

21850

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable J.C. Nicholson
Circuit Court Judge

Case No.: 2012-CP-10-8372
Appellate Case No. 2014-002450

Hattie Mae Greene Appellant

v.

Cindy M. Floyd Respondent

RECORD ON APPEAL

Volume I of II

RECEIVED
APR 09 2015
SC Court of Appeals

D. Cravens Ravenel
Baker, Ravenel & Bender, L.L.P.
3710 Landmark Drive, Suite 400
Post Office Box 8057
Columbia, South Carolina 29202
Phone: (803) 799-9091
Fax: (803) 779-3423
Attorneys for Appellant

M. Dawes Cooke, Jr.
Alissa D. Fleming
Jeffrey M. Bogdan
Barnwell Whaley Patterson & Helms, LLC
P.O. Drawer H
Charleston, South Carolina 29401-0197
Phone: (843) 577-7700
Fax: (843) 577-7708
Attorneys for Respondent

INDEX

Order Granting Defendant's Motion for Summary Judgment dated October 23, 2014.....	3
Complaint.....	12
Answer.....	26
Respondent's Motion for Summary Judgment.....	31
Appellant's Reply to Respondent's Motion for Summary Judgment with Affidavit and Supplementary Affidavit of Mark E. Sullivan.....	68
Transcript of Record of the May 14, 2002 hearing in Hattie Mae Greene v. Joseph Greene, in the Family Court 01-DR-18-0124.....	86
Direct Examination of Sandra Murray by Ms. Floyd.....	90
Cross Examination of Sandra Murray by Mr. Palmer.....	92
Direct Examination of Hattie Greene by Ms. Floyd.....	94
Cross Examination of Hattie Greene by Mr. Palmer.....	119
Direct Examination of Nyler Backman by Ms. Floyd.....	146
Cross Examination of Nyler Backman by Mr. Palmer.....	149
Redirect Examination of Nyler Backman by Ms. Floyd.....	152
Direct Examination of Lakenzia Greene by Ms. Floyd.....	153
Direct Examination of Lillian Johnson by Ms. Floyd.....	157
Direct Examination of Joseph Greene by Mr. Palmer.....	160
Cross Examination of Joseph Greene by Ms. Floyd.....	194
Redirect Examination of Joseph Greene by Mr. Palmer.....	206
Deposition of Cindy M. Floyd dated February 6, 2014.....	213
Direct Examination of Cindy M. Floyd by Mr. Ravenel.....	216
Deposition of Joseph Greene.....	271

Direct Examination of Joseph Greene by Mr. Ravenel.....	273
Cross Examination of Joseph Greene by Ms. Fleming.....	297
Redirect Examination of Joseph Greene by Mr. Ravenel.....	310
Recross Examination of Joseph Greene by Ms. Fleming.....	312
Redirect Examination of Joseph Greene by Mr. Ravenel.....	314
Deposition of Joseph Todd Manley dated April 17, 2014.....	320
Direct Examination of Joseph Todd Manley by Mr. Ravenel.....	323
Deposition of Mark E. Sullivan dated December 19, 2013.....	373
Direct Examination of Mark E. Sullivan by Ms. Fleming.....	375
Cross Examination of Mark E. Sullivan by Mr. Ravenel.....	443
Redirect Examination of Mark E. Sullivan by Ms. Fleming.....	447
Recross Examination of Mark E. Sullivan by Mr. Ravenel.....	451

VOLUME II

Affidavit of Mark Sullivan dated October 31, 2012.....	458
Supplementary Affidavit of Mark E. Sullivan dated July 21, 2014.....	467
Order of Separate Support and Maintenance dated May 14, 2002.....	471
Transmittal letter dated November 5, 2002 and Supplemental Order, Division of Military Pay in Hattie Mae Greene v. Joseph Greene, in the Family Court 01-DR-18-0124.....	476
South Carolina Continuing Legal Education Materials: <i>Cool Tips from the Hottest Domestic Law Practitioners II/May 19, 2000</i>	480
South Carolina Continuing Legal Education Materials: <i>Hot Tips from the Best Domestic Law Practitioners/September 15, 2000</i>	493
Certificate of Counsel.....	509

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) C/A No.: 2012-CP-10-8372

Hattie Mae Greene,
Plaintiff,

vs.

Cindy M. Floyd,
Defendant.

