

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 3 of 4
Pages 925 - 1384

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1 A. About this same time. I didn't remember
2 the exact date I had the conversation with Marne
3 about that, but it's all around this same time
4 period.

5 MR. PENDARVIS: The court reporter needs
6 to do some numbers for me. Anybody need to take a
7 break?

8 (A recess transpired.)

9 (PLF. EXH. 37, Letter to Ashlin Dated
10 November 4, 2004, Bates Stamped 00250
11 and 00251, was marked for
12 identification.)

13 BY MR. PENDARVIS:

14 Q. We're back on. Ms. Potterfield, while
15 you were out, I put in front of you a letter. It
16 appears to be a letter from Ms. Powell to you dated
17 November 4, 2004, marked as Exhibit 37. Did you
18 receive this letter?

19 A. Yes.

20 Q. Is this the basis for the numbers you
21 gave me earlier, where she had received
22 approximately 50,000 over nine months? Is that --

23 A. Some of it. Yes.

24 Q. Okay. Did you respond to Ms. Powell
25 after receiving this letter?

1 A. Yeah. This is just part of our ongoing
2 conversation about this, you know. And she
3 acknowledges in here that, yeah, he'd be better off
4 having the Court setting child support. He'd be
5 paying a lot less money. You notice, too, that the
6 other issue that we were dealing with was the
7 custody and her being able to move the children to
8 Aiken.

9 Q. But she's not telling him she's moving
10 the children to Aiken here; right?

11 A. No. But that was what the plan was.
12 (PLF. EXH. 38, Letter to Ashlin Dated
13 November 11, 2004, Bates Stamped 00252,
14 was marked for identification.)

15 BY MR. PENDARVIS:

16 Q. I'm passing you another letter. This
17 one is marked as Exhibit 38 to your deposition. I'm
18 going to represent to you that this is from Mrs.
19 Powell. I don't have any other indication, but do
20 you have any reason -- first off, did you receive
21 this letter?

22 A. I believe this is just part of it.

23 Q. Okay. Did you receive it? And my
24 apologizes, I don't have the rest of it; but did you
25 receive at least this first page?

1 A. I do remember this. Yes.

2 Q. About the break-in?

3 A. Yes.

4 Q. And this is the first time I see Mrs.
5 Powell referencing Aiken in her correspondence to
6 you, November 11, 2004. Are you aware of any other
7 references to moving to Aiken or the Town of Aiken
8 in any prior communication from Ms. Powell?

9 A. I'd have to go back through it. I mean,
10 I know we talked about it. I mean, I know she
11 talked to Conrad about it because it was in the
12 letter from Marne. So I mean, it had been -- it was
13 not news in November 2004..

14 Q. Was there any plans to try to remedy her
15 homeless situation?

16 MR. HILL: Object to the form.

17 THE WITNESS: She was not homeless
18 and -- I mean, again, it was kind of in her hands to
19 decide where she wanted to live. The problem was
20 that, you know, he had agreed to a range and she
21 wasn't staying in that range and so then he wouldn't
22 agree. And then we had another problem was that,
23 you know, then he decided that perhaps he didn't
24 want the children that far away from him. So those
25 were some impediments that we trying to work -- get

1 through and get over so that she could accomplish
2 what she wanted.

3 BY MR. PENDARVIS:

4 Q. What was the operating plan by November
5 2004 on how were you going to handle the litigation?

6 A. Well, we were still trying to deal with
7 some of the other -- there were some problems going
8 on in this building with the other tenant. There
9 was some other -- still some other allegations
10 against her regarding some banking and some checks.
11 So we were dealing with most of those issues and
12 waiting for her to find what she wanted to buy so we
13 could get the advance from Mr. Powell.

14 (PLF. EXH. 39, Letter to Marne Sherman
15 from Ashlin B. Potterfield, Dated
16 November 12, 2004, Bates Stamped
17 Original Client 159 and 160, was marked
18 for identification.)

19 BY MR. PENDARVIS:

20 Q. Ms. Potterfield, I've just passed you a
21 letter. Appear to be a letter from you to Ms.
22 Sherman marked Exhibit 39. Is this indeed your
23 letter?

24 A. Yes.

25 Q. Is this in response to the questions

1 about the money?

2 A. Yes. Some of it is, yeah.

3 Q. And there's a reference on the third
4 full paragraph that there's no immediate plans to
5 move to Aiken, in part because she has no funds to
6 do so. Do you see that?

7 A. Right. I mean, she had not picked out a
8 place; but they were going almost every weekend. I
9 mean, I believe the horses had already been moved
10 over at that point and she may have -- I'd have to
11 look back at my -- the rest of the file to figure
12 out the exact timing; but I think she also had --
13 they rented the barn space and the cottage in Aiken
14 at this point. We were trying to be fair and
15 careful to not set him off about her moving to Aiken
16 at this point and jeopardizing our custody and
17 visitation status.

18 Q. And I'm reviewing -- I'm just briefly
19 looking back at Exhibit 35, Ms. Sherman's letter to
20 you raising the issue of Alice, and this is your
21 response to that. And again, if you want, you're
22 welcome to look back at Exhibit 35 if you want; but
23 I see no reference in Exhibit 35 to any suggestion
24 about a lesbian relationship.

25 A. Right. That was in a telephone

1 conference with Marne.

2 Q. Okay. A telephone conference prior to
3 Exhibit 35?

4 A. Like I said, I told you before, I don't
5 remember exactly. It was within this time frame,
6 but I don't remember exactly what day that memo is.

7 Q. Ms. Sherman's letter is October 31,
8 2004. You've got a receipt date of November 3 and
9 then this letter is November 12. Does that help
10 refresh your --

11 A. No. I don't remember when I had the
12 telephone conference with Marne. There is a memo
13 that you have been provided that has the date on it,
14 but I do not recall the date.

15 Q. Okay. And it references in the last
16 paragraph on Page 2 that you're preparing a
17 settlement proposal?

18 A. We had been exchanging them, yes.

19 Q. And we being you and Ms. Powell or --

20 A. That's right.

21 (PLF. EXH. 40, Letter to Marne Sherman
22 from Ashlin B. Potterfield, Dated
23 November 18, 2004, Bates Stamped
24 Original Client 157 and 158, was marked
25 for identification.)

1 BY MR. PENDARVIS:

2 Q. Ms. Potterfield, I've passed you what
3 appears to be a response or another letter from you
4 to Ms. Sherman dated November 18. It's been marked
5 Exhibit 40. Is this the settlement proposal
6 referenced in the prior letter?

7 A. Yes.

8 Q. How were you able to guide Mr. Carolyn
9 Powell on what she should do without really having a
10 complete understanding of Mr. Powell's financial
11 circumstances, i.e., a financial declaration or
12 assets sheet?

13 A. Yeah. We did the best we could. Put
14 what she thought she would need based on what we
15 knew from the notes, you know, found in Mr. Powell's
16 safe and what she wanted to have happen. We put it
17 together the best we could with what she wanted.
18 And if you'll notice, it says start the process.
19 This was a start.

20 Q. So this is about, let's see, about 17
21 months after you first met with Ms. Powell?

22 A. That's correct.

23 Q. Did you feel like there was anything in
24 this request that was out of line?

25 A. I think there were probably parts of it

1 that were perhaps too hopeful; but again, you know,
2 the two of them had been talking. This is on the
3 parameters they had been talking about, so we were
4 taking what we wanted, putting it forward.

5 Q. Were you seeking periodic reports on the
6 money from the Kenilworth sale?

7 A. I don't recall specifically requesting
8 that, no.

9 Q. How could you -- what was your
10 understanding of the agreement on how that money was
11 to be treated?

12 A. That it was being held until we -- you
13 know, to decide on the advancement of funds, whether
14 it be -- because we went from that he was going to
15 perhaps just put a down payment on a 400 to \$500,000
16 house to now we're talking about an advancement. In
17 this letter, we requested 500,000 -- shifting to him
18 giving her a substantial advancement.

19 Q. Was there any written agreement as to
20 how that money was to be -- the proceeds from the
21 Kenilworth sale were to be treated while the
22 negotiations were being handled?

23 A. I don't remember any specific agreement
24 about that.

25 (PLF. EXH. 41, Letter to Ashlin from

1 Carolyn Powell, Dated November 30, 2004,
2 Bates Stamped 00123 through 00126, was
3 marked for identification.)

4 BY MR. PENDARVIS:

5 Q. Ms. Potterfield. I'm passing you now a
6 document marked Exhibit 41 to your deposition.
7 Appears to be another letter from Ms. Powell to you
8 outlining her expenses and her concerns. Did you
9 receive this letter?

10 A. Yes.

11 Q. What did you do?

12 A. Well, once again, we discussed that,
13 from September to December, she'd received about
14 \$36,000. So, you know, when I would get this
15 letter, Honey, I've done all this. You know, it's
16 hard -- it was very difficult to say, well, you
17 know, their position is you've gotten all this
18 money. So that's a very difficult position to be in
19 if your client says she doesn't have any money, yet,
20 you know, she spent \$36,500 from September to
21 November and had received that money plus more
22 during that time period.

23 Q. Well, doesn't her expense sheet on the
24 second page say it a little differently. Doesn't it
25 say she spent 36,5 and received 30?

1 A. From those three sources. She received
2 more than that. She's just talking about the James
3 Smith Realty, the 16,000 from the Washington Mutual
4 and then the 4,000 that she referred to in her other
5 note, where she received two \$2,000 checks from him
6 when she requested money for moving expenses. She
7 requested 5,000 from him and he gave her four.

8 Q. Okay.

9 A. I think, if I'm recalling correctly, the
10 reason he didn't give her five is he didn't want her
11 spending \$1,000 on the dog trainer.

12 Q. And I know that some of these things
13 sound -- you're trying to make them sound to me like
14 they're a little inflated, but parties are
15 allowed -- let me ask it this way.

16 Don't Family Courts -- the goal of the
17 Family Court in the temporary setting is to maintain
18 the status quo to the degree possible?

19 A. To the degree possible was our problem,
20 was our big problem because he couldn't -- there was
21 not a financial declaration that Conrad Powell would
22 have submitted that would have supported the funds
23 that he was giving her. I mean, he didn't have a
24 flow of income each month to substantiate him giving
25 this funds. That's what the Court would have had to

1 base it on.

2 Q. When you received this letter, did you
3 get back in touch with Ms. Powell?

4 A. I'm sure we talked after that.

5 Q. Did you talk about that -- I mean,
6 apparently she's believing that this is getting
7 ready to be everybody is going to have to dig in for
8 the long haul and litigate the case?

9 A. Not really. Actually, we're really
10 discussing the release of the funds. Like I told
11 you, we had shifted from, you know, just a down
12 payment on a house in Columbia to him advancing her
13 substantial funds and that's what she's, you know,
14 referring to. That's what we were working on at
15 this point.

16 Q. What do you think she means by her last
17 sentence then in parenthesis?

18 A. I'm sorry?

19 Q. What do you think she's trying to
20 communicate to you in the last sentence in
21 parenthesis that says, sadly, I'm under no illusion
22 any longer that it can be settled amicably or
23 quickly?

24 A. Well, I assume she felt that way at the
25 time. I mean, that's not what we were doing and

1 that's not what happened after that. Also, this is
2 the one I was referring to earlier. This is when
3 she's talking about her -- this is the end of
4 November. Her lease in Aiken was up in two weeks.
5 So, you know, she had two places to live during this
6 time period, the one on Gervais Street and the one
7 in Aiken.

8 Q. That's 41?

9 A. Yes.

10 Q. Thank you.

11 (PLF. EXH. 42, Letter to Ashlin
12 Potterfield from Carolyn Powell, Dated
13 December 6, 2004, Bates Stamped Original
14 Client 438 through 444, was marked for
15 identification.)

16 BY MR. PENDARVIS:

17 Q. Ms. Potterfield, I'm passing you an
18 exhibit marked as Exhibit 42 to your deposition.
19 This appears it be another letter from Ms. Powell to
20 you dated December 6, 2004. First off, is that Mr.
21 Taylor's handwriting on the top right corner?

22 A. Yes. The unmistakable Michael Taylor
23 handwriting.

24 Q. He's got such good handwriting. He was
25 really meant to be a doctor, that's all it was.

1 You received this letter?

2 A. I did.

3 Q. Did you sense a very serious concern
4 from the client that she needed help?

5 A. Well, yes and no. I mean, obviously, I
6 took what she said seriously and we talked. I mean,
7 you can tell from the correspondence from October or
8 November and father into -- you know, all the way
9 through December and into January, that we had a
10 great deal of communication. And, you know, I'd get
11 these letters and we'd talk and everything would be
12 okay. She'd understand what we were doing. I'd
13 point out the money that she did have and that she
14 did have somewhere to live and that we were working
15 on accomplishing her goal, which was her to be able
16 to move to Aiken and buy whatever property it was
17 that she wanted. I mean, we were moving toward
18 that. So I don't -- this is a little different than
19 my communications with her directly. I mean, the
20 tone is a little different.

21 Q. It appears from the language that she
22 feels like her case is not getting a lot of
23 attention.

24 A. That would be what it seems like; but
25 when you look at the level of correspondence and

1 communication, that just doesn't fit.

2 Q. Did you have any -- let's go back a
3 little bit in time to the reference on the second
4 page. I guess it's the second full paragraph, that
5 begins with Ashlin.

6 A. Uh-huh.

7 Q. Do you recall what was -- how Mrs.
8 Powell found out that the Kenilworth home was under
9 contract?

10 A. No.

11 Q. I mean, where she was located at the
12 time the sale happened or the contract, excuse me,
13 was entered?

14 A. No. I mean, I know from my notes that
15 she called me and told me it had sold. I know it
16 had been on the market, you know, all year.

17 Q. Is she accurately stating her
18 conversation with you when she says, after she said,
19 I repeat, would I have put my children through this
20 willing. When I returned from Ireland and provided
21 you with the contract, you stated that we would file
22 vanilla pleadings and also freeze assets. Did you
23 say anything like that to Ms. Powell?

24 A. We did discuss the vanilla pleadings and
25 that's what we filed.

1 Q. And what's this, what's the reference to
2 freeze assets? What does that mean?

3 A. I'm not sure.

4 Q. Did you tell her something about
5 freezing assets?

6 A. Probably not. I mean, like we discussed
7 before, she and I discussed, you know, property
8 sales are easy to track. I mean, he couldn't have
9 hidden that very well. I mean, we'd know exactly
10 where the money went.

11 Q. Did you speak with her about some of the
12 topics on the bullet points on the third, fourth and
13 fifth pages?

14 A. I'm sure we did.

15 Q. What was the plan of action after you
16 received this communication?

17 A. Well, we had some problems going on in
18 December with gallery issues. There were some more
19 fraud issues with banks and banking. Still some
20 custody issues. So we were working on those things
21 and trying to find a place for her to live so that
22 we could pin down an amount for Conrad to advance
23 her.

24 Q. So was the goal -- if I'm understanding
25 then, the goal was still working toward a

1 settlement -- a separation agreement rather than
2 litigating the matter?

3 A. Right.

4 Q. Would you characterize this matter, the
5 Powell V. Powell matter as a significant asset,
6 Family Court matter?

7 A. I don't know. That's kind of hard to
8 say. I mean, in comparison to what?

9 Q. In comparison to the other matters
10 you've handled, where in the range -- maybe that
11 wasn't an easy question to answer.

12 Of the cases you've handled, where in
13 the range of marital estate value do you believe
14 this Powell V. Powell matter placed?

15 A. Medium, medium high.

16 Q. Have you litigated to trial a medium to
17 medium high Family Court dispute?

18 A. Yes.

19 Q. How many?

20 A. I don't know. I mean, it's been -- be
21 20 years in November. I don't know.

22 Q. More than ten, less than ten?

23 A. Probably around ten, maybe a little
24 more.

25 Q. And how about as of December 2004?

1 A. I don't know. That would be hard to
2 say.

3 Q. Five? More than five?

4 A. Yeah. More than five. Maybe closer to
5 ten.

6 (PLF. EXH. 43, Handwritten Notes Dated
7 December 15, 2004, Bates Stamped
8 Original Client 289, was marked for
9 identification.)

10 BY MR. PENDARVIS:

11 Q. Ms. Potterfield, I'm passing you a
12 document marked as Exhibit 43 to your deposition.
13 It appears to be some handwritten notes of yours.
14 Are they?

15 A. Yes.

16 Q. These your handwritten notes? What
17 generated these notes?

18 A. I believe it was a telephone conference
19 with Marne.

20 Q. With Ms. Sherman?

21 A. Yes. I'm sorry.

22 Q. That's okay. And the first bullet point
23 is \$400,000 early in the case advance?

24 A. Right.

25 Q. Tell me about that.

1 A. That he was willing to advance 400,000.
2 We had asked for five and he was willing to advance
3 four. But then I asked if he would advance at least
4 some money for fees, additional over the 400.

5 Q. And the response was what?

6 A. Eventually she responded no.

7 Q. And were there discussions about how the
8 \$400,000 was going to be treated if accepted?

9 A. Right. That would have been an advance
10 on her property division.

11 Q. Was there any discussions in this
12 conversation about support and maintenance or
13 anything in addition to the equitable apportionment
14 advance?

15 A. I don't know if we discussed that
16 specifically in this conversation.

17 Q. In the late, mid December 2004 time
18 frame, were you having discussions with Ms. Sherman
19 about support and maintenance in addition to advance
20 on equitable apportionment?

21 A. I don't know if I discussed it with her.
22 I know he was still paying her, you know,
23 approximately the \$5500, on top of some other
24 things, like health insurance and some barn fees and
25 things for the children at that time. I know that

1 we were dealing with some other issues, too. Some
2 NBSC banking issues and Wachovia banking issues.
3 There were still some complaints on his part about
4 visitation, some child issues. So we were doing a
5 lot of things at the same time.

6 Q. Were you discussing some things with Ms.
7 Sherman about a temporary hearing?

8 A. Yes.

9 Q. Tell me about that.

10 A. I believe -- I don't remember exactly
11 when she -- there was a temporary hearing scheduled,
12 I believe.

13 Q. And was this by agreement?

14 A. The hearing?

15 Q. Yes, ma'am.

16 A. No. Well, I guess the hearing date
17 would have been by agreement; but she filed.

18 Q. But the fact of the request for a
19 hearing, not by consent?

20 A. No. It doesn't have to be. I mean,
21 that wouldn't be the way you do it. One person has
22 to file.

23 (PLF. EXH. 44, Letter to Ashlin B.
24 Potterfield from Marne Sherman, Dated
25 December 16, 2004, Bates Stamped

1 Original Client 151 through 153, were
2 marked for identification.)

3 BY MR. PENDARVIS:

4 Q. Passing you another exhibit. This one
5 is marked Exhibit 44 to your deposition, appears to
6 be a letter from Ms. Sherman to you dated December
7 16. Did you receive this letter?

8 A. I did.

9 Q. And this is addressing the \$400,000
10 advance that you had talked about in the memo?

11 A. Right.

12 Q. Or had written in the memo?

13 A. That's right.

14 Q. And the NBSC issues you've just talked
15 about as well?

16 A. That's correct.

17 Q. And what was being discussed about the
18 motion for temporary relief? You'll see it at the
19 very bottom of the first page.

20 A. Yeah. He was fed up with her behavior
21 regarding the forgeries and the checks and this new
22 thing with NBSC of trying to get money out of the
23 Chic Antiques account. I mean, he was really very
24 unhappy about those things.

25 Q. Did you talk to your client about the

1 proposed -- what would happen in the temporary
2 hearing?

3 A. I'm sorry?

4 Q. Did you speak with your client about
5 what might happen in the temporary hearing?

6 A. Yes. It was the same conversation we'd
7 been having which is, you know, you've gotten all
8 this money. That the Family Court isn't going to
9 really be in a position to probably still give you
10 that at that point. So we didn't -- and we wanted
11 the 400,000 advanced so she could move to Aiken
12 completely.

13 Q. Was there any discussion about turning
14 it around and making it an aggressive presentation
15 at the hearing on the temporary relief motion, to
16 make it a plaintiff's hearing?

17 A. We did discuss that. There was a great
18 deal of risk with all the recent fraud issues. The
19 forgeries, the fraud, the visitation problems.
20 Frankly, we were not in a fabulous position. I
21 mean, a Family Court Judge seeing those changes on
22 those checks, that would have been very detrimental
23 to Ms. Powell.

24 Q. You wouldn't have been able to argue
25 that she was desperate for money and there was --

1 and that she needed funds to live on and that was
2 the best she could do and the husband wouldn't give
3 it to her?

4 A. Not with the scenario that we had. Not
5 when she's already receiving \$5500, plus all the
6 other things he was paying. I mean, she wasn't --
7 he was paying for the roof over her head and the
8 household expenses and her health insurance, plus
9 \$5500 a month, plus the \$36,000 she had gotten
10 between September and December. That would have
11 very difficult to sell, that she had done that
12 because she didn't have any money. Not to mention,
13 that kind of behavior, Family Court Judges don't
14 like.

15 I mean, like I told you earlier, I might
16 could have explained the James Smith Realty check,
17 that they had done that one in the past; but the
18 other ones on top of it. This NBSC thing was really
19 quite concerning because she went to several
20 different branches to try to accomplish doing this
21 and that was -- we explained it the best we could;
22 but it would have been, I think, very detrimental to
23 her had this gotten in front of a Family Court
24 Judge.

25 Q. I'm just trying to understand. At the

1 very end of this, she's talking, at the temporary
2 consent hearing, then trying to work out a temporary
3 consent order, that they're still talking about
4 putting in the equitable advance or the advance on
5 equitable apportionment. Excuse me.

6 A. Right. They are still willing, despite
7 all this, to work with us to reach a consent order
8 rather than go to Family Court. That's what that's
9 about.

10 Q. And she had filed a motion for temporary
11 relief?

12 A. Yes. I don't remember when it -- what
13 the date was that it was set for, but there was one
14 filed.

15 Q. I have a copy. I don't have a copy for
16 counsel. I don't know if I want to mark this for an
17 exhibit. I'll let you look at it. It's got a Bates
18 Stamp on the bottom corner of Original Client 197
19 through 199 and then a separate Page 894 and they're
20 kind of sideways and that's why I'm not going to
21 make them part of the record, but is that a copy of
22 the motion for temporary relief?

23 A. Yes.

24 Q. Okay. And it really doesn't set forth
25 anything more than a request for a hearing; correct?

1 A. Right. Which had been -- was set for
2 January 12th.

3 Q. Okay.

4 A. January 12, 2005.

5 (Off-the-record conference.)

6 (PLF. EXH. 45, Draft Letter to Conrad
7 Dated December 20, 2004, Bates Stamped
8 00279 through 00282, was marked for
9 identification.)

10 BY MR. PENDARVIS:

11 Q. Ms. Potterfield, I've passed you a
12 document marked Exhibit 45. It appears to be
13 another letter from Ms. Powell to you. Did you
14 receive this letter?

15 A. Yes.

16 Q. She's explaining or what did you take
17 from this letter when you received it?

18 A. That she's trying to explain that she's
19 had conversations with Conrad, who keeps telling
20 her, you have money. She's trying to explain to him
21 where it went.

22 Q. Did Ms. Powell explain to you his
23 reaction?

24 A. I don't know.

25 Q. I think if you look at the very last

1 page, it appears it be a cover letter to you
2 providing you copies of this letter that she wrote
3 to Mr. Powell and some other things.

4 A. This last page?

5 Q. Yes.

6 A. Yes.

7 Q. I believe it's referring to the
8 preceding pages. And if you see the stamp at the
9 top, it's marked draft. On Page 1 of 45, you see
10 that stamp that says draft?

11 A. Yes.

12 Q. And then if you go to the last page and
13 you see where she's -- enclosures, it says draft of
14 letter to Conrad for your review?

15 A. Okay.

16 Q. I know this is out of sequence, but did
17 you respond to Ms. Powell?

18 A. I'm sure I did.

19 Q. What did you respond to with regard to
20 her first paragraph, after it says: Ashlin, it's
21 now been two months since I asked for relief in the
22 form of funds to provide basic support for my
23 children to include money for a house and car?

24 A. Okay.

25 Q. What did you tell her?

1 A. Same thing we've talking about before,
2 you know. I mean, she had funds. She had a roof
3 over her head. She had a car to drive. She
4 actually had two places to live. We go over that
5 again.

6 Q. In terms of the forgery allegations,
7 what was she telling you?

8 A. Well, you have my responses to Marne
9 with our position --

10 Q. Okay.

11 A. -- which is what -- she would give me
12 her explanation and then I would respond to Marne's
13 allegations.

14 (PLF. EXH. 46, Letter to Carolyn Powell
15 from Ashlin B. Potterfield, Dated
16 December 21, 2004, Bates Stamped 00283,
17 was marked for identification.)

18 BY MR. PENDARVIS:

19 Q. Passing to you now another document.
20 This one is marked as Exhibit 46. It appears to be
21 a letter from you to Ms. Powell. Is this your
22 letter?

23 A. Yes.

24 Q. Seems like you're saying back to Ms.
25 Powell that -- second sentence says, interesting to

1 me that they seem to just forget that you have no
2 other source of income.

3 A. That's was really dealing with the
4 gallery. There had been a lot of back and forth
5 stuff about her exiting the gallery, moving from the
6 apartment, moving from the gallery. She had been
7 back and forth as to whether or not she wanted to
8 maintain that. She had some shows still in place
9 she wanted to finish. You know, the notes from my
10 conversation with Bunni and, at that point, she
11 didn't want -- she didn't care about the gallery,
12 except for one outstanding -- I don't remember if it
13 was a sale or a show. But then it kind of evolved
14 and she did want to be able to maintain that as some
15 future source of income, that she could continue
16 building that business. It was part of that.

17 Q. And you're suggesting that they
18 proceed -- you two proceed with the temporary
19 hearing?

20 A. Right. You know, she kept saying she
21 didn't have any money, she didn't have any money. I
22 kept explaining that she did. And she kept saying
23 she didn't have any money. I said, okay. Well,
24 then we'll go put this in front of a Family Court
25 Judge if that's what you want.

1 Q. What did Ms. Powell tell you? Did Ms.
2 Powell -- let me back up. Did Ms. Powell respond to
3 you after receiving this letter?

4 A. Yes.

5 Q. What did she say?

6 A. I mean, I know we had several
7 conversation after this about that she wanted the
8 advance and did not want to have a temporary
9 hearing.

10 Q. And did you --

11 A. And that she would get out of the
12 gallery. We started working on when she'd get out
13 of the gallery and making that happen, so that she
14 could get the 400,000 and get out of the apartment
15 and move to Aiken.

16 Q. Did you give her any advice about how
17 you thought the temporary hearing would come out --

18 A. I did.

19 Q. -- if you proceeded that way?

20 A. I did. And this last sentence
21 kind of -- you know, the alimony and child support
22 would be less than what she was getting now; but she
23 would have had the 400,000, so that would kind of
24 make up for the difference if that -- if we took
25 that risk. If we did not take that risk and Conrad

1 continued to give her, you know, 45, \$5,000 a month.

2 Q. All right. I'm not sure if I'm
3 understanding. So I'm reading this last part, the
4 last sentence. It says: Please let me know if you
5 think this -- I've got to back up a second. He's
6 offered, via Marne, in my telephone conversation
7 last week, to advance 400,000. Please let me know
8 if you think this could at least get you into a
9 house and then have the alimony and child support
10 set to support you in this house.

11 A. Right.

12 Q. And what I --

13 A. We were --

14 Q. I'm sorry. Go ahead.

15 A. We were going to have to work around
16 those parameters. It's not going to be at the level
17 that she was at, so we had to take that as a what we
18 could work with, with the 400,000, and then figure
19 out what she could afford to do and hope that that
20 would happen. It's not going to be at the level
21 that it would have been, but she was -- she wanted a
22 set amount each month.

23 Q. And I want to just make sure I'm
24 understanding what you're telling me. So if I'm
25 understanding that last sentence then, it is that

1 the 400,000 was the part about at least get you into
2 a house and then the plan was to go to the Court to
3 get alimony and child support set at a later date on
4 a level less than you were saying she could expect?

5 A. Right.

6 Q. Or had been accustomed to living at?

7 A. Right. Because she'd still have 400,000
8 and she could use that in any way she wanted to
9 support herself if the Family Court did not give us
10 what she had been used to.

11 Q. Okay. So the plan was, let's reach an
12 agreement, get the \$400,000 advance and then we'll
13 deal with going to the Court to see what we can do
14 for alimony and child support?

15 A. Not necessarily and then, because there
16 was a hearing set for January, mid January, so, I
17 mean, you know -- but they were still willing to do
18 that. I mean, advance the funds. So it could have
19 been simultaneous, not necessarily and then.

20 Q. Okay. So in other words, reach an
21 agreement on the equitable apportionment and then go
22 see what the Court would do on alimony?

23 A. Potentially.

24 Q. Okay.

25 A. I mean, that was really an option. I

1 didn't really want to do that option, but. . .

2 Q. Did you ever tell Ms. Powell in writing
3 anywhere that she might not be able to receive what
4 she had been receiving if she left it with the Court
5 to determine?

6 A. I don't know. I mean, I know we
7 discussed it, which is why we determined not to have
8 the hearing in January.

9 Q. As of December 2004, when was your
10 understanding of the last payment Conrad Powell had
11 made to Carolyn Powell?

12 A. I don't know. I didn't see those.

13 Q. Well, I know we -- all right. Just a
14 second. Do you recall the statement in a prior
15 letter from Ms. Powell to you that the last money
16 she had received was in September 2004?

17 A. I remember that being in one of her
18 letters. And then it was responded to -- then I
19 wrote Marne Sherman and told her that. Then I got a
20 letter back from Marne correcting me and explaining
21 to me that actually she had gotten \$36,000 between
22 September and December.

23 (PLF. EXH. 47, Letter to Ashlin, Bates
24 Stamped 00121, was marked for
25 identification.)

1 BY MR. PENDARVIS:

2 Q. Ms. Potterfield, we've been trying to go
3 fairly -- I've been trying to go fairly
4 chronological in my documents and I'm going to tell
5 you, I'm passing you Exhibit 47. Appears to be a
6 letter from Ms. Powell to you, but I'm not certain
7 of the date. Do you recall when this letter would
8 have come through?

9 A. I believe this would have been August
10 '04, because I believe the contract on the house
11 would be a reference to Kenilworth.

12 Q. She's talking about a house not limited
13 to the Columbia metro area?

14 A. Right. And then it goes back to -- this
15 has been the constant parameter that Mr. Powell had
16 set. It could have been -- I think that contract
17 was in June. So it was sometime between -- sometime
18 maybe July, August.

19 Q. Did the \$400,000 advance ever get put
20 into a consent order?

21 A. No. I believe we just did that by
22 letter.

23 (PLF. EXH. 48, Letter to Marne Sherman
24 from Ashlin B. Potterfield, Dated
25 January 5, 2005, Bates Stamped 00288,

1 was marked for identification.)

2 BY MR. PENDARVIS:

3 Q. Ms. Potterfield, I'm passing you a
4 letter marked Exhibit 48 to your deposition. Is
5 this a copy of your letter to Ms. Sherman, January
6 5, 2005?

7 A. Yes.

8 Q. And this is the agreement you just
9 referenced y'all ultimately reached to resolve the
10 \$400,000 advance outside of a temporary consent
11 order?

12 A. Yes. Yes.

13 Q. What was the response?

14 A. I don't know.

15 Q. Let's see if this might help.

16 (PLF. EXH. 49, Facsimile to Ashlin
17 Potterfield from Marne Sherman, Dated
18 January 5, 2005, Bates Stamped 00294
19 through 00299, was marked for
20 identification.)

21 BY MR. PENDARVIS:

22 Q. Passing you to now, Ms. Potterfield, a
23 document marked as Exhibit 49 to your deposition.
24 Appears to be a facsimile letter from Ms. Sherman to
25 you, dated January 5, 2005. Did you receive this

1 fax?

2 A. Yes.

3 Q. Is this additional negotiations on the
4 settlement agreement?

5 A. Yes.

6 Q. Did you communicate this to Ms. Powell?

7 A. Yes.

8 Q. What did you all discuss about the
9 information in Paragraph 7 on the -- I think it's
10 the third page of the exhibit that's got Number 7,
11 it says: Advance on equitable division/attorney's
12 fees?

13 A. Right. What was your question?

14 Q. Did you discuss that provision with Ms.
15 Powell?

16 A. Yes.

17 Q. Did you make any agreement on a portion
18 of this being used for attorney's fees?

19 A. No.

20 Q. What was the plan?

21 A. We had no plan.

22 Q. I mean, did y'all decide to accept this,
23 reject it? What was the response to that?

24 A. I thought you meant about the fees. I'm
25 sorry.

1 Q. No, no. I'm really talking about what
2 was the plan in terms of responding to Number 7.
3 I'm sorry if my question wasn't clear.

4 A. We did respond to it. There was a great
5 deal of correspondence after this about when she
6 could get out. And, you know, why they wanted her
7 out and being out of the gallery. There's a bunch
8 of back and forth about that, which was frustrating,
9 I'm sure. It was frustrating for me and for her in
10 that, it's like we'll be happy to get out, but you
11 have to give us the money so that we can get out.
12 And so we spent a great deal of time trying to
13 explain that to them, that she'd be happy to move,
14 but we need the money in order to move.

15 Q. And, by this time, all the leases and
16 things that were -- the shows that were set for the
17 gallery had already been finished by the end of
18 December --

19 A. No.

20 Q. -- 2004?

21 A. No. There's further correspondence
22 about that. She would vacate the apartment at a
23 certain point, but that we needed to still honor --
24 I believe there were two contracts for shows, two
25 different artists. That was a big ordeal because we

1 had to provide the contracts for those shows to them
2 and they didn't believe they were legitimate. We
3 spent a great deal of time over the next two weeks
4 dealing with that.

5 Q. And what was your understanding of the
6 living arrangements as of early January 2005?

7 A. I know she still had the Gervais Street
8 apartment. I don't know what the status of the
9 cottage was.

10 Q. All right. How about the plans for
11 moving to Aiken?

12 A. She was still working on that plan.
13 Because, as you see, the beginning paragraph, we had
14 an additional issue to deal with, which was the one
15 child was going to stay and remain at Hand, which
16 was not the case. We also had to work that out.
17 The child that was at Hand only stayed a little bit
18 longer because she was participating in some school
19 function that she wanted to finish before she moved
20 to Aiken. We had to work that out. We also had to
21 work out private school tuition in Aiken. So there
22 was a great deal that got worked out in January on
23 these issues.

24 (PLF. EXH. 50, Handwritten Notes Dated
25 January 5, 2005, Bates Stamped Original

1 Client 290, was marked for
2 identification.)

3 BY MR. PENDARVIS:

4 Q. Passing to you now, it looks like, a
5 handwritten note marked Exhibit 50 to your
6 deposition. Is this your note?

7 A. It is.

8 Q. I'm going to let you read this one just
9 so I make sure I understand it.

10 A. It's telephone conference with bank
11 regarding check. They will hold action until
12 hearing date and need court order saying funds were
13 marital and/or being addressed by Family Court.

14 Q. Is that fairly common?

15 A. No.

16 Q. And did you provide them with a court
17 order saying the funds were marital?

18 A. No. I managed to get them to hold off
19 doing it with a letter, which is very important
20 because, you know, Wachovia was going to pursue the
21 fraud. And, at that point, on the 5th of January,
22 we were still, you know, thinking we might have to
23 go to a temporary hearing on the 15th. So was
24 pleased that I managed to get Wachovia to back off
25 of that.

1 (PLF. EXH. 51, Handwritten Note Dated
2 January 7, 2005, Bates Stamped Original
3 Client 293, was marked for
4 identification.)

5 BY MR. PENDARVIS:

6 Q. Ms. Potterfield, I'm passing you another
7 handwritten note document marked as Exhibit 51 to
8 your deposition. Are these your notes?

9 A. Yes.

10 Q. Is this a reference to a telephone
11 conversation with Ms. Powell?

12 A. Yes. I believe it is.

13 Q. Can you describe for me what we're
14 looking at?

15 A. Looks like we talked with the Wachovia
16 issue, because obviously this would have been after
17 I fixed it on the 5th. That she still maintains she
18 wanted \$5,000 per month. They were trying to work
19 out the thing that I was referring to, about the
20 girls moving to Aiken. You know, we were kind of
21 responding to that last letter from Marne, as well,
22 which was Number 49. And that he pay, you know,
23 Aiken Prep tuition. Still trying to decide what to
24 do with the gallery and that she wanted to be
25 allowed in both businesses to make a list.

1 Q. Can you read what's written, just so I
2 can -- is it what to do with this?

3 A. Yeah.

4 Q. And then what's below that?

5 A. This cuts her off completely.

6 Q. In other words, if he ends her
7 relationship with the gallery, that's the end of her
8 income from her business?

9 A. From that one, yes. I mean, you know,
10 like I said, she changed her mind about perhaps
11 doing that. We had discussions about what she
12 wanted to do, you know, with her future and -- but
13 essentially moving to Aiken was going to stop that
14 anyway. I mean, if she moved to Aiken, the gallery
15 would be hard for her to continue.

16 Q. What's the reference in the bottom about
17 the lists?

18 A. Personal property.

19 Q. Okay.

20 A. That he needed to make a list as well.

21 (PLF. EXH. 52, Letter to Marne Sherman
22 from Ashlin B. Potterfield, Dated
23 January 10, 2005, Bates Stamped 00301
24 through 00303, was marked for
25 identification.)

1 BY MR. PENDARVIS:

2 Q. Ms. Potterfield, I'm passing you another
3 document. This one is marked Exhibit 52 to your
4 deposition. It appears it's a letter from you to
5 Ms. Sherman. Is this your letter?

6 A. It is. Which would have been in
7 response to her last letter and partially what Ms.
8 Powell and I had discussed with those notes we just
9 went over.

10 Q. And did you believe on January 10, 2005,
11 that you all were fairly close to getting a
12 permanent settlement?

13 A. Yes.

14 Q. What did you mean about -- the last
15 sentence of the first paragraph. We do need to put
16 something temporary in place until we're able to
17 reach the permanent agreement?

18 A. Yes. They were having so many problems
19 with visitation and their communication back and
20 forth that's -- we thought we would do that. They
21 were able to work that out and so we did not have
22 to.

23 Q. Did Ms. Sherman call you to respond to
24 this letter?

25 A. I'm not sure how she responded.

1 Q. Ultimately, you didn't attend a
2 temporary hearing, did you?

3 A. No. We did not. She got \$400,000 that
4 month, as well as almost 5,000 in cash from him
5 directly.

6 (PLF. EXH. 53, Letter to Marne Sherman
7 from Ashlin B. Potterfield, Dated
8 January 13, 2005, Bates Stamped 00310
9 and 00311, was marked for
10 identification.)

11 BY MR. PENDARVIS:

12 Q. Ms. Potterfield, I'm passing you another
13 letter. This one is marked Exhibit 53 to your
14 deposition. This is a copy of your letter to Ms.
15 Sherman?

16 A. Yes.

17 Q. And this relates to Ms. Powell vacating
18 the apartment?

19 A. And the gallery.

20 Q. And the two shows? What happened about
21 these two shows, the February and April show that
22 was scheduled?

23 A. I don't remember exactly what happened
24 with them.

25 Q. It got resolved in some fashion?

1 A. It did.

2 (PLF. EXH. 54, Memo to File Dated
3 January 11, 2005, Bates Stamped Original
4 Client 296, was marked for
5 identification.)

6 BY MR. PENDARVIS:

7 Q. Ms. Potterfield, I'm passing you now a
8 document marked as Exhibit 54 to your deposition.
9 Is this an internal memo to the file that you
10 created?

11 A. Yes.

12 Q. Is this in the conference the day before
13 with Ms. Sherman?

14 A. Yes. This is the memo I was referring
15 to earlier. It had the -- this is when she told me
16 about the suspicions about the barn manager.

17 Q. Before we get to that point -- thank you
18 for that. Before we got to that point, what was
19 discussed about the temporary hearing or the need to
20 proceed with the temporary hearing?

21 A. Say that again.

22 Q. This references a conversation you had
23 with Ms. Sherman?

24 A. Right.

25 Q. And tell me what you discussed, if

1 there's anything more than what's printed here,
2 about the need for a temporary hearing.

3 A. I don't know that I understand what
4 you're asking me.

5 Q. Well, is there anything more? I mean,
6 you say you've agreed to continue the temporary
7 hearing. Were there plans to -- were there issues
8 that you all had decided would have to be resolved
9 at a temporary hearing?

10 A. Not necessarily. No. Actually, we --
11 everybody wanted to work on a permanent agreement
12 rather than spend the energy and time on a temporary
13 agreement.

14 Q. And is this date -- the next sentence
15 after that is talking about the advance of the
16 400,000. And you testified earlier that part of the
17 problem was she needed the money to get out, to
18 vacate the apartment. Is that why the reference to
19 a date, January 14th, as the delivery date of the
20 proceeds?

21 A. That was the date we were working on at
22 that time.

23 Q. Okay.

24 A. I don't think it actually happened on
25 that Friday. I think it happened the following

1 week. But, at that moment, that was the date we
2 were trying to work on.

3 Q. Tell me a little bit more about the next
4 sentence about the alimony issue. And it appears to
5 be that you've told Ms. Sherman that Ms. Powell
6 should not have to spend her property to support
7 herself and the girls.

8 A. Right. You know, they had offered us
9 \$1,000 for child support. We wanted 5,000 for total
10 support. So I mean, we're still talking about those
11 issues. That's what that's about.

12 Q. And when you said that Ms. Powell is
13 entitled to alimony and I'm not so sure about that.
14 Is that a response from Ms. Sherman?

15 A. That was her response.

16 Q. And she indicated that they were
17 suspicious that Ms. Powell was having a relationship
18 with Alice?

19 A. Right.

20 Q. Did you discuss that issue with Ms.
21 Powell after this January 10th conversation with Ms.
22 Sherman?

23 A. Yes.

24 Q. What did you tell her?

25 A. I told her what Marne had said.

1 Q. And did you tell her that that may have
2 some impact on her entitlement to alimony?

3 A. Yeah. I mean, we talked about this
4 earlier. I told her that, you know, she had to be
5 careful. That even the appearance of a homosexual
6 relationship could have the same effect as a
7 heterosexual relationship. That she still had to
8 take those same precautions.

9 Q. And when did you have this conversation
10 with Ms. Powell?

11 A. I'm not sure.

12 Q. Was it --

13 A. Would have been sometime shortly
14 thereafter because we had to talk about the moving
15 out and the money and the other things, too.

16 Q. And so January 2005 was the first time
17 you spoke with Ms. Powell about the impact of a
18 sexual relationship with anyone might -- how that
19 might have -- let me rephrase that.

20 Was January 2005 the first time you
21 advised Ms. Powell that having any form of sexual
22 relationship might have an impact on her entitlement
23 to alimony?

24 MR. HILL: Object to the form.

25 THE WITNESS: Was that the first time?

1 BY MR. PENDARVIS:

2 Q. Yes.

3 A. No.

4 Q. When was the first time?

5 A. Well, the first time would have been
6 when she read her packet when she sat in our office
7 in June of 2003. Actually, she probably read the
8 exact same packet in 1997 when she came in to see
9 Mr. Golden as well. So, no, it was not the first
10 time.

11 Q. My question was the first time that you
12 spoke with her about that?

13 A. I don't believe so. Might be -- I think
14 it was the first time I talked to her about that a
15 homosexual relationship could still count as
16 adultery.

17 Q. But your testimony is that, prior to
18 January 2005, you had spoken with Ms. Powell about
19 the issue of whether a sexual relationship may have
20 an impact on alimony?

21 A. I don't have a specific note or memory
22 about a specific conversation about that, but I'm
23 fairly certain we had a previous conversation about
24 dating or the appearance of dating. Plus, you know,
25 she's a -- you know, there's some clients who are

1 more sophisticated than others about that kind of
2 thing and she certainly was aware of the
3 ramifications of that, not only as it being a crime,
4 but she was still married.

5 (PLF. EXH. 55, Letter to Ashlin B.
6 Potterfield from Marne Sherman, Dated
7 January 11, 2005, Bates Stamped 00305
8 through 00307, was marked for
9 identification.)

10 BY MR. PENDARVIS:

11 Q. Ms. Potterfield, I'm passing you an
12 exhibit marked as Number 55 to your deposition. It
13 appears to be a letter from Ms. Sherman to you dated
14 January 11th. Did you receive this letter?

15 A. Yes. This is exactly what I've been
16 telling you about. This is what we were dealing
17 with the entire month of January. You know, that
18 Alexandra was going to stay, but she wasn't going to
19 stay with him, and she was only going to stay to
20 finish that one project that she wanted to do, which
21 we responded to later in another letter. And then
22 you can see where she goes into the difficulty I
23 described to you about she can't move out of the
24 apartment until she has the money.

