 you will, which is your Affidavit. And we do
18 know that was filed with the Court, correct?

19 A. Are you talking about in this stack?

20 Q. Yeah, it should be something that Mr. Hill asked
21 you about earlier, Defendant's Exhibit 18. Do
22 you see that?

23 A. I'm looking, hang on. Go ahead.

24 Q. Okay. Now, take a look at paragraph 10. Once
25 you've read that just let me know.

1 A. I've read it.

2 Q. Okay. Is that your description of what you
3 believe your husband was doing as far as
4 depleting the assets?

5 A. Certainly part of it. I wouldn't say all of it,
6 but that was an accurate statement in terms of
7 taking some of the assets and living off of
8 them.

9 Q. And, in fact, Exhibit B is you attached part of
10 his deposition transcript which you believed
11 supported your argument or your claim that he
12 was living off the marital estate and depleting
13 assets; is that right?

14 A. Correct.

15 Q. So if this was part of your Affidavit that was
16 filed by the Court it would have been part of a
17 court file as far as you know, right?

18 A. Are you talking about Tracy Amos?

19 Q. No, no, your Affidavit.

20 A. What was that question again?

21 Q. This Affidavit, to your knowledge, or to your
22 information, was filed with the Court, correct?

23 A. This Affidavit?

24 Q. Right, yeah.

25 A. Well, it says it was filed. It's stamped

1 "Filed".

2 Q. Okay. And if it was filed with the Court it was
3 part of the Court file related to your divorce,
4 correct?

5 A. Right, correct.

6 Q. Do you have any reason to believe that the
7 Affidavit of Tracy Amos, the one we just marked,
8 was not filed with the Court?

9 A. I'm saying I don't know. I don't remember
10 seeing it. I mean, obviously it's an Affidavit
11 signed by her in my case. Maybe it was filed, I
12 just never saw it.

13 Q. But assuming it was filed it would have also
14 been part of a court file, correct?

15 A. Right, of course.

16 MS. POWELL: Can I take a quick break
17 to call my daughter's doctor and just -
18 do you guys mind if I - I need to call
19 him.

20 MR. WATSON: Absolutely.

21 (Deposition went off the record.)

22 Q. (By Mr. Watson) Let's go back on the record.
23 Ms. Powell, we've talked for the last few
24 minutes about your Affidavit where you describe
25 what you believe your husband was doing with the

1 marital assets that was made part of the court
2 record and we talked about Ms. Amos' Affidavit,
3 which was made part of the court record in which
4 she said further work was needed, and we talked
5 about the transcript of the final hearing on May
6 2nd, 2007. I want to ask you if you've seen this
7 document which we'll mark as Defendant's Exhibit
8 40.

9 (FINAL DECREE OF DIVORCE MARKED AS
10 DEFENDANT'S EXHIBIT NO. 40 FOR
11 IDENTIFICATION.)

12 Q. Have you seen this document before?

13 A. I have.

14 Q. Can you take a look at it?

15 A. Yeah, I'm trying.

16 Q. In particular let's take a look at page four.
17 Look at paragraphs nine and ten, and actually
18 11, too, and 12 is a good one. All of those are
19 on page four.

20 A. Okay.

21 Q. Do you see in paragraph nine where the Court
22 found and ordered that the property division
23 provisions of the Agreement are fair and
24 equitable?

25 A. Right.

1 Q. Do you see that?

2 A. Right.

3 Q. Did you disagree with that statement of the

4 Court?

5 A. This was on the day of my final -

6 Q. This is the Order that granted you a divorce.

7 A. Right, exactly. No, I didn't.

8 Q. Okay. So you didn't disagree with that?

9 A. I didn't.

10 Q. And do you think the Court was correct when it

11 said the Court questioned both parties under

12 oath about their understanding of the Agreement,

13 their desire to enter into the Agreement in lieu

14 of trial, and their desire to have it approved

15 by the Court. "Based on the parties' testimony,

16 I conclude that the Agreement was reached in a

17 procedurally fair manner."

18 A. What was your question again?

19 Q. Did you see that before?

20 A. I see it.

21 Q. Did you have any problems with that or disagree

22 with that?

23 A. What do you mean? The day I was in Court?

24 Q. When you read it did you agree with it? Did you

25 ask your lawyer about, hey, what's she talking

1 about? The Court found that the Agreement was
2 reached in a procedurally fair manner?

3 A. Under the circumstances I agreed to all of this.

4 Q. And that there were no other improper factors
5 which would impair the parties' ability to
6 freely and voluntarily enter into the Agreement?

7 A. Again, this document, under the circumstances, I
8 agreed to all of it. I stood before the Judge
9 and I agreed to it.

10 Q. And the Court actually found here that the
11 parties had been represented by independent and
12 competent counsel throughout and are satisfied
13 with the advice they've received and the
14 services rendered by their respective attorneys.
15 Do you see that?