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

FILED
2014 OCT 23 AM 10:27
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

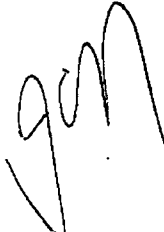
gm
This matter came before this Court on the Motion of Defendant Cindy M. Floyd (hereinafter referred to as "Attorney Floyd") for Summary Judgment pursuant to South Carolina Rule of Civil Procedure 56. A hearing was held on September 15, 2014. For the reasons that follow, this Court hereby grants Attorney Floyd's Motion for Summary Judgment.

BACKGROUND

This is an action for legal malpractice, arising from Attorney Floyd's representation of the Plaintiff, Hattie Mae Greene, in a proceeding for division of marital property with Plaintiff's now ex-husband, who is a retired Marine. The representation resulted in an Order of Separate Support and Maintenance, which awarded Plaintiff 60% of her now ex-husband's "military retirement." Almost ten years after the Order was entered, Plaintiff's ex-husband applied for and began receiving VA disability compensation. Plaintiff contends that Attorney Floyd was negligent in failing to have the court include a provision in its Order protecting her in the event that her ex-husband later received VA disability compensation, which unlike military retirement pay is not subject

to equitable distribution. Specifically, Plaintiff contends that Attorney Floyd should have persuaded the Family Court to include a provision dividing her husband's gross retired pay rather than his disposable retired pay; a provision requiring her husband to indemnify her if his disposable retired pay was ever reduced; or both. This Court concludes that the Defendant is entitled to summary judgment because the Family Court did not have jurisdiction to provide the relief suggested, and even if it did have such jurisdiction this would have been a novel proposition of law such that Attorney Floyd's failure to obtain this relief was, as a matter of law, not negligence.

FACTS



Plaintiff retained Attorney Floyd to represent her in connection with a divorce and division of marital assets. In the course of the divorce action, Attorney Floyd represented Plaintiff at a contested hearing to divide marital property. The resulting 2002 Order of Separate Support and Maintenance awarded Plaintiff 60% of her husband's military retirement. Subsequently, Plaintiff's ex-husband began receiving \$662.00 per month in disability benefits, which decreased his disposable retired pay¹ and, thus, decreased the Plaintiff's payments. Plaintiff claims that she should receive \$1,020.60 per month, which is 60% of her ex-husband's \$1,701.00 gross retired pay. Instead, Plaintiff now receives only \$623.40 per month, which is 60% of her ex-husband's \$1,039.00 disposable retired pay, after his \$662.00 disability compensation is subtracted from his \$1,701.00 gross retired pay.

Plaintiff claims that Attorney Floyd was negligent in failing to request that the family court include in its 2002 Order of Separate Support and Maintenance a division of

¹ Disposable Retired Pay is the amount that is paid by the Defense Finance Accounting Service to a veteran and/or their spouse after any deductions, including disability pay, are deducted from the veteran's "gross" or "total" retired pay.

gross retired pay, a requirement that Plaintiff's ex-husband indemnify her in the event that her share of his military retirement income was ever decreased.

In support of her claims, Plaintiff identified Mark E. Sullivan, an attorney licensed to practice in North Carolina, as her expert witness. Mr. Sullivan was deposed on December 19, 2013 and testified:

- 
- He is not nor has he ever been licensed to practice law in South Carolina.
 - In accordance with federal law, the South Carolina family courts do not have jurisdiction to divide disability pay as marital property.
 - There is no South Carolina case law addressing the propriety of the inclusion of an indemnification clause in an order dividing marital property.
 - He could not opine to a reasonable degree of certainty most probably that had Attorney Floyd made an argument for the inclusion of an indemnification clause, the family court would have incorporated it into the final order.
 - He could not opine to a reasonable degree of certainty that had Attorney Floyd requested the division of the gross military retired pay rather than the disposable retired pay, the family court most probably would have done so.
 - He could not opine that an appellate court in South Carolina would have held that the South Carolina family court has jurisdiction to equitably divide VA disability compensation.

In a Supplementary Affidavit, executed after Attorney Floyd filed her motion for summary judgment, Mr. Sullivan avers that he has reviewed educational materials published in or around 2002, and he now believes that the judge would have been aware

of the problem involving post-divorce disability elections and could have been persuaded to include a curative provision in his Order.

STANDARD OF REVIEW

Summary judgment is appropriate because there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Wilson v. Moseley*, 327 S.C. 144, 146, 488 S.E.2d 862, 863 (1997). In ruling on a motion for summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the non-moving party. *Id.*

“Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial.” *Sides v. Greenville Hosp. Sys.*, 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004). “[A]ssertions as to liability must be more than mere bald allegations made by the non-moving party in order to create a genuine issue of material fact.” *Jackson v. Bermuda Sands, Inc.*, 383 S.C. 11, 17, 677 S.E.2d 612, 616 (Ct. App. 2009). “[I]n cases applying a preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

“The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder.” *Matsell v. Crowfield Plantation Cmty. Servs. Ass'n, Inc.*, 393 S.C. 65, 70, 710 S.E.2d 90, 93 (Ct. App. 2011) (citing *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)). For the reasons that follow, this Court grants Defendants' Motion for Summary Judgment as to Plaintiff's claims in this matter.