25 (PLF. EXH. 56, Letter to Marne Sherman

1 from Ashlin B. Potterfield, Dated
2 January 13, 2005, Bates Stamped 00312
3 and 00313, was marked for
4 identification.)

5 BY MR. PENDARVIS:

6 Q.. Ms. Potterfield, I'm passing you another
7 document. This is apparently a couple of things.
8 This apparently is a letter and a fax copy back to
9 you of the same letter marked as Exhibit 56 to your
10 deposition. Is the underlying part your letter to
11 Ms. Sherman about Ms. Powell's plans to vacate the
12 apartment?

13 A. Yes.

14 Q. And the responses, the handwritten
15 notes, are those Ms. Sherman's letter?

16 A. That is. We were trying to get this
17 done as quickly as possible, so she just wrote it
18 back on there.

19 Q. Okay.

20 (PLF. EXH. 57, Response Dated January
21 15, 2004 to Fax Letter Dated January 11,
22 2005, Bates Stamped 00216 through 00218,
23 was marked for identification.)

24 BY MR. PENDARVIS:

25 Q. Ms. Potterfield, I'm passing you another

1 document. This is marked Exhibit 57 to your
2 deposition. It appears to be a communication from
3 Ms. Powell to you dated January 15. Did you receive
4 this from Ms. Powell?

5 A. Yes.

6 Q. Did you discuss this with her after you
7 received it?

8 A. Probably. Don't have any specific
9 memory of doing that. I know that I then, you know,
10 responded to Marne's letter. Took what she gave me
11 and responded to Marne's letter that was Exhibit 55.

12 Q. Did you speak with her in specifics
13 after you got this about what to do or just used the
14 letter?

15 A. I don't know. I don't know if I did or
16 not. We were trying to get it accomplished.

17 (PLF. EXH. 58, Letter to Ashlin B.
18 Potterfield from Marne Sherman, Dated
19 January 18, 2005, Bates Stamped 00328,
20 was marked for identification.)

21 BY MR. PENDARVIS:

22 Q. Ms. Potterfield, I'm passing you another
23 exhibit. This one is marked Exhibit 58 to your
24 deposition. Is this a letter you received from Ms.
25 Sherman?

1 A. Yes.

2 Q. Tell me what you know about Ms. Powell
3 moving to Augusta, if she did.

4 A. I don't know that I knew that she was
5 doing that, because this would have been before she
6 said she would be out of the apartment.

7 Q. Did you speak with Ms. Powell about her
8 residence?

9 A. After this, I believe there's
10 communication between us that she let me know what
11 that was about.

12 (PLF. EXH. 59, Letter to Marne Sherman
13 from Ashlin B. Potterfield, Dated
14 January 19, 2005, Bates Stamped 00331
15 and 00332, was marked for
16 identification.)

17 BY MR. PENDARVIS:

18 Q. I'm passing you another letter. This
19 one is marked Exhibit 59 to your deposition. Is
20 this a copy of your letter to Ms. Sherman dated
21 January 19, 2005?

22 A. Yes.

23 Q. And, in the first paragraph, are we
24 talking about the \$400,000 equitable apportionment
25 advance?

1 A. Right. Because the date we had been
2 working with would be the 14th of January.

3 Q. Was there a reason why that money wasn't
4 transferred on the 14th?

5 A. I think it was because they felt like
6 the gallery issue was unresolved. I don't know that
7 to be certain; but, you know, that we were still
8 saying we would be out of the gallery after the two
9 shows.

10 Q. And what was your understanding of
11 moneys was Ms. Powell was receiving as of January
12 19, 2005 from Mr. Conrad Powell?

13 A. Well, she told me this, which I put in
14 here. And then I believe there was a subsequent
15 letter from Marne informing me of how much money he
16 actually had given her at that point, which was
17 close to \$5,000. It puts me in a bad position when
18 I assert to the other lawyer that my client hasn't
19 received any money, when in fact she has.

20 (PLF. EXH. 60, Facsimile to Ashlin
21 Potterfield from Marne Sherman, Dated
22 January 19, 2005, Bates Stamped Original
23 Client 105 through 107, was marked for
24 identification.)

25 BY MR. PENDARVIS:

1 Q. Passing you a document marked as Exhibit
2 60 to your deposition. It appears to be a fax from
3 Ms. Sherman to you on January 19th, same day as the
4 previous exhibit. Did you receive this fax?

5 A. Yes. That's what I was referring to.
6 Her note saying that he had given her \$4500 in the
7 last -- since January 4th and that -- you know, it
8 impedes my dealing in good faith when I tell her
9 that we don't have any money and, in fact, he'd
10 given her \$4500.

11 Q. Well, if you look back at 59, that's not
12 what you said. What you said was, she has had to
13 ask him for grocery money, to which he told her,
14 I'll have to think about it. I don't think you told
15 her in that letter that she hadn't gotten money?

16 A. Well, that's essentially the statement,
17 that she didn't even have enough money for
18 groceries.

19 Q. And, as of January 19, 2005, Mr. Conrad
20 Powell is under absolutely no obligation by an court
21 order to pay anything, is he?

22 A. No. That's why he voluntarily gave her
23 \$4500 non-taxable; but the problem with the gallery
24 keeps going on, which is why we didn't have the
25 money. And that's just what she is responding to is

1 because she suspicion about the genuineness of those
2 contracts that I had forwarded her.

3 (PLF. EXH. 61, Fax to Ashlin Potterfield
4 from Carolyn Powell, Dated January 20,
5 2005, Bates Stamped Original Client 99
6 through 104, was marked for
7 identification.)

8 BY MR. PENDARVIS:

9 Q. I'm passing you now another document
10 that was marked as Exhibit 61 to your deposition.
11 Appears to be a fax from Ms. Powell to you on
12 January 20, 2005. Did you receive this fax?

13 A. Yes.

14 Q. And she's explaining the whole
15 circumstance around NBSC?

16 A. Right.

17 Q. In the first paragraph --

18 A. In Augusta.

19 Q. Okay.

20 A. She was responding to Marne's
21 question -- those two questions.

22 Q. And she states on the third page that
23 she moved out of the gallery on your advice?

24 A. I don't think that's accurate because
25 she hadn't move out of the gallery. I mean, not the

1 gallery, the apartment, because she wasn't supposed
2 to move out of the apartment until the end of
3 January and we said we couldn't do that until we had
4 the money. So I don't know that I knew she'd moved
5 out of the apartment and she certainly didn't have
6 to at that point.

7 Q. Did you call her back and talk through
8 the substance of this letter with Ms. Powell?

9 A. I don't know if I talked to her or saw
10 her or if we did it in writing after that.

11 Q. She's telling you her Wachovia account
12 is overdrawn by 16,000. You see that on the --

13 A. Yeah.

14 Q. -- in the final part?

15 A. And that was what I had been having to
16 talk to Wachovia about partially.

17 Q. On the final/last page of Exhibit 61,
18 there's a reference to a contract on the beach
19 house?

20 A. Right.

21 Q. What happened with the beach house?

22 A. It was sold.

23 Q. Did you request a copy of the beach
24 house contract?

25 A. I didn't remember specifically doing

1 that. I know that we communicated about putting
2 those funds in escrow and they agreed to do so.

3 Q. Was there any agreement on both the
4 Kenilworth house or the beach house settlement --
5 sale proceeds being left intact in the trust
6 account?

7 A. Like I've said before, I don't have any
8 specific memory of where -- of the Kenilworth, but I
9 know that there's correspondence between me and
10 Marne regarding the beach house proceeds.

11 (PLF. EXH. 62, Letter to Marne Sherman
12 from Ashlin B. Potterfield, Dated
13 January 20, 2005, Bates Stamped 00333
14 through 00335, was marked for
15 identification.)

16 BY MR. PENDARVIS:

17 Q. Ms. Potterfield, I'm passing you a
18 letter, at least it appears to be your letter to Ms.
19 Sherman dated January 20, marked as Exhibit 62 to
20 your deposition. Is this a copy of a letter you
21 sent to Ms. Sherman?

22 A. Right. Answering her questions about
23 NBSC and moving to Augusta.

24 Q. And the first page then talks about a
25 response to the January 19th fax and it carries over

1 to the second page. Can you explain that? I'm not
2 sure if I understand that as far as the being once
3 bitten, twice shy, every time I respond to Mr.
4 Powell's concerns, he comes up with another reason
5 not to advance the funds. Did Ms. Sherman respond
6 to that statement?

7 A. I don't know, but those were her words
8 from her previous letter where she is once again
9 pointing out something Ms. Powell did that was
10 fraudulent, in reference to that they didn't believe
11 that the contracts were genuine. And I responded
12 that, well, every time we get really close, he
13 brings up something else. Trying to put it back on
14 him.

15 (PLF. EXH. 63, Check Number 1719, Bates
16 Stamped Original Client 1936, was marked
17 for identification.)

18 BY MR. PENDARVIS:

19 Q. Ms. Potterfield, I'm passing you a
20 document -- a copy of a check. The page is marked
21 Exhibit 63 and maybe that's a post-it note or
22 something like that attached to it. Did you receive
23 a check from Mr. Powell, the \$400,000 --

24 A. Yes.

25 Q. -- advance? Was there an agreement

1 about this, other than delivery of the money and the
2 correspondence we've looked at so far?

3 A. I don't know what you mean.

4 Q. I mean, was there -- we'll look at some
5 things that says acknowledging receipt, but was
6 there a formal agreement as to how this money was
7 going to be treated?

8 A. Other than the correspondence where
9 we --

10 Q. Yes.

11 A. -- both acknowledge that it would be
12 equitable distribution?

13 Q. Yes. Is was there any other document
14 that says we've reached an agreement, something that
15 had the -- that could be filed in court or anything
16 like that?

17 A. No.

18 Q. Okay.

19 (PLF. EXH. 64, Acknowledgement Dated
20 January 21, 2005, Bates Stamped 00343
21 and 00344, was marked for
22 identification.)

23 BY MR. PENDARVIS:

24 Q. And I'm passing you another
25 acknowledgment, I guess we can say, marked as

1 Exhibit 64, two-page exhibit. This is just the
2 receipt for the check?

3 A. Right. That my office received it.
4 (PLF. EXH. 65, Letter to Marne Sherman
5 from Ashlin B. Potterfield, Dated
6 February 2, 2005, Bates Stamped 00347
7 and 00348, was marked for
8 identification.)

9 BY MR. PENDARVIS:

10 Q. This is a one-page document that has
11 double copies. I'm just going to leave it like that
12 for now. We can deal with that later. Ms.
13 Potterfield, I'm passing to you a document marked as
14 Exhibit 65 to your deposition. Is this a copy of a
15 letter you wrote to Ms. Sherman about the beach
16 house contract?

17 A. Yes.

18 Q. And the terms of the escrow arrangement
19 were going to be just that the proceeds be deposited
20 into an escrow account?

21 A. Right. We worked those details out
22 later because she responded.

23 (PLF. EXH. 66, Letter to Ashlin B.
24 Potterfield from Marne Sherman, Dated
25 February 8, 2005, Bates Stamped Original

1 Client 120, was marked for
2 identification.)

3 BY MR. PENDARVIS:

4 Q. Ms. Potterfield, I've passed you another
5 exhibit. This one is marked Exhibit 66 to your
6 deposition. Appears to be a letter from Ms. Sherman
7 to you dated February 8th, that you date stamped
8 received on February 10th. Did you receive this
9 letter?

10 A. Yes.

11 Q. And the handwritten notes on the
12 right-hand side, those appear to be Mr. Taylor's
13 notes?

14 A. I'm not sure you could quantify those as
15 notes, but I do believe that Michael's handwriting.

16 Q. And, obviously, there are materials
17 later in the representation where Mr. Taylor becomes
18 involved. When did Mr. Taylor become involved?

19 A. It was about this time period. We were
20 trying to see if we could manage a permanent
21 hearing -- I mean, a permanent agreement; but
22 weren't sure that that was going to happen and so we
23 were considering switching strategies on what to do.
24 I mean, we'd gotten really close, but not to the
25 amount of money that Ms. Powell wanted.

1 Q. And I'm going to represent to you that
2 the paper trail -- your paper trail sort of ends in
3 April, early May of 2005. Is that consistent --

4 A. I think it really --

5 Q. -- with your memory?

6 A. It really ends pretty much the end of
7 March, first of April.

8 Q. Okay.

9 A. There are like one or two letters that
10 come from Marne to me mainly because she didn't
11 know, so she was still sending them to me; but I
12 didn't respond to those letters. But from what I
13 can tell, there's no further work after April 1,
14 2005 for me.

15 Q. I'm going to get us through there and
16 I'll do some follow up at the end. With regard to
17 Exhibit 66, this February 8th letter, she's
18 referencing that they will agree that the proceeds
19 will be placed into an escrow account --

20 A. Yes.

21 Q. -- correct? And is the substance of
22 this letter the continuing effort toward a permanent
23 agreement?

24 A. Right. Because we had continued the
25 January 15th temporary hearing to work on a

1 permanent agreement. It got continued to, I think,
2 sometime in March, so we were trying to still work
3 on that.

4 Q. And it has a graduated maintenance/child
5 support proposal based on the age of the children
6 over time? Is that what I'm reading in the middle?

7 A. Yeah. That was the total support.

8 Q. And did you understand that Mr. Powell
9 had made an offer to Ms. Powell to -- it says here,
10 something like 1.15 million?

11 A. There had been multiple numbers
12 discussed between the two of them from the
13 beginning.

14 Q. What was Ms. Powell's response to this
15 proposal?

16 A. She had maintained pretty much the
17 entire time that she wanted a two million dollar
18 total.

19 Q. Plus support?

20 A. I thought you were just referring to the
21 cash.

22 Q. Okay. That's fine. So she wanted two
23 million in cash and then --

24 A. Then there were other things after that.

25 Q. Had there been discussions about

1 collegiate/college expenses?

2 A. Not really. That was kind of a very
3 nice voluntary thing for him to do, because he
4 certainly did not have to do that.

5 Q. Do you know what Mr. Taylor's notes are?

6 A. I have absolutely no idea. If I had to
7 venture a guess, it appears that he's doing some
8 math.

9 Q. Okay. I'd agree. They look like
10 numbers to me, too.

11 Was there any doubt in your mind by
12 February 2005 that these two people were doing to be
13 divorced at some point, Carolyn Powell and Conrad
14 Powell?

15 A. I guess there was always a little doubt
16 because they -- we had periods of time where they
17 would get along really great and have -- I don't
18 know that I was always privy to what their
19 relationship was all the time.

20 Q. And wouldn't there have to be a
21 financial declaration done to do a divorce? I mean,
22 wouldn't you have to do that at some point?

23 A. For a hearing, you'd have to.

24 (PLF. EXH. 67, Letter to Carolyn Powell
25 from Brenda K. Jeffcoat, Dated February

1 9, 2005, Bates Stamped 00356, was marked
2 for identification.).

3 BY MR. PENDARVIS:

4 Q. I'm passing to you a copy of a letter
5 apparently one of your staff members wrote to Ms.
6 Powell dated February 9. It's marked as Exhibit 67
7 to your deposition. Is this a copy of a letter your
8 office sent to Ms. Powell?

9 A. Yes.

10 Q. Without the enclosure. My apologies. I
11 don't have a copy of that, but I've seen a blank
12 financial declaration form that your firm used at
13 some point.

14 A. At that time. It's different now, but
15 at that time. Yeah. There was a universal form.

16 Q. And that was enclosed -- included with
17 this?

18 A. I hope it was.

19 Q. And this is the first request to have
20 Ms. Powell prepare a financial declaration?

21 A. I don't believe. So I know that she and
22 I discussed preparing for the hearing for January
23 15th that was scheduled. She and I would have
24 discussed it then, just like we discussed getting
25 some affidavits together, which she did. But I'm

1 sure what Brenda did was to make sure she had it and
2 that it was in the works.

3 Q. Because there still was a temporary
4 hearing scheduled for March; right?

5 A. Exactly.

6 Thomas, do you know how much longer we
7 might have? Just trying to decide whether I should
8 take a break or not.

9 Q. Thirty minutes.

10 A. Okay.

11 Q. Thirty, 35.

12 A. Okay.

13 MR. TAYLOR: Let's go for 30.

14 MR. PENDARVIS: I tell you what. Let's
15 take a break. I don't want to you -- let's take a
16 break.

17 (A recess transpired.)

18 (PLF. EXH. 68, Letter to Carolyn Powell
19 from Ashlin B. Potterfield, Dated
20 February 11, 2005, Bates Stamped 00357
21 was marked for identification.)

22 BY MR. PENDARVIS:

23 Q. Ms. Potterfield, I'm passing you a
24 document marked Exhibit 68 to your deposition. This
25 appears it be a letter from you to Ms. Powell that

1 enclosed a copy of what's been marked as Exhibit 66,
2 the February 8th letter from Ms. Sherman.

3 A. Okay.

4 Q. What was encouraging to you about the
5 offer in the February 8th letter?

6 A. Well, that they were still willing to
7 keep going. That -- I can't remember exactly, but
8 it seems like it was an increase in the monthly
9 amount from the last go round. Seems like the last
10 go round, it was like \$1,000.

11 Q. Did Ms. Powell call you back?

12 A. Probably.

13 (PLF. EXH. 69, Letter to Marne Sherman
14 from Ashlin B. Potterfield, Dated
15 February 22, 2005, Bates Stamped 00358,
16 was marked for identification.)

17 BY MR. PENDARVIS:

18 Q. Passing you a copy of a letter from you
19 to Ms. Sherman marked Exhibit 69, dated February 22,
20 2005. Is this a copy of your letter?

21 A. Yes.

22 Q. And what information did you use in
23 the -- toward the bottom of the letter it says:
24 Also he has not provided any monthly support for
25 her.

1 A. I assume it was some type of
2 communication with Ms. Powell about that.

3 Q. So the plan was she was going to be
4 sending a proposed permanent settlement offer?

5 A. I guess so. I mean, that's what it
6 looks like.

7 (PLF. EXH. 70, Handwritten Notes Dated
8 February 22, 2005, Bates Stamped
9 Original Client 298, was marked for
10 identification.)

11 BY MR. PENDARVIS:

12 Q. Passing to you now a note from your file
13 marked as Exhibit 70. Appears to one of your
14 handwritten notes. Is that your handwriting?

15 A. Yes.

16 Q. And I think we've just looked at a
17 response to the February 8th letter. I have a
18 question for you. Is this a telephone call with Ms.
19 Powell?

20 A. No. That would have been a conference
21 with her. So we would have met and then gone
22 through that this is how we were going to respond to
23 her February 8th letter and then I did the letter.

24 Q. Right. And what's meant by that last
25 hyphen point that says: How do we address the tax

1 issues with the sale of the beach house?

2 A. We discussed the tax issues that would
3 occur on the sale of the beach house.

4 Q. Capital gains or something like that?

5 A. Right. And there had been some other
6 basis issues, what they -- the funds they had used
7 to purchase the house.

8 (PLF. EXH. 71, Letter to Ashlin B.
9 Potterfield from Marne Sherman, Dated
10 March 3, 2005, Bates Stamped Original
11 Client 79, was marked for
12 identification.)

13 BY MR. PENDARVIS:

14 Q. Before I pass you this next exhibit, I'm
15 going to represent to you it references a
16 conversation on March 2nd with Ms. Sherman. Do you
17 recall discussing, right around these letters, about
18 settlement talks, had a conversation with Ms.
19 Sherman?

20 A. Not specifically.

21 Q. Okay. Here's a copy of that letter.
22 I've marked it as Exhibit 71 to your deposition.
23 Appears to be a letter from Ms. Sherman to you dated
24 March 3. Do you recall receiving this letter?

25 A. Yes.

1 Q. And it references a withdrawal of the
2 temporary hearing?

3 A. Right.

4 Q. Why didn't you proceed with the
5 temporary hearing?

6 A. Because we were working on this
7 permanent agreement and we were really getting --
8 making some movement on it. And, I mean, I didn't
9 have to give her permission to withdraw her own
10 motion.

11 Q. I understand. But you could have filed
12 one of your own, of course?

13 A. I could have.

14 Q. And the answer to why you didn't is the
15 same?

16 A. Well, there are several different
17 reasons. I mean, for the same -- most of the same
18 reasons that we hadn't done one prior to this; but
19 specifically more at this point was we were really
20 sending these, you know, settlement offers back and
21 forth.

22 Q. Seems like the check forgery issues, the
23 fraud issues you talked about earlier had decreased
24 with Ms. Powell moving to Aiken?

25 A. Yes.

1 Q. And the temporary hearing wasn't -- the
2 motion for temporary relief was not withdrawn, it
3 was postponed; right?

4 A. To in January.

5 Q. Right. So that issue was still out
6 there for the defendant; correct? I mean, they
7 still were seeking temporary relief? I mean, they
8 hadn't withdrawn their motion?

9 A. Not until she did that in March.

10 (PLF. EXH. 72, Letter to Carolyn Powell
11 from Brenda K. Jeffcoat, Dated March 4,
12 2005, Bates Stamped 00362, was marked
13 for identification.)

14 BY MR. PENDARVIS:

15 Q. Passing to you a letter from your staff
16 to Ms. Powell marked as Exhibit 72 to your
17 deposition and it's indicating that the hearing is
18 rescheduled for March 16th?

19 A. This would have been the consent order
20 of continuance, rescheduling it to the March 16th;
21 but I didn't know why -- these may have crossed.

22 Q. Okay.

23 A. You know what I mean? In the
24 courthouse, it may have crossed that she had --

25 Q. Withdrawn --

1 A. -- withdrawn it; but they sent a
2 continuance order. Yeah. Because, see, Leslie
3 Bridle would have signed it in January.

4 Q. Okay.

5 A. The continuance order. Then it got
6 rescheduled for March, but she withdrew it before
7 that.

8 Q. Okay. I'm understanding you now.
9 That's what depositions are for.

10 (PLF. EXH. 73, Letter to Ashlin B.
11 Potterfield from Marne Sherman, Dated
12 March 23, 2005, Bates Stamped Original
13 Client 67 through 69, was marked for
14 identification.)

15 BY MR. PENDARVIS:

16 Q. I'm passing you a copy of a letter from
17 Ms. Sherman to you dated March 23. It's marked as
18 Exhibit 73 to your deposition. Did you receive this
19 letter?

20 A. Yes.

21 Q. More settlement negotiations?

22 A. Yes.

23 Q. You communicated this letter to Ms.
24 Powell?

25 A. Yeah.

1 Q. What was your assessment of the proposal
2 in this March 23rd correspondence?

3 A. It was pretty much the same as the
4 previous one, just in a more formal form. The other
5 one was just in a short letter. She put more
6 details in this one.

7 (PLF. EXH. 74, Facsimile Letter to
8 Ashlin B. Potterfield from Marne
9 Sherman, Dated March 30, 2005, Bates
10 Stamped 00366 and 00367, was marked for
11 identification.)

12 BY MR. PENDARVIS:

13 Q. Passing to you now another document
14 marked. This is marked Exhibit 74. Appears to be a
15 facsimile letter dated March 30 from Ms. Sherman to
16 you addressing the issues at the Antique Mall?

17 A. Yes.

18 Q. Were you aware of some of these
19 activities before receiving this letter?

20 A. No.

21 Q. Did you call Ms. Powell once you
22 received it?

23 A. I don't know if I called her or if it
24 was just mailed to her since she was living in
25 Aiken.

1 Q. Do you know if there's any truth to the
2 claim that she removed personal property?

3 A. I don't know if she did or not. I mean,
4 it wouldn't surprise me that she would have taken
5 property from the gallery space because she had to
6 move out of there. It seems to me that there was
7 maybe a subsequent letter where she -- you know, I
8 don't know. I might be getting confused with some
9 other stuff they said was taken out. Sorry.

10 (PLF. EXH. 75, Handwritten Note to
11 Ashlin from Carolyn Powell, Dated April
12 1, 2005, Bates Stamped Original Client
13 63 and 64, was marked for
14 identification.)

15 BY MR. PENDARVIS:

16 Q. Ms. Potterfield, I'm passing you what
17 appears to be a handwritten note from my client to
18 you dated April 21, (sic) 2005, marked Exhibit 75.

19 MR. HILL: April 1?

20 MR. PENDARVIS: Yes, sir. April 1 or
21 maybe April 11?

22 THE WITNESS: No, it's not. It's 1
23 because it was received by me on the 4th.

24 BY MR. PENDARVIS:

25 Q. Received April 4th. Yes. I'll go with

1 April 1. My question is, did you receive this
2 communication from your client?

3 A. I believe I did.

4 Q. And is this the change of strategy thing
5 you had discussed earlier when I asked you about Mr.
6 Taylor's involvement?

7 A. Yes.

8 (PLF. EXH. 76, Check Number 1236 Dated
9 April 1, 2005, Bates Stamped Original
10 Client 231, was marked for
11 identification.)

12 BY MR. PENDARVIS:

13 Q. Let me quickly hand you what appears to
14 be a copy of a check payable to Mr. Taylor, \$10,000,
15 marked Exhibit 76. Is that the enclosure referenced
16 in this Exhibit 75 letter?

17 A. No. She says I have sent Michael Taylor
18 a check.

19 Q. Okay. And it references, on the second
20 page of Exhibit 75, a financial draft is in the
21 mail. Is this in preparation for the temporary
22 hearing?

23 A. She had been working on it for that
24 purpose; but I don't know that we would have needed
25 it at that point, although this is kind of the first

1 time she could really put a good second page
2 together since she was kind of in a more set space
3 where she was going to be living for a while.

4 Q. Did Ms. Powell communicate to you what
5 she was referring to as garbage in the proposed
6 settlement agreement? I guess it's the second
7 paragraph.

8 A. No. I think she's referring to this
9 letter about taking the stuff out, the personal
10 property. I think that's what she was referring to,
11 this Exhibit 74. That's what she was referencing
12 because I would have just sent -- she would have
13 just received that.

14 Q. Okay. So your testimony is that the
15 other points in the settlement proposal were still
16 under consideration?

17 A. The last offer we received from her?

18 Q. In April.

19 A. Yes. Until, you know -- if Carolyn had
20 decided on April 1st that she was no longer going to
21 do that; but I thought they were because we had just
22 received that letter, you know, a week before.

23 (PLF. EXH. 77, Letter to Ashlin
24 Potterfield from Marne Sherman, Dated
25 April 20, 2005, Bates Stamped 00389, was

1 marked for identification.)

2 MR. PENDARVIS: I'm going to tell all of
3 you, none of that is for today. (Indicating.) Just
4 so everybody is a little relaxed. We're on the
5 downhill side.

6 Q. Ms. Potterfield, I'm passing you a
7 letter marked Exhibit 77 to your deposition.
8 Appears to be a letter from Ms. Sherman to you dated
9 April 20th. Stamp date April 25. Is this a copy of
10 a letter you got from Ms. Sherman?

11 A. Yes.

12 Q. And is this in essence a withdrawal of
13 the prior offer?

14 A. It is.

15 Q. Do you know if a motion -- well, I'll
16 let you read it for a moment.

17 A. No. I don't know that there was a
18 motion for protective order. And, frankly, she
19 couldn't really have done that because -- I mean,
20 that term of art, she couldn't have done.

21 Q. Why not?

22 A. I don't know exactly what she was trying
23 to get at, but that wouldn't have accomplished what
24 she was trying to do.

25 Q. I want to save this next letter for

1 another deposition of someone else, but this is
2 about the time you and Mr. Taylor were moving your
3 practice to another location on Main Street?

4 A. Exactly the time, yeah. We were to be
5 out May 1st.

6 (PLF. EXH. 78, Phone Call Slips, Bates
7 Stamped 00309, was marked for
8 identification.)

9 BY MR. PENDARVIS:

10 Q. Ms. Potterfield, I'm passing you another
11 exhibit marked as Number 78 to your deposition. It
12 appears to be copies of some phone messages. Were
13 these messages recorded in your office?

14 A. What do you mean recorded?

15 Q. Well, did someone from your office
16 create these phone records?

17 A. It appears so, yes.

18 Q. And do you know -- the bottom one -- I'm
19 not going to ask you much about the top one because
20 it appears it was a phone call for Mr. Taylor; but
21 the lower note has for ABP, that's you?

22 A. That is.

23 Q. And is that January 12, '05?

24 A. I believe it is just because -- based on
25 the timing of it, because we thought that, you know,

1 he was going to advance the funds on the 14th and
2 they were going back and forth about her moving out
3 and taking stuff out of the gallery and some things
4 that were happening at the gallery. There were all
5 kinds of, you know, accusations and. . .

6 Q. This is Ms. Powell's note that she
7 wanted a restraining order?

8 A. Yes.

9 Q. Did you talk to her about that?

10 A. I don't know. I don't remember
11 specifically talking about the restraining order.

12 (PLF. EXH. 79, Facsimile to Ashlin
13 Potterfield from Marne Sherman, Dated
14 May 10, 2005, Bates Stamped 00397
15 through 00399, was marked for
16 identification.)

17 BY MR. PENDARVIS:

18 Q. Ms. Potterfield, I'm passing you a
19 document marked Exhibit 79 to your deposition and
20 this appears to be a letter dated May 10, 2005
21 addressed to you. Is this one of the letters you
22 were referring to that, Mr. Taylor had taken over
23 the representation, but Ms. Sherman did not know
24 that --

25 A. Right.

1 Q. -- and, therefore, it was addressed to
2 you instead of Mr. Taylor?

3 A. Right.

4 Q. Did you ever speak with Ms. Sherman
5 about the transition?

6 A. I don't think I did. I don't remember
7 talking to her about it. I might have.

8 Q. I'm asking was there like a phone call
9 saying, hey --

10 A. I don't remember now.

11 Q. -- Mr. Taylor is going to be taking
12 over?

13 A. It could be. I just don't remember how
14 that happened.

15 Q. To your knowledge, had Mr. Taylor had
16 experiences with Ms. Sherman in other matters?

17 A. Yes.

18 Q. By April/May 2005?

19 A. Yes.

20 Q. What was your understanding of how they
21 interacted?

22 A. My understanding was that they had a
23 good working relationship as well.

24 Q. Did you receive this letter?

25 A. I did.

1 Q. Did you respond to this letter?

2 A. I don't think I did. I think Michael
3 might have.

4 (PLF. EXH. 80, Invoice Number 10116,
5 Dated August 10, 2005, Bates Stamped
6 Original Client 236 through 238, was
7 marked for identification.)

8 BY MR. PENDARVIS:

9 Q. Passing you what appears to be a copy of
10 some billing records marked as Exhibit 80 to your
11 deposition. And this may be a repeat of the earlier
12 one because I see some of the same dates again.
13 During the instant litigation in which your
14 deposition is being taken, have you reviewed this
15 billing record for accuracy on time entries?

16 A. Not -- no. I mean, I've looked over it,
17 but I haven't like compared it to the file to see
18 what's missing.

19 Q. Is there any way to tell from the entry
20 of the attorney that did the work?

21 A. It's basically you'd have to figure out
22 the amount.

23 Q. The math value based on the attorney at
24 the bottom?

25 A. The rate. Right.

1 Q. Okay. So .4 -- all right. I
2 understand. But was Mr. Taylor doing any work on
3 this matter until April 1st of 2005?

4 A. He did some work prior to that, yes.

5 Q. What did Mr. Taylor do?

6 A. I know that he talked to Ms. Powell for
7 me when I was at an auditory seminar. I think there
8 was probably some other stuff done with Michael,
9 January, February, March, you know, in preparation
10 of trying to decide whether we were really going to
11 get some work toward that agreement or if we were
12 going to have to change tactics. If we weren't
13 going to be able to settle the case, then what would
14 we need to start doing.

15 Q. Did you have any conversations with Mr.
16 Taylor about protective measures that might need to
17 be taken during the -- let me restate it.

18 My understanding early in the
19 conversations -- in your testimony today is the
20 strategy in place for the part of the litigation
21 that you were involved was to attempt to achieve a
22 separation agreement or divorce by agreement;
23 correct?

24 A. Not necessarily the divorce, but a
25 settlement agreement. Yes.

1 Q. A settlement agreement? And that it was
2 at a point when it became apparent to you that that
3 wasn't going to happen that the transition was made
4 to Mr. Taylor to really litigate this matter;
5 correct?

6 A. Essentially.

7 Q. Was there ever --

8 A. And I would have spent a little more
9 time working on it if she wanted to, but she was
10 ready to switch to that.

11 Q. And was there ever a conversation
12 between you and Mr. Taylor about protective measures
13 that might need to be considered while you were in
14 the settlement strategy phase in case it wasn't
15 successful and it had to be litigated later?

16 A. I don't recall having that conversation
17 because I don't know that that would have made a
18 difference.

19 Q. Well, things like getting a formal
20 separation agreement or a temporary agreement that
21 would protect her claim for alimony and allow her to
22 live without -- or develop relationships with other
23 people while this divorce was pending?

24 A. Well, the only way to have accomplished
25 that would have been to have had a compressive,

1 complete agreement approved by the Court and a
2 decree of separate maintenance be issued.

3 Q. Well, I understand. But if a party --
4 well, was there ever any discussions about the
5 benefits of getting an order on the property
6 allocation with the \$400,000 payment?

7 A. It wasn't necessary because they agreed
8 that it would be equitable distribution and they
9 agreed to that, but making that a court order would
10 have had absolutely no impact on her alimony.

11 Q. How about a written property settlement
12 agreement that acknowledged the equitable -- advance
13 on the equitable apportionment?

14 A. No. You'd had to have a total
15 agreement. A partial agreement wouldn't have
16 accomplished that.

17 (PLF. EXH. 81, 2005 DayMinder, Bates
18 Stamped 02977 through 02995, was marked
19 for identification.)

20 BY MR. PENDARVIS:

21 Q. Okay. Let me finish up on some records
22 material. I'm going to pass you now a copy of what
23 appears to be the DayFinder for the 2005 year with
24 reference to the Powell/Potterfield events. And I
25 think it's two of them if you look. About mid way

1 through there's one for Mr. Taylor and one for -- it
2 goes through I think --

3 A. Okay.

4 Q. -- 2983 and, 2984, that page number is
5 Mr. Taylor's. My question for you is this a copy of
6 your DayTimer, the first portion of this exhibit,
7 for 2005?

8 A. Yes. This first part would be mine
9 because it says with Michael.

10 MR. HILL: Is this 81?

11 MR. PENDARVIS: I'm sorry. Yes, it is.
12 It's Exhibit 81. My apologies.

13 Q. And what I did not see in the production
14 was a DayTimer book for 2004?

15 A. That's correct.

16 Q. Did it get gone just some way?

17 A. It is gone. I don't know where it is.

18 Q. In the move?

19 A. Perhaps. I wish I had it. I don't have
20 it.

21 Q. Is everything in here true and accurate
22 to best of your knowledge?

23 A. To the best of my knowledge, you know.

24 Q. And similar to your testimony about the
25 2003 book, are the entries made by staff members?

1 A. Not all of them. These appear to be
2 made by staff members.

3 Q. Did you do any work on this matter --
4 let me restate that.

5 When was the last time you did some work
6 on the Powell V. Powell matter?

7 A. I really believe it was April 1, 2005.

8 Q. So entries for 2006 on the time sheets
9 would not be for work you did?

10 A. I don't think they would. I mean, I
11 don't remember doing anything after that point.

12 Q. Why didn't you hire an investigator to
13 look into Mr. Conrad Powell's assets?

14 A. Because it was under instruction from my
15 client that she did not want to do that.

16 Q. Did you explain to her the risks and
17 benefits of hiring a private investigator to explore
18 the assets?

19 A. We discussed that, you know, it'd take
20 time and money to do that. And her specific note to
21 me was that she did not want to spend the time or
22 money to do that at that point.

23 Q. Is there any kind of motion that you can
24 file in Family Court to protect assets held by a
25 spouse in a marriage?

1 A. Yeah.

2 Q. What kind of -- describe that.

3 A. You can ask for a restraining order as
4 to assets in a temporary hearing -- in a temporary
5 motion.

6 Q. Do attorneys in domestic cases file les
7 pendens to secure assets from sale?

8 A. Probably.

9 Q. Have you?

10 A. I don't.

11 Q. Why not?

12 A. Well, I didn't in this case because
13 everything was for sale.

14 Q. Did you ever discuss with Ms. Powell the
15 thought of amending the complaint to assert a claim
16 for adultery?

17 A. We discussed that we could do that if we
18 needed to.

19 Q. When did you have those conversations
20 with Ms. Powell?

21 A. Probably when we were discussing what
22 kind of pleadings we were going to file.

23 Q. Oh, originally in 2004?

24 A. Right.

25 Q. Did you ever have a conversation after

1 that point about amending the pleadings to assert a
2 claim of adultery?

3 A. I don't remember having another
4 conversation about that. We could have.

5 Q. Were you ever aware of Mr. Powell
6 recording or getting loans and encumbering marital
7 property while you were representing Ms. Powell?

8 A. I don't remember a specific loan.

9 Q. Did Ms. Powell ever express any concerns
10 to you that her husband might be doing just that,
11 filing/encumbering marital property?

12 A. I don't remember discussing that with
13 her, no.

14 Q. Did she ever write you a letter stating
15 that?

16 A. That he was going to put a mortgage on
17 another piece of property?

18 Q. Or that she was concerned he might.
19 Either one.

20 A. I don't remember that being a concern.

21 Q. If you don't mind, turn back to Exhibit
22 4 for me, please. I've got questions as I wind this
23 up. Going to be asking about the last page.

24 A. (Complying.)

25 Q. Give you a moment to look that over.

1 The question I'm going to be asking, in the
2 carryover from Numbered Paragraph 10 on the next to
3 the last page about degree of separate maintenance,
4 there's a statement that says -- two statements.
5 One that says: During this period, a spouse could
6 still be divorced on the grounds of adultery or
7 other fault grounds if provable.

8 The question I've got for you deals with
9 the next sentence. It says: The only benefit is
10 that the adultery (or other grounds) cannot
11 disqualify a spouse from alimony if it was properly
12 agreed to and memorialized in the previous decree of
13 separate maintenance. See that?

14 A. Yes.

15 Q. Can you explain what's meant by the only
16 benefit is that the adultery cannot disqualify a
17 spouse from alimony?

18 A. Once a decree of separate maintenance is
19 issued, all of the issues between the two parties,
20 other than the divorce itself, are resolved. So
21 there really is no benefit --

22 Q. Okay.

23 A. -- to go forward on a fault ground at
24 that point. The only benefit I could possibility
25 think about would be if there was a -- would be a

1 time frame issue.

2 Q. But you can move forward quickly on a
3 fault base ground rather than a separate and apart
4 for a year?

5 A. Right.

6 Q. Okay.

7 A. And that would be -- I mean, you would
8 have to get a complete -- a compressive, total
9 agreement fairly early in the separation for that to
10 be a benefit.

11 Q. Through certainly the Fall of 2004,
12 carrying into the early part of 2005, when there
13 were questions and allegations about Ms. Powell
14 altering checks and doing things to get money, why
15 didn't you seek a temporary hearing with an
16 explanation that she's not increasing her spending
17 habits -- let me say it this way. Let me rephrase
18 my question.

19 Why didn't you seek temporary relief
20 with an explanation that the spouses aren't required
21 to adjust their spending habits just because of the
22 divorce and that her spending activities weren't
23 increased and she wasn't spending more money than
24 she had in the history of their marriage?

25 MR. HILL: Object to the form.

1 THE WITNESS: That's a -- that is one
2 argument that perhaps could have been used; but all
3 during that time frame, it was my opinion, based on
4 judges in Richland County, based on the amount of
5 money she had received, based on these fraud
6 allegations, that it would not have been in her best
7 interests at that time to go forward with a
8 temporary hearing because she would have been -- it
9 was my judgment that she would have received less
10 per month than what he was voluntarily giving her.
11 You had a great risk also with some of the custody
12 allegations at that point and the fraud issues. So
13 it wasn't just the money, it was custody, too.

14 BY MR. PENDARVIS:

15 Q. Isn't there a presumption of a 50/50
16 split in South Carolina on asset allocation for the
17 spouses?

18 A. The recent case law would have led you
19 to believe that, but that is not a written in stone
20 kind of thing. And that has been subsequent to this
21 litigation.

22 Q. And wasn't there a presumption that
23 weighed more heavily in favor of the innocent spouse
24 if there was evidence indicating the other spouse
25 had committed adultery?

1 A. Not necessarily.

2 Q. You've said today several times in
3 response to some letters from Ms. Sherman that some
4 of Ms. Powell's activities were making it difficult
5 to represent her or words to that effect today. Do
6 you recall that?

7 A. Yes.

8 Q. Did you ever tell her that?

9 A. Yes.

10 Q. What did you tell her?

11 A. I mean, I told her the risks of having
12 this allegations in front of a Family Court Judge
13 and the risks that, you know, if the banks went
14 forward, what we'd have to do. Spent a great deal
15 of time and effort trying to protect her from that.

16 Q. What did she say when you told her that?

17 A. I mean, she had explanations; but, you
18 know, that doesn't always do it. I mean, we did the
19 best we could to answer them and try to say -- keep
20 her out of trouble. I think it worked. I don't
21 recall her being charged criminally.

22 Q. What happened with the proceeds from
23 the -- let me back up.

24 Were you aware that the beach house at
25 Pawleys Island sold?

1 A. I don't remember exactly when it was. I
2 know that, you know, Marne and I had those
3 conversations about that the proceeds would be
4 placed in escrow; but I don't remember exactly when
5 it sold or those details. I know it did. I just
6 don't know how I know that.

7 Q. What did you do to protect Ms. Powell's
8 interest in the proceeds from the sale of the beach
9 house?

10 A. Well, the point that I was involved, I
11 had those discussions and Ms. Sherman said they'd be
12 put in escrow.

13 Q. Did Ms. Powell agree that she would
14 vacate the commercial space -- let me rephrase that.

15 Prior we've seen correspondence where
16 there was an agreement that the plaintiff would
17 vacate the commercial space?

18 A. They requested that, as an in tandem
19 requirement of advance of moneys, that she would
20 vacate the apartment and the gallery.

21 Q. And did you communicate that requirement
22 to Ms. Powell?

23 A. We've just been through --

24 Q. Okay.

25 A. -- a lot of correspondence. Me relaying

1 to Marne Sherman what Ms. Powell wanted to do about
2 that space.

3 Q. And from the records we've looked at,
4 you served no formal discovery during your
5 representation of Ms. Powell?

6 A. No. Because Ms. Powell did not want me
7 to.

8 Q. Did you do any informal discovery while
9 you were representing Ms. Powell?

10 A. I had some discussions with Marne about
11 trading some information. I don't know that we ever
12 got down to that thought because we started trading
13 our settlement offers instead.

14 Q. And how many meetings did you have face
15 to face with Ms. Powell?

16 A. I don't know. I haven't counted them.
17 I mean, we've been through several notes of having
18 conferences together and there's more on the time
19 sheets and then there's ones in the calendar.

20 MR. PENDARVIS: Let me take a quick
21 break with my client and I'll be right back.

22 (A recess transpired.)

23 BY MR. PENDARVIS:

24 Q. Two issues and then we're finished.
25 There were some notes we went through about a phone

1 call you received from Ms. Bunni Crawford?

2 A. Yes.

3 Q. Other than that conversation, did you
4 speak with Ms. Bunni Crawford about this case after
5 that?

6 A. I had another conversation with her, but
7 I don't know the time frame in relationship to that
8 conversation.

9 Q. Okay. What was the substance of the
10 second conversation?

11 A. She was very belligerent with me,
12 yelling at me about Conrad this, Conrad that and
13 that Carolyn was very upset that he was moving money
14 around and doing stuff. So I immediately left that
15 conversation and called Carolyn, who was in D.C. on
16 a trip with her children and she said, no, don't
17 listen to Bunni.

18 Q. Okay. Was that the last conversation
19 you had with Ms. Bunni Crawford?

20 A. That's the only one I remember -- the
21 only two I remember and that didn't happen -- I was
22 in Five Points when that happened, so it wasn't like
23 I took notes like I took the other ones.

24 Q. You just saw her down in --

25 A. I ran into her. Yeah.

1 Q. Okay. Did Ms. Crawford ever give you
2 permission to talk about her case with anyone?

3 A. Ms. Powell?

4 Q. Ms. Powell. Excuse me.

5 A. I don't know if there was other people.
6 Could have been other witnesses when we were getting
7 ready for the temporary. Some of those witnesses
8 that did affidavits at that point perhaps.

9 Q. Okay. Turning to the conferences,
10 person-to-person conferences you had with Ms.
11 Powell. And you told us, in the first meeting in
12 June of 2003, you did not make notes?

13 A. Not that I remember and not that I have.

14 Q. Okay. And my question to you is, did
15 you have any other person-to-person conferences with
16 Ms. Powell that you did not record notes -- during
17 which you did not record notes?