16 A. I assume he was speaking of my current counsel.

17 Q. No, she says throughout, counsel throughout.

18 A. Throughout what?

19 Q. Throughout. That's what she says. Do you see
20 that?

21 A. Tell me what paragraph you're on again.

22 Q. On paragraph 10, last sentence.

23 A. Again, under the circumstances I agreed to this
24 document.

25 Q. Including all of paragraph 10?

1 A. I obviously did.

2 Q. Okay. Now, let's look at number 11 where it
3 says, "Each party has had ample opportunity to
4 confer with his and her counsel and financial
5 advisors and each considered the terms of the
6 Agreement to be fair and equitable." Do you see
7 that?

8 A. I do.

9 Q. Okay. And that accurately reflects your belief
10 and your position -

11 A. Under the circumstances on this day it did.

12 Q. Okay. "Each party is sufficiently knowledgeable
13 of the financial circumstances of the other and
14 is satisfied with the financial disclosure made
15 by the other."

16 A. I just said under the circumstances I agreed to
17 all of this.

18 Q. Okay. Everything in paragraph 11, correct?

19 A. Well, the document. I signed off on this
20 document. Under the circumstances this is what
21 I agreed to on the day I appeared before the
22 Judge. We don't need to go through it item by
23 item.

24 Q. Okay. Well, as long as you agree to this entire
25 document -

1 A. I'm saying, under the circumstances, -

2 MR. PENDARVIS: Let him finish.

3 Q. We don't need to go over it line by line if you
4 are testifying that you agree to the entire
5 document which has been marked as Defendant's
6 Exhibit 40.

7 A. I'm saying that under the circumstances I agreed
8 to this document on the day I appeared in court
9 when this was done.

10 Q. And you never asked Cantzon Foster or anybody
11 else to appeal this Order, did you?

12 A. Not since this Order - no, I have not asked
13 anyone to appeal it.

14 Q. You never asked Cantzon Foster or anybody else
15 to make a motion for the Court to reconsider
16 some of the findings or any of the findings
17 contained in Defendant's Exhibit 40?

18 A. I have not done that.

19 Q. Okay. You never terminated Reid Smith, did you?

20 A. Terminate?

21 Q. Or replaced him or fired him.

22 A. No, I never, we never had any termination
23 agreement. I didn't know that was my place.
24 When I terminated Taylor Potterfield I just, I
25 assumed that - well, actually he came in to do

1 the deposition with Cantzon Foster, so he would
2 have continued.

3 Q. Right. And I think you testified earlier that
4 he came to your hearing -

5 A. Right, I never -

6 Q. And on May 2nd, 2007 at the date and time of your
7 final hearing Reid Smith was counsel of record,
8 correct?

9 A. Right, I didn't see any reason to - you know, I
10 didn't see any reason for continuance, there's
11 no reason to terminate.

12 MR. WATSON: I'm going to mark this as
13 Defendant's Exhibit Number 41.

14 (HOURLY FEE AGREEMENT MARKED AS
15 DEFENDANT'S EXHIBIT NO. 41 FOR
16 IDENTIFICATION.)

17 Q. Okay. Can you identify Defendant's Exhibit
18 Number 41?

19 A. Are you asking me?

20 Q. Yes.

21 A. Yes. This is a document that I signed.

22 Q. And this actually relates to the foreclosure
23 action pending in Aiken County, correct?

24 A. Yes, it does.

25 Q. And so you see the handwritten addition "and

1 business issues related to divorce"?

2 A. I do.

3 Q. Were you aware that that was added?

4 A. I never saw that added until recently.

5 Q. Does that accurately reflect what Reid Smith was
6 retained to do for you? Business issues related
7 to divorce?

8 A. I don't really know what "business issues" mean.
9 I mean, he was brought in for Taylor to
10 determine marital assets. Is that what that
11 means?

12 Q. Right.

13 A. That's a pretty vague statement to me.

14 Q. Is it your testimony that he was brought in to
15 determine marital assets?

16 A. Right. But that's not exactly what that said,
17 but if you're saying that's what that means then
18 I would say that is what he was brought in to
19 do, to determine -

20 Q. Well, was it your understanding that he was
21 brought in to determine marital assets? I mean,
22 that's what you just said.

23 A. Evaluate.

24 Q. Evaluate, determine, analyze marital assets?

25 A. Right.

- 1 Q. Okay. Did Reid ever represent to you that he
2 was a CPA?
- 3 A. Yes. Are you a CPA? He is a CPA, is he not, or
4 no?
- 5 Q. Did he ever represent to you that he was?
- 6 A. He must have because I thought he was a CPA.
- 7 Q. How did you believe that? How did you come to
8 believe that?
- 9 A. I don't have our agreement in front of me. I
10 would have to look at that.
- 11 Q. What agreement? What would you have to look at
12 it?
- 13 A. I would have had a Fee Agreement with Reid.
- 14 Q. What is this?
- 15 A. That's not even signed by him.
- 16 Q. But it is signed by you. Are we looking at the
17 same thing? Look at page three.
- 18 A. Yeah, it's an Hourly Fee Agreement.
- 19 Q. Do you see two signatures there?
- 20 A. Oh, yeah, I do. And his as an attorney.
- 21 Q. One signature is yours?
- 22 A. Right, right. I see it.
- 23 Q. And Reid has signed it as an attorney, correct?
- 24 A. Right, correct.
- 25 Q. But is there anything on this document that

1 indicates that he is a CPA?