18 A. Yes.

19 Q. There were others?

20 A. Yes.

21 Q. How many?

22 A. I don't know. As you can see from a lot
23 of her notes, she would have dropped them off. And
24 sometimes when she'd come in to drop stuff off, I
25 would speak to her and we'd always -- it wouldn't be

1 like a go sit down in the conference room kind of
2 talk, but we would talk when she would hand them
3 stuff if I saw her during one of those times. I
4 know that happened several times.

5 Q. From June 2003 to when you completed
6 your involvement on the case in April of 2005, how
7 many face-to-face meetings did you have with Ms.
8 Powell?

9 A. I don't know.

10 MR. HILL: Object to the form.

11 THE WITNESS: I have not gone through
12 and counted them. And then there are ones that
13 aren't recorded either.

14 MR. PENDARVIS: No further questions.

15 MR. WATSON: In the Spring of 1984 --
16 I'm just kidding. Strike that.

17 THE WITNESS: Yes. You and I did go to
18 the Carolina Cup together.

19 (Off-the-record conference.)

20 (The witness, after having been advised
21 of her right to read and sign this transcript, does
22 not waive that right.)

23 (The deposition was concluded at 5:35
24 p.m.)
25

SIGNATURE OF DEPONENT

DEPONENT: ASHLIN BLANCHARD POTTERFIELD
DEPOSITION DATE: MARCH 10, 2011
REPORTER: WANDA K. CECIL
CASE CAPTION: POWELL VS. POTTERFIELD

I, the undersigned, ASHLIN BLANCHARD
POTTERFIELD, do hereby certify that I have read the
foregoing deposition and find it to be a true and
accurate transcription of my testimony, with the
following corrections, if any:

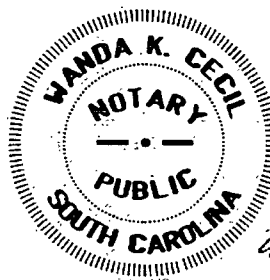
PAGE	LINE	CHANGE	REASON

SIGNATURE OF DEPONENT (CONTINUED)

PAGE	LINE	CHANGE	REASON

ASHLIN BLANCHARD POTTERFIELD Date

I, Wanda K. Cecil, Notary Public for the State of South Carolina at Large, do hereby certify that the deponent was advised of his or her right to read and sign said deposition both verbally and in writing. If the deponent fails to execute and return foregoing Signature of Deponent pages within the thirty (30) days allowed pursuant to the rules of Civil Procedure, the original transcript may be filed with the court.



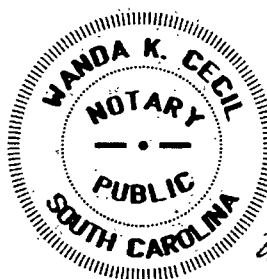
Wanda K. Cecil, CSR
My Commission expires
December 28, 2016

1 CERTIFICATE OF REPORTER
2
3

4 I, Wanda K. Cecil, Certified Court
5 Reporter and Notary Public for the State of South
6 Carolina at Large, do hereby certify that the
7 foregoing transcript, pages 1 through 238, is a
8 true, accurate, and complete record.

9 I further certify that I am neither
10 related to nor counsel for any party to the cause
11 pending or interested in the events thereof.

12 Witness my hand, I have hereunto affixed
13 my official seal this 27th day of March, 2011, at
14 Columbia, Richland County, South Carolina.
15
16



21 Wanda K. Cecil
22 Certified Court Reporter
23 Notary Public
24 My Commission expires
25 December 28, 2016

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1 STATE OF SOUTH CAROLINA

2 COUNTY OF RICHLAND

COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-40-8705

3
4 CAROLYN MITCHELL POWELL,

5 Plaintiff,

6 vs.

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

10 Defendants.

11 DEPOSITION OF: J. MICHAEL TAYLOR, J.D.

12 DATE: April 19, 2011

13 TIME: 9:29 a.m.

14 LOCATION: Law Offices of Turner, Padgett,
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16 1901 Main Street
Columbia, SC

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25 (INDEX AT REAR OF TRANSCRIPT)

Taylor, J. Michael

STIPULATION

It is stipulated by and among Counsel that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure, Rule 30; that all objections as to Notice of this deposition are hereby waived; that all objections except as to form are reserved until the time of trial; and that the deponent does not waive reading and signing of this deposition.

J. MICHAEL TAYLOR, J.D.

being first duly sworn, testified as follows:

EXAMINATION

BY MR. PENDARVIS:

Q. Good morning, Mr. Taylor. We've been introduced before today.

Would you state your full name for the record, please.

A. Jeffrey Michael Taylor.

Q. I would like to proceed today as we have in these other depositions, if you need -- the standard routine, if you need a break at any time, please let me know.

I will do my very best to communicate easy questions to understand, and I would like to get an agreement with you that if you answer a

Taylor, J. Michael

1 question, that meant you understood it.

2 Will you agree?

3 A. Okay.

4 Q. And if -- and I'm prone to talk over my
5 clients -- my witness -- so if I do that, I'm going
6 to do my very best to create a clean record here
7 today and, also, maybe you and I can help each
8 other on that.

9 I would like to begin today
10 with -- tell me a little bit about your
11 professional background, starting with when you
12 finished law school, and take me from there.

13 A. I graduated law school from USC in May
14 of 1980, took the bar exam that summer. Sometime
15 between taking the bar exam and passing the bar,
16 being admitted in November of 1980, I took a job as
17 assistant director of the CLE division of the South
18 Carolina Bar.

19 I did that for about eight months. And
20 then sometime the following year, in 1981, I opened
21 a solo practice here in Columbia. And I did that
22 up until approximately 1985.

23 Q. Can I pause you right there on the solo
24 practice. What was the general nature of your
25 practice?

1 A. Mostly family law is what it evolved
2 into. I started doing just a little bit of this, a
3 little bit of that, some probate court work,
4 appointments for people who are involuntarily
5 committed, things of that nature. But basically
6 started developing more and more into the family
7 law area.

8 And then in about 1985, I was offered a
9 job as a district office attorney with the Small
10 Business Administration, and they made me -- during
11 the course of that two-year tenure -- a Special
12 Assistant United States Attorney.

13 And then I left that job, roughly 1987,
14 I think, and took a job with Harvey Golden, and I
15 worked with Harvey in various capacities.

16 Later on, sometime in the 1990s, we
17 formed a partnership and then --

18 Q. Can I pause you there?

19 A. Sure.

20 Q. Was Mr. Golden -- was he practicing
21 under a P.A., a firm or --

22 A. Yeah. As I recall, when I started
23 there, it was Harvey L. Golden, P.A.

24 And then, as I said, we formed a
25 partnership with Ashlin, my partner here, I think

1 in May of 2005. And Ashlin and I have been
2 practicing together since then.

3 Q. In your progression of your
4 relationship with Mr. Golden's firm, when did you
5 become a partner?

6 A. I want to say sometime in the early
7 1990s. It was Golden, Taylor & Potterfield. And
8 then after a while, we added on Barron, and then it
9 became Golden, Taylor, Potterfield & Barron.

10 And when we split up, Almand remained
11 with Harvey, and Ashlin and I moved down the street
12 about half a block.

13 Q. And that was in 2005?

14 A. I believe.

15 Q. And after -- I guess with the exception
16 of your tenure with the U.S. Small Business
17 Administration Office, in the private practice of
18 law, beginning with your association with
19 Mr. Golden in 1987, what was the nature of the
20 types of cases you handled?

21 A. Exclusively family law cases. Um,
22 complex complicated high-asset cases were among
23 them. We also had some smaller cases as well.
24 There's a mix.

25 Eventually, I started doing appeals

1 in-house, and I still do appeals to this day.

2 Q. And have you practiced outside of the
3 Richland County area?

4 A. Statewide.

5 Q. Statewide.

6 And has that been the case since you
7 were with Mr. Golden's firm?

8 A. Yes.

9 Q. Are you admitted in any states other
10 than South Carolina?

11 A. No.

12 Q. Have you given any CLEs or anything of
13 that nature --

14 A. I have spoken at a few CLEs, yes.

15 Q. What were the topics?

16 A. One of them was hot tips from the
17 experts, and that was on the sequence of witnesses
18 that you call at a trial in a family court case. I
19 did another seminar recently on the law of
20 relocation.

21 Q. Would you explain that a little bit,
22 please.

23 A. Um, when -- the normal situation you
24 have, it's a post-divorce case, custodial parent
25 wants to relocate to another part of the country

1 and the stay-behind parent doesn't want that to
2 happen and sometimes that can end up in some
3 contested litigation, and basically what is the
4 law, what are the factors to be considered in that.

5 Q. Any other topics you recall speaking on
6 at CLEs?

7 A. Not that I can recall.

8 Q. You mentioned high-end asset cases.
9 Could you give me some parameters of what you
10 consider a high-end asset case?

11 A. It varies. Um, some of them would be
12 multimillion dollar cases, some of them would
13 involve tens of millions of dollars. But then
14 again, I also represent people pro bono, who can't
15 even afford an attorney, so it's a spectrum of
16 cases.

17 Q. I understand. I was just trying to get
18 an idea of, when you mentioned high-asset cases,
19 what range of asset -- I'm presuming you mean
20 marital assets?

21 A. Yes.

22 Q. And at what point in a representation
23 of high-asset case would you come to the conclusion
24 that it was a high-asset case?

25 A. Usually from the beginning.

1 Q. How would you know that?

2 A. We would ask the client at the
3 beginning to determine income. At an initial
4 conference we might ask, you know, what kind of
5 assets are we dealing with.

6 I don't really get a handle on that
7 until the client writes a novel that may detail
8 some of the assets and more of the parameters of
9 the case.

10 When we first start with a client, we
11 try to get them to develop as much information for
12 us before we decide whether we're going to even
13 take the case. And usually at that point, you get
14 a handle on it.

15 Q. You may recall from Ms. Potterfield's
16 deposition, her testimony about some of the forms,
17 and we looked at several forms that Ms. Potterfield
18 gave to Ms. Powell in the early part of this
19 representation.

20 And my question for you is: Are you
21 involved in developing what's in the text of the
22 form files for the firm?

23 A. Those forms started -- they were
24 already in existence when I started with Harvey.
25 And as time went on, they would be modified,

1 evolved a little bit, maybe changed to some degree.
2 But the genesis of it was Harvey Golden.

3 Q. And can I presume that changes are made
4 when new case developments change the law maybe or
5 you see things from another attorney that you think
6 might be valuable?

7 A. Or when we started handling our own
8 cases, for example, we would take Harvey's name out
9 of it and put our name in it or something like
10 that.

11 Q. How -- I want to break this in two
12 points, one for the Golden Taylor Potterfield firm,
13 and then a second question, same question for your
14 firm.

15 How were the files maintained in the
16 Golden Taylor Potterfield firm?

17 A. What do you mean by how?

18 Q. In terms of paper-hanging jackets, were
19 they -- did you go to a computer, digital, or
20 anything like that?

21 A. No, no. They would be in an accordion
22 file usually, and as the case would progress, it
23 might go to two accordion files. And then they --
24 depending upon the information that was developed,
25 it could go to banker's boxes. So the file would

1 eventually grow. But usually we start with an
2 accordion file.

3 Q. And that same question holds true for
4 the Taylor Potterfield firm?

5 A. Pretty much, yes.

6 Q. And the Golden Taylor Potterfield firm,
7 was there a case management protocol or software
8 program to keep the attorneys knowing what dates
9 they have hearings and depositions and things of
10 that nature?

11 A. Well, we maintain calendars, written
12 calendars. I think at that point, we may have had
13 some computerized calendering. But the main things
14 that we would concentrate on to keep us straight
15 about the important dates and things like that,
16 would be our written calendars.

17 Q. The same question, the same response
18 for the Taylor Potterfield firm?

19 A. Yes, yes.

20 Q. In the handling of a typical
21 file -- and we're going to get specific about
22 Ms. Powell's matter later -- but in the handling of
23 a typical file, do the attorneys -- and I'm really
24 focusing right now on you -- do you make plans and
25 objectives on what you would like to accomplish in

1 a file and set deadlines for yourself for filing
2 and --

3 A. No.

4 Q. -- discovery deadlines and things that
5 you --

6 A. No, no, no, we wouldn't map out to that
7 kind of a degree, because, for all practical
8 purposes, every battle starts as planned, but every
9 battle ends completely differently, not as planned.

10 So you don't know what's going to
11 happen in a particular sequence. The objectives
12 may change. The direction of a case may change as
13 the case develops and progresses. So you can't
14 start out with a timeline: Okay, I'm going to do
15 this here; and then at Z, Y, Z point 12 months
16 later, we will be at Y point.

17 There's no way you can really do that,
18 because they're all matters and factors that come
19 into play, stretching times, and sequence of things
20 and whether you're going to do something at one
21 point or another point. And you may change tactics
22 at some point.

23 Q. Does the Golden Taylor Potterfield firm
24 have any checklists of sorts to make sure that
25 you're accomplishing certain things, or at least

1 considering certain things for every file matter
2 that you undertake?

3 A. No, because every case is different. I
4 mean, an appeal has got -- it's a completely
5 different situation from an active, hot litigation
6 case in family court.

7 Or if you're doing negotiations only
8 and you don't even have any litigation going on, I
9 mean, there's some variations between the cases.
10 There is so much that you can't have a standard
11 procedural protocol.

12 Q. What did you do to prepare for the
13 deposition today?

14 A. I'm sorry?

15 Q. What did you do to prepare for this
16 deposition today?

17 A. Reviewed some of the materials.

18 Q. What did you review?

19 A. I'm sorry?

20 Q. What did you review?

21 A. Correspondence. I think, at some
22 point, pleadings, notes, primarily the things that
23 were during my tenure while I was representing
24 Ms. Powell.

25 Q. Did you review Ms. Potter -- the

1 transcript from Ms. Potterfield's deposition?

2 A. I think I saw parts of them.

3 Q. When a client retains -- let me back up
4 a second.

5 Can I presume it's typical that one of
6 the attorneys in the firm will get a call from a
7 prospective client saying, I would like to meet
8 with you about hiring you to represent me in a
9 divorce?

10 A. It could have been in a number of ways.
11 Sometimes I might get a phone call from a lawyer
12 saying, Hey, listen, I want to refer someone to
13 you.

14 It might be a potential client calling
15 in, they get to the receptionist, and then the
16 receptionist will set up an appointment for them.
17 So it could be any number of ways.

18 Q. When this prospective new client comes
19 to the firm -- in whichever way, referral, direct
20 call, former relationship with one of the
21 attorneys -- did the Golden Taylor Potterfield firm
22 consider that client to be a client of the
23 particular lawyer or the firm?

24 A. It depended. Um, if the client came in
25 to see Harvey, then Harvey would associate one of

1 the other attorneys. Sometimes clients would come
2 in, say, to see me, and then they would retain me
3 separately from Harvey, and that would be explained
4 at that point.

5 Q. And we'll get to this in more
6 specifics, but I did note in the representation
7 there was an additional retainer paid when you
8 became involved by Ms. Powell.

9 And I just wondered if there was like
10 a -- did the firm treat that as, like, a new client
11 for you, and you were just taking over a file from
12 Ms. Potterfield?

13 A. Well, you're taking it a little bit out
14 of context, but the way it really was, since Ashlin
15 and I were partners, technically, the firm was
16 still engaged, so we didn't need a new engagement
17 letter or anything like that. The fee agreement
18 already had my hourly rate, if I remember
19 correctly.

20 And, basically, I just assumed sole
21 responsibility at that particular point in time.

22 Q. And that's just based on your
23 communication with the client on how it's going to
24 be handled?

25 A. Yes.

1 Q. We're going to get to that later, but I
2 just wanted to get an idea more in the big picture
3 of how the firm handled clients. But my
4 understanding, it was the firm treated it as a firm
5 client, but this particular lawyer might be
6 handling it in association with another lawyer.
7 But it was the firm's treatment as the client was
8 the firm's client?

9 A. If you're talking about Golden Taylor
10 Potterfield --

11 Q. Yes.

12 A. Yeah, we were a partnership. So, yeah,
13 it would be a firm client, yes, for those purposes.

14 Q. And same question would apply -- same
15 answer would respond for the Taylor Potterfield
16 firm?

17 A. Yes.

18 Q. Okay.

19 A. Again, that's in a typical case.

20 Q. And you pointed out some
21 characteristics of different types of matters that
22 the firm would be engaged to represent.

23 In Ms. Powell's case, what was the
24 scope of the firm's representation of Ms. Powell?

25 A. Well, Ashlin was handling it. It was

1 to try to negotiate an ultimate settlement and
2 eventual divorce.

3 And when I was taking it over,
4 basically, the same goal, basically.

5 Q. Did it include a duty to obtain custody
6 of the children and support for the two minor
7 children for Mr. Powell?

8 A. When you say a duty --

9 Q. Well, as part of the scope, did it
10 include an obligation to seek custody of the two
11 minor children, the scope of representation?

12 A. One of the things that Ms. Powell was
13 very concerned about and what she really wanted --
14 one of her higher priorities was custody of her
15 children, or primary custody of her children; yes,
16 that was one of her goals.

17 Q. And that was within the scope of the
18 firm's representation?

19 A. Yes.

20 Q. Was seeking support for the two minor
21 children within the scope of the representation?

22 A. The same answer, yes.

23 Q. Did the scope of the representation
24 include, as an objective, to obtain separate
25 support and maintenance for Ms. Powell?

1 A. At one point, yes.

2 Q. At what point did that become -- at one
3 point it was -- tell me about your answer.

4 What do you mean by "at one point"?

5 A. Okay. Well, when I discovered that
6 Ms. Powell had committed adultery, that was no
7 longer an objective that we could really pursue.

8 We might be able to get something for
9 her out of settlement, but out of any kind of
10 contested case, that was off the table at that
11 point.

12 Q. Aren't you referring now to alimony?

13 A. Separate support and maintenance and
14 alimony are the same thing.

15 Q. Okay. And -- but that is unique
16 from -- let me back out of that.

17 Did the scope of the representation
18 include -- and as an objective -- to obtain an
19 equitable division of the property of the marital
20 estate?

21 A. That was one of the things we were
22 shooting for, yes.

23 Q. And at the initial part of the
24 representation -- I heard your answer earlier --
25 did the initial scope of the representation include

1 an objective to obtain alimony?

2 A. Yes, up until that point in time that I
3 described earlier.

4 Q. Did the scope of the representation
5 include a duty to advise the client concerning
6 matters related to the domestic proceedings?

7 A. Well, the -- and part of the
8 attorney/client relationship was to advise the
9 client appropriately as the case went on, yes.

10 Q. And did the duty to advise the client
11 appropriately as the case went on include, in
12 Ms. Powell's case, advice about extramarital
13 affairs during the --

14 A. Oh, yes.

15 Q. -- representation?

16 A. Oh, yes.

17 Q. And I was prepared with a question for
18 you.

19 Did any of those foregoing duties
20 change from the scope of the representation? I
21 think you have given a response about the separate
22 support and maintenance, slash, alimony issue.

23 Were any of the other objectives we've
24 gone through modified or changed during the length
25 of your firm's representation?

1 A. Well, there's no easy answer to that.
2 Uh, those were all objectives that the client, you
3 know, was wanting to get.

4 Now, whether they were all ultimately
5 obtainable, would vary upon the circumstances. You
6 know -- let me explain a little bit.

7 The things in family court have a
8 tendency to fight each other. What helps you in a
9 property division case may hurt you in an alimony
10 situation. And so if you push on one, you may be
11 sacrificing the other. That's why we ask our
12 clients to give us a list of priorities of what
13 they want to shoot for in the order of importance.

14 We try to get them everything that they
15 are asking for. But at some point, uh, you may
16 have to sacrifice something to get some greater
17 good.

18 You know, if the highest priority is
19 custody and the lowest priority is possession of a
20 particular piece of property or something like that
21 and the only way to get custody is to give up that
22 piece of property or something like that, then, you
23 know, you discuss it with the client: This is in
24 line with what you want.

25 So sometimes these things have a

1 tendency to become mutually exclusive. So to that
2 extent, yes, the goals of what you're looking for
3 sometimes change and shift during the course of the
4 litigation.

5 Q. Did any of those objectives and goals
6 we've been discussing within the scope of the
7 representation materially change when Ms. Powell's
8 case went with y'all when you changed from the
9 Golden Potterfield firm to Taylor Potterfield?

10 A. I think that the overall goals were
11 pretty consistent. The details among them changed
12 a little bit as things evolved.

13 But basically it remained pretty much
14 the same. I think periodically during the course
15 of our representation, you will see that your
16 client has written us, you know, My priorities now
17 are so on and so forth. Later on: My priorities
18 now are so on and so forth. And those priorities
19 would change.

20 At one point, she would say that
21 alimony -- she just wanted a little bit. And
22 another point later on down the line, she said, I'm
23 not seeking alimony at this time. So those things
24 shifted a little bit as the case progressed and
25 developed.

1 Q. Are you aware of any material changes
2 to the objectives and scope of the representation
3 at the point when you undertook the primary
4 representation of Ms. Powell?

5 A. The same answer. I mean, you know, as
6 I said, these things shifted a little bit.

7 Q. What was the basis or the reason why
8 you took over the representation from
9 Ms. Potterfield?

10 A. Well, your client wanted primarily to
11 do a settlement approach only. And that's what
12 Ashlin was primarily pursuing, to somewhat avoid
13 litigation or contested litigation, heavy
14 litigation.

15 And then it came to a point where she
16 wanted -- your client wanted to shift tactics
17 because the -- the nicer, easier kind of voluntary
18 approach wasn't going to bear any more fruit than
19 it already had by that point in time. Ashlin had
20 gotten your client \$400,000 in cash at that point.

21 But beyond that point, and as I recall,
22 he wasn't going to be too cooperative or whatever,
23 so we were going to try a different approach from a
24 different perspective, put it a little bit more on
25 a litigation perspective, primarily through formal

1 discovery, to kind of force and edge somebody to
2 the bargaining table. So it was a change in
3 tactics.

4 Q. How was the firm and Ms. Potterfield to
5 effectively negotiate a resolution of this -- let
6 me go back just one second.

7 Did you consider this to be a
8 high-asset case, the Powell case?

9 A. Medium, medium-high.

10 Q. And a medium, medium-high asset case,
11 how was the firm and Ms. Potterfield going to
12 effectively negotiate with the client without an
13 understanding of what was available for negotiation
14 through things like financial declarations and
15 discovery?

16 A. That was during Ashlin's tenure, and I
17 would have to defer to her on that. I took it from
18 a completely different perspective.

19 When Ashlin was handling it, she was
20 handling it in her way, and I wasn't -- I really
21 can't speak to that.

22 Q. This question is broader than the
23 Powell/Powell matter.

24 Did you and Ms. Potterfield and the
25 other partners, when it was Golden Taylor

1 Potterfield, discuss cases and how things were
2 going in matters --

3 A. No.

4 Q. -- and obtain advice from the other
5 attorneys?

6 A. No, no. The way that we worked was
7 that if Harvey was involved in the case, Harvey
8 would associate one of us.

9 If we had our own individual cases, we
10 would not involve Harvey. We would not even
11 involve each other, except maybe if there was a
12 conflict and somebody had to handle a hearing or
13 something like that, but that was rare.

14 Basically, when it was Ashlin's case,
15 it was her case, she handled it. And I didn't -- I
16 had my own cases to work on.

17 Q. There were no firm meetings to
18 discuss --

19 A. No.

20 Q. -- case management?

21 A. No.

22 Q. Okay.

23 A. Again, that wouldn't have done us any
24 good either, anyway, because every case is
25 different.

1 Q. Tell me about how you first became
2 aware of the Powell/Powell matter.

3 A. My first involvement, as I recall, was,
4 I think, in December of '04. Ashlin was
5 temporarily out-of-pocket for some reason. And
6 Ms. Powell was calling, she had an emergency
7 situation. She was being threatened with criminal
8 prosecution, she had intercepted a check, I
9 believe, or she was being accused for forging
10 checks or something like that.

11 And my office called me on my cell
12 phone, and I may have talked to Ms. Powell on the
13 phone for a while to try to get a handle on what is
14 the emergency situation, how can I put a damper on
15 this thing to keep it from blowing up.

16 And I think Ashlin was reached a couple
17 of hours later, and she was able to handle whatever
18 that particular emergency was. So I didn't have
19 any other involvement, other than that initial
20 blow-up.

21 Q. After the initial blow-up and the check
22 issues you recall, what was your next involvement
23 with the Powell/Powell matter?

24 A. As I recall, shortly after that, there
25 was a temporary hearing that was scheduled, um, and

1 Ashlin had asked me to assist her in preparation
2 for that. So I think I started drafting some
3 affidavits or something along those lines.

4 I believe I talked with your client a
5 little bit. It wasn't much of an involvement. It
6 was trying to deal with the immediate situation of
7 the temporary hearing.

8 Then the temporary hearing was put off,
9 and I stopped work because my involvement was no
10 longer necessary.

11 Q. Was that unusual for Ms. Potterfield to
12 come ask you for assistance in preparing a
13 temporary hearing?

14 A. Not unusual, but not -- not terribly
15 common either. Ashlin is a very accomplished trial
16 court attorney.

17 Q. How often did Ms. Potterfield come to
18 you for -- requesting assistance on matters?

19 A. Not all that frequently.

20 Q. I thought I understood your testimony
21 earlier that basically each of you worked on your
22 own files, unless Mr. Golden was involved and you
23 were working with him. But outside of that, each
24 of you worked on your own cases?

25 A. Yes, that's correct.

1 Q. And I just -- I didn't understand that
2 to mean that there would be times where the other
3 attorneys would be working with you or with each
4 other.

5 A. As a general rule, we handled our own
6 cases. But every now and then, you might call
7 somebody in to ask them to assist. And I think in
8 this particular situation, there may have been some
9 time constraints, and I think there were some other
10 things going on.

11 Ashlin was trying to keep the
12 settlement negotiations alive, and she didn't want
13 to be distracted by preparing for a temporary
14 hearing.

15 But basically my role was to assist at
16 that particular point in time, just, you know, I'm
17 a little crunched for time, can you help me put
18 this together, that kind of a thing.

19 Q. And if I'm understanding, that
20 temporary hearing request was withdrawn and you no
21 longer were needed to prepare?

22 A. As I recall, it actually was twice that
23 there was -- the temporary hearing, I think, was
24 scheduled for January. That was postponed to
25 March. And then in March at that time, I believe,

1 the motion was withdrawn. Correct.

2 Q. And that was 2005?

3 A. I believe that's correct.

4 Q. Okay. When was the next time you were
5 approached about the Powell/Powell matter?

6 A. Sometime after that -- I don't know
7 whether discussions occurred in February or March
8 of that year with Carolyn and with Ashlin, and the
9 idea was sort of developing as to whether or not to
10 try a different approach or a different tactic.

11 And I believe, April 1st, your client
12 wrote a letter basically telling us what her
13 decision was, which is, Okay, I'm ready to change
14 tactics. She was going to hire me and take over
15 the case.

16 Q. April 1st, 2005?

17 A. I believe that's correct.

18 Q. We'll look at some documents later.

19 I'm just trying to get a decent timeline on the
20 progression of things.

21 A. Whatever the documents say are going to
22 be more accurate than I can remember.

23 Q. We'll get to that.

24 What did Ms. Potterfield tell you about
25 the necessity for your involvement?

1 A. When you say the necessity, I'm not
2 sure what you mean.

3 Q. Or the request or why this transition
4 might be something for, you know --

5 A. Well, as I said, the idea was to change
6 approach, look at it from a different perspective
7 and pursue a more formalized discovery process to
8 try to force a settlement, and, if all else failed,
9 maybe eventual litigation. So I was coming at it
10 from a different angle, change tactics.

11 Q. Was it in the nature of, Here, you take
12 this case and here is what the client wants to do,
13 or I'm going to -- Ms. Potterfield telling you she
14 wanted to stay involved or -- describe that for me.

15 A. No. Ashlin's involvement ended April
16 1st. I don't recall her doing anything after that,
17 in this case.

18 So it was pretty much -- because, as I
19 said, you know, we normally run our own cases.
20 Ashlin was running her case for a while. Okay, I'm
21 taking it over, so I'm going to run the case.

22 Q. Was the client involved in that
23 decision?

24 A. Oh, absolutely.

25 Q. And who made the request for the

1 change?

2 A. Well, your client. She decided on
3 that. As I said, April 1st, she wrote a letter
4 saying, you know, I decided to go ahead and switch
5 tactics.

6 Q. Switch tactics or switch lawyers?

7 A. Both. I was coming at it from a
8 completely different perspective.

9 Q. What did Ms. Potterfield tell you about
10 the history of the case, the status of the case, at
11 this point when you were taking over?

12 A. I don't recall specifically what she
13 had told me about it. I mean, I reviewed some of
14 the materials in the file. Um, I knew that we had
15 just dodged -- or she had just dodged a temporary
16 hearing, that your client had gotten \$400,000 in
17 cash by some advance on equitable division by
18 agreement, you know, things of that nature, maybe a
19 little bit of how the business transactions were
20 going from the husband's perspective.

21 I don't think he had any stream of
22 income. He was living off of assets and things of
23 that nature.

24 Q. Did she tell you anything about
25 Ms. Powell and her characteristics, her nature, how

1 she was as a client?

2 A. Nothing that springs to mind.

3 Q. Was there any discussion about the
4 financial aspects or any additional need for
5 attorney's fees in your conversation with
6 Ms. Potterfield, as part of this transition?

7 A. I'm not sure I understand the question.

8 Q. Well, there were some additional monies
9 paid. We've seen that.

10 A. Correct.

11 Q. And can you tell me about how that came
12 to be?

13 A. What, the \$10,000?

14 Q. Yes.

15 A. That was to hire me specifically
16 because I needed an additional retainer. I believe
17 Ashlin was owed a little bit of money left over
18 from her representation of Ms. Powell. And from
19 that \$10,000, I paid Ashlin whatever her share was
20 at some point in time. I don't recall when that
21 was.

22 So that way, that took care of
23 Ashlin's -- your client's obligation to pay Ashlin
24 anything. I took it out of my retainer.

25 Q. Did the firm -- how did the firm

1 handle -- and I don't really need to spend a lot of
2 time on this, but how did the firm handle,
3 basically, compensating the attorneys? Were you
4 paid directly from the files you worked on only?

5 A. We maintained, basically, our own -- I
6 don't recall how Ashlin did it. I can only tell
7 you how I did it. I would -- if I get a retainer,
8 I stick it in an escrow account, and as I earn the
9 fees, I draw on that retainer, and at some point I
10 may ask the client to replenish the retainer if it
11 becomes exhausted.

12 If we conclude the case before the
13 retainer is exhausted, whatever is left in the
14 account goes back to the client.

15 Q. Are there times when you seek to have
16 the opposing spouse pay attorney's fees during the
17 litigation?

18 A. You can ask for them. Sometimes you
19 can get them, sometimes not.

20 Q. Was there any discussions about
21 making -- making an attempt to obtain attorney's
22 fees from Mr. Conrad Powell during this litigation?

23 A. At what point in time?

24 Q. Well, let's talk at the point you
25 became involved.

1 A. At that point in time, you know, we had
2 various -- various considerations we had to take a
3 look at here, taken a little bit out of context, in
4 that when I took over the case, I had to look at it
5 with fresh eyes and see what were our objectives,
6 where do we want to go, what was our opportunities
7 of getting certain things done, what particular
8 mechanisms do we need to put into play. And it was
9 kind of delicate.

10 When I took over the case, I had to be
11 very careful about how I took it over, because
12 there were all of these competing considerations
13 that were going on. There were a lot of judgment
14 calls that had to be made about how to even
15 introduce myself into the case, what particular
16 approaches to take.

17 At that point in time, if I were to ask
18 opposing counsel to provide attorney's fees
19 voluntarily, I would have gotten probably a flat
20 no, for the simple reason your client just had
21 gotten \$400,000 in cash.

22 Um, if I had tried to do a temporary
23 hearing, which in my judgment would have been
24 inadvisable at that juncture, the chances of
25 getting attorney's fees even then would have been

1 very low.

2 Q. Is it common for a wife to -- who has
3 custody of the children -- to have to maintain
4 support for herself and her children out of an
5 advance of equitable apportionment?

6 A. It depends upon the circumstance.
7 There are no cases that are ever alike. Every
8 situation is unique.

9 Q. Is it common for a spouse to be -- the
10 family court would basically let the
11 spouse -- force the spouse to live off of equitable
12 portion funds instead of support and maintenance
13 for the children?

14 A. It would depend upon the circumstances.

15 Q. In Ms. Powell's case, did you consider
16 going before a court?

17 A. We had thought about that. The
18 question was, what was going to happen if we pushed
19 forward for a temporary hearing. And there were a
20 lot of things that would go against a court
21 intervention at that point in time.

22 Again, first and foremost, your client
23 just got \$400,000 in cash. Not 1, not 2, not even
24 300,000; 400,000 in cash. That is unheard of in
25 family court at that stage in the proceedings.

1 That was a phenomenal result.

2 So to try to go back to the well at
3 that point in time and say, Oh, Judge, he hasn't
4 done anything for us lately, a judge is going to
5 look at me like I have lobsters crawling out of my
6 ears, for all practical purposes.

7 There were other considerations as
8 well. She had forged numerous checks. And if that
9 matter came in front of a certain family court
10 judge or two, that family court judge might very
11 well call the solicitor's office and say, Hey, I've
12 got a case for you right now, in which case your
13 client's criminal liability all of the sudden comes
14 out in the open. So that was a concern.

15 You have the fact that she had physical
16 possession of the children at that point in time,
17 was a terrific advantage that you didn't want to
18 risk, because that was, again, one of her primary
19 considerations.

20 She had just relocated to Aiken over
21 the husband's objections, put the children in a
22 private school over the husband's objections.

23 The husband had previously amended his
24 pleadings to ask for custody, so there's a risk
25 that she could lose custody if we went into a

1 family court hearing. So there were a lot of
2 competing considerations there.

3 And, in my judgment, asking for a
4 temporary hearing and get some form of alimony for
5 your client at that point in time would have been
6 very risky.

7 Q. What you didn't list just now, but you
8 did have evidence of the husband's adultery,
9 correct?

10 A. Yes.

11 Q. You did have evidence that the
12 husband's assets were as high as 7 million right
13 before -- right around the time of representation?

14 A. There was debate about how high the
15 assets were.

16 Q. But in excess of 5 million, correct?

17 A. I don't recall the exact figure.

18 Q. And you had evidence that certain
19 assets had been sold during the pendency of the
20 divorce?

21 A. Which assets were put into escrow, as I
22 understand.

23 Q. But, again, there was no -- you
24 understood that there was no -- you had no evidence
25 of an accounting, you had no evidence of where

1 those funds were. So you had some things that
2 would have been beneficial to the client to
3 approach the family court with that were favorable.

4 I mean, you didn't list those in your
5 considerations, correct?

6 A. Right. I didn't give you an exclusive
7 listing of the considerations. I'm saying there
8 were many considerations. And granted, you know,
9 it isn't like she didn't have her own side, you
10 know, her arguments to be made. But on balance,
11 and my judgment, having a temporary hearing at that
12 point would have conceivably done a lot of damage
13 to her.

14 Again, she got \$400,000 in cash. A
15 judge could very well say that she's not going to
16 get any alimony at this point, and then that sets a
17 bad precedent for later on in the case, because
18 then we're going to have to get around behind that
19 eight ball. And there again, there are other
20 considerations, too.

21 The husband was paying child support,
22 and what I considered under the circumstances to be
23 a generous amount. She might end up having to
24 pay -- he might end up having to pay less child
25 support than that, assuming she retained custody of

1 the children.

2 Q. Did you have any discussions with
3 Ms. Potterfield about the circumstances surrounding
4 the marital estate based on the delay in filing the
5 complaint?

6 A. Say that again, please.

7 Q. Did you have any considerations with
8 Ms. Potterfield about the effect of filing the
9 complaint in August of '04, the effect it had on
10 the size of the marital estate?

11 A. I don't recall any specific
12 conversations with her about that.

13 Q. Did you have any discussions with her
14 about why she delayed until August 27th, 2004 to
15 file the complaint?

16 MR. HILL: Object to the form.

17 THE WITNESS: I don't know that delay
18 would be the word for it, but again, that is while
19 Ashlin was handling the case. She was making those
20 judgment calls. I was not involved in the case at
21 that point, so I really can't address those issues.

22 BY MR. PENDARVIS:

23 Q. Well, my question was: Did you ask her
24 about that? And the answer is either yes or no, or
25 I don't know.

1 A. Why did she file when she filed? I
2 don't recall discussing that with her specifically.

3 Excuse me a second, I need some more
4 water.

5 MR. PENDARVIS: Sure, take your time.

6 If anybody needs a break today,
7 please --

8 THE WITNESS: I'm good to go.

9 BY MR. PENDARVIS:

10 Q. Did you have any discussions with
11 Ms. Potterfield about whether to file or whether a
12 lis pendens had been filed on any of the marital
13 property?

14 A. I don't recall specifically a
15 discussion about that.

16 Q. Do you recall generally any discussions
17 about filing a lis pendens on the marital property
18 in the Powell versus Powell matter?

19 A. No. Usually you don't file a lis
20 pendens in family court cases, so I don't recall
21 discussing that at all.

22 Q. Did you have any conversations with
23 Ms. Potterfield about temporary hearings, pendente
24 lite relief, anything of that nature?

25 A. Oh, yeah, back in December and January,

1 and I think maybe February when the March hearing
2 was -- I had some discussions with Ashlin at that
3 point.

4 Q. And earlier you had mentioned that
5 y'all had -- I think you said the word "dodged" a
6 temporary hearing. Why did you believe it was
7 a -- I mean, I took the word "dodge" as a good
8 thing, that y'all got away from something that
9 could have been bad.

10 A. Yes. Looking at it from a litigant's
11 perspective, a temporary hearing at that point in
12 time, I think, carried some grave risks. And I
13 mentioned some of those to you earlier, you know,
14 the possibility of criminal prosecution, the chance
15 that a judge would not award her any support at
16 all, custody was still in play. There are a lot of
17 risks that were going on there.

18 Q. In the most aggressive advocate's view
19 of Ms. Powell's case, what were the benefits that
20 could have come out of a temporary hearing for her?
21 List all of them for me, please.

22 A. At what point in time?

23 Q. At the point in time you got involved.

24 A. You mean before March?

25 Q. Well, let's just -- we'll start off

1 first with March, 2005.

2 A. What was the question again?

3 Q. The question is, in the most advocate
4 favorable way you can imagine, I would like for you
5 to list for me all of the benefits that could have
6 emanated or come from a temporary hearing in favor
7 of Ms. Powell. What did she have to gain?

8 A. I'm not sure I can really say that at
9 this point in time, because it's been so long ago.
10 You know, to some extent, maintaining of the status
11 quo with respect to the children would have been
12 helpful.

13 Um, getting her some kind of a monetary
14 award of some form would have been helpful. There
15 may have been some other things in there that I
16 just can't think of right now.

17 Q. The some form of monetary award would
18 have included maintenance, alimony?

19 A. Perhaps child support, perhaps
20 whatever, perhaps an advance on equitable division,
21 something like that.

22 Although advances on equitable
23 division, you don't see too often. It does happen,
24 but not to the scope that Ashlin got her.

25 Q. And we know, from some developments

1 later in September of 2005, if there had been a
2 temporary hearing in March of 2005 and Ms. Powell
3 became involved romantically with another person
4 after that, what would the effect on the marital
5 estate have been -- on the claim have been?

6 A. On property division?

7 Q. Yes.

8 A. Um, at that point, it would have
9 had -- technically, it would have had no effect,
10 but as a practical matter, by the time your client
11 started her affair, it had been so long after the
12 separation that its effect as a fault issue for
13 property division purposes are concerned, it had an
14 effect, but not much of an effect, because it was
15 not the cause of the break-up of the marriage.

16 She also, as I recall, was not hiding
17 marital assets with the boyfriend or things of that
18 nature.

19 So the effect by that time was -- I
20 wouldn't say negligible, but was not all of that
21 terribly great by that time.

22 Q. How about the effect on her claim for
23 alimony?

24 A. It wouldn't have affected her claim on
25 alimony. If she commits adultery the day before a

1 final hearing, she is precluded from alimony. The
2 temporary hearing does not stop the bar, the
3 adultery bar.

4 Q. How about a written settlement
5 agreement that's recorded in the court?

6 A. If it's approved by a family court, it
7 would have to be -- as a general rule -- it would
8 have to be a comprehensive full settlement
9 agreement for family court, or at least something
10 that specifically deals with alimony or something
11 like that.

12 Q. Did you have any conversations with
13 Ms. Potterfield about the advance on the equitable
14 distribution that she had obtained in regards to
15 going to the court to get that memorialized in
16 terms of a formal settlement approved by the family
17 court to protect claims for alimony?

18 A. No, I don't think that -- if you would
19 -- first of all --

20 Q. First, I'm just asking if you had a
21 conversation with Ms. Potterfield, then you can
22 explain.

23 A. Okay. I don't recall specifically,
24 because that's not the way that it works, you know.
25 Um, if you get an advance on equitable division,

1 the way this particular situation unfolded, that
2 was a voluntary payment from the husband to the
3 wife, okay. It was without having to have a court
4 order in order for her to get that money.

5 Now, when you say if you get a court
6 order to, quote, protect, closed quote, that, first
7 of all, Marne Sherman was not interested in
8 piecemeal litigation.

9 Second of all, I don't know that you
10 could, quote, protect that, closed quote, because
11 then that's permanently carving that out.

12 When it's an advance, it may switch it
13 back and forth a little bit later on. That was
14 just not in the cards.

15 Q. What did you do to pursue an alimony
16 claim on behalf of Ms. Powell?

17 A. Well, again, at that point in time, it
18 was something that she wanted, but it was -- um,
19 when you give all of the other factors that we're
20 talking about right there, it was not in the cards
21 at that particular point in time. You can't look
22 at these things in isolation.

23 Like I said, if I had risked all for
24 a -- like, uh, you have a patient coming into an
25 emergency room with a gunshot wound, and I'm

1 supposed to be paying attention to a fairly
2 insignificant thing when the gunshot wound is
3 really the problem.

4 Right now, her goals were to get
5 property division. That was her primary goal. At
6 times, she asked -- and she wasn't even looking for
7 temporary alimony.

8 Q. So the answer, then, is, for reasons
9 you have given, you did nothing to pursue her
10 alimony claim?

11 A. I wouldn't say I did nothing. I mean,
12 that was something that was in the mix. It was one
13 of the things that we were aiming for.

14 Now, on a temporary basis, as I said,
15 you know, that was not in the cards for a temporary
16 hearing. But ultimately, yes, that was one of the
17 things we were shooting for at a final settlement,
18 until your client took the bullet out of the gun.

19 Q. Did you do any discovery about his
20 extramarital affairs?

21 A. Yes. That was, I believe, in the
22 initial interrogatories that I sent to Marne
23 Sherman, and I believe we also asked him about that
24 in his deposition.

25 Q. What did you do to protect marital

1 assets during your representation of Ms. Powell?

2 A. What do you mean by "protect marital
3 assets"?

4 Q. Insure they're not being dissipated or
5 used by Mr. Powell.

6 A. Well, to some extent, they were being
7 used by Mr. Powell because that's the way they were
8 working throughout the marriage. He liquidated
9 assets and he lived off of the proceeds of the
10 liquidation. That's the way they had been living
11 for years and years and years.

12 Now, if you're asking, should I have
13 gone to court and asked for a restraining order
14 against alienation of assets or freezing of the
15 assets, at that point in time, that was something
16 that also was not in the cards.

17 And the reason why that is, is because,
18 first and foremost, I don't think we would have
19 gotten it, if we had asked for it from a court,
20 because, again, he's living off of those assets.
21 And that's what he was using to pay child support
22 and living expenses for the benefit of your client
23 and the children. Among other things.

24 The second thing of all is, that if I
25 had gone into court and asked for a restraining

1 order along those lines, it would have been made
2 mutual, which means the \$400,000 that Ashlin had
3 just gotten your client would also be frozen and
4 she wouldn't have been able to access those funds
5 at all.

6 So again, that was one of those things
7 that becomes mutually exclusive in line of what
8 other goals your client wanted.

9 Q. Did you discuss the thoughts,
10 considerations, regarding some form of protective
11 relief with Ms. Powell?

12 A. Yes. We were discussing this during
13 the period of time, the early stages there, when I
14 was getting involved in the case.

15 Q. Were there any meetings with Ms. Powell
16 in your office at the initial part of your
17 representation of Ms. Powell?

18 A. You mean after April 1st?

19 Q. Yes.

20 A. I believe there were. Um, I know there
21 were some earlier -- um, February, March, somewhere
22 along those lines. Exact time frame, I couldn't
23 really give you.

24 Q. And you met with Ms. Powell in
25 February, March of 2005. Is that your testimony?

1 A. At some point or another I know we had
2 some face-to-face meetings to basically discuss the
3 possibilities, yes. I just don't recall when.

4 Q. And it was during those meetings that
5 you're testifying you discussed with Ms. Powell the
6 plusses and minuses of doing things like seeking
7 protective relief or temporary hearings or things
8 of that nature?

9 A. As I recall, that was part of the
10 discussions. There was some of that going on.

11 Q. Tell me what you recall about your
12 discussions with Ms. Powell.

13 A. Just what I was saying, you know, where
14 are we, where are we going.

15 At that point of the case, what I was
16 really doing was also still trying to get a handle
17 on the case. I mean, what I'm laying out for you
18 is, you know, the thoughts that had developed as
19 time went on, when I was trying to figure out how
20 to handle this case, what am I going to be doing.

21 Again, the time frame for these
22 discussions, I didn't specifically recall. I was
23 just brought into the case, I was reviewing the
24 materials, trying to get a handle on the financial
25 stuff, trying to get some additional information

1 from your client.

2 I asked her, I think, to update her
3 novel. I think I asked her to give me a response
4 to Marne Sherman's settlement letter, things of
5 that nature.

6 Q. What advice did you give Ms. Powell
7 about extramarital affairs?

8 A. At what point in time?

9 Q. Let's start from the first time you had
10 any conversations with her about that, all the way
11 through your representation. I would like to get
12 the full understanding of what advice you gave her
13 about extramarital affairs during your
14 representation.

15 A. I don't recall talking to her about
16 extramarital affairs until we did the amended
17 answers to interrogatories, specifically talking to
18 her about it.

19 I know the question was asked in the
20 interrogatories from Marne Sherman, had she
21 committed affairs or adultery or anything like
22 that. And throughout that period of time, your
23 client's answer was no; and then we sent out some
24 answers to interrogatories and included the answer
25 no. And it turned out that the answer was yes, and

1 we had to send out some amended answers to
2 interrogatories.

3 Q. How would Ms. Powell know that there
4 were prohibitions on extramarital affairs after the
5 representation started?

6 A. After my representation?

7 Q. Well, just after -- how would
8 Ms. Powell understand the law about extramarital
9 affairs without the advice of her counsel?

10 A. Okay, well, through my understanding of
11 the entire case, back in 1996/1997, she was alleged
12 to have had an affair. I think the husband
13 testified in deposition that she had actually gone
14 out to San Francisco a couple of times to meet with
15 a man. I believe competing allegations of adultery
16 were being made at that time. She denied it to me,
17 that it had occurred.

18 But nonetheless, that would have, in
19 the course of that litigation, would have -- make a
20 new -- if I remember right -- that issue had to
21 have come up, because if she -- because alimony
22 would be one of the things they would be looking
23 for.

24 In the -- in another place would have
25 been an initial package of information, when the

1 client comes in and does the initial information
2 sheet and explains -- explanations and whatever
3 else. I believe Ashlin testified about that in her
4 deposition.

5 Q. And you were comfortable that
6 Ms. Powell understood all of the ins and outs of
7 law concerning extramarital affairs when you took
8 over the representation in March of 2005?

9 A. I didn't know that it was necessary for
10 me to specifically talk to her about it at that
11 particular point in time. I felt confident that
12 she knew about that, but there are some things you
13 shouldn't have to tell a client about. You
14 shouldn't have to tell a client, Don't rob a bank.

15 But the answer to your question was, I
16 was satisfied that she should have known that, yes,
17 at that point in time.

18 Q. But you never told her, did you, that
19 she would be barred from seeking alimony if there
20 was evidence she was involved in an adulterous
21 affair?

22 A. I told her that in January of 2006,
23 when we amended the answers to interrogatories,
24 yes.

25 Q. What did you tell Ms. Powell about her

1 claim for alimony in light of the evidence of an
2 adulterous affair?

3 A. You mean at that point in time?

4 Q. Yes, sir. January 2006.

5 A. Again, I would have to put it in the
6 context in relationship with the sequence of the
7 documentation, the documents that went by. But the
8 general explanation was, um, okay, we're going to
9 have to disclose this gentleman's name. You
10 have -- she had an affair.

11 I believe the day before, she had
12 written me a letter that I may have seen earlier
13 that morning on the 31st where, again, she was
14 providing me with some information.

15 At the very end of it, it said, at this
16 time, I'm not seeking alimony. I told her that,
17 Well, you know, you're not entitled to alimony.
18 But it's not a big deal anyway because you're not
19 looking for alimony at this point in time.

20 I did tell her that it would have an
21 effect on property division, but it shouldn't have
22 that big of an effect on property division because,
23 again, it was after the date of separation, long
24 after the separation. It wasn't the cause of the
25 parties separating, and she hadn't been guilty of

1 economic misconduct; so the effect of it was not as
2 bad as if she had been caught in an affair at the
3 beginning of the litigation.

4 Q. Did you give her any advice about
5 dating and seeing other people and admitting to
6 that or anything in that nature?

7 A. You mean before that?

8 Q. In -- yes, before that. Let's do it
9 both ways. Before January 2006 --

10 A. I don't recall specifically talking to
11 her about that particular subject. It might have
12 come up. But I don't -- I don't have a
13 recollection of it.

14 Q. We're going to look at the
15 interrogatories and requests for production, and I
16 have seen the file that you served on Ms. Sherman.

17 Outside of those two items, were there
18 any other forms of discovery you conducted on
19 behalf of Ms. Powell during your representation?

20 A. You mean, other than the
21 interrogatories and request for production?

22 Q. Yes, sir.

23 A. Yes. Uh, let me see. We went to Marne
24 Sherman's office and reviewed boxes of materials.
25 I believe there may have been some supplemental

1 discovery responses that I got back from Marne. We
2 took the husband's deposition. Um, and there may
3 have been some other stuff that we were doing at
4 that point, too.

5 Q. I want to move back a little bit to
6 some conversations you had with Ms. Potterfield at
7 the outset of your involvement.

8 Did Ms. Potterfield discuss with you
9 anything about her advice to Ms. Powell about
10 moving -- agreeing to move her two daughters out of
11 the marital home?

12 A. At the time I got involved in it, I
13 don't know if that was part of the game -- I don't
14 recall anything about that in December of '04.
15 January, February of '05, I may have been made
16 aware that she was in the process or had already
17 done the relocation. But other than that, I don't
18 recall anything specifically.

19 I remember that being a potential
20 problem in the case, but I don't recall talking to
21 Ashlin specifically about it. I was made aware of
22 the situation, but that was it.

23 Q. Tell me what you mean by a potential
24 problem.

25 A. Um, relocation can be a factor against

1 a parent. There is a South Carolina Supreme Court
2 case that would involve two equally fit parents,
3 that they were dead-even with each other, but one
4 of them wanted to move from Aiken to, I believe,
5 the beach, in South Carolina.

6 And the Supreme Court said that
7 relocation was enough to tip the scales in favor of
8 the other parent. You know, relocation along the
9 lines of what we're dealing with here put the
10 custody issue at risk.

11 You know, the parent can say, Why are
12 you going ahead and taking the children out of
13 their established environments? Why are you taking
14 them out of the schools that they have been in all
15 of their lives? Why are you taking them that much
16 further away from me and making my visitation that
17 much more difficult? And, again, it makes the
18 custody case a little more complicated.

19 Q. And so you're suggesting that was a
20 risky thing to do for Ms. Powell?

21 A. It was something that was complicating
22 the case and would have created -- potentially
23 could have created some problems, yes.

24 Q. What did Ms. Potterfield tell you about
25 her advice to Ms. Powell about that circumstance?

1 A. I don't recall Ashlin talking to me
2 about that at all.

3 Q. After you took over, did you ask her
4 about that?

5 A. Did I ask Ashlin?

6 Q. Yes. Did you ask Ms. Powell about
7 that?

8 A. No. By that time, it was a done deal.
9 But when I say it was a done deal, it had already
10 been done. But, again, you know, if we went in for
11 a temporary hearing, that was something that would
12 give the husband an opportunity to say, Oh, well,
13 while we're going in court anyway, let me tell you
14 what I want. I want to ask for custody at this
15 point because she took the kids.

16 Q. Do you believe Ms. Powell should have
17 been warned about the risks before -- by
18 Ms. Potterfield -- before moving?

19 A. I don't know. I can't speak to that
20 because I wasn't involved in that. I don't know
21 whether Ashlin gave her advice on this accord or
22 not.

23 Q. I'm not suggesting she did or didn't.
24 I'm just asking, do you believe that advice should
25 have been given to Ms. Powell?

1 A. It depends upon the circumstances. And
2 I don't know enough about the circumstances to give
3 a judgment call on that one.

4 Q. What more would you need to know? You
5 have reviewed the entire file.

6 A. Well, sometimes it's a risk, you know,
7 that you may want to take. If ultimately you do,
8 in fact, want to relocate, if you can get away with
9 it, then it becomes a fait accompli. So it is a
10 way of getting it done.

11 Now whether to stop it or tell her
12 don't do it, or do it, or whatever, sometimes it's
13 a calculated risk.

14 Q. Understand.

15 But do you believe that the client
16 should be given the information about the risks of
17 this proposed conduct -- i.e., the move, relocating
18 the children -- before the fact, before the move?

19 A. If, in fact, the client tells a lawyer
20 about the move before she makes it. I don't know
21 that that happened in this case. Again, that was
22 not during my representation.

23 Q. And I really wasn't asking about this
24 case. I was just asking, in general, do you think
25 the client should be warned about the risks of

1 conduct before doing the conduct, if the client
2 tells the lawyer ahead of time they're anticipating
3 doing this, that, or the other?

4 A. Well, again, it depends upon the
5 situation. It's all situational. If you've
6 got -- it may be one of the factors involved.
7 You're speaking in hypotheticals. There is no
8 hard-and-fast rule on that. The question is what
9 is reasonable under the circumstances.

10 Q. Turning to this case, do you believe it
11 was appropriate in these circumstances to give
12 Ms. Powell -- Ms. Potterfield give Ms. Powell
13 advice about the risks involved with moving the
14 children?

15 A. Again, I don't know. I was not
16 involved in that particular part of the case. That
17 was a decision by the time the case came to me, it
18 was an accomplished fact.

19 Q. So you have no opinion on whether
20 Ms. Potterfield should have given this advice to
21 Ms. Powell?

22 A. That's correct. I can't give an
23 opinion on that because I don't know what all of
24 the circumstances were at the time.

25 Q. Did Ms. Potterfield discuss with you

1 anything about Mr. Conrad Powell's contract for the
2 sale of the beach house, the \$2 million sale prior
3 to the actual sale?

4 A. I don't recall her talking to me about
5 that at all.

6 Q. Was that discussed -- the advance on
7 equitable portion discussed -- between you and
8 Ms. Potterfield at the time when you took over the
9 case?

10 A. She told me that she had obtained it.

11 Q. Anything else?

12 A. That's all I can think of at the
13 moment.

14 Q. Did you ask if there had been any
15 orders memorializing it or any other court
16 recognition of that sale?

17 A. I could look in the file, and I didn't
18 recall seeing any orders, so I don't recall
19 specifically asking Ashlin if there were any. My
20 recollection is, I didn't see any when I looked.

21 Q. Did you ask her about what had been
22 done to protect the proceeds from the sale?

23 A. I don't know that I specifically asked
24 Ashlin about that, but I do understand that the
25 proceeds went into two accounts that Conrad Powell

1 maintained.

2 At that point in time, I think he was
3 trying to make a 1031 property exchange, or
4 whatever you call it, so there was some issue about
5 that. But as I recall, the funds were protected.
6 They were escrowed or put into accounts where they
7 could be easily traced and determined.

8 Q. Did you obtain any of the records to
9 monitor the proceeds from the sale of the beach
10 house during your representation?

11 A. I don't recall specifically on that. I
12 know that there's a letter from Marne explaining
13 that the proceeds were put in escrow accounts.
14 Whether it was in some of the discovery responses
15 that I got back from Marne at some point or
16 another, I couldn't tell you. I have not reviewed
17 those discovery materials.

18 Q. Is it somewhat unusual for a party to
19 make an advance equitable distribution in a marital
20 dispute case?

21 A. You see it, but it's fairly rare.
22 Usually, the party that is making the
23 advancement -- certainly on a voluntary basis, it's
24 very rare.

25 You see just about anything in a family

1 court situation. But, no, that's very uncommon.
2 And an advance of the size we're talking about
3 right here, I'm telling you, is unheard of, in my
4 experience.

5 Q. Did Ms. Potterfield discuss with you
6 the part of the agreement whereby Ms. Powell was to
7 vacate her use of the marital commercial space?

8 A. I don't recall any discussions about
9 that.

10 Q. Were you aware of that component of the
11 agreement when you took over the case?

12 A. I don't recall specifically anything on
13 that.

14 Q. In March 2005, there was a pending
15 motion for pendente lite relief that Mr. Conrad
16 Powell had filed. Do you recall that?

17 A. I believe it was withdrawn in early
18 March, yes. I mean, there was --

19 Q. The hearing was set. I'm sorry to
20 interrupt. Go ahead.

21 A. Yes.

22 Q. I promised I was not going to do that
23 today.

24 Was there any discussions about the
25 merits of going forward with allowing it to proceed

1 with Ms. Potterfield?

2 A. I don't recall specifically, but I
3 remember that I was doing some preparation for it,
4 but I think that was all -- Ashlin obtained a
5 continuance or got it done. I was just doing some
6 affidavit preparation or something like that, but
7 that was it, so I wasn't really involved in
8 discussions.

9 Q. What's your -- what was the protocol
10 with Ms. Powell, as far as invoices for your
11 services?

12 A. What do you mean by "protocol"?

13 Q. How did you do it? Were invoices
14 submitted to Ms. Powell, your client, for services
15 rendered?

16 A. I don't remember sending her a bill,
17 except maybe when she came to collect the file.
18 But other than that, I don't think I sent her a
19 bill.

20 Q. How do you keep track of your time?

21 A. We have a computer program, Time Slips.

22 Q. And that's -- you maintain that as part
23 of the protocol of your office?

24 A. It's part of what we do, yes.

25 Q. Do all of the attorneys in the firm

1 participate in the Time Slips program?

2 A. Well, at least so far as -- the answer
3 is, at that -- whatever point in time, yes, Ashlin
4 and I both used the same program and -- but she's
5 got her cases and I've got my cases.

6 Now, whoever else is working on the
7 case, maybe a paralegal or something like that, can
8 also put their time into those things; but for some
9 reason, they rarely post their time.

10 Q. Really? Okay, that's off the record,
11 maybe. No, that's okay.

12 Was that -- did the Golden Taylor
13 Potterfield firm use that same program?

14 A. Yes, yes.

15 Q. Y'all just moved that to your time --

16 A. Yeah. We duplicated the hard drive, as
17 I recall, of Time Slips and the computer files that
18 we had, when we moved our office from Harvey's
19 office to our own firm.

20 Q. Let's help out the reporter. We are
21 talking on top of each other.

22 A. Okay.

23 Q. When -- and I'm trying to get past the
24 transition part and get into some of these
25 documents.

1 But when this decision was made to
2 transition the file from Ms. Potterfield to you,
3 did y'all have a formal meeting and get the file
4 out and say, Here is what we're getting ready to do
5 and --

6 A. No, no. The physical file, I just all
7 of the sudden started having access to, where I
8 started using the file. It was the same file.

9 Q. But there was no, like, formal meeting
10 or any sit-down with Ms. Potterfield to go
11 through --

12 A. No, no. No change in the guard, no
13 ceremony where we're crossing the swords and we're
14 walking under them or anything like that, no. No
15 heraldry.

16 Q. But as far as being made aware of
17 things that were pending, what requests had been
18 made by Mr. Powell's attorney and things of that
19 nature --

20 A. No. I don't think --

21 Q. -- to kind of update --

22 A. There was no formal meeting about that,
23 but I think the communication was there.

24 Q. Did you pull out the paper file and
25 look it over as part of the -- your familiarizing

1 yourself with the engagement?

2 A. At some point. Again, this was
3 all -- this is a process that, really, I started
4 looking at the file much more in depth after April
5 1st. That's when I really was trying to get a
6 handle on the other issues.

7 My involvement prior to that was
8 dealing with stamping out forest fires; but trying
9 to develop a strategy, develop what needed to be
10 done, occurred after that.

11 And again, I was needing some
12 additional information from your client, so I was
13 trying to spend some time pulling my thoughts
14 together and deciding, you know, how are we going
15 to do what we were going to do.

16 Q. So can I presume that to determine you
17 needed more information, that meant you reviewed
18 all of Ms. Powell's communications that went in the
19 file that were made to Ms. Potterfield?

20 A. As I recall, I reviewed the file. Now,
21 specifically what parts of the file I reviewed, I
22 don't recall. But at some point, I had gone pretty
23 much through the file, yes.

24 Q. Let's talk about the plans for the
25 litigation and your plans for, in particular,

1 discovering the marital assets.

2 When you began -- when you took over in
3 April of 2005, what were the plans to discover the
4 marital assets?

5 A. Well, again, it took a while to
6 formulate a plan, a course of action. The general
7 idea was to pursue -- push the case into a
8 settlement posture by using the litigation
9 development strategy; that is, doing the formal
10 discovery, to find out what assets were really
11 there.

12 One of the things your client had a
13 concern about was, was he hiding assets, things of
14 that nature. And so we were trying to develop that
15 particular information.

16 And, hopefully, in the course of
17 building up a drumbeat of that, we can force the
18 people to the settlement table. And if all else
19 fails, contested litigation, we would ultimately be
20 prepared for, if we had to go that route.

21 But again, the specific strategies and
22 whatever else had changed, to some degree as the
23 case progressed, it depends on what information you
24 get. It depends on all sorts of things. But
25 that's the general overall theme.

1 Q. Were you communicating this -- the
2 progression of the plan for developing a -- or
3 better understanding, the marital estate with
4 Ms. Powell as you were --

5 A. Well, from time to time. I don't know
6 if it was necessarily in those particular words at
7 any particular point in time, but that was the gist
8 of the ideas. Yes, we would have discussions, This
9 is where we wanted to go, this is where we were
10 going. In general terms.

11 Q. And as I said earlier, we're going to
12 be looking through some of the documents today.
13 And I did want to ask before we refreshed our
14 recollection with documents what -- were there any
15 concerns about the delay in seeking a financial
16 declaration from Mr. Conrad Powell?

17 MR. HILL: Object to the form.

18 THE WITNESS: Concerns about a delay in
19 getting financial resolution?

20 BY MR. PENDARVIS:

21 Q. Well, the case had been filed for over
22 a year.

23 A. Well, again, that's not uncommon.
24 Okay. And, again, there are some risks that go
25 along with financial declarations, one of them

1 being that if I ask the other side to provide me
2 with a financial declaration, I'm going to have to
3 provide a financial declaration to the other side.

4 And at various points in the case, we
5 had a hard time getting a sharp focus on your
6 client's finances, understanding where the money
7 was, where did the money go. She was saying she
8 didn't have any income at various times, when she
9 should have had income and things of that nature.

10 So, again, it's one of those things
11 that is a judgment call about pushing for that
12 particular information on a financial declaration.
13 That is a form of discovery, if you really want to
14 consider it. Hopefully, we can get the same
15 information, or the back-up information, the source
16 information, from formal written discovery.

17 Q. But wasn't the idea of moving it more
18 into litigation the reason that you were retained?

19 A. Yes.

20 Q. So this was generally part of the plan,
21 right, to proceed with the discovery and financial
22 declaration information?

23 A. Right. A financial declaration is just
24 a particular tool. It is a means to an ends, but
25 it is not the exclusive means of doing it.

1 You know, the issue of particularly
2 pushing forward for that kind of thing is a
3 judgment call.

4 Q. Do you think it's within the scope of a
5 judgment call to delay for almost two years after a
6 Complaint is filed to request financial declaration
7 from the opposing party?

8 A. I don't know that necessarily the word
9 "delay" would be the appropriate word.

10 Q. Or time period.

11 A. It's not unusual.

12 Q. Let me rephrase it. I'm sorry.

13 A. It's not unusual.

14 Q. What percentage of the cases do you
15 believe that you're involved in that included a
16 two-year time period from the compiling of the
17 complaint and the request for financial
18 declaration?

19 A. I can't put a number to that because
20 there are no two cases that are ever alike. There
21 is no set protocol for handling a family court
22 case. It's not a situation like, Okay, the client
23 hires me, let's go ahead and file our pleadings,
24 let's go ahead and have a temporary hearing, let's
25 engage in formal discovery. Sometimes you want to

1 do that, sometimes you don't want to do that. It
2 depends upon the case.

3 The question is, what is reasonable
4 under the circumstances at that point in time.

5 Q. Would it influence the decision if the
6 client, from the outset of litigation, was
7 expressing concerns her husband was moving assets
8 and hiding assets?

9 A. I don't know how to answer that,
10 because it's kind of abstract. And, again, it's
11 situational.

12 Q. Well, my question was, would that
13 influence the decision if, at the outset of the
14 litigation, the client was telling you that they
15 were concerned their spouse was hiding assets?
16 Would that influence your decision on whether to
17 proceed with a financial declaration?

18 A. It would be one of the factors to
19 consider in deciding whether or not to push for a
20 financial declaration.

21 Q. And it would be a consideration in
22 favor of a financial declaration, or against it?

23 A. Well, as a general rule -- I mean, if
24 your client asks for a financial declaration, that
25 would be something that you would consider, okay,

1 perhaps pushing for a financial declaration.

2 But again, there may be considerations
3 on the opposite side that tell you, maybe that's
4 not such a wise move at this particular point in
5 time.

6 It depends upon the circumstances. It
7 depends upon the case. There are no two cases that
8 are alike.

9 Q. What's the average length of time, in
10 your experience, that a case is pending at the
11 trial level in family court in Richland County?

12 A. I don't know what the average case is.
13 They range from a matter of just a couple of days,
14 depending upon if the footwork has been done ahead
15 of time to several years. Some cases go five, six
16 years, unfortunately.

17 Q. How many cases have you been involved
18 that went as long as five or six years at the trial
19 level?

20 A. I can't think of any off the top of my
21 head, but I do know that they occur.

22 Q. What's the longest case that -- stayed
23 pending in trial court that you were counsel for a
24 party in family court?

25 A. I can't recall, but I'm sure it was

1 probably around five -- well, it depends upon what
2 you're talking about. There was one case that went
3 up and down on appeals and things of that nature
4 that was six or seven years, but that's just a
5 guess. I would have to take a look at it.

6 Q. My question was focused on cases that
7 remained at the trial level. What's the longest
8 case that you recall where you were a party,
9 counsel for a party, that stayed at the trial
10 level?

11 A. I don't recall. I don't recall a
12 specific age of the case.

13 Q. Do you have any cases that went over
14 three years that you recall?

15 A. I finished one not too long ago that
16 was almost four years.

17 Q. What percentage of the cases in your
18 career have been in the category of two years or
19 more?

20 A. I couldn't give you a breakdown.

21 Q. Were there any discussions with
22 Ms. Powell about engaging a forensic accountant to
23 assist in the evaluation of the Powell marital
24 assets?

25 A. At one point I think we had discussed

1 that. I think John Camp's name may have been
2 suggested by Reid Smith at one point, but that was
3 a judgment call and a decision that we made after
4 the formal discovery, I think -- our formal
5 discovery was done. I think we're talking about
6 maybe February of '06, if I remember right,
7 January, February. Yeah, it would have been
8 February, maybe March.

9 MR. PENDARVIS: I'll tell you what,
10 let's take a break. It's eleven o'clock. We've
11 been going a couple of hours, get some water, and
12 come back to it in a few minutes.

13 (A brief recess was held.)

14 BY MR. PENDARVIS:

15 Q. Mr. Taylor, back on the record.

16 We were last discussing some
17 considerations about a forensic accountant, and I
18 think your testimony was that Mr. Smith had
19 suggested possibly using John Camp and you believe
20 that was sometime in February of 2006?

21 A. It was sometime very early on. I don't
22 know, it may have been around the time that we were
23 considering hiring Reid instead of going with a
24 forensic accountant. I think that was one of the
25 things we were looking at, as I recall.

1 Q. And "we" includes Ms. Powell?

2 A. I believe so, yes.

3 Q. Was Ms. Powell's -- what did Ms. Powell
4 tell you about her thoughts on whether a forensic
5 accountant should be retained?

6 A. Well, as I recall, Reid got involved in
7 the case -- again, this is during the discovery
8 answers, amended answers, whatever else, during
9 that period of time.

10 She was sued -- your client was sued
11 for foreclosure on the barn that she had bought,
12 and I do not do foreclosure cases, and I remember
13 Carolyn and I talking about that and believed -- I
14 suggested to her, Reid Smith is a very good lawyer
15 to handle foreclosures, because he's a bankruptcy
16 lawyer.

17 And then at some point after that, once
18 we got our initial discovery responses out and I
19 could start, you know, concentrating again on the
20 other stuff that we had gotten from the other side
21 and what else needed to be acquired and following
22 up, I mentioned it to Carolyn that if what we're
23 really looking for is to chase down assets, we
24 don't really need a forensic accountant so much
25 because a forensic accountant is somebody you use

1 if you needed to value a business with a
2 capitalization-of-earnings approach, or something
3 like that.

4 We didn't deal with that really at this
5 stage of the litigation. We didn't really need a
6 forensic accountant yet. We really needed somebody
7 that was going to help chase down some assets,
8 figure out what was there.

9 And I couldn't think of a better person
10 than Reid Smith, because he's, I think, spent his
11 entire career in bankruptcy court chasing down
12 assets hidden by creditors from the bankruptcy
13 trustee. He understands complex business
14 relationships. He could trace proceeds from one
15 entity to another. He understands how -- the
16 shifting in ownerships and things of that nature.
17 So he had a lot of experience, and I couldn't think
18 of a better bang for the buck than Reid at that
19 point.

20 The other advantage to Reid, as
21 well -- and I specifically remember talking to your
22 client about this -- was that at some point, we
23 could decide to use Reid maybe as co-counsel, and,
24 depending upon how the case unfolded, maybe have
25 him do the depositions, maybe, of the accountant,

1 or maybe even the husband, or whatever. So that
2 was a factor.

3 But upfront, Reid was retained as a --
4 more of an expert witness, somebody to help unravel
5 the finances. And, in fact, I think in February,
6 he and I actually went over to Marne Sherman's
7 office and looked through a whole bunch of
8 documents, and then Reid ended up doing his thing.

9 Q. So am I accurately gathering from that
10 that the financial aspect of the assets controlled
11 by Mr. Powell was primary in the representation, to
12 the point that having someone like Reid Smith take
13 the deposition was a wise choice, in your
14 assessment, because of --

15 A. Can you rephrase that? I'm not sure
16 I --

17 Q. The financial aspects of the -- that
18 portion of the marital claim -- there's custody,
19 there's other issues.

20 But the marital estate aspects of this
21 litigation was primary in your concern to the
22 degree that it made using Reid Smith as the
23 attorney taking the deposition a good choice.

24 A. As it turned out later on.

25 Again, as I said, you know, at that

1 point in time when we hired him, that was an option
2 that may have been available to us.

3 Whether to actually pull that trigger
4 was a decision that we could make later on,
5 depending upon the information that we developed
6 and as the case progressed.

7 At that point in time, Reid was a very
8 good choice as a financial expert. At that point
9 in time, again, alimony is off the table. Custody
10 is still a factor we've got to consider as one of
11 her priorities, again, make sure she doesn't do
12 anything to jeopardize that.

13 But it was -- the thrust of the stuff
14 we were going for was in the financial information,
15 developing what he had, where did it come from,
16 where did it go, is it a marital asset, is it a
17 nonmarital asset. All sorts of other
18 considerations needed to be made at that point. So
19 that's where we were finally going.

20 Q. What investigations did you do about
21 Mr. Conrad Powell's relationship with third parties
22 such as Tim Tyler?

23 A. I think I was fired before I had an
24 opportunity to take Tim Tyler's deposition.

25 Q. Same question for Mr. Conrad Powell's

1 relationship with Terry Powell.

2 A. His brother?

3 Q. Yes.

4 A. Again, I was fired before I had an
5 opportunity to take his deposition. I think we
6 ultimately took the husband's deposition, and he
7 explained some of the intricate relationships
8 between that. But, you know, the question was,
9 what relationships tied their business entities
10 together, and things of that nature.

11 Q. Why didn't you serve subpoenas on these
12 third parties?

13 A. What kind of subpoenas? For what?

14 Q. Document production.

15 A. I didn't know what we were looking for
16 yet at that point. Again, you know, this is
17 something that develops over a period of time. You
18 build on the discovery responses that you have.

19 And depending upon what we had in the
20 boxes at Marne Sherman's office, I may not need to
21 send out third-party subpoenas at that point. I
22 don't know. I didn't know what we had. I didn't
23 know what we didn't have at that point. Again,
24 that's a judgment call.

25 Q. What investigations did you do about

1 Mr. Conrad Powell's interest in some of these
2 companies?

3 A. As I said, we had the initial discovery
4 responses. We had the materials that Marne Sherman
5 made available to us. We ultimately took his
6 deposition. I'm sure that Reid may have done
7 something in addition to that.

8 Q. Part of that question, Mr. Taylor, is
9 based on some of the materials in the file that
10 show Mr. Powell had an interest in, at some point,
11 in -- I think by counts, 34 companies -- and I want
12 to ask you if you recall any of these names.

13 The first one, do you recall B&H
14 Limited partnership?

15 A. I don't recall the specifics of the
16 discovery responses at this point. I mean, I know
17 the generalities, but I did not go through the
18 discovery materials that we had there. I mean, we
19 had this litigation.

20 Q. So during the litigation, you didn't
21 look at these companies or the materials that
22 showed his interest in these 30-something
23 companies?

24 A. I don't know whether I did or not.

25 Q. Do you recall seeing -- and I will get

1 into some of the more primary ones --

2 Blossom/Huger, LP --

3 A. Yes.

4 Q. -- limited partnership?

5 A. Yes. Yes, I believe, that was one of
6 the businesses that he had, yes.

7 Q. Chapel Creek/Santee Golf? It has a
8 slash between them.

9 A. I believe that one -- I remember there
10 being something about that.

11 Q. Chic Antiques & Interiors?

12 A. Oh, yes.

13 Q. City Rugs, Incorporated?

14 A. I know he had a Persian rug business
15 and that may have been the name of it.

16 Q. Columbia Management Group?

17 A. Oh, yes.

18 Q. Coldstream Golf Club?

19 A. I remember he had an interest in a golf
20 course. I don't remember Coldstream specifically.

21 Q. Columbia Golf Properties, LLC?

22 A. That may be the golf properties I'm
23 thinking of.

24 Q. Columbia Management, Incorporated?

25 A. Oh, yes.

1 Q. Some of these are derivations and
2 companies that had been acquired, but I just want
3 to see if you remember these names.

4 Do you recall Flight Environments,
5 Incorporated?

6 A. That one doesn't ring a bell.

7 Q. Fox, dash, N, dash, Hare Investment?

8 A. Fox-N-Hare, that one doesn't ring a
9 bell. I'm not saying I didn't see something about
10 it, but that just doesn't ring a bell.

11 Q. I'm not certain about this one,
12 Gallery, Numeral 2?

13 A. Oh, Gallery 2, yeah, that was your
14 client's business.

15 Q. High Performance Sports Marketing,
16 Incorporated?

17 A. That one doesn't ring a particular
18 bell.

19 Q. J, slash, B Acquisition?

20 A. I'm not sure.

21 Q. Land Management, Incorporated?

22 A. That one rings a bell.

23 Q. One word here, Marknet, Incorporated,
24 M-A-R-K-N-E-T.

25 A. I'm not sure.

1 Q. I'm not sure how to pronounce this one.
2 The lower case word, the first word on these two
3 corporations is M-I-R-O-C, Miroc, Columbia, LLC.
4 And the second one is Miroc, LLC?

5 A. I'm not sure.

6 Q. Oak Hills Golf Course?

7 A. That rings a faint bell.

8 Q. The Penny Farthing?

9 A. That one doesn't ring a bell.

10 Q. Racing Champion South, Incorporated?

11 A. I remember there was Wheels. I don't
12 remember whether Racing Champion was the one that
13 bought them out. Again, we're talking about 2006.
14 So this is five years ago. I have no recollection
15 of a lot of these.

16 Q. These next three, I'm going to read
17 together, RC2, Incorporated -- and that's capital
18 R, capital C, numeral 2. There's three of them:
19 RC2, Incorporated, RC2 Corp, and RC2 South,
20 Incorporated.

21 Are you familiar with those
22 corporations?

23 A. They ring a bell. That may be the one
24 that bought out the racing.

25 Q. Capital letters, these first two, S.M.

1 Acquisition Company?

2 A. I'm not sure.

3 Q. Team Sports, Incorporated?

4 A. I'm not sure.

5 Q. This one, next one I'm not sure about,

6 but I'm going to ask anyway. It's called The

7 Victoria?

8 A. I'm not sure.

9 Q. Village Antiques & Interiors,

10 Incorporated?

11 A. That one rings a bell.

12 Q. Vista Antiques, Incorporated?

13 A. I think so.

14 Q. Vista Rugs, Incorporated?

15 A. Yes. That may be the Persian rug

16 business.

17 Q. You have mentioned this before, Wheel

18 Sports Group.

19 A. Yes.

20 Q. The next one is Wheels of Racing,

21 Incorporated?

22 A. I could be confusing the two or the

23 alternate. As I recall, one bought out the other

24 at some point in time.

25 Q. And as I said, I'm just -- and I just

1 want to see if you recall seeing these. Here is
2 another one, WSG Acquisition, Incorporated?

3 A. I'm not sure.

4 Q. That might be Wheels Sports Group, WSG,
5 Acquisition?

6 A. I'm not sure.

7 Q. Did you have discussions with
8 Mr. -- let me go down the list.

9 First off, did you have discussions
10 with Ms. Powell about what she knew of
11 Mr. Conrad Powell's interest or not in any of these
12 corporations?

13 A. I don't recall having a specific
14 conversation with Carolyn about those. I do know
15 she had a hard time understanding what her
16 husband's finances and the relationships were.

17 She understood in some basic terms
18 about Chic Antiques and Gallery 2, how that worked
19 out, and some of the bigger things. But some of
20 the finer aspects, I don't recall having specific
21 conversations with her about those.

22 Q. Same questions with Ms. Potterfield.

23 A. No.

24 Q. -- did you speak --

25 A. No.

1 Q. -- with her about these corporations?

2 A. No, no.

3 Q. Was she basically out of the picture by
4 the time --

5 A. She was --

6 Q. -- the discovery was -- hold on,
7 please, for our court reporter.

8 Was she pretty much out of the picture
9 once the discovery aspect of this case got moving?

10 A. Ashlin was out of the picture as of
11 about April 1st, 2005, whatever year that was.

12 Q. Did you need to go back to her for
13 information gaps to --

14 A. No.

15 Q. Okay. Did you have conversations with
16 Mr. Smith about these -- Reid Smith about these
17 corporations?

18 A. The specific ones I remember, he did a
19 preliminary report, -- actually, it was fairly
20 good -- in May of 2006 or so that went through a
21 lot of these details and how the businesses started
22 and how money was folded over from one company to
23 another and various investments and things of that
24 nature. And I had some discussions with him about
25 that after that, as well about some of these

1 things.

2 Q. Let me move off of this topic just a
3 moment, and we'll come back to the financial things
4 just for a minute.

5 The next person I want to ask you about
6 is Ms. Sherman. Let me start with that as -- have
7 you had other matters involving -- where
8 Ms. Sherman was opposing counsel?

9 A. Yes.

10 Q. Can you give me a number approximately?

11 A. I couldn't give you a number. I have
12 known Marne Sherman -- it might go back 20 years,
13 however long it was, when she was with Kermit King.
14 I have had various cases with her over the years.

15 Q. Could you describe the -- your
16 professional relationship with Ms. Sherman.

17 A. Good. She's competent. She's
18 reasonable. She and I get along with each other
19 very well.

20 Q. Does that change the dynamics of how
21 you handle cases, based on your assessment of the
22 relationship with opposing counsel?

23 A. It can be a consideration. One of the
24 things that I was concerned about when I was taking
25 over the case and I was trying to gauge how I was

1 going to make my announcement was that I not stick
2 the knife in too deep, I mean, if I go in there
3 with all guns blazing and asking for all manners of
4 crazy things right out of the get-go, because I was
5 concerned there was a risk that the husband might
6 end up firing Marne and then going on to somebody
7 that only knows how to litigate and this case would
8 degenerate down into a litigation footing and
9 that's the only way the case would be resolved,
10 which is not what your client wanted.

11 Q. Okay. Um, and we're asking about your
12 relationship in the beginning of this -- your
13 involvement in this matter.

14 Moving to the point of discovery and
15 the document production, did you have some
16 conversations with -- or any conversations with
17 Ms. Sherman about discovery related to her client's
18 interest in these companies?

19 A. I might have, I just don't recall
20 specifically right now. There may be some
21 documentation that may refresh my recollection on
22 that, but I -- nothing comes to mind at the moment.

23 Q. In terms of assets, one of the
24 questions I wanted to ask -- I think you have
25 already answered -- about what procedural devices

1 are available in family court, remedies for a
2 spouse that's dissipating marital assets, and I'm
3 pretty sure you have given me that answer.

4 Is there -- are there procedural
5 devices in family court for -- or to have a spouse
6 account for marital assets that have been
7 dissipated during the divorce?

8 A. Yes.

9 Q. What are they?

10 A. They can be any of a number of things.
11 Primarily discovery.

12 If the assets at a particular point in
13 time are identified, you can usually trace where
14 the assets go at some point.

15 Sometimes if a person has \$5 million
16 and says, I've only got \$2 million left, well,
17 where did that missing money go? You know, then
18 the question is, there might be an inference that
19 it was dissipated.

20 But the general rule of it is, if you
21 can trace it through bank accounts and various
22 transactions and things of that nature...

23 Q. And once you have traced it, what
24 remedy is there to recover it?

25 A. Well, the question is whether or not it

1 needs to be recovered, per se, because if you're
2 talking about property division, if somebody
3 dissipated \$400,000 in the case, for example, and
4 it's all gone by the time of the trial, or
5 whatever, well, that \$400,000 is still on their
6 side of the ledger, as far as property division is
7 concerned. So it's accounted for in the final
8 division of assets.

9 Q. So one remedy is that the dissipating
10 spouse, that asset is treated as obtained by that
11 spouse?

12 A. Yes, as if they had already had it. If
13 it no longer exists, that's too bad; it is still
14 credited on their side of the ledger at the end of
15 the case.

16 Q. Are there other remedies outside of
17 that in terms of to actually recover the asset?

18 A. I'm sure there could be. Nothing comes
19 to mind right off the top of my head, but I think
20 there are some others.

21 Q. Have you brought third parties into the
22 cases for asset recovery?

23 A. I have done it on occasion, yes.

24 Q. That's another remedy?

25 A. Well, it depends upon what you've got.

1 I mean, if you've got evidence that somebody is
2 holding marital funds, yes, that is a remedy
3 available to you.

4 Q. Can you think of any others? We've
5 talked about two. The credit --

6 A. I'm sure there are some others. I just
7 can't think of anything else right now.

8 Q. I want to make sure my record is clear,
9 what we're talking about. I want to make sure I'm
10 clear on this.

11 There's a credit to the marital share
12 that the dissipating spouse is charged with is one
13 we've discussed. The second is bringing third
14 parties into the case to recover the asset. And
15 those are the only two you can think of for now?

16 A. I am sure that there are some others, I
17 just don't have any off the top of my head right
18 now.

19 Q. Did Mr. Smith ever discuss with you any
20 concerns that he might not be qualified to serve as
21 an expert in family court?

22 A. Not that I can recall, no. But, again,
23 his involvement in the case changed from a
24 potential witness to co-counsel.

25 Q. Okay. Before we move into the

1 documents, I want to get an understanding of your
2 assessment of Ms. Powell during your representation
3 of her.

4 Can you give me a description of your
5 assessment of your client's frustrations, angers,
6 happiness, and just her emotional status about the
7 litigation, from the beginning when you first
8 started representing her until the end?

9 Can you just kind of guide me through
10 what you were seeing in your client?

11 A. I couldn't really give you a detailed
12 answer on that one. Overall impression was she had
13 some difficult issues to deal with in her case. I
14 had problems getting information from her.

15 She, I think, at one point, wrote that
16 she had passive-aggressive tendencies. And those
17 showed up on occasion. At times she would be
18 angry. But I don't recall her ever specifically
19 saying that she was necessarily angry at me about
20 anything.

21 But she could be difficult to deal
22 with, because, when you're talking with her, you
23 get the circular answers, to some extent. She
24 didn't really understand a lot of stuff. She
25 wasn't an impossible client, but she could be

1 difficult at times, especially with the
2 non-responsiveness.

3 I would ask for information, and I
4 would get it in dribbles and drabs, if I got it at
5 all.

6 Q. Did you sense any frustration about
7 Ms. Powell related to the delay, how much time it
8 was taking to get her case resolved?

9 A. I recall she occasionally, um, would be
10 complaining about, why is it taking so long. And,
11 you know, part of the answer would be, Well,
12 because we haven't given our discovery responses to
13 the other side; could you please give me the
14 information that we need so that we can move this
15 case along.

16 Q. You wouldn't consider that
17 unreasonable, given that Ms. Potterfield had been
18 working with her for two years and you worked with
19 her for another two years and that's a long period
20 of time? Do you agree?

21 A. Well, the question is, you know,
22 whether it was reasonable or not for her to feel
23 that way. Yes, I can understand the frustration.
24 But at the same time, a lot of this was a result of
25 her.

1 She wasn't getting me the information I
2 needed. She would complain about the lateness, but
3 then she wouldn't give me the discovery responses I
4 needed.

5 There was a specific time I remember,
6 especially when we were doing the initial answers
7 to interrogatories, it took us a long time to get
8 that information developed.

9 And we were working on a deadline, and
10 I scheduled an appointment for her to come in and
11 review the materials, and she would call to cancel,
12 had to reschedule for a few more days, and she
13 would call and cancel that one again. A third
14 time, called and cancelled.

15 She became reluctant to provide
16 information over a period of time.

17 Q. Are there any records in the -- on your
18 calendar for appointments that were made and
19 cancelled?

20 A. As I recall, in January 2006, yes,
21 there are three specifics there. The other, where
22 else it might be in the calendars or any other
23 records, I don't recall off the top of my head.

24 Q. Did Ms. Potterfield tell you there were
25 ever problems with getting Ms. Powell to respond to

1 things that she had asked Ms. Powell to --

2 A. I don't know that I had a discussion
3 with Ashlin about that.

4 Q. Did you see anything in the file where
5 Ms. Potterfield was -- memo to the file -- client
6 is unresponsive, trying to get information, or
7 anything of that sort?

8 A. I don't recall specifically that. What
9 I recall were things like, um, Carolyn writing to
10 Ashlin about not receiving support for a period of
11 time, and then Ashlin would write a letter to
12 Marne.

13 And then Marne would write a letter
14 back and say, What do you mean by she hasn't gotten
15 any support? She got, you know, \$50,000 at one
16 point in time, or \$30,000 at another point in time,
17 things of that nature. I remember that. I don't
18 remember the other specifically.

19 Q. We'll go through some of the materials
20 now that we talked about earlier. And a number of
21 these initial documents, Mr. Taylor, are undated
22 and they may -- so we may not be going through a
23 chronology here.

24 And I will even say on the record your
25 handwriting is so wonderful, I can just tell -- no,

1 I'm just kidding --

2 (PLF. EXH. 1, handwritten notes, was
3 marked for identification.)

4 BY MR. PENDARVIS:

5 Q. I've passed you, Mr. Taylor, a document
6 marked as Exhibit 1.

7 Is this your handwriting?

8 A. Yes.

9 Q. Would you be -- I'll be asking a number
10 of these questions when you see a handwritten
11 document.

12 Can you read this for us, so that I can
13 understand?

14 A. Okay. It says: Carolyn Powell.

15 There are a couple of lines of things
16 that are crossed through.

17 And then Line Number 1, We responded;
18 2, motion, dash, Rule 11 violations; 3, no
19 financial dec, so no evidence to base attorney's
20 fees on; 4, no sanctions, dash, Griffith versus
21 Griffith. Says can't do two things at once. Plead
22 Fifth Amendment and ask for affirmative relief.

23 Q. Okay. Any idea when that Exhibit 1 was
24 written?

25 A. My guess would be around the time that

1 we were faced with a motion to compel discovery,
2 which I think was December, January, of -- excuse
3 me. December of 2005, January of 2006.