2 A. All I know is he's a bankruptcy attorney, but I
3 assumed he had his CPA degree. I don't know
4 where I got that information. It's in my head,
5 though.

6 Q. Okay. But you don't know where it came from?

7 A. I don't know.

8 Q. Did he represent to you that he was a specialist
9 in any area of the legal practice?

10 A. Bankruptcy. Basically that's what my
11 understanding is. He is a specialist in
12 bankruptcy.

13 Q. Is that contained in this Fee Agreement?

14 A. No.

15 Q. Do you know where you got that information?

16 A. He was advising me on bankruptcy.

17 Q. There's a difference between getting advice and
18 representing that you are a specialist because a
19 specialist indicates greater information,
20 greater training. Did he ever say he was a
21 specialist, certified specialist in any area?

22 A. Well, he was brought in to help settle this
23 foreclosure issue and I assumed -- I mean,
24 Taylor is the one that recommended him to me.

25 Q. But the reason Taylor recommended him to you was

1 because you were already being represented by
2 him in another case and was familiar with your
3 finances?

4 A. Taylor recommended him to me for the case for
5 the foreclosure issue in Aiken.

6 Q. Okay. Do you have a document, or piece of
7 paper, email, or anything else?

8 A. I would have to go through my records with Reid
9 and see what I have.

10 Q. Could you do that?

11 A. I will certainly do that.

12 Q. And if you find something can you give it to
13 your lawyer so he can produce it to me?

14 A. I will. I'll be glad to. I think I have, but,
15 I will.

16 Q. Now, were you satisfied with the services of
17 Cantzon Foster?

18 A. I was.

19 Q. Do you believe he mishandled or made any
20 mistakes or acted negligently in any way?

21 A. I think Cantzon Foster represented me the best
22 he could based on where I was emotionally and
23 what I needed.

24 Q. What role did Bunni Crawford play in the
25 settlement negotiations? She's listed as a

1 witness.

2 A. I don't know why, but she is a friend and she
3 was initially - she, you know, actually brought
4 me to Cantzon Foster and beyond that she
5 shouldn't have been a part of any of that.

6 Q. But didn't she negotiate directly with Conrad?

7 A. Well, that's Bunni. She tries to negotiate with
8 everybody. She had some conversations with
9 Conrad.

10 Q. And didn't she relay those conversations back to
11 Cantzon Foster?

12 A. I'm sure she did, but I had asked them not to
13 discuss the case at some point and I'm hoping
14 that they didn't. But they were talking, yes,
15 initially until I asked Cantzon to make that
16 decease.

17 Q. Did he make it stop?

18 A. I hope so.

19 Q. When did you ask him to have her stop
20 communicating with Conrad Powell?

21 A. It was shortly after I retained Cantzon.

22 Q. Okay. There was some communication, and I can
23 pull out the letter, and you may remember it.

24 A. Right.

25 Q. Where Cantzon represented or wrote to Marne

1 Sherman that the parties had gotten together
2 over the weekend and reached some agreements.

3 A. Uh-huh.

4 Q. Was Bunni Crawford involved in that meeting or
5 the facilitation of that agreement?

6 A. The parties had gotten together?

7 Q. Do you need me to show you the document?

8 A. I'm just trying to think of - but he was saying
9 that of Marne. I would think that he was
10 talking about me and Conrad, we were talking.
11 That would be my assumption.

12 Q. You and Conrad had direct communication -

13 A. Yeah, we had direct communication.

14 MR. PENDARVIS: You've got to let him
15 finish.

16 MS. POWELL: I'm sorry.

17 MR. PENDARVIS: Let him get until it's
18 quiet and then you can talk.

19 Q. You and Conrad Powell had direct communications
20 about the terms of a proposed settlement?

21 A. We talked about some issues, yes.

22 Q. Tell me about those conversations and the issues
23 you talked about.

24 A. The issues were mostly about personal assets,
25 personal property.

1 Q. Not the property division?

2 A. Well, that is part of the property division.
3 Personal property such as furniture.

4 (LETTER DATED MARCH 19, 2007 FROM MR.
5 FOSTER TO MS. SHERMAN MARKED AS
6 DEFENDANT'S EXHIBIT NO. 42 FOR
7 IDENTIFICATION.)