4 Q. I'm going to represent to you we're
5 going to get to a letter that has substance, a
6 letter addressed to Ms. Sherman that some of these
7 words are referenced in.

8 And my question is, when we get to that
9 letter, was this note made before or after the
10 letter was written?

11 A. I would have to look at that. I can't
12 tell you that at this point. These are basically
13 thoughts that I had for how to respond to the
14 motion.

15 (PLF. EXH. 2, handwritten notes, was
16 marked for identification.)

17 BY MR. PENDARVIS:

18 Q. Number 2. First off, is this your
19 handwriting?

20 A. Yes.

21 Q. And can you read that for us.

22 A. At the top it says: Carolyn Powell,
23 arrow, take over case ASAP.

24 The other writings on this piece of
25 paper deal with other cases.

1 Q. Okay.

2 A. And this information would have been
3 obsolete.

4 Q. How about the sticky gray thing in the
5 middle, is that --

6 A. That's an unrelated case as well.

7 Q. Do you have an idea of when this note
8 was written?

9 A. No idea.

10 Q. April 2005, somewhere thereabouts?

11 A. I have no idea. It may have been at
12 that point. I don't know.

13 (PLF. EXH. 3, handwritten notes, was
14 marked for identification.)

15 BY MR. PENDARVIS:

16 Q. I'm passing you now a document marked
17 Exhibit 3 to your deposition.

18 Is this your handwriting?

19 A. Yes. This involves an unrelated
20 matter.

21 Q. Oh, it does, okay. I was wondering who
22 Harry was.

23 (PLF. EXH. 4, handwritten notes, was
24 marked for identification.)

25 BY MR. PENDARVIS:

1 Q. I'm passing you now a two-page document
2 marked as Exhibit Number 4 to your deposition.

3 Is this your handwriting?

4 A. Yes. Well, some of it is. Some of it
5 is your client's handwriting.

6 Q. And I've seen the 9670. Was that the
7 file number associated with this matter?

8 A. It may have been.

9 Q. We've seen that on some of the other
10 documents. I didn't know, is that typical?

11 A. I believe that would be correct, yes.

12 Q. And Bob, question mark?

13 A. Okay. That is your client's
14 handwriting. These, I believe, are notes passed
15 between your client and me when her husband's
16 deposition was being taken.

17 Q. Okay. Can you just read this for us,
18 please.

19 A. Your client's handwriting says: Bob,
20 question mark.

21 My handwriting: They are still
22 married.

23 Her handwriting: Nancy Sergeant.

24 My handwriting: Over what period of
25 time have you had sex with each of these women,

1 question mark. How many times a week, question
2 mark.

3 Q. Can I pause you there.

4 And these were questions you were
5 submitting to Mr. Smith as he was taking a
6 deposition?

7 A. Yes. That was probably something I
8 handed him to read.

9 Q. Okay. Now we're on Page 2.

10 A. My handwriting, but it's crossed out,
11 Carolyn: Who is, slash, was Bob Percy?

12 And somebody -- that doesn't look like
13 my handwriting -- crossing that out.

14 And then your client wrote upside down:
15 Also, I maintain an office at 602 Huger Street
16 since before marriage.

17 And then I had a line: How old are
18 each -- E-A-C, something. That's crossed out. And
19 then under that it says: Did he keep notes from
20 '94, slash, '95 through now, question mark.

21 Q. Okay. And that, I think you testified,
22 is contemporaneous with Mr. Conrad Powell's
23 deposition?

24 A. I believe that to be the case.

25 (PLF. EXH. 5, handwritten notes, was

1 marked for identification.)

2 BY MR. PENDARVIS:

3 Q. I'm passing you now a document marked
4 Exhibit Number 5 to your deposition.

5 And I'm going to ask, is this your
6 handwriting?

7 A. No.

8 Q. Okay. Um, do you know what this is or
9 where this came from?

10 A. I can barely read it. I have no idea
11 what it refers to.

12 Q. I will represent to you on the
13 computer's image version of this, you can read
14 the -- do you see that little date stamp thing,
15 faintly recorded on the upper right-hand corner? I
16 will tell you, if you do the zoom on the computer,
17 you can see it's November 30, 2004.

18 Does that refresh your recollection
19 about any of this?

20 A. This doesn't look like anything I
21 recall seeing, so I don't know.

22 Q. Thank you.

23 (PLF. EXH. 6, handwritten notes, was
24 marked for identification.)

25 BY MR. PENDARVIS:

1 Q. Was there someone in your office named
2 Cookie --

3 A. Yes.

4 Q. -- during the 2005 time period?

5 A. Yes. She was a secretary, I think,
6 when we were still with Harvey.

7 Q. Mr. Taylor, I'm passing to you now
8 another single-page document. This one is marked
9 as Exhibit 6 to your deposition.

10 Is this your handwriting?

11 A. Yes.

12 Q. And it looks like December 10th, 2004,
13 on the top right-hand corner?

14 A. That's what it looks like, yes.

15 Q. Can you read the remainder for us,
16 please.

17 A. Inside the circle: 5K retainer, W
18 doesn't, apostrophe, T have it. Need to file
19 reply, dash, are we under an extension. Next line,
20 exchange financial decs. Next line, PL hearing
21 question mark, arrow.

22 H has kids Wednesday afternoon to
23 Friday morning every week. H now says he wants
24 custody. And then there's, underneath that, a
25 sticky note, Carolyn Powell, with her cell phone

1 number.

2 Q. And can you describe the context this
3 was written?

4 A. As I recall, this was when I was asked
5 to help with the January -- the temporary hearing
6 that was scheduled for January of '05. This was
7 something when I just took a quick look at the file
8 and saw, Okay, here were some issues that might
9 come up.

10 As I recall, an extension was granted
11 for the reply, and we needed to do some of these
12 other things. And again, there were some concerns
13 here about husband having the kids Wednesday
14 afternoon to Friday morning every week.

15 Q. And why was that a concern?

16 A. Well, um, because if the wife is
17 relocating and the father has had that kind of
18 extensive involvement with the children, you know,
19 it makes his custody case that much stronger and
20 makes it that much more difficult potentially for
21 her to move to Aiken. It's a factor in his favor.

22 But it's a two-way sword, too, because
23 it also shows that she's willing to share the
24 children. So it works both ways. But primarily
25 it's something in his favor.

1 Q. Now, do you know when Ms. Powell moved
2 to Aiken?

3 A. I don't recall.

4 Q. Was it before or after this note was
5 written?

6 A. I don't recall. All I know is it was a
7 done deal by the time I took over the case.

8 (PLF. EXH. 7, handwritten notes, was
9 marked for identification.)

10 (PLF. EXH. 8, Plaintiff's Reply to the
11 Amended Answer and Counterclaim of Defendant, was
12 marked for identification.)

13 BY MR. PENDARVIS:

14 Q. Mr. Taylor, I'm passing you two
15 documents marked Exhibits 7 and 8. One is a
16 handwritten note. And one of them is a copy of,
17 apparently, a reply that was filed in the Powell
18 case.

19 I saw your note earlier about the
20 reply, and that's the reason I'm putting these in
21 front of you.

22 Is this your handwriting on Exhibit 7?

23 A. No.

24 Q. Do you recognize the handwriting?

25 A. No. I'm not sure whose it is.

1 Q. Is it possibly Ms. Potterfield's
2 handwriting?

3 A. It's possible, but I couldn't say with
4 any degree of certainty.

5 Q. And I see that she signed the reply on
6 Exhibit 8.

7 A. That's correct.

8 Q. Did the earlier -- your notes or
9 whereabouts, the reply, your handwritten notes that
10 you made, were you preparing to do -- help
11 preparing the reply to this?

12 A. I was more concerned about the
13 temporary hearing. And I think primarily I was
14 looking at affidavits for the temporary hearing.

15 Q. I noted on Exhibit 6, there's a star by
16 your note that says that -- something to file a
17 reply?

18 A. Yes.

19 Q. And that's the reason I'm asking you
20 about the reply. Was there a reason for the star?

21 A. Basically to call attention to it, This
22 is something we need to do. And it was done.

23 (PLF. EXH. 9, a letter to Carolyn
24 Powell from J. Michael Taylor dated April 7, 2005,
25 was marked for identification.)

Taylor, J. Michael

1 BY MR. PENDARVIS:

2 Q. I'm passing to you now a document
3 that's marked as Exhibit 9 to your deposition. It
4 appears to be a letter dated April 7, 2005?

5 A. Yes, sir.

6 Q. Is this your signature on the letter?

7 A. Yes.

8 Q. I don't know that I have seen another
9 letter prior to this date. Is this one of the
10 first letters or the first letter you recall
11 writing for Ms. Powell on that matter?

12 A. I don't recall.

13 Q. Can you tell me about the discussion on
14 April 27 with Ms. Powell on the telephone
15 referenced in the first paragraph, Exhibit 9?

16 A. I would have to see Marne's letter to
17 really put that into context.

18 Q. This is a copy of a handwritten note,
19 Exhibit 77 to Ms. Potterfield's deposition, which
20 apparently is the April 20 letter referenced in the
21 first page.

22 A. Okay.

23 Q. Does that, in context, help you with
24 your discussion with Ms. Powell?

25 A. Yes.

1 Q. Tell me about that conversation.

2 A. Well, as I recall, I had asked Carolyn
3 to provide me with an update to her novel. And
4 before I got the update to the novel, this letter
5 came in from Marne dated April 20th. And when it
6 came in, I called Carolyn up and basically I told
7 her about the substance of the, um, letter, and
8 then I followed it up.

9 I don't know how much time was spent on
10 that. I would probably have to see my time
11 records, but that's all I recall at this time.

12 Q. Thank you.

13 (PLF. EXH. 10, a letter to J. Michael
14 Taylor from Carolyn dated May 12, 2005, was marked
15 for identification.)

16 BY MR. PENDARVIS:

17 Q. Mr. Taylor, I'm passing you a document
18 marked Exhibit 10 to your deposition and ask you if
19 you received this document.

20 A. I believe I did.

21 Q. Did you discuss the -- once you
22 received it, what did you do?

23 A. I'm trying to recall.

24 Q. I don't mean to rush you. Take your
25 time if you need to read this.

Taylor, J. Michael

1 A. I don't recall specifically. I'm just
2 drawing a blank.

3 Q. Were you and Ms. Powell in the context
4 of continuing to negotiate the settlement? That's
5 obviously the objective, but were you working on
6 making a proposal to Ms. Sherman?

7 A. That was one of the options that was
8 being considered at that point in time. Again, I'm
9 just now taking over the case and, you know, is
10 there a way to actually just resurrect the
11 custody -- not custody -- the settlement
12 negotiations.

13 As a practical matter, that really
14 wasn't there, but it was something -- an option
15 that needed to be looked at and at least considered
16 so that we -- you know, in order to make these
17 judgment calls, you've got to develop different
18 options, and this was one of them.

19 I also wanted to know how far apart we
20 were on the settlement to see whether that was
21 realistic to pursue or not.

22 Q. Were there any items on the list that
23 you communicated to Ms. Powell that were not going
24 to be available based on the circumstance?

25 A. I don't recall, um -- well, let's see.

1 So far as cash, I don't know whether the \$2 million
2 that she was asking for was reasonable or not,
3 because we didn't have the information developed
4 yet.

5 Um, custody, again, was something that
6 was very important to her.

7 Q. Again, just so that I'm -- I want to
8 make sure you're in context as you're going through
9 this.

10 Were there any things in these items
11 she was requesting as part of the settlement
12 proposal that were not going to be available under
13 the facts and the law and the circumstances of the
14 case?

15 A. And the husband, assuming all
16 responsibility for taxes, that might be
17 questionable. A lot of this would develop
18 how -- would depend upon how the information
19 developed.

20 Life insurance in a contested case,
21 we're probably not going to get that. Nothing else
22 comes to mind at the moment.

23 Q. Okay. Did you respond to her questions
24 on Page 2 under the little topic that says: Other
25 issues?

1 The first one talking about -- she's
2 stating to you: Money from the sale of our beach
3 house should have been equitably divided at the
4 close of the sale.

5 And then she further says: I was led
6 to believe all of the monies were placed into
7 escrow, but have been told by my husband recently
8 that only half of the money was placed in escrow at
9 NBSC; the money should be released to me as my
10 share.

11 Did you talk to her about that?

12 A. My recollection was that the money from
13 the beach house was split into two accounts, one
14 for \$700,000 and the other for a million. And the
15 million was going to be a tax-free exchange.

16 And the money, as I recall, at this
17 point in time, was, in fact, held in escrow. At
18 least that's my recollection at this juncture.

19 Q. Did you explain that to Ms. Powell?

20 A. I don't recall specifically.

21 Q. Okay. The next paragraph under the
22 "other issues" category on Page 2 talks about
23 support for the children and her.

24 Did you discuss that issue with
25 Ms. Powell once you received her letter of May 12,

1 2005?

2 A. I don't recall. Um, I might have.

3 Q. Did you discuss with her the request in
4 the last sentence on that paragraph that says: A
5 hearing needs to be scheduled to force my husband's
6 attention to this matter?

7 A. Again, that was one of the things that
8 we were trying to decide how we were going to
9 proceed at this point in time.

10 This is May. And the question was
11 whether we wanted -- again, you know, we went back
12 into the very same considerations we talked about
13 earlier, about a temporary hearing.

14 She already had a big block of cash and
15 a bunch of other things, and I think the ultimate
16 decision that was made was to pursue the formal
17 discovery approach.

18 Q. The third and final paragraph under the
19 "other issues" category talks about the property in
20 Aiken and the money you had just referred to that
21 was an advance on equitable apportionment.

22 Did you discuss with her the likelihood
23 of obtaining this support she's referencing in this
24 paragraph?

25 A. I'm sorry. She's talking about -- she

1 wants an additional cash settlement of the...

2 Q. Did you speak with her about these
3 issues?

4 A. I don't recall. I'm sure I probably
5 did.

6 Q. And the final sentence under that
7 "other issues" category, she's requesting that you
8 have the judge order all assets sold and divided.

9 Did you speak with her about that?

10 A. I don't recall specifically. That
11 wasn't going to be very realistic at this juncture.

12 (PLF. EXH. 11, a letter to Marne
13 Sherman from J. Michael Taylor dated June 23, 2005,
14 was marked for identification.)

15 MR. PENDARVIS: Before we go into this
16 next exhibit, off the record.

17 (A brief recess was held.)

18 BY MR. PENDARVIS:

19 Q. Mr. Taylor, back from the break. I
20 just passed you a document marked Exhibit Number
21 11. I believe this might be the letter, the
22 introduction letter, I think you called it, in your
23 deposition to Ms. Sherman when you were advising
24 her of your representation.

25 A. I believe that's correct.

1 Q. Is this your letter?

2 A. I believe that's correct, yes.

3 Q. Did -- in your relationship with
4 Ms. -- your professional relationship with
5 Ms. Sherman, do y'all tend to speak, telephone
6 calls or do things in letters?

7 A. It varies. Some things you want to do
8 by letter, some things you want to do by telephone
9 call.

10 Q. Did Ms. Sherman call you after
11 receiving this letter?

12 A. I don't recall. I think the first
13 response I got from Marne would have been her
14 serving us with discovery requests.

15 Q. Okay.

16 A. There's a second page to this letter,
17 by the way. It has a blind P.S. to your client.

18 Q. Okay. I do see that enclosure. My
19 apologies for not having that together.

20 A. I'm just saying the blind P.S. is not
21 attached to this particular exhibit. It was on a
22 separate page.

23 Q. I understand, thank you.

24 And we're going to go through the
25 documents. I've got them, as best I can, in

1 chronological order, and we'll get to what came
2 from Ms. Sherman. But did she respond to your
3 questions and inquiries about exchange of -- in the
4 first paragraph -- financial declarations?

5 A. If I recall -- and I would have to see
6 Marne's letter back -- which I think was dated in
7 mid July or something.

8 Marne said she and Ashlin had been too
9 busy dealing with Carolyn's shenanigans and the
10 financial issues to deal with -- to bother with
11 financial declarations up to that point, or words
12 to that effect.

13 Q. Did she provide you with -- and I'm
14 moving now to the second paragraph.

15 Did she provide you with the -- any
16 information from the closing on the beach house
17 sale?

18 A. As I recall, we eventually got it.
19 Now, when we got it, I couldn't tell you.

20 Q. Next question deals with the final
21 paragraph that begins with "Finally." There's a
22 request for monetary support.

23 Did she respond to that?

24 A. I don't recall whether she responded to
25 that or not.

1 Q. And I will tell you that we will
2 probably be looking at the responses to
3 interrogatories since they contain your
4 interrogatories, rather than bulk up the record.

5 (PLF. EXH. 12, invoice submitted to
6 Carolyn W. Powell from Taylor/Potterfield dated
7 July 1, 2005, was marked for identification.)

8 BY MR. PENDARVIS:

9 Q. Mr. Taylor, I have passed to you
10 another document marked as Exhibit 12, and it
11 appears to be a billing statement dated July 1,
12 2005.

13 A. That appears to be correct.

14 Q. Was this billing statement submitted or
15 sent to Ms. Powell?

16 A. I don't recall. I don't think so.

17 Q. Why was it generated?

18 A. Um, whenever -- if I had to hazard a
19 guess -- when I make draws on the fees that are in
20 escrow, um, I would go ahead and print out a bill
21 at that time showing how much was due so that I
22 would know how much to make the check out for, I
23 believe, so as to document -- it was part of the
24 process of making sure I'm careful about how much
25 money I pull out of the escrow account to pay for

1 my fees.

2 Q. So this one reflects a \$3,000 payment
3 to Ms. Potterfield?

4 A. It may. I'm not entirely sure. I
5 don't know whether this is in that context or
6 whether it was generated for any other purposes,
7 but typically we would pull these out when we were
8 making draws on accounts. So I couldn't tell you
9 right now, without looking at the records, to see
10 when I made draws on my account.

11 Q. This shows a payment on September 5th,
12 2003 on the third page.

13 A. I believe that was Ashlin's initial
14 retainer.

15 Q. And my question is, was it -- was it
16 pulled from the trust account and paid into
17 operating -- on July 1st, 2005, or at the time it
18 was --

19 A. This indicates that the payment was
20 made September of 2003. Now, this was when Ashlin
21 was handling the case, so I couldn't answer the
22 question on that.

23 Q. And the, um -- the -- is there any way
24 to discern the person who did the activity other
25 than using the math from the hourly rate on the

1 third page?

2 A. The only real way of doing it is using
3 the hourly rate on the third page. Although, this
4 has got my wrong hourly rate here, because it's got
5 me at \$200 an hour and I was actually at \$300 an
6 hour. So I may have undercharged your client.

7 (PLF. EXH. 13, a letter to J. Michael
8 Taylor from Marne Sherman dated July 12, 2005, was
9 marked for identification.)

10 BY MR. PENDARVIS:

11 Q. I'm passing you a document marked as
12 Exhibit 13, and it appears to be Ms. Sherman's
13 letter to you dated July 12th, 2005, and this
14 exhibit does have the Defendant interrogatories and
15 request for production included with a cover
16 letter.

17 A. That appears to be correct.

18 Q. Did you receive this letter in July,
19 2005?

20 A. Yes.

21 Q. And are these stamps on the front page,
22 upper right-hand corner, stamps your staff handled?

23 A. Yes.

24 Q. Did you have any -- to streamline our
25 deposition today, the letter says what it says, I

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1 presume you'll say that.

2 Did you have any conversations with
3 Ms. Powell after receiving this communication from
4 Ms. Sherman?

5 A. I know I had some communication with
6 her. What the communication was, I don't recall,
7 whether it was by letter or telephone or something.
8 I had given her a heads up before. That's on the
9 blind P.S. on a previous exhibit we were talking
10 about.

11 At that time, I gave Carolyn copies of
12 the discovery requests that I was serving on Marne,
13 and I told your client that I fully expect them to
14 serve reciprocal discovery responses, so go ahead
15 and get started gathering this data now, please,
16 because it's going to be quite time-consuming to
17 respond to these things.

18 Q. And I thought about this after we left
19 off with the last -- Exhibit 11 itself, by the way,
20 is a copy from Ms. Sherman's files, so it would not
21 have ever included the blind P.S.?

22 A. That's correct.

23 Q. So I just wanted -- I thought of that
24 after it was over.

25 A. Okay.

1 Q. That record is probably a complete one,
2 except for the enclosures of the discovery, and
3 we'll get to that later.

4 A. I'm pretty sure that our file copy that
5 we turned over to you in discovery includes the
6 blind P.S.

7 Q. It did.

8 A. Okay.

9 Q. This next one, before I -- and I've not
10 decided whether I'm going to make this an exhibit
11 yet. I will tell you it's a working copy of
12 Defendant's interrogatories.

13 And before I decide we need to make it
14 an Exhibit, I'm trying to keep our volume down, if
15 we can. If you turn to Page 4 of 7, there's some
16 notes on the left-hand side.

17 A. Okay.

18 Q. And is any of that your handwriting?

19 A. No.

20 Q. Do you recognize who may have written
21 that?

22 A. No, I do not recognize it.

23 Q. Are there any of the checkmarks on the
24 first page, do you recall --

25 A. No, no.

1 Q. And the same thing for the words
2 "working copy" on the top?

3 A. That's not my handwriting.

4 MR. PENDARVIS: Okay. We're not going
5 to make this an exhibit. You're welcome to, if you
6 want.

7 (PLF. EXH. 14, a letter from J. Michael
8 Taylor to Marne Sherman dated August 9, 2005, was
9 marked for identification.)

10 BY MR. PENDARVIS:

11 Q. This is marked as Exhibit 14. The
12 letter I have just passed to you appears to be
13 dated August 9, 2005 from you to Ms. Sherman.

14 A. Yes.

15 Q. Did you get a response to this letter?

16 A. As I recall, Marne handwrote on it that
17 she was working on it and was going to get me some
18 responses in a couple of weeks or something to that
19 effect. I think she faxed it back to me.

20 Q. Okay. Did she -- did you have any
21 other communications with her about the response
22 to -- the Defendant's responses to discovery, other
23 than the facts?

24 A. At some point, at what -- I think
25 shortly thereafter, I, in fact, got the answers and

1 responses to requests to produce at some point.

2 (PLF. EXH. 15, a letter to J. Michael
3 Taylor from Marne Sherman dated August 16, 2005,
4 with attachments, was marked for identification.)

5 BY MR. PENDARVIS:

6 Q. And that may have been August 16th.
7 I'm passing you a cover letter with some
8 Defendant's discovery responses, a letter from
9 Ms. Sherman to you.

10 After you have looked through those,
11 can you tell me if you received this letter.

12 A. I believe I did.

13 Q. Did you review the discovery responses
14 with Ms. Powell?

15 A. I don't recall if we sent a copy of
16 them to her or what the communication was on that.
17 Based on what I see right now, I don't have an
18 independent recollection.

19 Q. Were there any responses that concerned
20 you in regard to Ms. Powell's claim?

21 A. You mean with respect to these answers
22 to interrogatories?

23 Q. Yes, sir.

24 A. Yeah, there were a couple.

25 Q. Can you tell me about those, please?

1 A. Yeah. One of them was on the adultery
2 question, which I believe is Number 5, he invoked
3 the Fifth Amendment.

4 And also, I think, in some of the
5 production requests somewhere, he tried to say that
6 the information was privileged in some form.

7 I don't recall if there was anything
8 else that piqued my curiosity at the time. There
9 may have been a -- later on, now that I think about
10 that -- I'm not sure at what point in time -- there
11 was one that, on Page 3, when they're describing
12 what the witnesses are going to testify about; Dan
13 Correll will testify about Ms. Powell's fidelity,
14 among other things. At some point, I remember that
15 piqued my curiosity. I don't remember when.

16 Q. Okay. Did you discuss the witnesses
17 identified with Ms. Powell?

18 A. I'm sure I did, at some point. When, I
19 don't recall.

20 Q. In terms of the assets identified, what
21 did you do with that information?

22 A. Can you point to something specific?

23 Q. Well, in general, I'm just asking, were
24 there plans being developed about how this
25 financial information was going to be incorporated

1 into a financial declaration or anything of that
2 sort?

3 A. Well, at some point, you know, we were
4 going to have to get a sharper focus on this. And
5 at some point, I was going to want to see the
6 back-up documentation for this to see if these, in
7 fact, were accurate representations.

8 So, yeah, there was going to be some
9 follow-up to this. Exactly when, um, I can't
10 recall precisely, but it occurred at some point.

11 Q. And I'm not going to count the pages,
12 but towards the back of this document there is a
13 copy of Defendant's Answers to Plaintiff's Request
14 for Production that, essentially, throughout the
15 response -- and there's the privilege assertion on
16 Number 6, but the other items are available for
17 review and inspection. And I think you testified
18 earlier that you and Mr. Smith went over at some
19 point to inspect those documents?

20 A. That's correct, at some point.

21 Q. And it was an inspection of the
22 documents produced per the August 16, 2005
23 response?

24 A. As I recall, the documents that we saw
25 were more comprehensive than just the responses to

1 these. I think -- and I'm having a vague
2 recollection of this -- there were several boxes of
3 information, as well as some stacks of information.
4 And I'm fairly sure that the stuff that she showed
5 us at that point would have included additional
6 material at some point, but I have no independent
7 recollection of what that was.

8 Q. How was the privilege issue asserted on
9 Page 2 of 3, Paragraph -- the response to request
10 Number 6, an assertion of privilege was made? Was
11 that resolved?

12 A. Uh, yes. At some point, I wrote Marne
13 a letter objecting to two things in particular, one
14 of them, the pleading to the Fifth Amendment to the
15 adultery question. I think I even cited Griffith
16 versus Griffith in my communication with Marne, and
17 also, my objection to her claiming either of those
18 things as privileged.

19 And as I recall, Marne amended or
20 supplemented her discovery responses to include
21 further information on that. At some point, it was
22 resolved to some degree.

23 Q. Did Mr. Conrad Powell produce copies of
24 the personal financial statements that Ms. Powell
25 had provided your firm?

1 A. Oh, you mean the things that your
2 client had taken out of his safe? I don't recall
3 whether he had pulled those out or not or provided
4 copies of them.

5 I tend to think he didn't, because I
6 remember in his deposition we were asking him
7 questions, and at some point he said -- and he went
8 ahead and answered the question, apparently
9 truthfully, but said: Somebody has been in my
10 safe. So I remember that coming up in the
11 deposition at some point.

12 (PLF. EXH. 16, a letter to J. Michael
13 Taylor from Carolyn Powell dated August 17, 2005,
14 Re: Answers to Marne Sherman letter of July 12,
15 2005 and Interrogatories, was marked for
16 identification.)

17 BY MR. PENDARVIS:

18 Q. Mr. Taylor, I have passed to you marked
19 as Exhibit 16 to your deposition a letter dated
20 August 17, 2005 from Ms. Powell to you.

21 First question: Do you recall
22 receiving this document?

23 A. I believe I received this, yes. This
24 was her initial response to some letters, as well
25 as initial responses to the interrogatories.

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1 Q. Did you have any conversations with
2 Ms. Powell about the substance of this
3 communication?

4 A. Uh, well, I remember the discovery
5 responses were not real involved or extensive, and
6 we had to go back several times after that. I
7 think I testified about that earlier, about having
8 to go through multiple revisions of discovery
9 responses.

10 The rest of this, she was basically
11 responding to the letters that Marne had sent at
12 some point or another.

13 Q. And it's referenced in the Re: line,
14 her letter of July 12th, 2005?

15 A. That's what it refers to here on this,
16 yes.

17 Q. That's not uncommon for clients not to
18 be skilled in preparing discovery responses, is it?

19 A. No, no. I mean, that's why I warned
20 her ahead of time all the way back in June of 2005
21 that these are going to be tedious, they're going
22 to be very involved, and we need to get working on
23 them as soon as we can, because they can be quite
24 time-consuming.

25 Q. Were there any comments, statements,

1 Ms. Powell made in this communication marked as
2 Exhibit 16 that concerned you about affecting her
3 claim, her divorce claim?

4 A. I recall the first paragraph was
5 dealing with what he was doing with the proceeds
6 from the beach house. And I think I already
7 mentioned before that he was trying to do a
8 one-million-dollar tax-free exchange. So she was
9 making some comments, I think, about that.

10 I think Conrad had failed to obtain
11 substitute property within the period of time, and
12 as a result, tax consequences hit on that.

13 Q. Were the monies disbursed from the
14 qualified intermediary?

15 A. I'm sorry?

16 Q. Were the monies disbursed from the
17 qualified intermediary based on the failures?

18 A. As I recall, at the time of his
19 deposition, that money was in a CD or it was in
20 some other kind of account. I don't know whether
21 it had been disbursed from the mediator or not. I
22 just have no recollection of that.

23 Q. So other than that, there was no other
24 things that concerned you about affecting her claim
25 based on her comments in this letter to you?

1 A. Well, I'm a little concerned here. In
2 the second letter she says: Following the sale of
3 my marital home in September of 2004, I received
4 absolutely nothing.

5 Again, she had gotten, I think, between
6 September and November of 2004, some \$30,000 in
7 voluntary contributions from the husband, and then
8 of course, she got the \$400,000. So I'm a little
9 concerned about her saying she got absolutely
10 nothing, when she got a pretty good chunk of
11 change.

12 Q. Isn't she referring to proceeds from
13 the sale, though?

14 A. She says: Following the sale of my
15 marital home in September of 2004, I received
16 absolutely nothing.

17 She's not necessarily referring to the
18 proceeds from the marital home. And again, here,
19 she says: I managed to claim the escrow as
20 promised, but was not given any other support
21 money.

22 And as I recall -- and I may be wrong
23 on this -- that may be referring to the \$16,000
24 that she had intercepted the escrow, but that may
25 have been another transaction, as well.

1 But, yeah, I'm a little concerned about
2 her telling me some things here that don't quite
3 square with other information that I have.

4 Q. Did you speak with her about
5 those -- expressing those concerns?

6 A. I'm sure I mentioned something about it
7 at some point. Exactly what and when, I do not
8 recall.

9 Q. Anything in there -- since we're mostly
10 through the letter, anything about the children on
11 the second page that concerned you about her
12 custody objectives?

13 A. Well, basically, this is her response
14 to his complaints about the children being put in
15 private school, as opposed to public school, and
16 things of that nature.

17 And I think she was contesting his
18 allegation that she never even looked at Aiken
19 High, and she said she had conducted extensive
20 research. So this is kind of her version to
21 compare with his version.

22 Q. How often were you communicating with
23 Ms. Powell in the summer, fall, winter of 2005?

24 A. I don't recall. Most of it was sending
25 her stuff and then some stuff would come back in.

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1 I think she had perhaps more contact
2 with my office staff than with me at that point,
3 because, again, we're trying to collect documents
4 and information. So I couldn't answer that right
5 off the top of my head.

6 Q. Were there -- do you recall any
7 in-person meetings during the summer, fall, winter,
8 early winter of 2005, during this discovery phase?

9 A. I don't recall. I'm sure we must have
10 had some kind of face-to-face meetings, maybe when
11 she brought some information in or something like
12 that. It came in in clumps, and there would have
13 been some follow-up.

14 Q. And you're testifying that she -- you
15 met with her at certain points when she brought
16 information to the firm?

17 A. I'm sure that that happened on
18 occasion. How many times, I couldn't tell you, but
19 that's my recollection at this point. I don't have
20 anything in particular to jog my memory in front of
21 me.

22 (PLF EXH. 17, handwritten notes, was
23 marked for identification.)

24 BY MR. PENDARVIS:

25 Q. Here's another note. I'm passing you a

1 handwritten note. This one, I can read the date on
2 it. It's marked Exhibit 17.

3 Is this your handwriting?

4 A. Yes.

5 Q. And it's got the 9670 in the upper
6 left-hand corner of the file?

7 A. Correct.

8 Q. Can you read the rest of it for us,
9 sir.

10 A. Okay. One of them is a sticky note
11 that says: Husband's girlfriends need to be listed
12 as witnesses. Russian immigrant nanny, Michelle
13 Owens, woman six years before litigation. And then
14 there's a line about beach house proceeds. And
15 then off to the corner, it says Nancy Sergeant.

16 Q. And that's all your handwriting?

17 A. Yes.

18 Q. And then that is -- that's a sticky
19 note that's attached to a piece of -- a part of a
20 legal sheet of paper, legal pad.

21 It says, a Dan Correll is listed by
22 husband as a witness who will, among other things,
23 testify about wife's, quote, fidelity, closed
24 quote, WTF, question mark.

25 Q. And did you get a response from

1 Ms. Powell on who Mr. Cowell -- who that person
2 was?

3 A. At some point, I did an investigation.
4 And it may have come from your client. I think
5 that dealt with the adultery allegations back in
6 '96 and '97.

7 (PLF. EXH. 18, Plaintiff's Responses to
8 Defendant's Interrogatories, was marked for
9 identification.)

10 BY MR. PENDARVIS:

11 Q. I'm passing to you now, marked as
12 Exhibit 18 to your deposition, Plaintiff's
13 Responses to Defendant's Interrogatories. I'll let
14 you look through those. And also the Request For
15 Production. No, it isn't. I'm sorry. It's simply
16 interrogatories.

17 Is this a document you prepared?

18 A. My staff and I prepared this, I
19 believe, with your client's assistance. It's hard
20 for me to -- this is the response to
21 interrogatories.

22 Yeah. We went through numerous drafts
23 of these, and I think this was, um, the one that we
24 ended up sending out. This is the original one
25 that -- let me just double-check. Yeah, it has

1 the -- Answer Number 17, the adultery question is
2 no.

3 I believe this may be what we served on
4 Marne. I don't see the certificate of service
5 but...

6 Q. And these were responses you developed
7 with the client's assistance?

8 A. Yes.

9 Q. Were there any responses that were
10 provided that concerns you affecting -- that
11 somehow might have negatively affected Ms. Powell's
12 claim?

13 A. You mean responses in here?

14 Q. Yes. Statements, interrogatory
15 responses she had to make, truthful responses that
16 concerned you about possibly adversely affecting
17 her claims in the divorce proceedings.

18 A. I couldn't put all of this in context
19 at this point in time, so I don't think I can
20 answer that question --

21 Q. Okay.

22 A. -- because there's too much information
23 here.

24 Q. Were there any communications with
25 Ms. Sherman requesting extensions? We noted the

1 interrogatories were served in August and the
2 responses were --

3 A. My --

4 Q. -- served in January '06?

5 A. Sorry. My recollection was Marne sent
6 me a letter saying, your client's discovery
7 responses are overdue. And I handwrote a note,
8 something to the effect that, We're working on
9 them.

10 And Marne didn't push the issue with us
11 until, I think, December or January, December of
12 '05 or January of '06, when she really started
13 getting antsy for responses.

14 (PLF. EXH. 19, invoice submitted to
15 Carolyn W. Powell from Taylor/Potterfield dated
16 January 25, 2006, was marked for identification.)
17 BY MR. PENDARVIS:

18 Q. I'm passing to you now what appears to
19 be another invoice, and this one is Taylor
20 Potterfield submitted to -- well, my question is,
21 is this an invoice that was generated from your
22 firm?

23 A. Yes, it appears to be one of our
24 billing statements.

25 Q. And it's dated January 25, 2006. Is

1 that the correct date it was generated?

2 A. That's what's printed there, yes.

3 Q. And on the last page, again, on the --
4 showing the payments, were there two separate
5 payments, the \$5,000 and the \$1,000 payment?

6 A. No. The way that works is that would
7 be draws out of the escrow account. One would be a
8 draw of \$5,000, and then there would be another
9 draw of \$1,000 on the dates indicated, which there
10 were fees owed -- or earned by that particular
11 point in time.

12 Q. And the same response on determining
13 who did the activity, would have to be a
14 mathematical calculation based on the --

15 A. Yes.

16 Q. -- hours.

17 And I see your hourly rate changed at
18 this time to \$280.18?

19 A. Yeah.

20 Q. That's pretty unusual.

21 A. Yeah, I don't know how that came about.

22 The hourly rate for me for my representing your
23 client, I believe, was \$300 an hour at this time,
24 so, once again, I was underpaid.

25 Q. Not as substantial a discount this

1 time, though, right?

2 A. No.

3 Q. Are you aware of whether this was
4 transmitted to Ms. Powell?

5 A. I have no recollection of that.

6 Q. Who handles that in your office?

7 A. Um, usually it would have been me. If
8 the client had requested a copy, we would have
9 given her one.

10 (PLF. EXH. 20, a letter to J. Michael
11 Taylor from Carolyn Powell dated January 30, 2006,
12 Re: Marne Sherman letter of January 30, 2006, was
13 marked for identification.)

14 BY MR. PENDARVIS:

15 Q. Mr. Taylor, I've passed you another
16 exhibit. This one is marked Exhibit 20 to your
17 deposition. It appears to be a letter from
18 Ms. Powell to you, and there's a note at the back
19 of it, and I'm not certain -- we'll get to that in
20 a minute. I'm not certain whether that's part of
21 this or not.

22 First off, with the first two pages of
23 what's been marked as Exhibit 20, did you receive
24 this letter from Ms. Powell?

25 A. As I recall, when I got Marne's letter

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1 insisting on my client signing the interrogatories,
2 um, and that piqued my curiosity and I asked her to
3 flush this out and also provide some additional
4 information that Marne had also requested, we had a
5 meeting on January 31st, and I believe, um, that's
6 when -- that shows when it was faxed to me.

7 As I recall, I reviewed this before my
8 meeting with your client. Give me just a second.
9 Um, and actually, my handwritten notes on here are
10 kind of in two parts. Some of these were questions
11 that I had when she provided me this information
12 initially, and then some of these are answers that
13 I got when I had my conversation with her.

14 Q. The conference on the -- there was a
15 conference on the 31st --

16 A. Yes.

17 Q. -- of 2006.

18 And was that a telephone conference or
19 an in-person meeting?

20 A. No, she came in the office.

21 Q. Are some of these notes created during
22 that January 31 meeting?

23 A. Yes. Some of these are notes that I
24 wrote as I reviewed this in preparation of meeting
25 with your client, and then some of these are notes

1 that were her responses to the questions that I had
2 about these.

3 Q. From what I can tell, all of the
4 typewritten parts are legible.

5 Can you please help me on the
6 handwritten notes, however you want to go around
7 those.

8 A. Well, at the very top: Roe, R-O-E,
9 Young, Batesburg, South Carolina, dash, started
10 September '06.

11 That was the affair that she had, and I
12 found out at that meeting. And it says: This
13 letter is really a follow-up of discovery, not
14 failure to respond.

15 Number 2, there's a dash off to the
16 side, about written statements, we need to pull
17 these out of the file.

18 Number 3, um, she says she's not filed
19 tax returns for 2003 and 2004, whatever. And my
20 comment to that was: Has wife asked for the info,
21 question mark.

22 Q. And this is on the right-hand side of
23 the page?

24 A. Correct, yeah.

25 Q. Sorry. I just want to make sure.

1 A. What info does she need, husband would
2 have, question mark. Interest on mortgages,
3 question mark.

4 And then off to the side of Paragraph
5 4 --

6 Q. On the left?

7 A. -- on the left: Computer is W's and
8 that's underscored, not, underscored, husband's.

9 Wife will reconstruct the records from
10 other info she has.

11 And then, there on down, or can get,
12 parentheses, bank records that they already have
13 and receipts that are in the Gallery, closed
14 parentheses.

15 Dash, W will reconstruct, parentheses.
16 Will take one day, closed parentheses.

17 Q. And is that A-T-T-Y client privilege up
18 there?

19 A. Yes, attorney/client privilege. The
20 question was whether or not the information that
21 was on the computer was subject to attorney/client
22 privilege, did she have any communications that she
23 wrote to me that might be on the computer.

24 So that was a concern, that we were
25 going to have to be careful that that did not get

1 accidentally disclosed to the other side.

2 Over to the right-hand side next to
3 Number 5, this is about there not being a current
4 ledger at this time. I believe that was for her
5 business.

6 And my comment of that: In '05,
7 W -- that's wife -- didn't do anything in the
8 business until September, arrow, and has not
9 created these records yet.

10 Number 6, she says: I do not own a
11 home. And I have a note to the side, question
12 mark, what is W living in, question mark? Rental
13 house, question mark. And then: W is living in a
14 rental home.

15 Dash, barn has bad termite damage, and
16 until it's finished, parentheses, will be soon,
17 closed parentheses, can't -- apostrophe T -- get
18 fire policy.

19 On the next page, Paragraph 7, off to
20 the left, she's talking about bank statements and
21 other information, I believe, that was in the
22 containers that she had.

23 My question was: Are any of those
24 papers attorney/client, question mark.

25 Answer: Yes.

1 Paragraph Number 10, about not
2 providing the financial statement, and I wrote:
3 How would obtain loan for barn, question mark.

4 And then the answer to that was: Loan
5 for the barn was from an individual, not -- I would
6 imagine, stopped the thought at that point.

7 Paragraph 12, off to the left there's
8 an arrow where she's talking about completing the
9 financial declaration: H has 1.7 million from sale
10 of beach house.

11 Dash, H told W he put \$700,000 in an
12 account to fund settlement with wife, but other
13 million is where, question mark.

14 Dash, Marne says in a letter that she
15 told her client to put it in escrow.

16 Q. And then you had the conversations with
17 Ms. Powell about all of these things?

18 A. Oh, yes.

19 Q. What was the communication about the
20 money in escrow? What did y'all decide about what
21 to do about that?

22 A. As I recall, at some point we got an
23 answer to that question, that Marne had told us at
24 some point that the money was in two accounts.

25 Now, when I learned that

1 information -- I couldn't put it into context right
2 now -- but I recall the million dollars was
3 apparently in some kind of a secured fund or
4 something.

5 Q. And was that part of the
6 qualified -- 1031 qualified intermediary exchange?

7 A. It was intended to be the 1031
8 exchange, yes. He still had that money. I think
9 he -- even all the way up through his deposition he
10 said he still had all of that money and he could
11 account for all of it.

12 Q. Let's turn now to the third page and
13 help me to decide if this is part of the exhibit.
14 Are these your notes?

15 A. Yes, yes.

16 Q. Were these notes generated
17 contemporaneous with notes in the first part of
18 this Exhibit 20?

19 A. I want to think no. It's got -- it
20 says: File, Carolyn Powell. That's just for
21 somebody to make sure it finds its way to the
22 correct file.

23 It says: Carolyn Powell, dash, called
24 last week, working on answers to interrogatories,
25 dash, faxed to Brenda, dash, answers to

1 interrogatories.

2 And the rest of this stuff is all
3 crossed out. It deals with irrelevant other cases.

4 Q. And Brenda is a person in your office?

5 A. Is a person in my office, correct.

6 Now, when this document was written, I
7 do not know. I don't think it was contemporaneous
8 with this January 30th, 2006. I think this was an
9 earlier document.

10 MR. PENDARVIS: If you don't mind,
11 please, let's just separate that from this
12 document, and I will put exhibit label 21 on that
13 last page.

14 (PLF. EXH. 21, handwritten notes, was
15 marked for identification.)

16 BY MR. PENDARVIS:

17 Q. I'm passing to you now what appears to
18 be a memo to the file dated January 31, 2006,
19 marked as Exhibit 22.

20 (PLF. EXH. 22, memo to file, Re:
21 Carolyn Powell dated January 31, 2006, by JMT, was
22 marked for identification.)

23 BY MR. PENDARVIS:

24 Q. Is this a memorandum you generated?

25 A. Yes, I wrote it.

1 Q. Why did you write a memo to the file?

2 A. Because I wanted to know how it was
3 that I let an answer that was incorrect get out of
4 my office to an interrogatory. I was very upset
5 about that.

6 Carolyn had been given multiple copies
7 of these discovery responses, and she would come
8 back with corrections to a lot of them, but never
9 was Answer Number 17 corrected. It always came
10 back no, no, no, no, no. And then it turns out
11 that she had been having an affair since September,
12 and I wanted to know how that mistake got made.

13 And I looked back on it, and this was
14 to basically show that what had happened was we had
15 never followed up with it, because we had trusted
16 her to come up with that information. But the
17 error had been corrected, and we sent out an
18 amended interrogatory as quickly as we could. So
19 we resolved the problem before it became a problem.

20 Q. But I see no reference in the memo that
21 Ms. Powell submitted drafts after September that
22 could still contain the incorrect response.

23 A. It doesn't have to say that. I mean,
24 if you look at the drafts of the interrogatories
25 that we have, you will see some with her

1 handwriting on it, some with my handwriting on it,
2 and various drafts that went back and forth.
3 That's evident from the file. I didn't need to put
4 that kind of detail in here.

5 What I really wanted to know was back,
6 originally, when we first put down the answer, she
7 said the answer was no, and that was back in August
8 of 2005. And at the time that she answered that
9 the first time, that answer was accurate. She had
10 not started her affair with
11 Mr. Young yet. That was the next month.

12 But then the multiple versions of the
13 discovery responses that came after that, the
14 drafts, she had never corrected that.

15 Q. Okay. Did you tell her about duties to
16 supplement responses and things of that nature?

17 A. Yes.

18 Q. You did?

19 A. Yes. That's why we were having to do
20 this.

21 (PLF. EXH. 23, a letter to Marne
22 Sherman from J. Michael Taylor dated February 1,
23 2006, was marked for identification.)

24 BY MR. PENDARVIS:

25 Q. I believe you provided testimony about

Taylor, J. Michael

1 this next letter, but I'm passing you, marked as
2 Exhibit 23, a document. It appears to be a letter
3 dated February 1, 2006 from you to Ms. Sherman.

4 Take a moment, look that over. It's
5 just the -- I think there's some notes
6 contemporaneous with this that we talked about
7 earlier.

8 A. Yeah. This is when I was doing a
9 follow-up to Marne's responses. That's correct.

10 Q. And do you remember the note we looked
11 at that had the Rule 11, the Fifth Amendment notes?

12 A. Well, Rule 11 was a different issue.
13 That was dealing with the motion to compel. But
14 Griffith versus Griffith, that was -- at this time,
15 as I recall, in early January, about -- maybe just
16 the day before we actually finally got Carolyn in
17 at some point, Marne had sent me a motion to compel
18 discovery that was scheduled for January 25th, I
19 think, it was going to be heard.

20 And the document you're referring to
21 was my response to the motion to compel in the
22 event that Marne was going to continue on with it.

23 (PLF. EXH. 24, a composite of financial
24 documents, was marked for identification.)

25 (PLF. EXH. 25, copy of a sticky note,

1 was marked for identification.)

2 (PLF. EXH. 26, handwritten notes, was
3 marked for identification.)

4 BY MR. PENDARVIS:

5 Q. I'm passing to you, Mr. Taylor, three
6 documents marked separately as Exhibits 24, 25, and
7 26. They all appear to be related to, apparently,
8 the document inspection.

9 I'll ask if you can review those and
10 let me know if you have seen this document before.

11 MR. HILL: Which are which, please?

12 MR. PENDARVIS: I'm sorry, Charlie. 24
13 is the big one, the single-page document is 25, and
14 the document with the handwritten notes is 26. And
15 it could be that 25 is identical to 24, but let's
16 just go through this.

17 THE WITNESS: I think 25, they even
18 have the same number, I believe.

19 BY MR. PENDARVIS:

20 Q. Okay. We will just leave it. I have
21 already marked it. Let's look at 24 and 26.

22 Can you describe for me what these
23 documents are?

24 A. I believe these were some documents
25 that we -- assuming that this sticky note was, in

1 fact, attached to the same documents, I don't have
2 any reason to believe that they were separated,
3 because they have sequential numbers as produced in
4 our discovery responses. So I believe these are
5 some of the documents that we got from Marne's
6 office for that visit.

7 And then Number 26 are some random
8 notes that I made through some of the documents as
9 well. And I believe this is when Reid Smith and I
10 went to go take a look at those boxes of stuff.

11 Q. And did you make the notes on Exhibit
12 26?

13 A. Yes, that's mine.

14 Q. That's your handwriting?

15 A. Yes, that's my handwriting.

16 Q. And where were those notes recorded?

17 A. Well, the first part of them, Page 1,
18 2 -- and 2, I believe -- were while we were at
19 Marne's office. And I believe on that day, we had
20 a meeting with your client after we went to Marne's
21 office.

22 And Page 3, um, has got a random note
23 where I say: We need husband's PI report, dash,
24 Marne's office, to copy, along with tax returns.

25 That may have been something I randomly

1 wrote later. And then where it starts off 2/22/06,
2 Chic Antiques, I believe this is information that I
3 got from your client during that particular
4 meeting.

5 And the subsequent notes indicate it
6 may be a subsequent conversation I had with her,
7 because I've got two parallel lines off to the left
8 which indicates basically there's a break of some
9 sort, maybe a supplemental meeting or something
10 like that.

11 Q. Before I go there, I'm going to be
12 asking you to read this for us.

13 But before we get to it, turning back
14 to Exhibit 24, were these essentially the financial
15 documents that Mr. Powell's attorney produced in
16 response to the request concerning his companies
17 and financial information?

18 A. No. These were documents that I
19 believe Reid may have asked them to duplicate that
20 were from the huge stack of information that was
21 available. I don't know that I had asked for this.
22 I may have or Reid may have. But this
23 is -- believe me, this is a very small fraction of
24 what we had looked at.

25 Q. So during that inspection, a request

1 was made, you believe, by Mr. Smith, for copies of
2 the documents we're looking at marked as Exhibit
3 24?

4 A. Yes. Now, these -- I don't know
5 whether these documents were produced
6 contemporaneous while we were in Marne's office or
7 whether we flagged them and asked them to copy them
8 and then provide us some later. I remember there
9 were some supplemental discovery responses
10 somewhere that they had produced. And we even got
11 a separate bill for the copies.

12 So I remember -- the answer is, these
13 came from Marne's office. Exactly when they came
14 from Marne's office, I'm not sure.

15 Q. Fair.

16 Page 2 of Exhibit 24 are some
17 handwritten notes. Is that your handwriting?

18 A. I have no idea whose handwriting that
19 is.

20 Q. Do you believe that was in the -- this
21 was part of the production, not like notes taken?

22 A. I don't recall. I don't know whose
23 notes these are. These may be -- I don't know
24 whether these are Reid's handwriting or whether
25 this was some of the stuff that was produced -- I

1 believe it's the stuff that was produced from
2 Marne, but I couldn't be sure.

3 Q. Were you involved in a meeting of
4 August 15, 2005?

5 A. August 15?

6 Q. If you look at the top page, there's --
7 there's three pages. Pages 2, 3, and 4 of Exhibit
8 24 at the top say -- if I'm reading this
9 correctly -- Tim Tyler inventory of files delivered
10 on August 15, 2005.

11 A. I had nothing to do with this document.

12 Q. Okay. And what were the plans between
13 you and Mr. Reid Smith about use of this
14 information, these personal financial statements
15 and other materials contained in Exhibit 24?

16 A. As I recall, I turned these things on
17 over to Reid and said, Hey, have at it.

18 Q. And his job was to do what?

19 A. He was retained, again, originally, to
20 chase down assets. And this is some of the stuff
21 that we were kind of aiming for. So these would be
22 documents that would make particular sense to him.

23 I don't know whether this is all that
24 he looked at. He may have looked at some other
25 documentation, but he ultimately produced a report,

1 I think, in April or May of the year that, again,
2 followed -- you know, that followed the money. It
3 started off with what did they have before the
4 marriage, how did it change in complexion, and
5 whatever else.

6 So this is stuff that, I'm sure, that
7 Reid had looked at and used in developing what he
8 was going to eventually write.

9 Q. Tell me the scope of the work Mr. Reid
10 Smith was to do for Ms. Powell.

11 A. Well, originally, as I said, we were
12 using him -- if you want to call it -- a consultant
13 or as an expert witness -- potential expert
14 witness -- for the financial issues in the
15 marriage, particularly the assets.

16 As I said, where they came from, where
17 did they go, were any assets missing, that was the
18 prime drive for him.

19 The rest of it was pretty much custody
20 issues and the actual divorce itself and that
21 stuff. That was my control. He was originally
22 financial only.

23 And then as I said later on, he was
24 still -- he was made co-counsel, but the focus of
25 his efforts was the financial aspect.

1 Q. Was Mr. Reid Smith in charge of
2 whatever discovery requests, subpoenas, and things
3 that he deemed necessary to help discover assets
4 from Mr. Conrad Powell?

5 A. If he needed subpoenas or something, he
6 and I would have been able to talk about that
7 whether he -- at that point, he would not have been
8 issuing subpoenas, because he was not counsel of
9 record. I would be the one that would have to
10 issue subpoenas. I don't recall requesting
11 subpoenas from third parties yet.

12 Again, we were given a wealth of
13 information, and we needed to find out what it is
14 we already had before we could figure out where we
15 needed to go on from there.

16 Q. Did there come a time when Mr. Reid
17 Smith suggested or requested that certain discovery
18 subpoenas and things of that nature be issued to
19 recover or obtain information?

20 A. I don't recall, because by that time,
21 we were trying to chase down certain things. And
22 if I recall, the path that we were pursuing was
23 getting answers out of Conrad Powell in deposition.

24 And I think the next stage in the
25 process at that point was going to be Tim Tyler's

1 deposition, and whatever further documentation that
2 maybe we needed at that point, we will kind of see
3 where that is.

4 So I don't know that -- it may have
5 been premature at that point to send out subpoenas
6 and involving third parties and that particular
7 nature of the beast.

8 The prudent decision at that point was
9 for us to do the sequence where we had access to
10 the stuff that they've already provided us, develop
11 that, take the husband's deposition, and then Tim
12 Tyler's deposition.

13 But I was relieved as counsel before
14 Tim Tyler's deposition was ever taken, so I don't
15 know what happened after that.

16 Q. Was there any -- just so we can finish
17 up with Exhibit 24, were there any particular
18 documents copied as a part of Mr. Reid Smith's
19 request that were of particular significance to the
20 claims or defenses of the claims that Ms. Powell's
21 asserting in the case?

22 A. There's no way I can give you that
23 answer today, sir. I would have to go through all
24 of these and try to put them into context. This is
25 for all discovery data. I couldn't answer that.

1 Q. You don't recall a -- what's a good
2 phrase here -- smoking gun, some very significant
3 document that had bearing on the financial issues
4 in the case?

5 MR. HILL: Objection to form.

6 THE WITNESS: There were some things
7 that piqued my curiosity. That's what document
8 Number 26 was about, where I was taking some
9 particular notes of some things that at that point
10 made some significance to me.

11 What the significance of it is, I
12 couldn't tell you today, again, without going back
13 into all of that material that had been produced.

14 MR. PENDARVIS: That will be a nice
15 segue.

16 BY MR. PENDARVIS:

17 Q. Would you help me with Exhibit 26 and
18 read your handwriting into the record for us,
19 please, as best you can.

20 A. Okay. The 2/22/06, Carolyn Powell. It
21 says: They have appraisal, off to the arrow --
22 Appraisal Institute -- excuse me, Appraisal --
23 Interstate Center office building, 72403
24 16 Berryhill Road, 48,865 square feet, two-story
25 office building, total value \$2,800,000.

1 And then back up earlier where it says,
2 appraisal for 927-931 Gervais Street, 7,422 square
3 feet, \$1,100,000 fair market value, parentheses,
4 when husband bought it, closed parentheses.

5 Next line: Husband filed separately in
6 2003, federal taxes, claiming both children, dash,
7 total income, \$119,366.

8 Next on down: Pawleys Island,
9 something. It should be sold, but I don't know
10 what it is. It's something. 3, slash, 7, slash,
11 05. \$2,075,000 sales price. Paid off mortgage of
12 \$231,267 and settlement charges of \$135,567.82.
13 Net 1 million in a 1031 exchange. And \$707,080.76
14 cash to H, parentheses, seller, closed parentheses.

15 9/15/04, H sold 3912 Kenilworth Drive,
16 Columbia, \$995,000 price, \$875,000 in mortgages,
17 net \$57,357 -- and something else I can't read; for
18 the change.

19 H sold a lot of property in '03. H has
20 \$71,267, '06. And then it's -- off to the left --
21 D, slash, O, slash, S. D, slash, O, slash, M.
22 9/17/88, 12/03, DOF 8/04. And then there's a break
23 in the thought with the double lines.

24 Q. Before you go there, is that date of
25 separation? I mean, what is the DOS, DOM?

1 A. DOS means date of separation. DOM is
2 date of marriage. DOF is date of filing.

3 Q. Okay, thank you.

4 A. And then there's a asterisk here -- a
5 star here, quote, Powell surveillance, closed
6 quote, tapes, it says above that. Off to the
7 right, September 24, '05 through November 16, '05,
8 Ducote, D-U-C-O-T-E, Investigations, Inc.

9 H claimed W tapped the phones, and W
10 claims she had a right to do so because they were
11 business phones, open parentheses, question mark,
12 question mark, closed parentheses.

13 Next page where it says Campney, that's
14 an unrelated case.

15 So then again there's a break in
16 thought here, double slash off to the left.
17 Office, 8, slash, 21, slash 02. It looks like
18 personal financial statement. H claims, quote,
19 corrections, closed quote.

20 And then off to the left of the bracket
21 it says: Pre-1988 and then it lists 40-acres farm
22 sold, and received \$30,000. 100-acre farm sold and
23 received \$42,000. 189-acre farm has 33 1/3 percent
24 in net -- I don't know, and something -- 550.

25 Q. Can I pause you right there. I see a

1 circle P1 and a circle P2 down there. Can you --

2 A. The only thing I can think of is that
3 might be on -- and again, I'm trying to
4 reconstruct. To speculate at this point, it might
5 be Page 1 and Page 2 of the financial statement
6 that he had done back then.

7 Q. I'm sorry to interrupt.

8 A. Okay. Next line: Also, Cold --
9 something -- was 6 percent, not 10 percent, and
10 debt, something, \$2,600,000.

11 Underneath that, 520-acre land sold,
12 parentheses, but doesn't say for how much, closed
13 parentheses.

14 Oak Hills Golf Course was 6 percent,
15 not 10 percent and worth \$2,600,000, and debt of
16 \$2,600,000.

17 Columbia Management, something,
18 \$2,860,000, a debt of \$1,500,000, and equity of
19 \$453,038.

20 Columbia Management, Persian rugs,
21 worth \$950,000 and debt of \$850,000 and equity of
22 \$33,000.

23 927/29 Gervais Street, fair market
24 value, \$1,500,000 total value, it looks like,
25 \$625,000 and equity of \$208,333.

1 531 -- excuse me -- 5123 Lakeshore
2 Drive, sold '03, parentheses, doesn't say for how
3 much, closed parentheses.

4 13 mobile home lots, fair market value,
5 \$32,000, and equity of \$10,666.

6 Added Pawleys Island, fair market
7 value, \$1,900,000 and equity of \$1,900,000. And
8 then a slash and it says: Total real estate
9 investment, something, \$3,178,665.

10 And then underneath P2, it says: Cash
11 in bank is \$30,000. Cash in stocks in broker
12 accounts, \$750,000. Devine Street residence,
13 \$700,000. Personal residence, Kenilworth,
14 \$985,000. Stocks, miscellaneous, omitted.

15 Com stock Chic Antiques, \$200,000.

16 Com stock Flight something, zero value,
17 not \$75,000.

18 Total liabilities, \$1,260,000. Total
19 assets was \$6,043,665. In excess, assets over
20 liabilities is \$4,783,665.

21 And then the next line -- next page,
22 Page 3, we already talked about, We need to get
23 PI --

24 Q. Right.

25 A. -- report. And then it says: Chic

1 Antiques -- this would have been my meeting with
2 the client -- W worked in company from date of
3 marriage and before.

4 Number 2, W was secretary of
5 corporation; 3, W had signature authority over
6 checking account; 4, W and H went to England to buy
7 inventory, which went into the Five Points shop,
8 but ended up in the Asheville, North Carolina
9 operation; 5, W's separate property became
10 inventory to Chic Antiques, parentheses, the
11 contents of her separate house, closed parentheses.

12 H referred to as, quote, our business,
13 closed quote. Gallery 2, dash, W's business.
14 Dash, W used same tax number as Chic Antiques. And
15 then there's a double line, break in thought.
16 Again, this may have been a subsequent meeting or
17 something.

18 Settlement, whatever W has in storage
19 containers. Quote, my building, closed quote.
20 Dash, Gervais Street, 1.1 million value, free and
21 clear of mortgages.

22 \$5,000 per month for five years, but H
23 pay girls' college education, uncovered meds. W
24 keep the \$400,000 she already got.

25 And then off to the left, something, 17

1 days, and then something 15 in May.

2 Next line: H has been paying \$1,500
3 per month, quote, support, closed quote, to W, has
4 loaned her use of her car.

5 Q. What's the scratched-out writing on the
6 right-hand side?

7 A. Okay. It was scratched out about
8 getting my building and whatever. This will get W
9 back in Columbia. But yet, that was scratched out.
10 So the significance of that, I don't know.

11 Q. Last page.

12 A. Again, this is an unrelated
13 document -- I mean, this is a document related to
14 this case, but not in sequence with these others.

15 It says: C. Powell, arrow, not
16 entitled to attorney's fees because no financial
17 declaration from H, exclamation point. Also, Rule
18 11 violation.

19 This, again, must have been just some
20 random thought of mine in preparing the response to
21 the motion to compel discovery that Marne had
22 filed.

23 Q. What were the operating plans at the
24 conclusion of the February 22nd events in this
25 case, the document inspection meetings? What was

1 the next step for the prosecution of the case?

2 A. As I recall, Reid was on board, and he
3 was going to develop an analysis of the financials
4 at that point.

5 Q. Had decisions been made about whether
6 he was going to participate as co-counsel, just
7 remain as consulting expert, anything of that sort?

8 A. That decision was made later. The
9 option was available at that point. He could
10 either be a witness or co-counsel, but we were
11 keeping him at that point as a consultant, really,
12 to develop the information, and then we'll see
13 where it goes from there.

14 Can we take a short break?

15 MR. PENDARVIS: Yeah, absolutely.

16 (A brief recess was held.)

17 (PLF. EXH. 27, a letter to J. Michael
18 Taylor from Marne Sherman dated February 23, 2006,
19 was marked for identification.)

20 BY MR. PENDARVIS:

21 Q. Mr. Taylor, back from a short break.

22 This is basically an authentication
23 question. Is this a copy of the letter you
24 received from Ms. Sherman dated September 23, 2006?

25 A. I believe that's correct.

Taylor, J. Michael

1 MR. HILL: What number is this?

2 MR. PENDARVIS: This is Number 27. The
3 record should say I passed you an exhibit marked
4 Exhibit 27.

5 BY MR. PENDARVIS:

6 Q. Were there any conversations in
7 response to this letter that you remember speaking
8 with Ms. Sherman about?

9 A. I'm trying to recall. Well, she asked
10 for our videotape of our private investigator's
11 report, so that was a follow-up. I'm sure there
12 was something other than that. And, yeah, this is
13 where she changed her privileged information
14 answers, and she also changed the answers regarding
15 the adultery questions as to the husband.

16 Q. And did you communicate this with
17 Ms. Powell?

18 A. I'm sure I did, somehow.

19 Q. At this point in time, February of
20 2006, how would you describe your relationship with
21 Ms. Powell?

22 A. Um, we were still doing some follow-up
23 discovery. Um, the -- I sensed a little bit of
24 anger from her, but it was kind of a diffused
25 anger. I don't know that it was really directed at

1 me or not, but I don't -- like I said, she never --
2 that I recall -- expressed displeasure with my
3 representation.

4 But we had further discovery responses
5 we had to follow up on. There was some stuff that,
6 as I recall, even at the time she fired me, there
7 was still some discovery stuff that was still owed
8 to Marne at some point. So again, I was getting
9 some reluctance from your client, but we still had
10 a working relationship.

11 Q. Was she expressing her frustrations
12 with the delay?

13 A. I don't recall that at this point in
14 time. I don't recall that.

15 Q. Was she expressing any frustrations or
16 anger about the way her husband was handling the
17 proceedings?

18 A. I would have to see some documentation.
19 I don't have an independent recollection at this
20 point right now about that.

21 (PLF. EXH. 28, a facsimile cover sheet
22 to J. Michael Taylor from Carolyn Powell attaching
23 a handwritten note to Carolyn on Chic Antiques
24 letterhead, was marked for identification.)

25 BY MR. PENDARVIS:

Taylor, J. Michael

1 Q. I pass to you now a fax from Ms. Powell
2 dated -- marked Exhibit 28 to your deposition,
3 dated March 10, 2006 and ask if you have seen this
4 document before.

5 A. Um, yes, I believe I have seen this.

6 Q. Did you discuss this -- and this is a
7 fax of a letter from Mr. Conrad Powell to
8 Ms. Powell.

9 After receiving this fax from
10 Ms. Powell, did you speak with her about the
11 substance of the letter from her husband?

12 A. I'm sure I did. I don't have an
13 independent recollection.

14 Q. Was there anything of significance
15 that -- from Mr. Powell's letter that had any
16 bearing on Ms. Powell's claims or the defenses to
17 her claims?

18 A. I couldn't make that judgment call at
19 this point right now. There may be, there may not
20 be. I couldn't tell you at this point.

21 (PLF. EXH. 29, phone message and
22 handwritten notes, was marked for identification.)
23 BY MR. PENDARVIS:

24 Q. I'm passing to you now a single-page
25 document marked Exhibit 29 to your deposition.

1 Other than the telephone message, are
2 the notes around Exhibit 29 your handwriting?

3 A. Yes. This appears to be three separate
4 documents. You've got one of those, the phone
5 message. And then there's the one off to the right
6 that says: H has been paying W \$1,500 per month,
7 quote, for the girls, closed quote. And then under
8 that is a separate document.

9 Q. Is that your handwriting?

10 A. Yes.

11 Q. Can you read that for us, please.

12 A. C. Powell, dash, letter from husband,
13 \$1,500. Planning to drop all insurance, dash,
14 replace by 13th. Um, under that: Has been letting
15 H pay for the girls, dash, can now, something,
16 expense -- so he -- okay -- girls, can now see how
17 expensive they are, dash.

18 Came into house and took photos,
19 parentheses, of interior, closed parentheses,
20 question mark, closed parentheses, or -- and then
21 something -- he says, under an arrow, in presence
22 of children.

23 Next line, H is pumping girls for info.

24 Q. What was the source of the information
25 that you recorded here?

1 A. The only thing I can imagine is this
2 must have been a telephone conference with her,
3 because I even have her phone number down here.

4 This may be where she called me on
5 3/16, and then I returned the call. Maybe not.
6 But -- no, because that wouldn't make sense,
7 because I already have her phone number on that
8 message.

9 So I don't know the date of this
10 particular document on the bottom half of Exhibit
11 29, but that most likely would have been a
12 telephone conference with your client.

13 Q. Were there any conversations during the
14 December '05, January, February, March, 2006 time
15 period with Ms. Powell about whether to begin -- to
16 proceed with a temporary hearing or anything of
17 that nature?

18 A. I don't know whether there were any
19 specific conversations at that point. I would have
20 been very concerned about having a temporary
21 hearing at that time. She was no longer entitled
22 to alimony.

23 She still had physical possession of
24 her girls. He was paying child support that I
25 thought was a little high, more than what a judge

1 would probably award. So I don't know what the
2 purpose of the temporary hearing would have been.

3 Q. Did you run the guidelines on what the
4 temporary -- what the child support guidelines
5 showed?

6 A. I don't recall seeing a printout. I
7 may have. Of course, one of the problems -- and
8 that was something that we subsequently did later
9 on, I think, in that summer at some point. I think
10 I asked Reid to run some projected numbers for
11 income, so we could try to put something into it.

12 But it would have been very speculative
13 because, again, he doesn't have a stream of income.
14 Her income is difficult to determine. So the
15 guidelines would have given you a range of a lot of
16 things.

17 But in my judgment, at the time -- and
18 I don't recall the basis for it, it could have been
19 running the numbers through the guidelines -- I
20 thought he ought to be paying probably \$1,200,
21 \$1,300 in child support, somewhere around that
22 range.

23 Q. Did you have any conversations about
24 child support values, guidelines, anything of that
25 nature, with Ms. Marne Sherman?

1 A. I don't recall. I may have. But I
2 know that he was -- as I said, in my judgment, he
3 was paying more than I thought he would otherwise
4 be required to pay. It was close to \$1,600 a
5 month, I think.

6 Q. Did Ms. Sherman -- I'm sorry, I didn't
7 mean to interrupt you.

8 A. \$1,500 or something.

9 Q. Did Ms. Sherman ever tell you that's
10 what she contended or believed?

11 A. I don't recall if we had a specific
12 conversation about that child support fee.

13 Q. Did you talk with her, generally, about
14 the child support issue in terms of the litigation?

15 A. At some point, and I'm sure during the
16 litigation, we did. When it would have been, I
17 don't know.

18 Q. Was it closer to the beginning of your
19 representation? Toward the end? Middle?

20 A. I couldn't tell you.

21 (PLF. EXH. 30, a letter to J. Michael
22 Taylor from Reid B. Smith dated May 19, 2006, Re:
23 Carolyn Powell, was marked for identification.)

24 BY MR. PENDARVIS:

25 Q. Okay. We made a reference to this

1 earlier, but I'm passing you now a document marked
2 as Exhibit 30 to your deposition that is apparently
3 a letter from Mr. Reid Smith to you, dated May 19,
4 2006.

5 Do you recall receiving this letter and
6 enclosures from Mr. Smith?

7 A. Yes.

8 Q. And were you expecting this?

9 A. Yes, yes.

10 Q. After receipt of this timeline and
11 asset information, did you follow up with Mr. Reid
12 Smith about what to do with the substance of his
13 reports?

14 A. I'm sorry, can you repeat that
15 question, please.

16 Q. Yes, I can.

17 After receipt of this letter on May 19,
18 2006 from Mr. Reid Smith, did you follow up with
19 Mr. Smith about the plans on using the information
20 contained in his report in the litigation?

21 A. I remember having some conversations
22 with Reid after this, yes.

23 Q. And what was -- what were those
24 conversations?

25 A. I don't recall. They were just random

1 conversations, perhaps a follow-up on this.

2 At some point later on, we were -- I
3 know we were valuing the case and I had a
4 conference with Reid and your client and me about,
5 you know, the direction of the case at that
6 particular point.

7 And, again, ultimately, I think we
8 ended up deciding to go forward with the deposition
9 of Mr. Powell.

10 Q. Were there any conversations between
11 you and Mr. Smith, first off, in terms of his role,
12 you know, consulting expert or participating as
13 co-counsel that came out of this report?

14 A. Well, it would have been sometime after
15 this that we made that decision. I think there may
16 have been some follow-up information that was being
17 pursued.

18 Like I said, I know I asked Reid at
19 some point to do some income projections or
20 something like that, but at some point -- and it
21 gets a little fuzzy in my mind at this point due to
22 the time of day when these decisions were made.

23 Q. Was there any deadline that was
24 approaching or any -- deadline is the word -- that
25 needed to be satisfied by some of the information

1 in this letter, Exhibit 30?

2 A. I'm not sure I understand the question.

3 Q. Well, I'm just asking, was there a
4 response due or a hearing coming up at the time of
5 this letter?

6 A. I don't recall any hearings being
7 scheduled at this point in time, no.

8 Q. Let's look on the second page, the
9 third full paragraph. I see this reference:
10 Because I'm pressed for time, I told Carolyn that I
11 would get a preliminary report to you today. I
12 will have to -- I have to discuss in greater detail
13 how Wheels funded the various enterprises.

14 Can you clear me up on what this
15 "pressed for time" --

16 A. I'm not sure. I think in the sense
17 that he wanted to get Carolyn and me a report at
18 some point, but I don't recall there being any
19 particular hearing coming up, or any deadline.

20 Q. Were there any plans for the
21 discovery -- I see on the first paragraph that
22 pulls into the second page, the last sentence
23 says: I would like to continue investigating
24 whether this was sufficient to transmute the
25 corporation to a marital asset.

1 One example, I mean, were there any
2 other plans on what was going to be done?

3 A. Well, that was one of the issues that
4 we were looking at. As I recall, two of the
5 businesses were premarital, and there was a
6 question as to whether or not they were on the
7 table to be carved up by way of property division.
8 Can we make -- convert -- transmute them, excuse
9 me -- into marital assets, or can we show that?

10 So that was one of the things that we
11 were aiming towards. There were a lot of issues
12 that were coming up in here that needed to be
13 looked into.

14 Q. Were there dates and discussions about
15 a time and date for the deposition of Mr. Conrad
16 Powell in the May 19, May, 2006 context?

17 A. Again, at some point after this report
18 and we were still evaluating where we were, what
19 more did we need. There came a point -- and I
20 don't recall exactly when it was, I think it was
21 sometime during the summer -- that we were trying
22 to do a re-evaluation and asking ourselves, what
23 various options do we have at this point, do we
24 want to stay the course, do we want to do something
25 a little bit different, or something like that to

1 see kind of where we were going.

2 As I recall, the ultimate decision was
3 that she decided to go ahead and pursue the
4 deposition of the husband. I mean, there were some
5 risks involved in doing that, in doing his
6 deposition.

7 Q. And what risk would be involved in
8 taking his deposition?

9 A. They would take her deposition.

10 Q. Okay. And is that unusual in domestic
11 proceedings?

12 A. Not unusual, but I was concerned about
13 Carolyn's deposition being taken.

14 Q. But there was nothing you could do to
15 control that, was there?

16 A. For all practical purposes, that's
17 correct.

18 Q. And just so that I can kind of put some
19 things to bed in my mind, are all of the
20 attachments -- were all of the attachments to the
21 two-page letter in the exhibit marked as Exhibit 30
22 generated by Mr. Reid Smith, to your knowledge?

23 A. I don't know. I would have assumed so,
24 but I couldn't say that with any certainty. You
25 would have to ask him.

1 Q. But to the extent, to your knowledge,
2 Mr. Smith generated these?

3 A. That would be my assumption.

4 (PLF. EXH. 31, an e-mail to Michael
5 from Reid attaching financial documents, was marked
6 for identification.)

7 BY MR. PENDARVIS:

8 Q. Mr. Taylor, I'm passing to you another
9 document marked as Exhibit 31 to your deposition.
10 It appears to be an e-mail from Mr. Reid Smith, I
11 believe, with an attachment attached to the e-mail.

12 Is this an e-mail you received from
13 Mr. Reid Smith?

14 MR. WATSON: Thomas, do you have
15 another copy of that?

16 MR. PENDARVIS: You can look at this
17 one.

18 THE WITNESS: I recall receiving the
19 e-mail cover on this, but I don't have an
20 independent recollection of receiving the
21 attachment that I'm assuming this is. It may have
22 gotten separated in our file.

23 BY MR. PENDARVIS:

24 Q. Does the substance of the attachment
25 appear consistent with the statement on the cover

1 of the e-mail?

2 A. If this is -- I would be willing to
3 assume that this would be the attachment to the
4 cover e-mail. I mean, that's what it appears to
5 be.

6 Again, I don't have an independent
7 recollection, but I don't have any basis to
8 challenge that.

9 Q. By the summer of 2006, September,
10 August, September, 2006, were you communicating via
11 e-mail?

12 A. I think this is probably about the only
13 e-mail that I may have gotten from Reid. The quick
14 answer to that is, as a general rule, no.

15 Q. Okay. Because as you pointed out,
16 there haven't been a lot of e-mails that I've seen
17 in these files. I was just wondering if that was
18 part of the standard communication.

19 A. No. E-mail was not a method of
20 communication that either of us used at that time.

21 Q. Are the handwritings -- whose
22 handwriting is that? Is that yours?

23 A. Not mine.

24 Q. And upon receipt of this, did you
25 communicate with Mr. Smith about developing the

1 Columbia Management issues or anything of that
2 nature?

3 A. Well, again, I don't have an
4 independent recollection of the attachment. But I
5 do know that Reid and I and Carolyn had a meeting
6 in the office, um, at some point after this, to
7 discuss, again, you know, where are we going with
8 the case, what are we going to do, do we, in fact,
9 want to take Conrad's deposition, do we have other
10 options available to us.

11 So, again, it was a reassessment of the
12 case, where are we now, where are we going.

13 Q. There's a reference to his statement in
14 the fourth line down -- fourth line -- third line
15 down -- that this -- excuse me -- these should be
16 helpful in negotiating a property settlement.

17 Do you see that?

18 A. Okay.

19 Q. Were there any further discussions
20 about using this information in settlement
21 negotiates?

22 A. Well, that was an option, again, you
23 know, that we were evaluating at the time. Like I
24 said, there were decisions as to which way to go.
25 So, yeah, I'm sure that that would have been

1 discussed at some point.

2 Q. Were there any discussions about
3 possibly engaging a forensic accountant at this
4 point?

5 A. Again, not at this point, because we
6 weren't really there yet. We could get a forensic
7 accountant later on, if we needed one.

8 (PLF. EXH. 32, handwritten notes, was
9 marked for identification.)

10 BY MR. PENDARVIS:

11 Q. Mr. Taylor, I passed to you a document
12 marked Exhibit 32 to your deposition. It appears
13 to be another note. The date looks like August 21,
14 2006.

15 A. Yes.

16 Q. Is this your handwriting?

17 A. Yes.

18 Q. Would you please read that for us, for
19 the record.

20 A. C. Powell, TC, which means telephone
21 conference, 8/21/06. Dash, meet this week
22 Wednesday, Thursday or Friday with Reid, Carolyn,
23 and JMT. Next line, W is waiting to hear from JMT
24 regarding a meeting.

25 Q. Okay. So the plan was, at this point,

1 to proceed as of August, early September 2006 to
2 proceed with taking Mr. Conrad Powell's deposition?

3 A. We were evaluating it at that point. I
4 don't recall exactly when the decision was made. I
5 know that there was a handwritten note in the file
6 somewhere where I was examining the various options
7 that we had. Again, take the husband's deposition?
8 Or do we want to make a settlement proposal? Or
9 things of that nature.

10 But, ultimately, the decision was made
11 to proceed with the deposition.

12 (PLF. EXH. 33, deposition questions -
13 draft dated November 14, 2006 - for the deposition
14 of W. Conrad Powell, was marked for
15 identification.)

16 BY MR. PENDARVIS:

17 Q. And in that regard, I'm passing to you
18 a document marked as Exhibit Number 33 that has on
19 the first line: Deposition questions, dash, draft,
20 dated November 14, 2006.

21 It appears to be some questions for the
22 deposition. It also includes some of the -- some
23 of the material from Mr. Smith at the very back.

24 A. I don't recall seeing these in the very
25 back here where it says: Notice the financial

1 statement, July 31st, 1998.

2 Q. Okay. As to the first part of the
3 Exhibit 33 that you -- other than the portions you
4 referred to -- can you give me the Bates numbers at
5 the very bottom center of the materials that you
6 believe were not originally included with this?

7 A. I would have to compare the documents
8 to make sure, but I've got different versions of
9 the deposition questions. It went through various
10 versions. I remember it started off with a rough
11 draft. And then we started going through it again,
12 and drafts, I think, went back and forth between me
13 and Reid. I know I asked -- I think your client
14 got a draft at some point.

15 Um, and I can't say with any
16 certainty -- some of these attachments may be -- I
17 don't recall -- I do not recall Number 26 through
18 34 having seen that before. I might have, but I
19 don't recall.

20 Q. That's fair.

21 And it looks like, if you would look on
22 the document on the left bottom corner, Pages 1
23 through 25 have a number, and then the page marked
24 Bates Number 26 does not have that number.

25 A. Okay.

1 Q. Which are the attachments?

2 A. That's correct.

3 Q. Okay. So my question is, for the first
4 25 pages of Exhibit 33, is that the -- a form of
5 the deposition outline that was -- you were
6 involved with preparing?

7 A. It was one form. What had happened
8 was, um, we were making a decision whether or not
9 Reid would take the deposition or I would take the
10 deposition, and the decision was made, the judgment
11 call, that he was better able to ask the questions
12 about the financials.

13 And I think with this, maybe, it would
14 be the complete packet of some of the stuff that
15 Reid had added to it, since he was going to do it.
16 He may have added some more stuff to it.

17 Q. Okay. Were there any subject areas
18 that were not explored in his deposition that you
19 thought later might would have been better to have
20 been explored?

21 A. I thought it was pretty thoroughly
22 done.

23 Q. Okay. And the deposition -- I'm not
24 going to make this an exhibit today, but the
25 deposition was taken on December 13, 2006 of

1 Mr. Conrad Powell?

2 A. It was originally scheduled for
3 November. I think Marne got sick at the last
4 moment, and we ended up taking the deposition mid
5 December sometime.

6 Q. And you attended the deposition?

7 A. Yes.

8 (PLF. EXH. 34, a letter to Michael
9 Taylor from Carolyn Powell dated November 16, 2006,
10 Re: Issues regarding housing, settlement, was
11 marked for identification.)

12 BY MR. PENDARVIS:

13 Q. I'm passing to you now a document
14 marked as Exhibit 34 to your deposition. It
15 appears to be a letter from Ms. Powell to you with
16 a copy to Mr. Reid Smith, and it's dated November
17 16, 2006.

18 Did you receive this letter from
19 Ms. Powell?

20 A. I got this at some time, but I don't
21 remember when. Um, it's not in our file, but I
22 believe I saw it at some point before your client
23 fired me. So exactly when that would be, I don't
24 know.

25 Q. And it appears to be -- there's

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1 some -- the substance -- and I will let you read
2 it, if you need to -- but it appears to be there's
3 issues in Ms. Powell's mind about really the
4 objective of trying to resolve the case following
5 Mr. Conrad Powell's deposition.

6 A. Yeah. As I recall -- and matter of
7 fact, the last sentence of the letter says: It is
8 not my wish to force the issues into a family court
9 battle unless Conrad continues to be unjust.

10 Prior to that she says: It is my hope
11 that, following Conrad's deposition, we can move
12 the agenda, reaching a settlement to the forefront.
13 Hopefully, we will have the answers we need to
14 properly assess the marital assets.

15 Q. And is that in context with your
16 conversations with her in that time period?

17 A. I believe so. Again, that's the
18 approach we were taking.

19 (PLF. EXH. 35, handwritten notes, was
20 marked for identification.)

21 BY MR. PENDARVIS:

22 Q. I'm passing to you now some handwritten
23 notes marked as Exhibit 35 to your deposition.

24 They appear to be some notes that were
25 recorded at or during Mr. Conrad Powell's

1 deposition; is that correct?

2 A. Yeah, that's correct. I had a copy of
3 the questions that I provided to Reid written out,
4 and I also had made contemporaneous notes on a
5 separate pad. And these are the notes that I had
6 scribbled during the course of the deposition. But
7 obviously, you know, this is just for purposes at
8 that point in time. And the actual deposition
9 would be much more accurate.

10 Q. Obviously. And we're not going
11 to -- I'm not going to ask you to read this in
12 to -- but I would like you to do one thing for me.

13 Are there any notes made and recorded
14 in Exhibit 35 that relate to objectives for the
15 case?

16 I think lawyers in a deposition
17 frequently will hear testimony that makes them
18 think of a thing that needs to be done or they wish
19 to do at some point, not necessarily a pure
20 recording of or jotting down whatever the witness
21 is saying, Would you mind looking through that and
22 see if you see any -- do you understand what I'm
23 asking?

24 A. That wouldn't be the way that I -- let
25 me just take a quick look here, but that's not the

1 way that I normally do these things.

2 Sometimes -- I don't necessarily do
3 strategy issues or things like that in depositions.
4 Sometimes I concentrate on follow-up questions,
5 things like that, at the deposition.

6 I don't normally have an epiphany
7 about, Oh, all of the sudden we need to go in a
8 particular different direction at this point in
9 time in the case.

10 I'm concentrating more on what's being
11 said and developing the information that's in front
12 of me, because you only get to take the deposition
13 one time.

14 So real quick, I don't see anything
15 that indicates any strategy issues.

16 Q. Like you said, this is the only time I
17 get to take your deposition, so I need to know that
18 information, if there was something that was --

19 A. Nothing jumps out to me.

20 Q. Okay. On top of that, I don't think
21 there's anyone here except you that can really do a
22 good job interpreting your notes.

23 At the conclusion of Mr. Conrad
24 Powell's deposition, January 13th, 2006 --

25 A. I'm sorry, at the conclusion of his --

1 Q. After Mr. Powell's deposition was
2 completed.

3 A. It wasn't January.

4 Q. I'm sorry, did I say January? December
5 13th, 2006. My apologies.

6 At the conclusion of the December 13,
7 2006 deposition of Conrad Powell, were there any
8 conversations with -- between yourself, Reid Smith,
9 and Ms. Powell about what was the next step in the
10 case?

11 A. At some point, I know that there was --
12 the next step was going to be Carolyn's deposition,
13 and, uh, we needed to get her prepared. And I was
14 making contact with her to come into the office.

15 It was either December -- I know early
16 January, but I don't remember exactly when the
17 deposition was -- and I wanted her to come in,
18 Let's get prepared, because it's going to take a
19 long time to get her prepared for her deposition.

20 And I think we had a few phone calls
21 after that. I couldn't get her to come in, and
22 then next thing I knew, I was fired.

23 Q. We're going to get to the letters and
24 faxes you got on that.

25 And my question is, prior to the

1 faxes -- back up.

2 When did you first -- how did you first
3 find out that Ms. Powell wanted to terminate the
4 lawyer/client relationship?

5 A. I think she sent me a letter.

6 Q. And that was the first you had heard
7 about that?

8 A. I believe that's the first I had heard,
9 yeah.

10 Q. And when was that? Was it early
11 January, 2006?

12 A. Early January, 2007 sometime.

13 (PLF. EXH. 36, fax cover sheet to
14 Michael Taylor from Carolyn Powell dated 1/17/06,
15 was marked for identification.)

16 BY MR. PENDARVIS:

17 Q. I'm passing you a document marked as
18 Exhibit 36 to your deposition.

19 Is this the fax that you were
20 discussing just a moment ago?

21 A. No. Wait, let me explain. There are
22 two parts to this. Okay. The first page is a fax
23 sheet she sent to me when -- in January of 2006 she
24 was served with foreclosure papers, um, and the
25 question was -- this is when we first got Reid

1 Smith involved.

2 Q. Okay.

3 A. The next letter here -- although it's
4 dated January 17, 2006, I think that was a misdate.
5 That ought to be January 17, 2007.

6 Q. I thought so, too. In that regard, if
7 you don't mind, as we did before, we will separate
8 this and I will mark the January 17th, 2006 dated
9 typewritten letter as Exhibit Number 37.

10 (PLF. EXH. 37, a letter to Michael
11 Taylor from Carolyn Powell dated January 17, 2006,
12 was marked for identification.)

13 BY MR. PENDARVIS:

14 Q. And I think everything in the file and
15 your testimony is consistent with this being a
16 mistyped date.

17 And this was the communication you
18 referred to earlier in your testimony?

19 A. Yes.

20 Q. Did you follow up on -- with Ms. Powell
21 after you received this on how she wanted to handle
22 a transition?

23 A. You mean terminating representation?

24 Q. Yes.

25 A. As I recall, I got a letter from

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1 Cantzon Foster saying that he's now going to be
2 representing her, and we had the file copied and, I
3 believe, delivered or even picked up by Cantzon
4 Foster's office.

5 I signed the consent order, relieving
6 me as counsel, um, and that was it.

7 (PLF. EXH. 38, a letter to J. Michael
8 Taylor from C. Cantzon Foster dated January 19,
9 2007, was marked for identification.)

10 BY MR. PENDARVIS:

11 Q. And I'm passing you a copy of a
12 document marked as Exhibit 38 to your deposition.

13 Is that the letter from Mr. Foster with
14 the proposed consent order?

15 A. I believe so.

16 Q. After the letter from Ms. Powell marked
17 as Exhibit 37, did you have any further
18 conversations or communications with her?

19 A. I don't believe I did. She may have
20 called the office about obtaining a copy or
21 something -- the file or something, something
22 about, you know, us having to have time to copy the
23 file. And then we were turning it over to Cantzon
24 Foster's office, there may have been a
25 communication to that effect. But other than that,

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1 I don't recall anything else after that.

2 Q. And nothing of substance regarding her
3 claim?

4 A. No.

5 Q. Okay. Did you have any communications
6 of substance regarding Ms. Powell's claim and the
7 lawsuit with Mr. Cantzon Foster after he took over
8 the representation?

9 A. No. Once I was out of the case, I was
10 out of the case.

11 Q. Did you provide Mr. Foster with any
12 summaries, instructions on where things were, what
13 the plans were, where things -- promises made to
14 Ms. Sherman, or anything of that nature?

15 A. I recall having a conversation with
16 Cantzon and telling him that, you know, Anything I
17 can do to make sure that this goes smoothly -- I'm
18 sure I told him something about an upcoming
19 deposition of the wife and that there were other
20 depositions that I think were in the near future.
21 I think Lenny Hart's deposition was also scheduled.
22 I don't recall who else.

23 I know I had some kind of a telephonic
24 conversation with him at some point or another to
25 try to bring him up to speed for what needed to be

1 done immediately.

2 Q. Somewhat contemporaneous with Exhibit
3 38?

4 A. Somewhere around this time.

5 MR. PENDARVIS: Let's take a break.

6 (A brief recess was held.)

7 MR. PENDARVIS: We're working toward
8 winding this thing up.

9 (A brief recess was held.)

10 BY MR. PENDARVIS:

11 Q. Mr. Taylor, thank you for your
12 testimony so far. And we've been really talking a
13 lot about the activities that were going on in the
14 actual representation of Ms. Powell.