8 Q. Let me show you what has been marked as
9 Defendant's Exhibit 42. Do you see that?

10 A. Yes.

11 Q. Have you seen that letter before?

12 A. I'm sure I have.

13 Q. You're cc'd on it, correct?

14 A. Yes.

15 Q. As is Reid, correct?

16 A. Correct.

17 Q. But look at the very first sentence on the first
18 page. "It has come to my attention that our
19 clients have worked this weekend towards
20 reaching a complete property, support, custody
21 settlement agreement. Carolyn Powell has
22 authorized me to make the following offer of
23 settlement of the issues involved in this case.
24 The terms are as follows."

25 A. Correct.

Powell, Carolyn

1 Q. Do you recall the weekend?

2 A. I was in communication with Conrad. The clients
3 would have been me and Conrad, not a third
4 party.

5 Q. So Bunni Crawford was not involved in any
6 discussions that you and Conrad had? Is that
7 your testimony today?

8 A. Not the three of us together.

9 Q. Did she ever take messages to Conrad from you?

10 A. I communicated with Conrad directly when I had
11 an issue. I mean, Bunni and I may have talked
12 about some things initially, but I tried to get
13 her out of it in the end to let me work that out
14 between Foster and Sherman and Conrad. So in
15 the end it was only me talking to Conrad. But
16 there are times where she did communicate with
17 Conrad outside of my permission or knowledge,
18 yes.

19 Q. About the proposed settlement?

20 A. Exactly.

21 Q. And did she try to work out property division,
22 child support? Resurrect alimony? What did she
23 try to do?

24 A. I think she was, I think she thought in her own
25 way, you know, that she was being an advocate

1 for both of us and trying to be a mediator in
2 the middle, which is not something where she
3 should have been.

4 Q. Did Cantzon Foster ever tell you that Reid Smith
5 had made a mistake in any matter he handled for
6 you?

7 A. No.

8 Q. Okay. Did you ever tell Reid Smith that you
9 were unhappy or dissatisfied with his services?

10 A. I haven't had a conversation with Reid since the
11 divorce.

12 Q. How about from February 22nd, 2006 through May
13 2nd, 2007?

14 A. No. As I said, on May 2nd, under those
15 circumstances, I went into the courtroom and
16 offered myself up.

17 Q. So is the answer no?

18 A. The answer is - no, we didn't - I didn't have
19 communication with him since that time. Are you
20 talking about from the very beginning?

21 Q. No, from the time that he was retained in
22 February of 2006 through May 2nd, 2007 did you
23 ever tell Reid Smith that you were unhappy or
24 dissatisfied with the services he was providing
25 for you?

- 1 A. No, I didn't tell him that.
- 2 Q. Okay. And, in fact, on several occasions during
- 3 that period you said, you told him you were glad
- 4 he was involved and you were happy with his
- 5 services -
- 6 A. I thought Reid was -
- 7 Q. Let me finish.
- 8 A. I'm sorry, I thought you were finished.
- 9 Q. That you were glad he was involved and -
- 10 A. Don't breathe. I'm sorry.
- 11 Q. Isn't it a fact that on several occasions
- 12 between February 22nd, 2006 and May 2nd, 2007
- 13 that you told Reid Smith you were glad he was
- 14 involved and you were happy with his services?
- 15 A. I did.
- 16 Q. Okay. Now, Mr. Hill asked you what settlement
- 17 you thought you should have gotten and didn't
- 18 get. Remember those questions?
- 19 A. You guys are all over the place right now.
- 20 Okay, we're going back to Mr. Hill. He asked
- 21 me?
- 22 Q. He asked you at the end, he said, what
- 23 settlement do you think another attorney would
- 24 have gotten for you that these attorneys didn't
- 25 get. Do you remember that question?

1 A. I do remember that question.

2 Q. And you said you didn't know what that
3 settlement would be, but it was nothing like
4 what I started with. Do you remember that? The
5 terms were nothing - of what you ended up with
6 were nothing like what I started with. That's
7 what I wrote down that you said.

8 A. Right. I was basically saying that what I was
9 offering in the beginning I didn't get even from
10 that beginning offer, so that wasn't saying that
11 I ever felt that I got what I was entitled to.

12 Q. Do you believe that - and Mr. Hill spent a lot
13 of time going over the terms that you had
14 offered in the beginning, the two million
15 dollars and all the other things. Was there
16 ever a time that anybody agreed to that? That
17 Conrad agreed to your terms?

18 A. Not to my knowledge.

19 Q. Okay. And do you think another attorney could
20 have forced him to agree to your terms?

21 A. Well, I think if my attorneys had been
22 aggressive and gotten a Complaint filed that at
23 least it would have gotten his attention and he
24 might have been willing to settle and be more
25 fair in the beginning, yes.

1 Q. So you believe if a Complaint had been filed he
2 would have agreed to the terms of a settlement?

3 A. These are apples and oranges. What I do believe

4 -

5 Q. I just need to understand what you're saying.

6 A. What I'm trying to say is that we never got
7 aggressive with my husband over almost four
8 years of this back and forth paper shuttle we
9 never filed anything. We never filed a
10 Complaint, we never, we didn't ever assess
11 marital assets. I can barely talk because my
12 throat is so dry now, but we didn't do any of
13 those things over the period of, you know, three
14 to four years.