15 I want to talk a little bit about other
16 things that were occupying your time while you were
17 representing her.

18 Were there any caseload issues that
19 were impacting your practice from April of 2005
20 through January 2007?

21 A. Not that I can recall.

22 Q. Were there any -- did you have any
23 health issues going on? Were you having any kind
24 of medical issues or things that were impacting
25 your ability at the time to practice?

1 A. Nothing that would impact my ability to
2 practice law.

3 Q. Was it taking -- were there any health
4 issues that you were involved with that were taking
5 time away during workdays?

6 A. I don't recall any.

7 Q. Had you -- what's your marital status?

8 A. Married.

9 Q. When were you married?

10 A. I'm under oath. August of 2005. 2005.

11 Q. And were there any -- was this your
12 wife's first marriage? Were there any children
13 that were --

14 A. No. This is my wife's second marriage.

15 Q. Did she have some children that came
16 into your life when you got married?

17 A. Yes.

18 Q. Were any -- were there any things going
19 on in the change of your personal dynamics with the
20 new wife and family that were impacting your
21 practice?

22 A. No. I was handling it all.

23 Q. Reid Smith mentioned some things to
24 Ms. Powell about health issues and marriage issues
25 that were affecting your -- you know, you at the

1 time -- I'm not saying negatively or not.

2 But there were some questions in some
3 communications that Reid Smith gave to Ms. Powell
4 about those things, and I wanted to understand from
5 you what was going on in that time of your
6 representation of Ms. Powell.

7 MR. WATSON: Objection to form.

8 THE WITNESS: I can't recall anything
9 unless you have something specific.

10 BY MR. PENDARVIS:

11 Q. That's as specific as I have got, that
12 there were some communications from Mr. Smith to
13 Ms. Powell. And I wanted to find out from you if
14 there were things that were health issues or family
15 issues that were bearing on your time and ability
16 to be in the office and practice.

17 A. No. What was going on in my personal
18 life was not preventing me from actively practicing
19 law and continuing on with the cases that I was
20 handling. I don't recall anything in particular.

21 Q. In the 2006 time period -- well, let me
22 back up before that. What was generally your
23 number of hours a week you were practicing law?

24 A. Um, I cut back a good bit after we left
25 Harvey. That's one of the things I like about

1 being in the firm with Ashlin right now, is that
2 I've got more time for family. I don't work
3 weekends, except for rare occasions. Rarely, very
4 rarely, have to work late in the evening, if
5 necessary. So the workload has cut back a good
6 bit.

7 Q. Prior to the movement from the Golden
8 firm to Taylor Potterfield, how many approximate
9 hours a week were you averaging at Golden Taylor
10 Potterfield?

11 A. Well, at that time, before my marriage,
12 I had sole custody of two children, so I would
13 leave the office by five, um, and come in to the
14 office probably at 8:30 in the morning, something
15 like that, fairly consistently. And I was able to
16 handle the workload that we had without any issues.

17 Q. And if I understand from your testimony
18 about the improvements to moving to Taylor
19 Potterfield, that you were having to work some
20 nights and some other things when you were with
21 Golden Taylor Potterfield?

22 A. There were times when I had some issues
23 earlier on. This was all before I was representing
24 your client. I had a case in Dillon when I had to
25 commute home every night, and there were some

1 issues then. But by the time I was representing
2 your client, that had been pretty much cut out.

3 Q. And can you give me a comparison of
4 time after the move to transition to Potterfield
5 Taylor on the number of hours, work hours, that you
6 were -- the amount of hours less that you were
7 working at Potterfield Taylor?

8 A. I really couldn't. All I could really
9 tell you is, in general terms, the hours are better
10 now than they were when I transferred to Taylor
11 Potterfield.

12 Q. And you don't recall any health issues
13 that were involving you at this time period when
14 you were representing Ms. Powell?

15 A. Unless you can come up with something
16 specific, I don't recall anything in particular.
17 I'm not saying something didn't happen, but I'm
18 usually a fairly healthy individual and nothing
19 comes to mind.

20 MR. PENDARVIS: Okay. Thank you for
21 your time today.

22 MR. WATSON: No questions from me,
23 Mr. Taylor.

24 MR. HILL: No questions.

25 (The deposition was concluded at 3:00

p.m.)

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Taylor, J. Michael

SIGNATURE OF DEPONENT

DEPONENT: J. MICHAEL TAYLOR, J.D.
DEPOSITION DATE: APRIL 19, 2011
REPORTER: SUSAN M. VALSECCHI
CASE CAPTION: CAROLYN MITCHELL POWELL vs. ASHLIN
BLANCHARD POTTERFIELD; J. MICHAEL TAYLOR;
TAYLOR/POTTERFIELD, ET AL.

(Please return both Signature of Deponent pages)

I, the undersigned, J. MICHAEL TAYLOR, J.D.,
do hereby certify that I have read the foregoing
deposition and find it to be a true and accurate
transcription of my testimony, with the following
corrections, if any:

PAGE	LINE	CHANGE	REASON

Taylor, J. Michael

SIGNATURE OF DEPONENT (CONTINUED)

DEPOSITION DATE: APRIL 19, 2011
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BLANCHARD POTTERFIELD; J. MICHAEL TAYLOR;
TAYLOR/POTTERFIELD, ET AL.

PAGE	LINE	CHANGE	REASON

J. MICHAEL TAYLOR, J.D. Date

I, SUSAN M. VALSECCHI, Notary Public for the
State of South Carolina at Large, do hereby certify
that the deponent was advised of his or her right
to read and sign said deposition both verbally and
in writing. If the deponent fails to execute and
return foregoing Signature of Deponent pages within
the thirty (30) days allowed pursuant to the Rules
of Civil Procedure, the original transcript may be
filed with the court.

SUSAN M. VALSECCHI, RPR, CRR
My Commission expires
January 4, 2015

Taylor, J. Michael

1 CERTIFICATE OF REPORTER

2
3 I, Susan M. Valsecchi, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby certify
6 that the foregoing transcript is a true, accurate,
7 and complete record.

8 I further certify that I am neither
9 related to nor counsel for any party to the cause
10 pending or interested in the events thereof.

11 Witness my hand, I have hereunto
12 affixed my official seal this 28th day of April,
13 2011 at Columbia, Richland County, South Carolina.

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23
24 Susan M. Valsecchi, RPR, CRR
25 My Commission expires
January 4, 2015

Taylor, J. Michael

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In The Matter Of:
Carolyn Mitchell Powell v
Ashlin Blanchard Potterfield, et al

Reid Smith, J.D.
September 30, 2011

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1 STATE OF SOUTH CAROLINA

2 COURT OF COMMON PLEAS

3 COUNTY OF RICHLAND

4 CAROLYN MITCHELL POWELL,

5 Plaintiff,

6 vs. CIVIL ACTION NO. 2009-CP-40-8705

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

12 Defendants.

13 DEPOSITION OF: REID SMITH, J.D.

14 DATE: September 30, 2011

15 TIME: 10:00 A.M.

16 LOCATION: Law Offices of Sowell Grey Stepp &
17 Laffitte, LLC
1310 Gadsden Street
Columbia, SC

18 TAKEN BY: Counsel for the Plaintiff

19 REPORTED BY: WANDA K. CECIL
20 Certified Court Reporter

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ALSO PRESENT:

Carolyn Mitchell
J. Michael Taylor

(INDEX AT REAR OF TRANSCRIPT)

1. (PLF. EXH. 1, First Amended Notice of
2. Deposition, was marked for
3. identification.)

4. REID SMITH, J.D.,
5. being first duly sworn, testified as follows:

6. EXAMINATION

7. BY MR. PENDARVIS:

8. Q. Good morning, Mr. Smith. We've met
9. before.

10. A. Good morning.

11. Q. I'm Thomas Pendarvis. I'm representing
12. Ms. Carolyn Mitchell. The caption says Powell in
13. this matter. Have you ever had your deposition
14. taken before?

15. A. No, not that I can recall.

16. Q. You've been involved in depositions?

17. A. I certainly have.

18. Q. And you've taken depositions?

19. A. I have.

20. Q. So do we need to go through the
21. protocol?

22. A. We do not.

23. Q. Thank you very much. Would you mind
24. providing me with a little of your professional
25. background, college, law school and your law

1 practice?

2 A. Sure. I graduated undergraduate in '77
3 from the University of South Carolina with a major
4 in English and a cognate in film making. I didn't
5 want to teach, so I went to law school. I graduated
6 from USC Law School in 1981. While I was in law
7 school, I was a law clerk for one of the Chapter 7
8 bankruptcy trustees, Bob Anderson. And when I was
9 sworn in, I went to work for that -- for Anderson
10 and Robinson as an attorney, an associate, and
11 became a partner in about a year and a half.

12 Q. And when did you begin practice with
13 Anderson and Robinson?

14 A. I believe it was '79.

15 Q. And partner by '80, '81, somewhere in
16 there?

17 A. No. I didn't graduate until '81, so I
18 was partner '82, late '82, early '83, something like
19 that.

20 Q. And so 1979 to '81 time period, was your
21 position there as a law clerk?

22 A. Yes.

23 Q. And while you were with Anderson and
24 Robinson, what was the nature of your law practice?

25 A. It was a bankruptcy practice or I should

1 say debtor/creditor practice. The new Bankruptcy
2 Code went into effect in 1978 and it was only about
3 a year old. And very few lawyers were familiar with
4 the new Bankruptcy Code and I was lucky to have
5 taken bankruptcy, the new Bankruptcy Code course
6 under Professional Phillip Lacey while I was in law
7 school.

8 And so I felt that I had an advantage
9 over a lot of these older, established attorneys
10 because I had been thoroughly schooled in the
11 differences between the new Bankruptcy Code and the
12 old Bankruptcy Act, although I did have an
13 opportunity to handle a case under the old act. And
14 it was not unusual at that point in time for that
15 law firm to be involved in 90 percent of the
16 bankruptcies in this state, either as the trustee, a
17 creditor's attorney or the debtor's attorney.

18 My practice included representing the
19 bankruptcy trustee in setting aside pre-bankruptcy
20 conveyances, whether by preferential transfer or a
21 fraudulent conveyance under either the Bankruptcy
22 Code or the Statute of Elizabeth.

23 I remember the -- one of the very first
24 cases that I handled resulted from a brief that I
25 wrote while I was a -- I worked for Professor

1 Underwood, who had an expertise in federal
2 jurisdiction. And Bob Anderson retained Professor
3 Underwood to address an issue involving a debtor
4 from Orangeburg who transferred all of his assets to
5 a corporation called Iranian Overseas Investments
6 that was headquartered in Anquilla. And, under the
7 old act, there was summary versus plenary
8 jurisdiction. So there was a question whether the
9 trustee actually had the authority to pursue that
10 transfer.

11 And it was interesting to me because it
12 was also at the same time that the Iranian crisis
13 was pending, so we had to deal with trying to
14 establish some sort of diplomatic relationship with
15 the Country of Iran so that we could go through the
16 proper channels to subpoena this company into the
17 U. S. Courts.

18 And I wrote the brief for Professor
19 Underwood and then he made a few changes, turned it
20 in to Bob Anderson. And I saw an opportunity and I
21 went in to meet with Bob Anderson on a Saturday
22 morning and said, Bob, you know I wrote this brief,
23 so why don't you just hire me? And he did.

24 Q. Interesting. Did you handle any other
25 types of matters outside of the

1 debtor/creditor/bankruptcy matters you've described
2 so far?

3 A. I'm sure that I did. We did collection
4 work once we got judgments. Well, that would be
5 debtor/creditor. We would try to uncover assets for
6 the benefit of the creditor. I did that both in the
7 Magistrate Court and in the Circuit Court. Of
8 course, a lot of the trustee work included analyzing
9 business records, looking for transfers. We worked
10 with accountants a great deal.

11 Q. Do you have any training in accounting
12 matters?

13 A. No, I don't. And I've never held myself
14 out as an accountant.

15 Q. How would you define forensic
16 accounting?

17 A. I'm not sure of the classical definition
18 or the book definition; but forensic accounting to
19 me is when you try to trace assets to determine what
20 happened, whether the assets be cash, real property
21 or personal property.

22 Q. And when you say determine what
23 happened, do you mean how the transfer took place
24 or --

25 A. Right. Right. Having to -- let's say

1 you start at a point in time and you either go
2 forward or backward to determine what happened.

3 Q. Are you qualified to handle forensic
4 accounting matters?

5 A. No. And I've never, again, held myself
6 out to be a forensic accountant.

7 Q. Do you believe --

8 A. But I think I am able to trace assets.
9 I think 30 years of working in the bankruptcy area
10 has given me the ability to uncover assets that
11 may have been hidden. I also have experience in
12 corporate areas of making sure corporate procedures
13 have been followed, because a lot of times we will
14 try to uncover or undo a transaction for lack of
15 corporate formality.

16 I had the opportunity a few years ago to
17 sue Regions Bank on an \$800,000 mortgage and the --
18 I represented one of the partners and the
19 partnership granted a mortgage to Regions Bank
20 without my client's knowledge. So we convinced the
21 Court that the failure to follow proper procedure
22 resulted in the mortgage being void and the Court
23 agreed. And so, you know, I do have the opportunity
24 to look at those type of transactions.

25 I always did well in business courses in

1 law school. My very first A in law school was
2 business law, which was a four-hour A, which really
3 helped my GPR; but I do have the ability -- I did
4 have the ability to do what Carolyn Powell retained
5 me to do.

6 Q. What things, what types of activities
7 can someone with forensic accounting skills and
8 background do that you are not able to do with your
9 training?

10 A. I don't know. But I think as far as
11 uncovering assets that may be hidden, I'm probably
12 better at that than a forensic accountant, but. . .

13 Q. Okay. But?

14 A. Well, I was going to say, I wasn't
15 really retained to pursue hidden assets because
16 Carolyn's -- one of her very first communications to
17 me indicated that she wasn't so concerned about
18 assets being hidden as Conrad's diluting assets by
19 giving them away to his brother or his accountant.

20 Q. Do you believe your experience in, you
21 testified, in your ability to trace assets provided
22 you with sufficient skills to determine whether
23 someone had diluted assets?

24 A. Yes, I do. Plus my experience and
25 knowledge of corporate law.

1 Q. One little formality I didn't satisfy.
2 I placed in front of you --

3 A. Okay.

4 Q. This is really just a housekeeping
5 matter. A document marked the first amended notice
6 of deposition, marked Exhibit 1. Just want -- we
7 had an agreement for today's date and depo.

8 A. Yeah. And I thank you for continuing
9 the previous date as well.

10 Q. We all have other obligations we need to
11 satisfy. Okay.

12 You no longer practice with Anderson &
13 Robinson, do you?

14 A. No, no. Billy Robinson and Rick Mendoza
15 and I left that law firm and started another law
16 firm.

17 Q. And what was the name of that practice?

18 A. Robinson, Smith & Mendoza.

19 Q. And about when did Robinson, Smith &
20 Mendoza form?

21 A. That's an easy date to remember because
22 the security code to the back door was the day that
23 we started, which was 10/4/80.

24 MR. WATSON: And I'll designate that as
25 confidential for the purposes of this deposition.

1 BY MR. PENDARVIS:

2 Q. 2000?

3 A. '85.

4 MS. MITCHELL: I'm sorry. I was
5 A.D.D.ing. What's that?

6 BY MR. PENDARVIS:

7 Q. So you're almost on the anniversary?

8 A. (Nodding head.)

9 Q. Okay. And can you, just in terms of the
10 attorneys -- and you remain with that firm?

11 A. No, no.

12 Q. Okay.

13 A. I have been through many firms.

14 Q. Okay. So in October of 1985, you began
15 practicing with Robinson, Smith & Mendoza?

16 A. Right. The same type of practice.

17 Q. And how long were you with Robinson,
18 Smith & Mendoza?

19 A. I'm not sure exactly, but I believe it
20 was for three or four years.

21 Q. And where was the next practice with
22 which you --

23 A. I was in a solo practice. And, gosh,
24 it's really hard to keep track; but I would estimate
25 that I was in a solo practice for maybe about a year

1 and a half before I started another partnership with
2 Dalton Watkins.

3 Q. But before we go to the partnership, did
4 you have a d/b/a or did you form a corporation to
5 run your solo practice?

6 A. I can't remember. I'm sorry.

7 Q. That's okay. And your partner's name
8 again? I'm so sorry.

9 A. It was Dalton, D-a-l-t-o-n, Watkins.

10 Q. And was it Smith & Watkins, Watkins &
11 Smith?

12 A. Smith & Watkins.

13 Q. Same type of practice?

14 A. Yes.

15 Q. What was Mr. Watkins' specialty?

16 A. His major client was General Motors
17 Acceptance Corporation. So we did a lot of creditor
18 work for GM, judgments, representing them in
19 Bankruptcy Court, repossessions; but I also had a
20 debtor practice, so we had to be very careful about
21 potential conflicts of interest. And I also, at
22 that particular point in time, my practice was
23 probably about 50 percent debtor/creditor,
24 representing what used to be First National Bank of
25 Orangeburg in all of their bankruptcy work and also

1 representing debtors in matters in Bankruptcy Court,
2 negotiating compromises and work outs, things like
3 that.

4 Q. And what --

5 MR. WATSON: Thomas, I'm going to leave
6 it with Alexis for ten seconds while I go to the
7 receptionist. Go head, keep going. I just --

8 MR. PENDARVIS: Got it.

9 MR. WATSON: Be back in one second.

10 BY MR. PENDARVIS:

11 Q. What was the duration of your practice
12 with Smith & Watkins?

13 A. Again, it's hard to recall. Again,
14 probably about maybe two to three years and I'm not
15 certain on this; but I would estimate two to three
16 years.

17 Q. So just like '88 to '90 or somewhere
18 like that?

19 A. Yeah. Somewhere in that range. Yeah.

20 Q. And after your practice with Smith &
21 Watkins, what was your next move?

22 A. I went on my own again.

23 Q. And how long were you solo after the
24 Smith & Watkins?

25 A. Again, I don't recall; but it was

1 probably another two to three years.

2 Q. And what was the next move?

3 A. Then I started a partnership with a
4 couple other attorney. Smith & Moreno or it may
5 have been Smith, Moreno & McMann or Smith, McMann &
6 Moreno. I'm not clear. And, again, that practice
7 was slightly different in that Bob McMann's area was
8 plaintiffs' work.

9 Q. General civil practice plaintiff?

10 A. Right. And Ricardo had a Family Court
11 practice and --

12 Q. That was Mr. Moreno?

13 A. Yes. Ricardo Moreno, who was Cuban, so
14 we also had a Spanish speaking clientele.

15 Q. And your practice was similar,
16 debtor/creditor/bankruptcy?

17 A. Right. And also, you know, anything --
18 a family member needs a will or a deed or, you know,
19 something like that. It wasn't 100 percent
20 debtor/creditor, but I'd say maybe 90 percent
21 debtor/creditor.

22 Q. And about how long was the practice with
23 these two other partners, Mr. Moreno and Mr. McMann?

24 A. Gosh, I haven't thought about this in so
25 long. You're catching me cold and I can't remember,

1 but I believe -- Ricardo died of cancer.

2 Q. Sorry.

3 A. And that firm split up probably -- maybe
4 around '99 or 2000, something like that.

5 Q. And after that?

6 A. I was on my own for a very short period
7 of time, maybe six months to a year. Then I started
8 another partnership, Smith, Hallman & Kirby.

9 Q. And about when did Smith, Hallman &
10 Kirby get going?

11 A. I want to say around 2000; but, I'm
12 not -- again, I'm not clear. I'm not sure about
13 that.

14 Q. And how long were you practicing
15 under --

16 A. Well, Hallman and Kirby withdrew and
17 Martin Kiser came on board and it was Smith & Kiser.

18 Q. And after Smith & Kiser?

19 A. Then it was Price, Bird & Smith.

20 Q. Is this the first formation of the group
21 that you're presently practicing with?

22 A. Yes.

23 Q. And about when did Price, Bird & Smith
24 begin practicing together?

25 A. About 2006 maybe or 2007. Again, I'm

1 not very clear; but I think it was sometime around
2 that time.

3 Q. And that partnership still -- excuse me.
4 That professional association is still in existence?

5 A. Well, Bob Price has retired, so now it's
6 Bird & Smith.

7 Q. Mr. Smith, in all the practices,
8 partnerships, professional associations, and solo
9 practices that you've described, have all of those
10 been located basically in Richland County?

11 A. Yes.

12 Q. Columbia?

13 A. Yes. But my practice has been statewide
14 because, you know, I handle cases all over the
15 State. Just don't limit my practice to Columbia.

16 Q. Now, we're going to get into some of the
17 matters involving the Powell v. Powell matter in
18 Family Court. Outside of that particular matter,
19 have you made appearances in Family Court?

20 A. Only when I was drafted and when I was
21 court appointed in a DSS abuse and neglect case. I
22 have very little experience in the Family Court.
23 Now, I may also -- let me clarify. I've also
24 appeared in the Family Court to address business
25 issues. I recall one time I represented a funeral

1 home in Orangeburg and I was asked to appear to
2 testify as to the business issues related to that
3 funeral home.

4 Q. Were the owners of the funeral home in a
5 divorce?

6 A. Yes.

7 Q. Are you from Orangeburg?

8 A. No. My wife's family is from
9 Orangeburg. I'm from Union.

10 Q. Okay. You said Orangeburg a couple of
11 times today so far. I thought that might be. Okay.
12 And what was your role in the business aspects of a
13 dispute in Family Court in Orangeburg?

14 A. My goal, my -- excuse me. My job was to
15 testify about the assets, the cash flow and the
16 liabilities.

17 Q. Were you identified as an expert?

18 A. I don't recall being qualified as an
19 expert; but the day of trial, the attorney that
20 associated me had a heart attack. And I went into
21 court and asked the judge for a continuance and the
22 judge says no. You're a lawyer. This case has been
23 on the docket for long enough, so we need to try it.
24 And I asked him if I could make a few phone calls.
25 And there was a lawyer that I knew in Orangeburg,

1 who was experienced in family law, and he agreed to
2 come in and sit with me and help me try that case.

3 Q. I'm sure that was an experience.

4 A. It was an experience.

5 Q. And so, if I'm understanding then,
6 the -- who was the lawyer you called in Orangeburg?

7 A. I can't think of his name right now and
8 I'm sorry. It's one of the -- Horger, Nance and
9 Barnwell maybe was the firm; but I could be wrong on
10 that.

11 Q. That's fine. Well, your friend lawyer
12 that came to your --

13 A. Acquaintance lawyer.

14 Q. Acquaintance lawyer who came to your
15 rescue that day, was that attorney stepped up as
16 counsel for the party or did you both serve as
17 counsel at that hearing?

18 A. I think we both served as counsel and
19 he -- he made all the decisions. He addressed the
20 Family Court issues, the separation, the property
21 issues; and I addressed the business-related issues,
22 what assets the funeral home owned, things like
23 that. We eventually settled that case though. So
24 after the Court heard testimony from the parties, we
25 went into a settlement conference and settled.

1 Q. And did you appear on the witness stand
2 in that matter?

3 A. No. I appeared as an attorney. And I
4 recall that I must not have been doing something
5 right because the judge said, Mr. Smith, I've never
6 put a lawyer in jail before, but I'm about to. And
7 the person beside me said sit down and I did. And I
8 don't know if -- and I recall telling that judge
9 that I didn't like the way he was talking to my
10 client and that not only did I want a transcript of
11 this hearing, but I want a copy of the voice
12 recordings. And we settled and the judge later
13 apologized for being so rough on me.

14 Q. What about year was the Family Court
15 matter in Orangeburg you're describing now?

16 A. Maybe early '90s to mid '90s.

17 Q. And you were representing the -- who
18 retained you, the husband?

19 A. The husband, right, who owned the
20 funeral home.

21 Q. Was the funeral home considered a
22 marital asset by the wife?

23 A. Yes.

24 Q. That was her challenge?

25 A. Right.

1 Q. Did she have a stock interest or an
2 ownership interest in the funeral home?

3 A. I think it was a d/b/a, a sole
4 proprietorship. Let me correct that. No. We later
5 put the funeral home in a Chapter 11 and the -- and
6 I believe it was an LLC, a single-member LLC.

7 Q. And this bankruptcy matter for the
8 funeral home occurred after the divorce was
9 completed?

10 A. Well, before the divorce and after the
11 divorce.

12 Q. Were there any other -- let me step back
13 a moment.

14 As part of the involvement with the
15 matter in Orangeburg, did you retain a forensic
16 accountant?

17 A. There was a person who was an in-house
18 bookkeeper and I believe there was an accountant who
19 prepared tax returns, but that was it. So, no, we
20 did not get a forensic accountant.

21 Q. Do you remember the accountant's name?

22 A. I do not.

23 Q. Was it Bert Wolfe?

24 A. That sounds familiar. It very well
25 could have been.

1 Q. How long was your representation of the
2 husband in the Orangeburg Family Court matter?

3 A. Not long, because I really didn't see
4 myself as his attorney. I saw myself as a witness
5 for the business interests that the husband held and
6 I didn't become the attorney until the judge told me
7 that morning that we were going to try the case.

8 Q. So maybe the answer is one day?

9 A. One day. Right.

10 Q. And so if I'm understanding, you were
11 engaged as an expert?

12 A. I didn't hold myself out an expert, no.
13 I simply was the attorney with knowledge about the
14 assets and liabilities.

15 Q. All right. Were you involved in
16 assisting the attorney for the husband in the Family
17 Court matter in Orangeburg as to discovery,
18 preparing that matter for trial?

19 A. No. I relied on the attorney to do
20 that. He talked to me about the business and the
21 funeral home operations, but I didn't help him with
22 any other aspect of the case.

23 Q. Were you given things like financial
24 declarations to rely upon in forming your -- or
25 investigating the assets?

1 A. No. My focus was the business, nothing
2 else. Not personal assets, just the business. And
3 I remember walking into the Court in Orangeburg with
4 a banker's box on a little carrier like that.

5 (Indicating.) And I rode up the elevator with the
6 judge and he looked at me and said, I hope you're
7 not coming into my court with all of that.

8 MR. WATSON: Don't say anymore. I'm
9 going to have nightmares about this.

10 MR. PENDARVIS: All right.

11 THE WITNESS: But all those records were
12 related to the business, the funeral home
13 operations.

14 BY MR. PENDARVIS:

15 Q. Do you know why the lawyer that was
16 representing the husband called you to assist in
17 evaluating the assets of the funeral home?

18 A. Well, we filed a Chapter 11 and the
19 client spent some time in federal prison. And it
20 was during the time that he was in federal prison
21 that they went to Family Court. And there was a --
22 someone was hired to operate the funeral home during
23 the time that he was in prison. And so the lawyer,
24 the Family Court lawyer was basically interested in
25 the funeral home operations and that was all I

1 helped him with.

2 Q. Was the wife making a challenge or a
3 claim?

4 A. Yes.

5 Q. What was the wife's claim?

6 A. She wanted a part of the business, but
7 she'd gone out and started her own funeral home
8 business. But she wanted a part of his business as
9 well. And it was a question about dollars. What is
10 the funeral home worth?

11 Q. So there's no dispute, the funeral home
12 was a marital assets?

13 A. I don't think so. I don't recall that
14 being an issue because I think it was started after
15 the marriage.

16 Q. It was pretty clear it was marital and
17 just the question was valuation?

18 A. Right.

19 Q. Other than the Orangeburg Family Court
20 matter you've described and, again, without
21 considering Ms. Powell's matter, have you been
22 involved in any other Family Court matters?

23 A. Well, my own divorce.

24 Q. Did you retain counsel for your own
25 divorce?

1 A. It was a friendly divorce. I retained
2 an attorney to represent my ex and I represented
3 myself. It was no child, no property, just one-year
4 separation, divorce.

5 Q. Other than your pro se representation
6 and the Orangeburg matter, and again excepting Ms.
7 Powell's matter, have you been involved in any other
8 Family Court matters as counsel?

9 A. No, not as counsel. And the reason I
10 paused, I was trying to think if I'd appeared in any
11 other Family Court as a -- as a consultant about,
12 you know, the business side of the operations. Now,
13 I am involved in a Family Court hearing right now;
14 but, again, related to the business side and not the
15 Family Court side.

16 Q. And what's the nature of your
17 involvement?

18 A. I represent the farmers and it was --
19 the issue involves -- it's very complicated. The
20 decree has already been entered. The matter was on
21 appeal when an attorney in Manning came to me and
22 said, the Family Court Judge ruled that property
23 titled in the farmer's name only belonged to an LLC.
24 And the Family Court erred because it allocated the
25 value for this farm property, substantial farm land,

1 hundreds of acres, and the Family Court should have
2 allocated only his 50 percent LLC interest. And
3 this attorney wanted to know if a Chapter 12
4 bankruptcy could help resolve that issue and I. . .

5 Q. Well, I tell you what, to move things
6 on, I think I've gotten -- you've just really been
7 called as a consultant for counsel and you're not
8 serving as an expert?

9 A. Right. Right. Well, right now; but
10 that appeal was affirmed and then we went back to
11 Family Court. And during the course of the second
12 round in the Family Court, my co-counsel was
13 disqualified because he joined a firm that had
14 represented the ex in some real estate matters. And
15 so I'm now helping with another appeal because the
16 Family Court Judge modified the original Family
17 Court decree and there's a question of jurisdiction
18 for him to do that.

19 Q. You're still in the role as either
20 counsel or co-counsel for the party?

21 A. Yeah.

22 Q. The party in the Manning --

23 A. Right. Right.

24 Q. Have you been engaged as an expert
25 before?

1 A. No.

2 Q. In any matter?

3 A. Not that I can recall, no.

4 Q. As we move toward the subject matter for
5 the deposition today in this lawsuit, describe your
6 relationship with the Taylor/Potterfield firm and
7 its attorneys.

8 A. Well, Michael and I go a long way back.
9 I first met Michael when he was counsel for the
10 Small Business Administration and I would see him in
11 the bankruptcy arena. I think the first case may
12 have been when I was representing a creditor in a
13 farm bankruptcy and Michael was representing the
14 SBA. And, if I recall correctly, there was a
15 dispute over perfection of liens and who was
16 entitled to have that particular asset. So we were
17 sort of friendly adversaries in that position, but
18 we developed a healthy respect for each other's
19 legal abilities.

20 Q. About when was that matter you're just
21 describing?

22 A. I think it was the mid-'80s.

23 Q. And after that initial matter that you
24 testified you first came across Mr. Taylor while he
25 was representing the SBA, were there other legal

1 matters after that initial matter where you were
2 either opposing or with Mr. Taylor involved in
3 certain legal matters?

4 A. Yes, I'm sure there were. I represented
5 debtors in which the SBA was owed money and so we
6 were -- you know, our paths crossed in that arena.
7 I also knew Michael socially. I mean, we didn't
8 hang out a lot; but from time to time, we would get
9 together and go to dinner or something like that.

10 Q. Did Mr. Taylor ever -- again, we're
11 going to get to the Powell matter soon; but outside
12 of the Powell matter, did Mr. Taylor ever call or
13 consult with you about business, debtor/creditor
14 issues that were involved in his practice?

15 A. Yes, he did. I recall a case in
16 particular out of Sumter that had some corporate
17 issues with the husband and a question of whether
18 the husband was hiding assets or not and I helped
19 him with that case.

20 Q. And this was after Mr. Taylor was no
21 longer representing the SBA and he was in Family
22 Court?

23 A. That's right. Right.

24 Q. Okay. Mr. Golden?

25 A. Yeah, with Mr. Golden. Correct.

1 Q. About when was that one matter you
2 remember from Sumter?

3 A. That was probably early 2000s, 2001,
4 2003, something like that.

5 Q. Do you have any relationship with any of
6 the other lawyers that practiced with Mr. Taylor?

7 A. I knew Ashlin socially through Michael.
8 And Ashlin refers -- has referred clients to me who
9 are having financial troubles.

10 Q. About how many clients has Ms.
11 Potterfield referred to you?

12 A. I recall two specifically, but there may
13 have been one or two more.

14 Q. Same question for Mr. Taylor. Has he
15 referred clients to you?

16 A. Yes, he has.

17 Q. About how many?

18 A. Probably about the same number that I
19 can recall. I mean, it's not that many.

20 Q. Other than the Sumter matter and the
21 Powell matter, have you been involved with Mr.
22 Taylor in any other domestic issue?

23 A. I recall one time he called me just to
24 discuss, not breaching any confidences, but just
25 general facts and getting my opinion about that

1 particular situation. And there may have been
2 others, but I just don't recall right now.

3 Q. If I'm understanding, you're describing
4 a call from Mr. Taylor, he's involved with a matter
5 that involves some financial issues?

6 A. Right.

7 Q. So he called you --

8 A. Right.

9 Q. -- as a consultation to help him
10 understand?

11 A. Right. And it could have also been
12 business-related issues, like the corporate
13 structure or ownership, you know, things of that
14 sort.

15 Q. But in a domestic dispute context?

16 A. Right. Right.

17 Q. Other than the Orangeburg lawyer and the
18 matters you've described involving Mr. Taylor and
19 Ms. Potterfield, have you been involved in any other
20 domestic matters involving other attorneys?

21 A. Excluding the court appointments, I
22 don't recall any right now.

23 Q. All right. Let's turn our attention to
24 your involvement with Ms. Powell. And just a short
25 break. Just a matter of housekeeping. Of course,

1 if anybody needs a break or anything, just let me
2 know. We'll be glad to -- we're not in a real
3 serious endurance contest today, so just let me
4 know.

5 A. Sure. Sure.

6 Q. A slight one. Try to get this thing
7 finished.

8 All right. Describe the first time you
9 heard about Ms. Powell and her domestic dispute.

10 A. Well, the first time I heard about Ms.
11 Powell had nothing to do with her domestic dispute.

12 Q. Okay.

13 A. Michael called me up, says he has a
14 client in Aiken that was in a foreclosure and could
15 I help her out. So I called Carolyn, we set up a
16 meeting and she came to my office and we talked
17 about the foreclosure issues. We looked at the
18 mortgage, when it would have been perfected, looked
19 at the note to determine whether there had been a
20 default, discussed other possible defenses. And
21 because I only had a -- I can't recall exactly, but
22 I think it was maybe two weeks or ten days left to
23 answer it. I immediately contacted the attorney and
24 he gave me another 30-day extension to answer it.

25 Q. So your first involvement with Ms.

1 Powell was -- may have come out of her domestic
2 attorney, but your role at the outset was limited to
3 the foreclosure matter in Aiken?

4 A. Yes.

5 Q. Did Mr. Taylor describe anything to you
6 in that first phone call about the domestic matter?

7 A. No. It was very matter of fact. It was
8 a foreclosure. Can you help my client?

9 Q. As part of the representation of Ms.
10 Powell in the foreclosure matter, did you ask Mr.
11 Taylor about what was going on in the divorce?

12 A. I think Michael did tell me in the call
13 that he was representing her in a divorce, so I was
14 aware that he had -- there was an attorney/client
15 relationship in that arena. And in the initial
16 stages though, I think my role was limited to the
17 foreclosure; but that changed and it changed
18 quickly. Within about a month, I was asked to come
19 in as a -- to address the business issues in the
20 divorce.

21 Q. Did you need to find out from Mr.
22 Taylor, as part of your involvement in handling the
23 foreclosure matter, whether the asset that was the
24 subject of the foreclosure was part of the marital
25 estate of the domestic proceeding?

1 A. In the early stages, no. I really
2 didn't care. I was just trying to save the asset.

3 MR. PENDARVIS: Two on the top, three on
4 the bottom.

5 (PLF. EXH. 2, E-mail to Carolyn from
6 Reid, Bates Stamped SMI_00564, was
7 marked for identification.)

8 (PLF. EXH. 3, E-mail to Reid from
9 Carolyn, Bates Stamped SMI 00565, was
10 marked for identification.)

11 MR. PENDARVIS: Can you share? I
12 thought I had an extra set.

13 MR. WATSON: I can look over.

14 MR. PENDARVIS: Off the record.

15 (Off-the-record conference.)

16 BY MR. PENDARVIS:

17 Q. Mr. Smith, two documents have been
18 passed to you marked as Exhibits 2 and 3. And the
19 first question common to both of the exhibits, is
20 that your handwriting in the middle?

21 A. It is my handwriting. Back before I
22 joined this new firm, my entry into the electronic
23 age was slow. And I believe I was even using an AOL
24 e-mail account for the office. And as it was saved,
25 it didn't save the dates and all of that. So as I

1 was going back through my files, I was able -- well,
2 I should say it didn't print the dates; but I was
3 able to get the dates from looking at the e-mail
4 itself.

5 Q. So when you were looking at the e-mail
6 and you were hitting the print button, you could
7 tell it was a -- for example, Exhibit 2, an e-mail
8 from January 26th?

9 A. Right. Right.

10 Q. Do Exhibits 2 and 3 reflect the first
11 e-mail communications you had with Ms. Powell?

12 A. Probably, yes.

13 Q. And the January 2006 date, is that the
14 time period that you first became involved in
15 handling the foreclosure matter?

16 A. Probably, yes.

17 Q. And Exhibit 2 references -- your e-mail
18 to Ms. Powell references a letter to Thomas Murphy
19 and that was the attorney, I presume, that was
20 handling the foreclosure?

21 A. Correct.

22 Q. This is a -- if I'm understanding right,
23 Exhibit 2 and 3 were follow ups to a meeting that
24 was on the 25th of January 2006?

25 A. Yeah, I think that's correct because the

1 e-mail is dated January 26th and it references a
2 meeting yesterday.

3 Q. And the meeting was in your office here
4 in Columbia?

5 A. It was.

6 Q. And this foreclosure dealt with some
7 property Ms. Powell had recently acquired in Aiken?

8 A. It was called the Clark Barn and it was,
9 I think, a ten-stall barn located in the horse area
10 of Aiken. Beautiful place. The roads are not
11 paved. People ride horses. And it was right next
12 door to the polo field, the practice field.

13 Q. Did you visit the property?

14 A. I did.

15 Q. In the initial communications with Ms.
16 Powell, did she discuss with you the Family Court
17 matters?

18 A. I think she did. Of course, if Michael
19 referred the case to me, then I automatically
20 assumed there's a Family Court matter pending.

21 Q. What did Ms. Powell tell you?

22 A. I don't recall other than generally that
23 she -- Michael was representing her and her -- I
24 think we also spoke about her husband, who he was,
25 what he owned. And I happened to be familiar with

1 his business because I've been there before. So I
2 was generally familiar with the -- although I did
3 not know him personally, I knew where the business
4 was located and what it did.

5 Q. Chic Antiques?

6 A. Yeah. As a matter of fact, when I was
7 working with Bob Anderson, we were the Chapter 7
8 trustee for a previous owner of that property, Baker
9 Electric, that went into a Chapter 7. And so I
10 remember going to that property before Chic Antiques
11 owned it.

12 Q. As of January 2006, did you know Conrad
13 Powell?

14 A. No, I did not. I may have seen an
15 article in the newspaper about him and his business,
16 but I don't know him personally.

17 Q. Same question for Ms. Powell?

18 A. No, not until she came to my office that
19 day.

20 Q. Did Mr. Taylor describe Ms. Powell to
21 you in the initial communication referring her
22 foreclosure matter to you?

23 A. I think, other than saying that she was
24 female, I don't recall any -- or that she, you know,
25 I don't recall any specific discussions just about

1 Carolyn Powell.

2 Q. Did he tell you anything about the
3 domestic matter that he was handling for her?

4 A. I don't recall anything at that stage.

5 Q. In your first initial conversations and
6 communications with Ms. Powell around the early --
7 excuse me, late January 2006, as reflected in
8 Exhibits 2 and 3, did you all discuss the terms of
9 your engagement?

10 A. We did and, initially, the terms of my
11 representation was limited to the foreclosure
12 action.

13 (PLF. EXH. 4, Hourly Fee Agreement,
14 Bates Stamped SMI_02511 through 02513,
15 was marked for identification.)

16 BY MR. PENDARVIS:

17 Q. Mr. Smith, Wanda has just passed to you
18 a document marked as Exhibit 4. It appears to be a
19 fee agreement?

20 A. Yes.

21 Q. And is that your signature on the last
22 page?

23 A. It is.

24 Q. And this describes the terms of the
25 representation?

1 A. Right.

2 Q. Was this consistent with what you
3 discussed with Ms. Powell before the formal written
4 document that's been marked as Exhibit 4 was
5 created?

6 A. Yes, I think so.

7 Q. And, on the first page, there's some
8 handwritten language, three lines, four lines down?

9 A. I see it.

10 Q. Am I reading this right, and business
11 issues related to divorce?

12 A. That's correct.

13 Q. And is that R.S., your initials?

14 A. Right. It is.

15 Q. And what did that -- I understand. The
16 document is pretty clear about the matter of the
17 foreclosure.

18 A. Uh-huh.

19 Q. Describe for me the scope, what you
20 believed the scope of your representation was with
21 regard to the divorce.

22 A. When I initially prepared this
23 agreement, of course, I had only the foreclosure in
24 mind. And sometime, and I'm not sure exactly when,
25 but at some point after I prepared the agreement

1 and -- if you look at the bottom last page, it
2 appears to have been prepared on January 25th.

3 Q. That's the name of the document?

4 A. Right. The file name. And after that
5 was prepared on the 25th, this agreement was signed
6 on the 30th of January 2006. So between January
7 25th and January 30th and again, I don't recall
8 exactly when, I had been asked to help address the
9 business issues related to the divorce.

10 Q. And who asked you to address the
11 business issues related to the divorce?

12 A. It was probably Michael, with Carolyn's
13 approval.

14 Q. And if I wasn't paying attention, please
15 forgive me; but approximately when was that
16 conversation in relation to the time the document
17 was created?

18 A. I don't know.

19 Q. Was this added much later or --

20 A. No, no. This was added probably on the
21 30th. Probably what happened is that Carolyn was in
22 my conference room and she was paying the retainer
23 and signing the fee agreement and I handwrote and
24 the business issues related to the divorce and I
25 initialed it; but, obviously, I failed to get her to

1 initial it. But I believe that she was in the
2 conference room in my office when I did that. And
3 again, you know, I believe that she came to Columbia
4 to pay the retainer and to -- or she may have
5 already been in Columbia, but she came by my office
6 and paid the retainer and I printed the agreement.
7 Instead of editing it, I just handwrote that part
8 in.

9 Q. What did you believe business issues
10 related to divorce meant in terms of the scope of
11 your representation?

12 A. Analyzing the business cash flow,
13 looking at the business assets, determining the
14 liabilities.

15 Q. Did that include gathering the
16 information to do the work you've just described,
17 the cash flows, analyzing assets and determining
18 liabilities?

19 A. It did. Right.

20 Q. Did that include engaging a forensic
21 accountant?

22 A. Didn't think we needed one at that time.

23 Q. Did you later believe that a forensic
24 accountant would be beneficial to her cause?

25 A. Personally, no. I never formed that

1 opinion. However, when Cantzon Foster replaced
2 Michael Taylor, he suggested that she do that; but
3 that was Cantzon and not me.

4 Q. Did you discuss that matter with Cantzon
5 Foster, the matter being the engagement of a
6 forensic expert?

7 A. No, I did not. I didn't discuss any of
8 the domestic issues with Cantzon except for what I'd
9 been engaged and that was to provide an opinion --
10 not an opinion, but to help him determine the
11 business assets, liabilities and cash flow.

12 Q. And was it your understanding that Mr.
13 Taylor was to remain as lead counsel and you were
14 co-counsel?

15 A. I don't -- I never saw myself as
16 co-counsel in that case. There was a debate between
17 Michael and me as to whether I would be co-counsel
18 or appear as a witness. And it may have been
19 beneficial for me not to be an attorney, but simply
20 to appear as a witness to address the business
21 issues. I never even made an appearance as the
22 attorney until Cantzon became involved and said you
23 need to do that. And, following his advice, I did.
24 I filed a notice of appearance.

25 Q. Did you consider yourself engaged as an

1 expert to give opinion testimony in Ms. Powell's
2 Family Court matter when this matter was signed in
3 January 2006?

4 A. You know, I guess it depends on the
5 definition of an expert. I don't see myself as an
6 expert; but I see myself as highly qualified and
7 competent to assist in assets, liabilities and cash
8 flow.

9 Q. Let me ask that same question a
10 different way then. Did you anticipate getting on a
11 witness stand in Family Court and giving opinions on
12 the business cash flow, business assets and business
13 liabilities?

14 A. Yes. Yes.

15 Q. You did?

16 A. Yes.

17 Q. Okay. And, in that regard, would you be
18 relying on Mr. Taylor and the Taylor/Potterfield
19 firm to do the discovery, to provide you with facts
20 upon which you could give an opinion?