15 The answer to that question is do I
16 believe things would have been different had we
17 been more aggressive in the beginning, which is
18 what I tried to get my attorneys to do from day
19 one, from calls - you can look at all my
20 messages and telephone calls and pleadings and
21 begging to get this to the front burner, get it
22 into the system and tell me that my outcome
23 would not have been different. We never put any
24 pressure on Conrad Powell. We let him live and
25 do what he wanted to do and didn't change

1 anything for him except to slap him on the hand
2 and tell him to give me - make me move out of
3 my business and give up my income and live off
4 of a partial property settlement and take care
5 of my children.

6 Q. When you ultimately settled the matter shortly
7 before May 2nd, 2007 did you ever tell Reid
8 Smith, Cantzon Foster, Bunni Crawford that you
9 believe the settlement was insufficient?

10 A. Please repeat that.

11 Q. When you finally reached a settlement, or when
12 you reached a settlement shortly before May 2nd,
13 before your final hearing, did you ever tell
14 Cantzon this is insufficient, or Reid, this is
15 insufficient?

16 A. I've already answered that. On May 2nd I, under
17 the circumstances, I agreed to what we put on
18 paper that day in front of the Judge.

19 Q. Okay. At what point did you believe that you
20 had a claim of some sort against Reid Smith?
21 This claim.

22 MR. PENDARVIS: And I'm going to object
23 to the extent that you're calling for
24 communications with her counsel as in
25 present or former in this litigation.

1 Other than that, under that agreement, you
2 can answer it.

3 A. So rephrase your question, please.

4 Q. At what point in time did you come to the
5 conclusion that you had a claim, a legal
6 malpractice claim, that you wished to assert
7 against Reid Smith?

8 A. That was after the divorce filings. After my
9 divorce filings. After it was final.

10 Q. After May 2nd, 2007?

11 A. It would have been after May 2nd.

12 Q. And what caused you to believe that? What was
13 the process that you went through to get to the
14 point that you believe you had a claim, a legal
15 malpractice claim against Reid Smith?

16 A. Just knowing that the assets, the marital assets
17 weren't established and we didn't - and I
18 didn't have sufficient counsel to find that.
19 I'm going to retract that and just thinking back
20 because I'm having to think back of a lot of
21 documents and a lot of conversations. You know,
22 at some point Cantzon Foster and I did talk
23 about the fact that when we brought - so I'll
24 have to say that that part was discussed in part
25 when we talked about a forensic CPA, or whatever

1 you want to call Tracy Amos. So I did know at
2 that point when we talked about getting someone
3 else to come in and assess the marital estate.
4 That there was information that maybe I needed,
5 so I guess you could say from that point and
6 then it was reinforced later. But I really
7 don't know how to answer the question.

8 Q. Wasn't that April of 2007?

9 A. When?

10 Q. Let's look at Tracy Amos' Affidavit. Isn't it
11 dated -

12 A. Right, it's April sometime.

13 Q. Well, actually March 13th, 2007.

14 A. Uh-huh. Well, I'm just saying that that was
15 when I first had an inkling that I didn't -
16 that we needed to have someone look at it.

17 Q. So it was at that point you believe -

18 A. I would say from that point on that I knew that
19 I didn't, you know, have the right person
20 looking at my marital assets.

21 Q. And that you did not have sufficient information
22 to reach your settlement agreement; is that
23 right?

24 A. I'm sorry. Say that one more time.

25 Q. Well, you said at the time Tracy Amos was hired,

1 which she at least submitted an Affidavit March
2 13th, 2007, so she was obviously consulted as of
3 March 13th, 2007. Was it at that point you
4 believed that you didn't have sufficient
5 information about Conrad Powell's financial
6 condition to allow you to voluntarily enter into
7 a settlement agreement?

8 A. That's a lot. I don't know how to respond to
9 that actually because -

10 Q. Well, let's back up. You just said that you had
11 an inkling.

12 A. Right.

13 Q. You first had a thought or a feeling when Tracy
14 Amos was being interviewed or hired or retained
15 or consulted. She filed an Affidavit March 13th,
16 2007. Does that establish the time that you
17 first realized or thought that you may not have
18 enough information about Conrad Powell's
19 financial situation to move forward?

20 A. I would say I would have to have - that would
21 had to have been beginning of my not thinking I
22 had all the information.

23 Q. Is the answer yes?

24 A. Yes.

25 MR. WATSON: Do you want to step out

1 for a minute? I might be close to being
2 done.

3 (Deposition went off the record.)

4 Q. (By Mr. Watson) Do you recall the deposition of
5 Terry Powell and his girlfriend being scheduled?

6 A. I do.

7 Q. And do you recall that you cancelled or someone
8 cancelled those depositions?

9 A. If someone cancelled I would assume it was Mr.
10 Foster.

11 Q. Okay. Was that at your instruction?

12 A. That must have been at the time we were trying
13 to hammer out a final agreement I'm sure he did
14 to try reschedule if we needed to. To not tie
15 everybody up if we were going to get to a
16 settlement.

17 Q. Was that at your instruction?

18 A. With my conversation with Mr. Foster I'm sure it
19 was his recommendation that we do that.

20 Q. Okay. But you were aware -

21 A. I was aware of it.

22 Q. You were aware of it and you didn't object.

23 A. Right, correct.

24 Q. Okay. If, in fact, you didn't instruct him to
25 do that you certainly didn't object.

- 1 A. Right, I didn't object.
- 2 Q. Did you believe that Terry Powell or his
- 3 girlfriend could provide additional information
- 4 about the financial condition of Conrad Powell?
- 5 A. I did.
- 6 Q. You did?
- 7 A. I did.
- 8 Q. So why is that you didn't object when they were
- 9 cancelled?
- 10 A. Same reason I agreed to that document we keep
- 11 talking about in front of the Judge. I wanted
- 12 to get it over with.
- 13 Q. You were ready to have the case over; is that
- 14 right?
- 15 A. Exactly.
- 16 Q. Okay. Let me look over my notes a little bit
- 17 more. When did you first meet with Cantzon?
- 18 A. Gosh, January - I believe it was around January
- 19 17th, that date stands in my mind, but definitely
- 20 in the middle of January -
- 21 Q. Was that before or after you -
- 22 A. - 2007.
- 23 Q. I'm sorry, I did the same thing and I apologize.
- 24 A. We're getting good at this.
- 25 Q. Was that before or after you sent your letter to

1 Mr. Taylor?

2 A. That was before.

3 Q. And I think you testified earlier that Bunni
4 Crawford had introduced you to Cantzon Foster?

5 A. She did, right.

6 Q. Can you tell me how that came about?

7 A. She just said that she wanted me to meet Cantzon
8 Foster, that he was - she considered him a
9 great attorney. I mean, I needed some advice in
10 terms of finding someone who might could get
11 this divorce to a settlement and she said, well,
12 let me introduce you to Cantzon and see what he
13 says and if he feels like he can make things
14 move faster for you then - well, anyway, it was
15 a consultation basically to meet him and see if
16 he was - if I thought he was capable of getting
17 closure for me.

18 Q. Are you aware of any assets, marital property,
19 that was sold or compromised in any way from
20 February 22nd, 2006 through May 2nd, 2007? The
21 time that Reid Smith was involved in the case.

22 A. Not specifically, no.

23 MR. WATSON: I think I'm done. Thank
24 you.

25 MR. PENDARVIS: I have no questions.

1 MR. HILL: I have about six.

2 REDIRECT EXAMINATION BY MR. HILL:

3 Q. Ms. Powell, you keep saying that you were
4 desperate for Ms. Potterfield and Mr. Taylor to
5 file a Complaint. And I don't understand, the
6 Complaint in this case was filed on March 27th of
7 2004.

8 A. What I'm saying - that was actually, number
9 one, it was a year later than when I retained
10 Taylor Potterfield. But what I was trying to
11 say was whatever it would take to establish to
12 the Court, whatever that - I am not an
13 attorney, please understand that.

14 Q. I understand.

15 A. Whatever that document is to say to the courts
16 that we, that a divorce is pending. I needed to
17 be protected in terms of having a home for my
18 children, having funds to survive and support
19 myself. None of that was done. So whatever
20 document that is that protects your client that
21 says, you know, this is legal filing that -
22 what is the document I'm looking for? It's a
23 document that would protect me and make sure I
24 didn't lose assets or didn't, or wasn't put in
25 the position of being oppressed. I hired Taylor

1 Potterfield to protect, to do what I couldn't
2 do. Get a divorce and do it fairly and as - I
3 hired them to represent me. I've already
4 forgotten the question, I've rambled too much,
5 I'm sorry. The procedure that I'm trying to
6 think of I've forgotten but it would have been
7 whatever it would have been in the court system,
8 whether it was an emergency hearing for my
9 children, it was a document that would have
10 protected my assets and certainly protected my
11 right to alimony. And to get a divorce. To, to
12 do what I asked them to do and memos and letters
13 and phone calls for almost three years.
14 Whatever that document is, whatever that
15 procedure is.

16 Q. You talked with Mr. Watson about inventory not
17 being part of what Mr. Smith had found.

18 A. Right.

19 Q. Look back at Exhibit Two in that stack.

20 A. I can't find Two.

21 MR. PENDARVIS: Here's a copy.

22 Q. This is one of the documents that you said that
23 you furnished to Ashlin Potterfield early on in
24 her representation of you.

25 A. Correct.

1 Q. And it contained a copy of Mr. Powell's schedule
2 of assets and equity as of December 31, 2003 to
3 which some notes and you identified his
4 handwriting were attached. And the page I'm
5 referring to has four numbered paragraphs on it
6 with handwriting at the top.