21 A. Well, I had to do my own fact gathering.
22 So, no, I didn't limit the fact finding to them. I
23 mean, I conducted my own investigation. And the
24 idea here was that we would settle before we ever
25 went to litigation. So, you know, the possibility

1 of a settlement was always in everyone's mind.

2 Q. Michael told you the plan was to settle?

3 A. No, he didn't say that. That was just
4 based upon my experience as a lawyer that -- in
5 other arenas, that settlement is always a
6 possibility. But I believe that there were
7 discussions between Carolyn and me about settlements
8 and I know that settled proposals have been floated
9 and the parties had not reached an agreement.
10 Before I became involved in 2006, I think there had
11 been settlement discussions.

12 Q. Who prompted or first posited the
13 question to you about whether you would be
14 interested in becoming involved in the business
15 issues related to the divorce?

16 A. I think it was Michael; but I'm not sure
17 because I know that, when Carolyn and I met for the
18 first time, we developed a good relationship, I
19 hope, a respect for my abilities. And it could have
20 been her, but I just don't recall specifically.

21 Q. What did Mr. Taylor tell you about the
22 status or circumstances surrounding the divorce when
23 you first spoke with him about becoming involved to
24 handle the business issues related to a divorce for
25 Ms. Powell?

1 A. I think I was told in general terms
2 about his businesses. I don't recall him telling me
3 anything specifically that I needed to do, just
4 needed my help with some business issues.

5 Q. Did he tell you or describe any other
6 characteristics about the divorce proceedings other
7 than what he was asking you to assist with?

8 A. I don't think so, but I don't recall
9 specifically.

10 Q. Did Mr. Taylor ever tell you how long
11 they had been representing Ms. Powell at the time he
12 was first communicating to you about the divorce?

13 A. I think Carolyn told me that, not
14 Michael.

15 Q. What did Ms. Powell tell you?

16 A. I think she said that it had been
17 pending for a couple of years. And I think, at one
18 point, she sent me an e-mail saying that she was
19 glad I was involved because it had been a long
20 process.

21 Q. We might be getting to that.

22 A. Okay.

23 Q. But as far as Mr. Taylor, is it your
24 testimony that he did not describe characteristics
25 of the relationship, his attorney/client

1 relationship with Ms. Powell?

2 A. Again, I think I've said I don't recall
3 specifically; but I don't recall anything other than
4 general; they're separated, he has a business. I
5 don't recall any underlying specifics about the
6 Family Court side of the case.

7 Q. Did Mr. Taylor advise or tell you that
8 Ms. Potterfield had first been representing Ms.
9 Powell in the domestic matter?

10 A. I can't remember. I don't think so. I
11 think I learned that from Carolyn Powell.

12 Q. Did you ever speak with Ms. Potterfield
13 about the Powell domestic matter?

14 A. I think when I was in their office one
15 day, maybe to look at some files, I may have said
16 hello and I'm here to look at Carolyn Powell's file;
17 but, again, we didn't -- I don't recall discussing
18 any specifics, other than exchanging pleasantries
19 and I'm here to see her file.

20 Q. Did you provide Mr. Taylor with a copy
21 of your fee agreement with Ms. Powell?

22 A. Probably not.

23 Q. Did you discuss any communication
24 protocols with Mr. Taylor with regard to your
25 involvement as an expert witness?

1 A. Well, again, I've never held myself out
2 as an expert witness and I don't really understand
3 the question of discussing protocols.

4 Q. Well, you didn't have any fact -- you
5 weren't a fact witness, identified as a witness in
6 their divorce proceedings; is that correct?

7 A. I'm not sure. I don't know.

8 Q. Well, did you have any -- you've
9 testified you didn't know Ms. Powell until the phone
10 call and you also testified you might have seen Mr.
11 Conrad Powell's name in the newspaper, but you
12 didn't know him either?

13 A. Uh-huh.

14 Q. And that's a yes? You have to say yes.

15 A. I'm sorry. Yes.

16 Q. So it's not as though you had
17 information that was relevant to the divorce between
18 Conrad Powell and Carolyn Powell, other than
19 whatever assets, corporate things you might have
20 evaluated later?

21 A. Right. That's correct.

22 Q. So if you were -- I think you testified
23 earlier that your anticipation was that you were
24 going to be called to trial and give testimony.
25 Where I started with this question was, did you have

1 any communications with Mr. Taylor about things like
2 work product, things that you didn't want --
3 communications that might need to be evaluated
4 before they were transmitted because they would be
5 disclosed to opposing counsel, anything of that
6 nature?

7 A. All of my communications were to
8 Michael, never to opposing counsel. So anything
9 that came from me went to Michael Taylor, not to Mr.
10 Powell's attorneys.

11 Q. But you understand, if you were going to
12 be identified as an expert, that any communications
13 you had with Mr. Taylor would be discoverable by the
14 opposing party?

15 A. Well, as a general principle, yes, I
16 understand that; but we weren't sure if I would be a
17 witness or not. I think it depended on -- we would
18 make that call at a later time.

19 Q. And I'm understanding that now, but I
20 wanted to find out if you had some conversations
21 with Mr. Taylor to explore the possibilities of your
22 involvement and things that might need to be
23 considered in the event you were identified as an
24 expert witness.

25 A. I think, at one point, we may have

1 discussed transmutation because the LL -- Chic
2 Antiques and Huger Properties, LLC were pre-marital
3 assets and that was between Michael and me. I
4 think, at one point, there were discussions between
5 Michael and me about using the results of my
6 investigation for settlement discussion purposes, to
7 help us get a handle on these assets and what they
8 were worth, how much equity was in the real estate,
9 so that we could factor all of those issues into our
10 settlement discussions.

11 Q. What did you understand about how long
12 the matter had -- well, let me back up.

13 Did you understand when you first began
14 communicating with Mr. Taylor that a domestic -- a
15 lawsuit had been filed in Family Court?

16 A. Oh, yeah. I was aware of that.

17 Q. Did you know how long it had been filed?

18 A. Not at our first meeting, but I learned
19 eventually.

20 Q. And what were you told?

21 A. I think it goes back to Carolyn Powell
22 saying that it had been pending for a couple of
23 years.

24 Q. Did you ask Mr. Taylor for copies of Mr.
25 Conrad Powell's financial declaration?

1 A. We had that discussion. I also asked if
2 there were discovery documents that he had that I
3 could look at. I think there had been a request to
4 produce sent to Marne Sherman. And shortly after I
5 was involved, Michael and I went out to Marne
6 Sherman's office and spent four or five hours in her
7 conference room reviewing all the records.

8 MR. WATSON: Hey, Thomas, whenever you,
9 can we take --

10 MR. PENDARVIS: Sure.

11 MR. WATSON: We've been going about an
12 hour and 20 minutes.

13 MR. PENDARVIS: All right. Perfect.

14 (A recess transpired.)

15 BY MR. PENDARVIS:

16 Q. Mr. Smith, before we took a break, you
17 were describing some of the discovery events and you
18 testified that you and Mr. Taylor went to Ms. Marne
19 Sherman's office and reviewed document for hours.

20 A. (Nodding head.)

21 Q. Earlier in my question if I was asking
22 is you asked Mr. Taylor for a financial declaration
23 and I understand -- I didn't really get a clear
24 answer. Did you ask Mr. Taylor, can I have -- where
25 is Mr. Conrad Powell's financial declaration?

1 A. I believe I did ask for that.

2 Q. What did he tell you?

3 A. But, at that point, one had not been
4 filed. I don't recall seeing one in the early
5 stages.

6 Q. Do you know what the requirements are in
7 Family Court as to filing a financial declaration?

8 A. No.

9 Q. Did Mr. Taylor tell you about filing a
10 financial declaration and the court rules about
11 that, Family Court Rules?

12 A. Well, you know, going back to my own
13 divorce, I recall having to file one; but I don't
14 think we did it until the day of the hearing. But I
15 was aware of the requirement that one be filed.

16 Q. Were you aware that the rules of court,
17 Family Court require that a financial declaration be
18 filed within 45 days of this suit being filed or a
19 temporary hearing, whichever comes first?

20 A. Not familiar with that rule.

21 Q. When Mr. Taylor told you that Mr. Conrad
22 Powell had not filed a financial declaration, did
23 you ask him why?

24 A. I don't -- I think I accepted it.

25 Q. Would having a financial declaration --

1 let me restate the question.

2 Would having seen Mr. Conrad Powell's
3 financial declaration at the outset of your
4 involvement in looking at the business issues
5 related to the divorce assisted you in developing
6 your --

7 A. I think, yes, it would have assisted me;
8 but I would not have relied on that all by itself.
9 I did my own independent investigation.

10 Q. Did you have any further discussions
11 with Mr. Taylor about maybe getting a financial
12 declaration from Mr. Powell?

13 A. Yes. I knew one would be produced
14 eventually and I may have said, when you get one,
15 let me have a copy of it.

16 Q. And what did he say when you told him
17 that?

18 A. I'm sure he said, sure, I'll get one to
19 you. And, eventually, I did see one.

20 Q. But that wasn't until Mr. Foster was
21 handling the representation; correct?

22 A. No. I think that we saw one before his
23 depo -- Conrad Powell's deposition.

24 Q. Okay.

25 (PLF. EXH. 5, E-mail from Reid to

1 Carolyn, Dated February 16, 2006, Bates
2 Stamped Original Client 510, was marked
3 for identification.)

4 BY MR. PENDARVIS:

5 Q. Mr. Smith, a single-page exhibit marked
6 as Exhibit 5 has been passed to you. It appears as
7 though this is a February 16th --

8 A. Uh-huh.

9 Q. -- e-mail. Is SCBRLAW --

10 A. That was me.

11 Q. -- an e-mail address you used?

12 A. Right. It sure was.

13 Q. And to whom is it addressed?

14 A. It is addressed to Carolyn Powell and it
15 appears to be from me.

16 Q. And the subject?

17 A. Accountant.

18 Q. Okay. Tell me about this e-mail.

19 A. When I first met with Carolyn, I asked
20 her about her tax returns and she said she had not
21 done her tax returns. And I knew John Camp and I
22 had referred other clients to him and I suggested
23 she see Mr. Camp about getting her tax returns done.
24 I don't think she had done tax returns for maybe a
25 couple of years when I first met her and I told her

1 that's something she needed to do right away. And
2 it had nothing to do an accounting for the Family
3 Court action.

4 Q. That was my next question. Did you
5 anticipate Mr. Camp having any involvement in the
6 divorce?

7 A. No.

8 Q. Did you anticipate Mr. John Camp having
9 any involvement in your business asset --

10 A. No.

11 Q. -- analysis?

12 A. No. And I saw -- I had an idea that the
13 marital estate could be -- would be substantial.
14 And, in addition to being an accountant to handle
15 the past due tax returns, he also provides asset
16 management services. And I thought that it would be
17 good to go ahead and establish a relationship with
18 him and he could help her manage her assets.
19 Financial planning.

20 Q. And that was anticipating post-divorce
21 activities?

22 A. Right. Right.

23 Q. Did you mention Mr. John Camp to Mr.
24 Taylor as any involvement with the domestic
25 representation?

1 A. What I think I told Michael was I was
2 surprised that she hadn't done her tax returns and I
3 had encouraged her to get those done and that I'd
4 referred her to an accountant to help her get it
5 done. But I don't -- I don't think I gave him John
6 Camp's name specifically.

7 Q. Did you ask Mr. Taylor if he had had any
8 conversations or communications with Ms. Powell
9 about the tax returns?

10 A. I don't recall that conversation, no. I
11 don't think I did.

12 Q. Do you have an opinion whether a party
13 in a divorce proceeding is helped or hurt by not
14 doing tax returns?

15 A. I think not doing tax returns is a
16 serious matter. There are penalties. It's a
17 criminal matter. And I think if you -- whether it's
18 in the Family Court or not, they need to be done.

19 Q. Separate from whatever issues the taxing
20 authorities, United States Government and let's
21 assume the State of South Carolina taxing
22 authorities may have with a person failing to do tax
23 returns, what impact does failure to do a tax return
24 have in a Family Court matter?

25 A. Well, a tax return would confirm

1 representations that you made to the Family Court
2 concerning your income and, if it's a business, a
3 depreciation schedule. I mean, there's a wealth of
4 information in tax returns that you get in the
5 Family Court that could help in the Family Court.

6 Q. Would not doing a tax return for a given
7 tax year be a negative thing in Family Court
8 proceedings?

9 A. I don't know how much Family Court
10 Judges rely on tax returns to confirm, so I don't
11 have enough experience in the Family Court to answer
12 that.

13 Q. Did you discuss that concern with Mr.
14 Taylor in the February, January of 2006 time period?

15 A. I don't recall.

16 Q. How about afterward?

17 A. I think my concern about the tax returns
18 were more from a penalty and how much it would cost
19 her as opposed to my concern in Family Court.

20 Q. But in response to the question, did you
21 discuss the failure to have tax returns done with
22 Mr. Taylor after February 2006?

23 A. I can't recall any discussions after
24 that, but I do recall following up with Carolyn
25 about whether she had gotten the tax returns done or

1 not.

2 Q. And what was the result of when you
3 followed up with her?

4 A. She had not.

5 Q. Do you know if she ever did?

6 A. No, I do not.

7 Q. Have you had any conversations with Mr.
8 John Camp about whether he has performed accounting
9 services for Ms. Powell?

10 A. No, I have not.

11 Q. Do you think that the failure to do tax
12 returns is going to have any impact on the business
13 issues related to Ms. Powell's divorce?

14 A. From her side, no.

15 Q. Okay. How about from Mr. Conrad
16 Powell's side?

17 A. I have his tax returns going all the way
18 back to '99, I believe. And I also had joint tax
19 returns from Mr. and Mrs. Powell going back to that
20 period up to -- maybe through 2003 or 2004. I'm not
21 sure.

22 Q. I'll not ask you questions about what
23 your knowledge of the marital living circumstances
24 were. But essentially from your testimony just now,
25 is it your understanding that Ms. Powell had not

1 filed tax returns since she had been separated from
2 Mr. Conrad Powell?

3 A. Yes.

4 Q. And, prior to that point, they had filed
5 jointly; is that correct?

6 A. Yes.

7 Q. Okay. When you first became involved in
8 January 2006, were you aware who was representing
9 Mr. Conrad Powell?

10 A. No.

11 Q. When did you find out?

12 A. Michael told me, I guess, shortly after
13 I decided to get involved with the Family Court
14 side.

15 Q. Did you and Mr. Taylor have a meeting
16 after you became involved?

17 A. Yes. I recall going to his office on
18 Devine Street and, I think, looking at his file.
19 That may have been when I ran into Ashlin. And I
20 think that we may have left his office together and
21 ridden to Marne Sherman's office.

22 Q. Okay. We're going to go through some
23 correspondence some about the relationship and I
24 just want to get an understanding of -- after you
25 became involved and discussed with Mr. Taylor that

1 you were going to have an involvement with the
2 business aspects of the divorce, did you all develop
3 a plan as to who was going to be doing what and what
4 responsibilities were yours and what
5 responsibilities were Mr. Taylor's?

6 A. I think that was implied from my role.
7 We never discussed specifically you do this and I'll
8 do that.

9 Q. Okay.

10 A. But I knew what I had to do to provide
11 the services that I was supposed to provide.

12 (PLF. EXH. 6, Letter to Marne Sherman
13 from J. Michael Taylor, Dated February
14 23, 2006, Bates Stamped Original Client
15 11, was marked for identification.)

16 BY MR. PENDARVIS:

17 Q. Mr. Taylor -- I mean, Mr. Smith, excuse
18 me. You've been passed another document marked
19 Exhibit 6 to your deposition. This appears to be a
20 letter from Mr. Taylor to Ms. Sherman, counsel for
21 Mr. Conrad Powell, dated February 23. And I see at
22 the bottom you were listed as being copied on this
23 letter.

24 A. (Nodding head.)

25 Q. Did you receive this letter?

1 A. If it says I did, I did. I don't recall
2 specifically right now; but, you know, that was more
3 than five years ago.

4 Q. Let me pause and kind of go back to a
5 housekeeping kind of question. What did you do to
6 prepare for your deposition today?

7 A. Oh, I reviewed my file and I talked with
8 my attorney and I spent a restless night.

9 Q. Well, let me tell you, for the remainder
10 of the day today, there's not going to be one
11 question I ask you that seeks a communication
12 between you and Mr. Watson, so just have that as an
13 understanding. If I ask you something and you think
14 it's asking for something you shared with Mr. Watson
15 or he shared with you, I'm not. Okay?

16 A. I understand.

17 Q. This communication, first paragraph
18 mentions -- this is Mr. Taylor speaking to Ms.
19 Sherman, advising that Ms. Powell does not have tax
20 returns for 2003 or 2004 and is in the process of
21 hiring an accountant. Did you speak with Mr. Taylor
22 after February 16th and February 23rd --

23 A. I'm sure I did.

24 Q. -- the date of this letter?

25 A. I'm sure I did.

1 Q. Okay. You see this handwritten note at
2 the bottom?

3 A. Right.

4 Q. Was that on the copy you received when
5 you got this letter?

6 A. I'm assuming it is and I don't recall
7 seeing this letter in my file, but that doesn't mean
8 I didn't get it.

9 Q. Okay. Did you follow up with Mr. Taylor
10 after receiving a copy of this letter about the
11 contents?

12 A. I don't remember. I'm sure that we --
13 that I would have, but I don't recall specifically.
14 This appears to be related to discovery that Carolyn
15 Powell was supposed to provide and I'm not sure I
16 would have been involved in that particular aspect
17 of the case.

18 Q. So if I'm understanding your testimony,
19 the business aspects of the divorce that you were
20 engaged to handle for Ms. Powell focused on Conrad
21 Powell's assets or marital assets and not
22 specifically Ms. Powell's assets?

23 A. Right. Right. I was focused more on
24 him than Carolyn. Although I'm sure that Carolyn
25 and I discussed from time to time, and Michael and I

1 did as well, her obligations and what needed to be
2 done to make sure she complied with her discovery
3 requests or obligations.

4 Q. Thank you.

5 (PLF. EXH. 7, Letter to Marne Sherman
6 from J. Michael Taylor, Dated February
7 23, 2006, Bates Stamped Original Client
8 12 and 13, was marked for
9 identification.)

10 BY MR. PENDARVIS:

11 Q. Mr. Smith, Exhibit 7 been passed to you.
12 This appears to be another letter dated February
13 23rd from Mr. Taylor to Ms. Sherman. I'll give you
14 a moment to read it. And there's a blind copy page
15 on the back, too, that's addressed to you. I'll let
16 you take a moment to look at that as well, please.

17 A. (Complying.) Okay.

18 Q. Do you recall receiving this letter, a
19 copy of this letter?

20 A. I think I did and the reason I think I
21 did is that I got these materials. They were hand
22 delivered to my office and this appears to be the
23 cover letter that came with the materials.

24 Q. And the first sentence of Mr. Taylor's
25 letter to Ms. Sherman talks about copies of the tax

1 returns and I guess PI, private investigator,
2 report. Is this the circumstance you were
3 describing earlier where you went with Mr. Taylor to
4 Ms. Sherman's office?

5 A. Yes, I believe it is.

6 Q. So if this is accurate, it would have
7 been on February 22, 2006?

8 A. I believe so, based on the date of the
9 letter.

10 Q. How long did you spend at Ms. Sherman's
11 office looking through those documents?

12 A. Approximately four to five hours. And I
13 believe that I tagged what I wanted, what I felt
14 would be relevant in my analysis, and that they
15 produced copies of the documents that I believed
16 that I needed.

17 Q. Were there any obvious gaps in the
18 information that you reviewed in the two bankers'
19 boxes?

20 A. I don't recall any obvious gaps. I do
21 recall needing additional information and I believe
22 that we may have made a request for that additional
23 information. For example, I don't think he had
24 finished all of the tax returns up to date and they
25 had promised to provide those when they were

1 completed.

2 Q. Prior to going to Ms. Sherman's office
3 on February 22, 2006, what had you reviewed
4 regarding the Powell marital estate?

5 A. Well, I'm not sure about the exact
6 timing of when I reviewed documents; but I remember
7 going on line and looking at the records of the RMC
8 or clerk of court's office and tax assessor's office
9 for Richland County, Lexington County, Horry County,
10 Georgetown County, and I believe there was a county
11 in North Carolina as well.

12 Carolyn Powell had provided me some
13 records. I'm not sure exactly when she gave them to
14 me, but I reviewed those as well. Those records
15 consisted of tax returns that she had retrieved from
16 storage, also records relating to Chic Antiques and
17 Huger Street properties and the tax returns for
18 those LLCs. I also talked to Carolyn. In my
19 experience, when you're representing a creditor and
20 you're trying to uncover assets, a disgruntled
21 ex-wife is a rich source of information. So I also
22 talked to Carolyn in considerable detail about what
23 she knew, her opinions; and I think, eventually, we
24 did get discovery documents from Conrad Powell and I
25 reviewed those as well.

1 Q. Had you reviewed any of the personal
2 financial statements --

3 A. Yes, I did.

4 Q. -- for Mr. Conrad Powell?

5 A. Yes. I reviewed those. And I think
6 that was also some of the information that I felt I
7 needed to follow up on because, in the information
8 at Marne Sherman's office, I believe there were
9 references to financial statements in some of the
10 tax returns that weren't in those boxes. And,
11 eventually, I got those financial statements.

12 Q. Schedules or. . .

13 A. It may have been a loan application with
14 the bank. I was looking for closing statements,
15 mortgage, deeds, financial statements, tax returns,
16 check records, and I believe that -- and somewhere
17 in that volume of material, I recall seeing a
18 reference to a financial statement that was not in
19 the material.

20 Q. Did you see the handwritten financial
21 statements Mr. Powell had written that Ms. Powell
22 had obtained?

23 A. Yeah. Of course, I did. I saw those.

24 Q. And so you were looking at where various
25 assets might have been sold or moved?

1 A. Well, again, Carolyn told me early on
2 that her concern was not so much hiding assets as
3 diluting the assets by giving Tim Tyler and Terry
4 Powell, Conrad's brother, an interest in those
5 assets and in the corporations. And that's why one
6 of my -- the major thing that I focused on
7 initially, I went back to the formation of these
8 corporations to determine, okay, who are the
9 members? Who were the shareholders? When did they
10 transfer their interests? What was paid for the
11 transfer of that interest? What assets were owned
12 at the time of the transfer -- at the time that they
13 gave up their interests? What liabilities
14 encumbered those assets at that time?

15 And the financial statements that I saw,
16 in my opinion, were accurate because they were given
17 to banks as part of loan transactions and you don't
18 hide assets when you give financial statements or I
19 should say, use proper language --

20 Q. You shouldn't.

21 A. One does not hide assets when you're
22 giving your banker your financial statement. If
23 anything, you puff and over disclose. So I felt
24 comfortable that I had a full understanding of all
25 the assets that Conrad Powell or his corporations

1 owned. I also did some investigation in Asheville,
2 North Carolina. I didn't go there; but some online
3 records, looking at newspaper articles about the
4 brothers' business in North Carolina, looking at
5 real estate records that were on line in Buncombe
6 County, North Carolina. And it was my opinion that
7 we had a firm understanding of all of the assets.

8 Q. And is that the Racing Champion South
9 RC2?

10 A. No. This was -- I can't think of Terry
11 Powell, the name of his company right now; but he
12 had -- in addition to his rug gallery, I think he
13 also had a real estate company in North Carolina and
14 I investigated to make sure that none of Conrad's
15 money went into that company so that we could claim
16 an ownership interest in that company.

17 Q. Okay. Did you have any conversations
18 with Mr. Taylor about measures that could be taken
19 to ensure that assets weren't moved, like filing les
20 pendens and things of that nature?

21 A. I really didn't see that as part of my
22 responsibility. So, no, I don't think I had any
23 conversations along those lines with Mr. Taylor.

24 Q. Did Mr. Taylor ever tell you about his
25 plans to secure the marital assets in the Powell

1 marital estate?

2 A. I don't think so, but I believe that we
3 felt comfortable with the situation. Having
4 knowledge of the assets in the martial estate at
5 that time, it would be very hard for him to transfer
6 something out that we couldn't pursue or account
7 for.

8 Q. Did you have any conversations with Mr.
9 Taylor about pros and cons of filing things like les
10 pendens on the real estate property?

11 A. No, never did have that conversation.

12 Q. Were there things that could have been
13 done to protect her financial interests in the --
14 Ms. Powell's financial interests in the marital
15 estate?

16 A. Again, I'm not a Family Court lawyer, so
17 I don't know.

18 Q. Did you ask those questions?

19 A. No, I did not.

20 Q. Did Mr. Taylor mention certain things
21 that he had considered but decided against doing --

22 A. No.

23 Q. -- that would have protected the marital
24 assets?

25 A. I don't recall any discussions along

1 those lines.

2 Q. Was there anything that you needed,
3 other than the documents that you reviewed at Ms.
4 Sherman's office, to finish your work?

5 A. Well, we eventually got the discovery
6 documents from Conrad Powell. We eventually got his
7 financial statement. And I recall comparing my
8 notes and my records with what was in the financial
9 declaration and the discovery. So, no. I think
10 that at the time -- by late 2006, that I had a
11 handle on the business issues and the financial
12 issues related to the businesses.

13 Q. Did you have any discussions with Mr.
14 Taylor about the need to push the discovery and
15 proceed with preparing the case for trial?

16 A. I don't recall any specific discussions
17 about pushing discovery. I knew that eventually we
18 would get it, plus I felt comfortable with the
19 information that I had. I knew that there was a
20 need to get information so that we could make sure
21 that we were pursuing settlement discussions
22 appropriately.

23 Q. But was there ever any conversation with
24 Mr. Taylor about the urgency of Ms. Powell's
25 financial circumstances in the early part of 2006?

1 A. I don't recall any discussions in the
2 early part of 2006 between Michael and me, but I do
3 recall those discussions between Carolyn Powell and
4 me. That she was saying that, you know, she was
5 desperate. She told me that she had to move her
6 children to the Mais Oui Building on Gervais Street.
7 That she was -- and eventually had moved to Aiken.
8 And that she said one time that, you know, her -- I
9 think her oldest daughter at that time was 17 and
10 was going away for college, and she had some
11 concerns about her daughter's college expenses and
12 wanted to be able to provide for her family.

13 Q. Did you rely any of those conversations
14 that you had with Ms. Powell to Mr. Taylor or Ms.
15 Potterfield?

16 A. Probably.

17 Q. And, with that information, was there
18 any discussion about the need to move things
19 forward, take depositions and proceed with preparing
20 the case for trial?

21 A. Well, we -- I got involved in the Family
22 Court issues probably in maybe February of 2006.
23 And I had my initial report to Michael and Carolyn
24 Powell within three months, by May. And I believe
25 that we were -- shortly after that, we started

1 scheduling the depositions and I believe that we may.
2 have scheduled Conrad's deposition maybe in October
3 or November; but it had to be continued. The
4 reason, I can't remember. So we eventually
5 conducted his deposition in December.

6 Q. Did you have any discussions with Mr.
7 Taylor about his strategy in terms of how he was
8 going to prepare the case and present it for trial?

9 A. Yes, I did. As a matter of fact,
10 because of my familiarity with business issues,
11 Michael Taylor suggested that I conduct Conrad's
12 deposition. So he gave me a list of questions that
13 he typically asks and we discussed the reason that
14 those questions were necessary in the Family Court
15 and I incorporated his suggested questions into my
16 deposition questions.

17 Q. And I believe we've got a copy of that
18 and we'll get to that, but my question was trying to
19 focus more on the trial plans and strategies that
20 Mr. Taylor may have shared with you.

21 A. Okay.

22 Q. I mean, did he say anything more than
23 here's the plan? We'll take Conrad's deposition.
24 We're going to take his brother's deposition. We're
25 going to take the CPA's deposition or anything like

1 like?

2 A. Yeah. That's exactly what he said.

3 Q. Okay.

4 A. And underlying all of that were the
5 continued settlement discussions.

6 Q. Did he ever discuss the liability issues
7 in the divorce with you and the strategies about
8 liability?

9 A. Well, liability to me means a debt that
10 you owe to a creditor, so --

11 Q. We're saying there was claims of
12 adultery and other matters on which a divorce can be
13 based. Did he discuss those --

14 A. Yes.

15 Q. -- issues with you?

16 A. He did.

17 Q. And what did he tell you?

18 A. He told me that there was a question of
19 Carolyn Powell's entitlement to alimony because of
20 adultery. I think I even saw the PI report on that.

21 Q. And whose adultery are we talking about?

22 A. Carolyn Powell's.

23 Q. Okay.

24 A. And that there was not -- and because of
25 that that she may not be entitled to alimony. So

1 that was something that we had to factor in to our
2 settlement discussions.

3 Q. And the PI report you just referred to,
4 is that the PI report referenced on page 2 of
5 Exhibit 7?

6 A. Yes.

7 Q. Did he have any conversations with you
8 about Ms. Powell's adultery claims against Conrad
9 Powell?

10 A. Yes, he did.

11 Q. What did he tell you about that?

12 A. We discussed that in preparation for the
13 deposition and that there had been allegations of
14 adultery and I think Michael gave me a name. And,
15 in the course of my investigation, I checked for
16 that name as much as I could to see if there had
17 been transfers to that person or if that person were
18 a member -- if that person was a member of a
19 business entity that Conrad had formed.

20 Q. Did you see the private investigator
21 report that -- for the private investigator that was
22 hired on behalf Ms. Powell to investigate Mr.
23 Powell's adultery?

24 A. I think I did and I think I used some of
25 that information in the deposition of Conrad Powell.

1 Q. Was there everything that you disagreed
2 with about the strategy proposals that Mr. Taylor
3 expressed to you?

4 A. I know when I should be forceful in
5 expressing my opinion and I also know that, when I'm
6 not familiar with the forum that we're in, that I
7 should defer to someone who knows what they're
8 doing.

9 Q. So am I taking that as you did not
10 express any disagreement with any of the strategies
11 that Mr. Taylor expressed to you?

12 A. No. I mean, I don't recall any.

13 (PLF. EXH. 8, E-mail to Reid from
14 Carolyn, Bates Stamped SMI_00566, was
15 marked for identification.)

16 MR. PENDARVIS: Pause just a real quick
17 moment..

18 (Off-the-record conference.)

19 BY MR. PENDARVIS:

20 Q. Mr. Smith, Exhibit 8 has been passed to
21 you, which appears to be from your -- is this your
22 handwriting again?

23 A. That's my handwriting. Yes, it is.

24 Q. And this is a February 24, 2006 e-mail?

25 A. Yes. I think I made a mistake on the

1 original date and went back and saw it and corrected
2 it.

3 Q. Prior to this e-mail, did you sense some
4 stress from Ms. Powell about this whole delay and
5 how long the divorce proceedings had been at this
6 point in time?

7 A. I saw Carolyn Powell as a high strung
8 person. It was in her personality to -- I thought
9 that she was a person who was stressed easily, but I
10 didn't see any evidence of anything other than
11 frustration with the time that it had taken.

12 Q. When you got this e-mail, did you reply
13 or call her back or discuss anything further?

14 A. I don't remember. I don't recall, so I
15 would say probably not.

16 (PLF. EXH. 9, E-mail to Reid from
17 Carolyn, Bates Stamped SMI_00567, was
18 marked for identification.)

19 MR. PENDARVIS: Off the record.

20 (Off-the-record conference.)

21 BY MR. PENDARVIS:

22 Q. Exhibit 9 has been passed to you. And
23 if I'm reading your handwriting again, this is a
24 March 1, 2006 e-mail from Ms. Powell to you?

25 A. Yes.

1 Q. And the Lavigno, if I'm pronouncing that
2 right, is that --

3 A. Lavigno.

4 Q. Lavigno? Is that all part of the
5 foreclosure matter?

6 A. Yeah. That first paragraph relates to
7 the foreclosure action. We had -- Mr. Murphy and I
8 had traded settlement proposals and I'd sent --
9 probably forwarded Mr. Murphy's letter to Carolyn,
10 with my opinion on the offer.

11 Q. Turning to the matters involving the
12 divorce, that's the second paragraph.

13 A. Yes.

14 Q. Is this the diluting assets subject that
15 you had testified earlier that was concerning Ms.
16 Powell?

17 A. Right. Right.

18 Q. What were the plans to better understand
19 the asset dilution issue?

20 A. Well, I talked to Carolyn about what she
21 thought had happened and where the assets had gone.
22 She felt that Tim Tyler and Terry Powell had -- were
23 a part of Conrad's efforts to dilute assets and
24 that's why I wanted to make sure that I understood,
25 first, all of the corporations that Conrad Powell

1 had an interest in and I went to the -- went on line
2 to the Secretary of State's office and typed his
3 name under agent to see what I could come up with.
4 I typed in Tim Tyler's name under agent to see what
5 I could come up with. Put in Terry Powell's name
6 and then I followed up with all of those
7 corporations to see what assets those corporations
8 may own. And then I used the tax returns from
9 Conrad Powell and Carolyn to identify corporations
10 in which Conrad had an interest. And then I
11 determined from the records that Carolyn had given
12 me the percentage of ownership held in those
13 companies by Mr. Conrad Powell, Terry Powell and Tim
14 Tyler.

15 Q. Did you do any evaluation or
16 investigation of assets owned by those same
17 corporations?

18 A. Sure did. Went to the tax assessor's
19 office, checked the register of deed or clerk of
20 court's office, all of it on line, although I did go
21 to the Richland County RMC Office. And I also just
22 Googled the names of those companies to see what
23 came up.

24 Q. And when, what time period did those
25 activities you just testified to take place?

1 A. Probably from February to May.

2 Q. Turning back to Exhibit 9, after you --
3 you did receive this e-mail; correct?

4 A. Yes, I did.

5 Q. Did you have any conversations with Mr.
6 Taylor about the content of the second paragraph of
7 Exhibit 9?

8 A. I think Michael and I talked about this
9 case and I gave him sort of a summary of what I was
10 trying to do. I don't recall specifically talking
11 about -- you know, I gave Michael a summary; but I
12 don't recall any feedback from him. I mean, he may
13 have told me; but I think he was letting me do my
14 job.

15 Q. And I've got a question I want to ask
16 you, but I need to get a little background. When
17 was your divorce? Before or after 2006?

18 A. It was in, I believe, '83 or '80 -- no.
19 '86 possibly.

20 Q. Okay. In the '80s?

21 A. Mid-'80s.

22 Q. Was it a living sperate, apart for one
23 year --

24 A. Yes.

25 Q. So how long did your divorce take from

1 the date of filing to the order, decree of granting
2 the divorce?

3 A. Well, we were separated for probably
4 close to three years and, from the date of filing to
5 the divorce, I don't recall; but I don't think it
6 was very long.

7 Q. Twelve, 15 months?

8 A. Maybe not even that long.

9 Q. When you saw Ms. Powell's statement --
10 next to the last sentence in the second paragraph,
11 it says, three years is a long time to be held
12 hostage and punished for leaving an abusive
13 marriage, what did you believe she was trying to
14 communicate with that sentence?

15 A. That she was ready for it to be over.

16 Q. That she felt like three years was a
17 long time in the divorce proceedings?

18 A. Right. Right. Exactly what it was.
19 Right.

20 Q. Did you agree with her, that three years
21 was a long period of time to be involved in a
22 divorce proceeding?

23 A. I don't recall if I agreed with her or
24 not. I mean, I just accepted it as a statement of
25 fact. I don't recall saying I agree or anything

1 like that.

2 Q. Sitting here today, what is your opinion
3 of a divorce proceeding that lasts for three years?

4 A. I think three years is a long time; but,
5 you know, I had been separated for three years in my
6 divorce, so -- and I also think it depends on the
7 facts of the case, too.

8 (PLF. EXH. 10, E-mail to Carolyn from
9 Reid, Bates Stamped SMI_02714, was
10 marked for identification.)

11 BY MR. PENDARVIS:

12 Q. Mr. Powell (sic), Exhibit Number 10 has
13 been passed to you and this appears to be an e-mail
14 from you to Ms. Powell and, based on the very
15 bottom, I'm going to presume that's a March 1, 2006
16 e-mail?

17 A. Right.

18 Q. And this is your e-mail?

19 A. Right. It is.

20 Q. And the majority -- the bottom
21 two-thirds deals with the foreclosure matter and the
22 first --

23 A. Right.

24 Q. -- first two paragraphs are dealing with
25 the divorce issue; is that correct?

1 A. Well, let's see. The second or third --
2 well, just the second par -- well, yeah, I guess the
3 first and second are the divorce and the rest would
4 be related to the foreclosure action.

5 Q. And the second paragraph describes --
6 well, let me ask this. Does the second paragraph
7 describe the online activities you've just testified
8 about with regard to the RMC office and the tax
9 assessor's office and Secretary of State and all the
10 different web sites you had gone to --

11 A. Yes.

12 Q. -- to investigate?

13 A. Yes.

14 Q. Thank you.

15 A. And also the documents provided by Marne
16 Sherman.

17 Q. And, apparently from this letter, you
18 were still in the process of analyzing and reviewing
19 those materials?

20 A. Right.

21 Q. And am I correct that, by the time of
22 this March 1, 2006, the copies of the materials you
23 had marked at Ms. Sherman's office had been
24 delivered and that is to what you are referring in
25 this --

1 A. Yes.

2 Q. -- Exhibit 10?

3 A. That is correct.

4 Q. Given the concerns about the dilution
5 issue, asset dilution issue, your statement that "my
6 initial reaction is that Conrad is trying to make a
7 full disclosure", did you gain from the information
8 you had reviewed at the point of March 1, 2006 that
9 Mr. Conrad Powell was being forthcoming in terms of
10 how various ownership interests in corporations had
11 been changed or modified?

12 A. Yes. If you look, I stated that I had
13 not found any surprises in the documents. I'm not
14 sure if Carolyn had given me all of the information
15 that she had retrieved by this date or not. I'm not
16 sure; but based on what I had seen, I didn't see
17 anything that indicated that there was an effort to
18 hide assets.

19 Q. Did that opinion ever change?

20 A. No, it did not.

21 (PLF. EXH. 11, Reid Smith Memo and
22 Notes, Bates Stamped MIT005170 and
23 005171, was marked for identification.)

24 BY MR. PENDARVIS:

25 Q. Mr. Smith, I'm passing you now or you've

1 been passed a document marked as Exhibit 11 that
2 appears to be -- I got my magnifying glass out
3 yesterday. There are a series of documents we're
4 going to be looking at that all appear to be April
5 3, 2006 and I did get out a magnifying glass to make
6 sure that's what printed down there. Do you recall
7 receiving these materials from Ms. Powell?

8 A. I do.

9 Q. And were these materials transmitted to
10 you via e-mail from Ms. Powell?

11 A. Yes. I recall receiving this via
12 e-mail.

13 Q. When you were receiving this information
14 from Ms. Powell, were you sharing that with Mr.
15 Taylor?

16 A. At this point, no. I don't think I
17 shared this information until the May summary that
18 I -- May 2006 summary that I sent out.

19 Q. For example, the second paragraph of the
20 first page of Exhibit 11 again references a
21 continuing frustration with closure, I think she
22 describes it, or completing the divorce?

23 A. Uh-huh.

24 Q. That was yes?

25 A. I'm sorry. Yes, I see that.

1 Q. Did you relay that concern to Mr. Taylor
2 about Ms. Powell's frustration with delaying closure
3 of this divorce?

4 A. I'm not sure that I did in this
5 situation. Although I do recall vaguely that we had
6 discussions about her wanting to move this case
7 along.

8 Q. The third paragraph references -- second
9 sentence, it says, it is insanity that I have to
10 live off a partial property settlement and, now,
11 borrowed money to support my family. See that?

12 A. I do.

13 Q. Did you relay that concern to Mr.
14 Taylor?

15 A. Well, I don't recall relating that to
16 Michael Taylor, so the answer would be no. But I do
17 have an opinion when I read that.

18 Q. And what was your opinion?

19 A. That she got a \$400,000 partial property
20 settlement and that that was a lot of money to me.

21 Q. What was your opinion on what
22 entailments she may have then had to support and
23 maintenance during the pendency of the divorce?

24 A. I didn't have any opinion on that
25 either, because I'm not familiar with those legal

1 aspects of those issues.

2 Q. What do you know about support and
3 maintenance obligations in a Family Court matter?

4 A. Not much. I know that alimony -- I see
5 it from the debtor/creditor perspective, whether
6 it's dischargeable in bankruptcy or not. So I am
7 familiar with alimony and support; but, normally,
8 when I look at that in a legal context, it's whether
9 that debt survives bankruptcy.

10 Q. Well, you took the bar exam; right?

11 A. I did.

12 Q. And domestic is on the bar exam?

13 A. And I took Family Law when I was in law
14 school.

15 Q. Excellent. So you're aware that during
16 the pendency of a divorce, separate and apart from
17 what entailment someone -- a party may have to
18 marital asset allocation, separate from the
19 allocation of assets is a right or an obligation
20 that a spouse may have, depending on the facts, to
21 seek support during the pendency of the Family Court
22 matter; correct?

23 A. That's correct. And, in this case, I
24 recall that Conrad Powell was paying child support.
25 I believe I was aware at that time that he was

1 sending them to private school in Aiken. And that,
2 by that time, I'd also seen the PI report about
3 Carolyn's possible adultery. And, again, I really
4 didn't consider those issues because that wasn't the
5 area that I was retained to handle.

6 Q. Outside of the communications, the
7 written communications we're talking about that we
8 have been looking at, did Ms. Powell have any
9 telephone communications with you during the January
10 to April 2006 time period?

11 A. I think so, yes. I believe that we
12 talked a few times.

13 Q. Were any of those conversations about
14 the domestic matter or did they deal with the
15 foreclosure matter?

16 A. Well, both. I think, from the
17 foreclosure matter, we talked about options and I
18 also needed some information from her sister. And
19 she give her sister authority to talk to me, as we
20 see here. In addition, we talked about assets and
21 business issues.

22 Q. The second page of Exhibit 11 apparently
23 outlines some fact issues related to various
24 corporations and loans that the Powells, Conrad and
25 Ms. Powell, may have been involved in?

1 A. Uh-huh.

2 Q. Yes?

3 A. Yes. I'm sorry. Yes.

4 Q. Was this information helpful to you?

5 A. It was very helpful, as well as the
6 documentation that she provided. And I just didn't
7 rely on what was here. I did my own investigation
8 to confirm what Carolyn had written here.

9 Q. Was there any information Ms. Powell
10 related to you, limited right now to Exhibit 11, in
11 this letter that you found later to be inaccurate or
12 not true?

13 A. Yes.

14 Q. Tell me about that.

15 A. Chic Antiques.

16 Q. Item Number 4?

17 A. Yes.

18 Q. On page 2?

19 A. Right.

20 Q. Tell me about that.

21 A. My investigation determined that Conrad
22 Powell was not a 100 percent shareholder of Chic
23 Antiques based on the corporate records that I
24 reviewed.

25 Q. It states down past that 100 percent

1 number that, in the early 1990s, he was shown on the
2 tax records as a 51 percent owner?

3 A. Right. And I believe we concluded that
4 or I concluded that Terry Powell was a legitimate
5 shareholder in that company.

6 Q. And what was the basis of that
7 conclusion?

8 A. The corporate records and the tax
9 returns, which were in conformity with each other.

10 Q. Okay.

11 A. And later, when I had the opportunity to
12 examine Tim Tyler about Conrad's holdings, I believe
13 I asked him what ownership interests he had and he
14 told me the percentage that agreed with my records.

15 Q. And was that a telephone interview?

16 A. No, no. We deposed Tim Tyler.

17 Q. Okay. Were there tax filings and
18 financial records that showed Conrad Power as 100
19 percent owner of the shares in Chic Antiques?

20 A. Off the top of my head, I don't recall
21 any showing him 100 percent owner.

22 Q. Okay.

23 (PLF. EXH. 12, Reid Smith Memos, Bates
24 Stamped MIT005174 and 005175, was marked
25 for identification.)

1 BY MR. PENDARVIS:

2 Q. Mr. Smith, Exhibit 12 has been passed to
3 you. And this appears to be -- actually, there
4 might be some duplicate copies here. Yes. My
5 apologies.

6 It may be that we have -- the first two
7 pages are a new document and the remaining might be
8 copies. With counsel's agreement, Charlie?

9 MR. HILL: Wait a minute. Off the
10 record.

11 (Off-the-record conference.)

12 MR. PENDARVIS: With agreement, we're
13 just going to make -- the first two pages are what
14 will be Exhibit 12. We'll attach these later.
15 Thank you.

16 Q. Mr. Smith, a corrected version of
17 Exhibit 12 is now in front of you.

18 A. Uh-huh.

19 Q. This appears again to be another
20 communication from Ms. Powell to you, April 3, 2006?

21 A. Yes, I see that.

22 Q. The first phrase of this memo talks
23 about equitable division, equitable division notes.
24 Before we get into the content, did you have any
25 involvement in the negotiations and the settlement