7 A. This one?

8 Q. Yes. And paragraph two says, "Chic Antiques and
9 Interiors a South Carolina Corporation, cost
10 inventory value is estimated at three hundred
11 thousand dollars." To which apparently Mr.
12 Powell wrote a marginal note, "Four hundred
13 thousand dollars, question mark." So that was
14 information regarding the value of the inventory
15 that you provided to Ms. Potterfield early on in
16 the litigation, was it not?

17 A. I gave her the information that was being shared
18 between my husband and his accountant. That
19 didn't mean this information was correct.

20 Q. Well, did you have any basis to disagree that
21 the inventory value in 2003-2004 was somewhere
22 in the neighborhood of three hundred to four
23 hundred thousand dollars?

24 A. That is not a correct assessment of the
25 inventory at that time and I explained that to

1 counsel at the time.

2 Q. What did you explain?

3 A. That that is not a correct assessment of the
4 inventory of that business.

5 Q. What did you tell them the correct inventory
6 was?

7 A. Nobody knows, nobody's done an inventory in
8 forever, never.

9 Q. Well, you worked in that business every day?

10 A. Of course I did.

11 Q. Okay. And you've bought and sold.

12 A. Of course.

13 Q. So you had some idea of what the inventory was
14 valued at.

15 A. I did and I shared that with counsel and it
16 wasn't - it was far greater than that amount.

17 Q. What did you tell Ms. Potterfield or Mr. Taylor?

18 A. Actually, I don't know that I gave them a - I
19 mean, I couldn't without doing a physical
20 inventory. I could guess. Guessing would not
21 tell me what the assets were. I can make
22 anything up. But I know the assets were far
23 greater than what's being reported in financial
24 statements and I made that real clear from the
25 beginning. That we knew that this was between

1 Conrad and his accountant after the divorce
2 proceedings started, after we separated.

3 Q. But you don't have a reasonable estimate from
4 working in that business on a daily basis -

5 A. At this time, or?

6 Q. No, no. In 2006 when Mr. Smith prepared that
7 document that you criticized for leaving out the
8 inventory, you don't have any reasonable
9 estimate of what the value of that inventory was
10 at that time?

11 A. Can you rephrase? You're asking me if I knew
12 what the reasonable value for -

13 Q. If you being a person who worked in that
14 business -

15 A. Right. In 2006 when Reid Smith, when that
16 document was - I wouldn't have known at that
17 time because I wasn't working - I didn't have
18 access to the property at that time.

19 Q. Okay. When is the last time that you worked in
20 that business?

21 A. It would have been 2003.

22 Q. And do you have a reasonable estimate of what
23 the value of the inventory was at that time?

24 A. I could have guessed.

25 Q. Well, a guess is not going to do you or me any

1 good. I'm asking you do you have a reasonable
2 estimate as someone who is involved in the
3 business?

4 A. I think I do.

5 Q. What would that be?

6 A. It would be - today or then?

7 Q. Then. When you were familiar with the inventory
8 of the business.

9 A. Again, this is 20,000 square foot of inventory
10 and locked vaults and on and on and on. Over a
11 million. Let's start there.

12 Q. What about as of August the 27, 2004? August
13 26, 3004.

14 A. Inventory never got depleted, it got replaced.

15 Q. Did Mr. Foster ever suggest to you that you
16 should bring a legal malpractice action against
17 Ms. Potterfield, Mr. Taylor and Mr. Smith?

18 A. He didn't suggest, he didn't suggest, he was,
19 quite frankly, just in shock over a few things.
20 I mean, I was in shock when I first met with him
21 that things were not being handled as they
22 should have been. So I don't know that the word
23 "sue" was a word that was used in our
24 conversations.

25 Q. Did he suggest to you that there was a basis to

1 claim legal malpractice against those folks?

2 A. He shared with me that my representation
3 definitely had some big holes.

4 Q. Specifically what did he say?

5 A. I don't know that I can tell you a specific
6 conversation. We talked about it and he felt
7 that I was not - I mean, he didn't feel like I
8 had fair representation. But we did talk, talk
9 about the issue once, you know, he got more
10 familiar with the case and he knew how things
11 were handled and what holes were not filled. So
12 we talked about it. I can't remember a
13 particular conversation. I would have to really
14 think back over - it was a very short
15 relationship with Mr. Foster, as you might
16 imagine, and his catching up with my case took a
17 couple months. I hired him in January and then
18 in March he still was trying to catch up.

19 Q. So when did you have the conversation in which
20 he suggested that there were holes that were not
21 filled, to use your language?

22 A. I would just say around the time when we were
23 talking about hiring Tracy Amos in March.
24 Around that time. March or April, you know,
25 when we were discussing whether I should move

1 forward and hire Tracy and go back and do the
2 things that hadn't been done the first round.

3 Q. What did he tell you that Ashlin Potterfield did
4 that she shouldn't have done or failed to do
5 that she should have done?

6 A. I'm not really trying to recall - I'm not
7 recalling specifics, I'm just talking in
8 generalities. I mean, a forensic accountant
9 would have been one to assess the marital
10 estate, you know, straight off the bat. We
11 talked about those issues, but, you know, I
12 don't know that they are necessarily relevant
13 here. You know, I agreed to not hire Tracy Amos
14 and move forward, but he definitely felt that if
15 I were to - I think he just sort of left that,
16 you know, to me.

17 But certainly there was reason to be
18 dissatisfied with my former counsel, plenty of
19 it. His mission for me was to get my case in
20 front of the Judge and get it finalized. Or,
21 you know, if I choose to drag it out and start
22 fresh and bring in the experts we needed.

23 Q. Same question with regard to Michael Taylor.
24 What did he tell you that Mr. Taylor did that he
25 shouldn't have done or failed to do that he

1 should have?

2 A. We didn't separate Ashlin, Taylor in those
3 conversation. When we talked about things that
4 were done and not done it was basically Taylor
5 Potterfield as a whole. It wasn't like we were
6 sitting and discussing attorneys and their
7 styles and all that. It was more - I think he
8 was trying to represent me the - Cantzon was
9 trying to get me to the table as fast as he
10 could and he followed my direction. He gave me
11 advice and told me, you know, those were choices
12 I had to make whether I continued the litigation
13 or, you know, I settled. So, of course, any
14 good attorney would tell me that I wasn't
15 represented fairly.

16 Q. When you met with Mr. Foster was Mr. Taylor
17 still actively representing you at the time?

18 A. Yes, he was. When I met with Mr. Foster I still
19 - Michael Taylor was still retained. I had
20 just met with Mr. Foster as a consultation.
21 And, like I said, we didn't get into these heavy
22 issues until probably around March when he had
23 time - he wanted to, you know, when I decided
24 to hire him and wrote Taylor the letter he
25 needed a few weeks to catch up and read the

1 files. We didn't really have discussions about
2 all that until we had a chance to - I mean, he
3 wanted to get familiar with the case before he
4 gave me any advice.

5 Q. Which happened first, your retaining Mr. Foster
6 or your sending the letter of termination to Mr.
7 Taylor?

8 A. Simultaneous. When I hired Mr. Foster I
9 basically wrote Mr. Taylor a letter that I no
10 longer needed his services basically.

11 Q. Did Mr. Foster advise you that if you thought
12 the Settlement Agreement was inadequate that you
13 could make up the difference by bringing a
14 malpractice suit?

15 A. His? Are you talking about with what our - no,
16 he never advised me of that.

17 Q. That if you thought the settlement that you
18 agreed to in April was deficient that you could,
19 in a word, make up the difference by bringing a
20 malpractice action?

21 MR. PENDARVIS: Object to the form.

22 Q. You can answer it.

23 A. Cantzon never put anything in those words to me.
24 He never expressed, he never expressed those
25 feelings or that option to me in any words.

1 Q. Did anybody?

2 A. You know, there was never, there was never - it
3 wasn't a competition. I was trying to get - I
4 wasn't even thinking along those lines at the
5 time of suing someone for malpractice. I mean,
6 had advice from friends, obviously, that after I
7 hired Cantzon Foster tried to lead me that way,
8 but I wanted to focus on letting Mr. Foster get
9 the job done.

10 Q. Mr. Foster tried to lead you this way or your
11 friends?

12 A. No, no. I mean, I'm saying Mr. Foster, Mr.
13 Foster was trying to represent me in my divorce
14 case and he was not engaging in, you know, what
15 could happen before or after, he just made it
16 very clear to me what choices I was making and
17 what I agreed to. I had to decide, that's what
18 I had to live with if I chose not to move
19 forward. So you asking me if Mr. Foster had -
20 no, he did not make those assumptions and that
21 wasn't part of his counsel.

22 MR. HILL: Okay. That's all.

23 MR. WATSON: Nothing from me.

24 (Deposition concluded at 6:20 p.m.)

25

1 STATE OF SOUTH CAROLINA)

2 : C-E-R-T-I-F-I-C-A-T-E

3 COUNTY OF LEXINGTON)

4 I, Elaine G. McLeod, Court Reporter and Notary Public,
5 certify that I did have Carolyn Mitchell Powell to
6 appear before me at 10:09 a.m. on Thursday, January 27,
7 2011 at the Law Office of Turner, Padgett, Graham &
8 Laney, P.A., 1901 Main Street, 17th Floor, Columbia,
9 South Carolina; that the witness was sworn and cautioned
10 to tell the truth, the pages constitute a true and
11 accurate transcript of the testimony given at that time
12 and place.

13 I further certify that I am not of counsel or kin to
14 any of the parties to this cause of action, nor am I
15 interested in any manner in its outcome.

16 IN WITNESS WHEREOF, I have hereunto set my hand and
17 seal this the 11th day of February, 2011.

18
19
20
21 _____
22 Notary Public for South Carolina
23 My Commission Expires: 08/17/2015
24
25

Powell, Carolyn

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