LEGAL DISCUSSION

To recover for legal malpractice, a plaintiff must prove the following: (1) the existence of an attorney-client relationship, (2) a breach of duty by the attorney, (3) damage to the client, and (4) proximate cause of the client's damages by the breach. *Harris Teeter, Inc. v. Moore & Van Allen, PLLC*, 390 S.C. 275, 282, 701 S.E.2d 742, 745 (2010). The plaintiff must prove that she "most probably would have been successful in the underlying suit if the attorney had not committed the alleged malpractice." *Summer v. Carpenter*, 328 S.C. 36, 42, 492 S.E.2d 55, 58 (1997); *Doe v. Howe*, 367 S.C. 432, 442, 626 S.E.2d 25, 30 (Ct. App. 2005).

gen
The question of the success of the underlying claim, if suit had been brought, is a question of law. *Manning v. Quinn*, 294 S.C. 383, 386, 365 S.E.2d 24, 25 (1988) (holding in a legal malpractice case that the likelihood of success of action that the plaintiff alleged the defendant should have taken was a question of law "and decision of that question on summary judgment motion is appropriate"); *Doe v. Howe*, 367 S.C. at 442, 626 S.E.2d at 30. Here, Plaintiff has not produced a scintilla of evidence that she would have been more successful in the underlying action had Attorney Floyd not committed the alleged malpractice.

The United States Supreme Court, in *Mansell v. Mansell*, 490 U.S. 581 (1989), addressed the relationship between a retired serviceman's retirement pay and disability benefits, as follows:

Members of the Armed Forces who serve for a specified period, generally at least 20 years, may retire with retired pay. . . . Veterans who became disabled as a result of military service are eligible for disability benefits. . . . In order to prevent double dipping, a military retiree may receive disability benefits only to the extent that he waives a corresponding amount of his military retired pay. . . . Because disability benefits are

exempt from federal, state, and local taxation, . . . military retirees who waive their retirement pay in favor of disability benefits increase their after-tax income. Not surprisingly, waivers of retirement pay are common.

490 U.S. 581, 583-84 (1989) (internal citations omitted).

gm
The Uniform Services Former Spouses' Protection Act (hereinafter "the Act") authorizes state courts to treat "disposable retired pay" as marital property that can be divided upon a couples' divorce or separation. 10 U.S.C. § 1408(c)(1); *Mansell*, 490 U.S. at 584. The Act defines "disposable retired pay" as total monthly retired pay minus certain deductions, which deductions include any amount waived in order to receive disability benefits. 10 U.S.C. § 1408(a)(4)(B); *Mansell*, 490 U.S. at 585. Accordingly, the *Mansell* Court reached the conclusion that the Act "does not grant state courts the power to treat as property divisible upon divorce military retirement pay that has been waived to receive veterans' disability benefits." 490 U.S. at 594-95. The *Mansell* Court recognized the harsh result the Act could have on former spouses, yet declined to rule in opposition of Congress' intent. Id.

The South Carolina Court of Appeals, in *Price v. Price*, recognized *Mansell's* directive that "disability benefits may not be equitably divided in a divorce proceeding" and that "[w]hile the Act allows state courts to treat *disposable* retired pay as divisible property, courts do not have the authority to treat *total* retired pay as divisible property. 325 S.C. 379, 380, 480 S.E.2d 92, 92 n.2 (1996) (emphasis in original). Based upon these clear authorities, the Family Court in the underlying action did not have jurisdiction to grant Ms. Greene the relief that her expert says Attorney Floyd should have demanded on her behalf.



Plaintiff has failed to offer a scintilla of evidence that Attorney Floyd breached her duty owed to the Plaintiff by failing to argue to the Family Court to include in its 2002 Order an indemnification clause or a division of "gross retired pay," or that, had Attorney Floyd done so, such language would have most probably been included in the Order and the Plaintiff would have obtained a better result. *See Harris Teeter, Inc.*, 390 S.C. at 290, 701 S.E.2d at 749-50 (granting summary judgment to defendant attorney where one of plaintiff's expert witnesses testified that, had defendant attorney not breached the standard of care, plaintiff's "percentage of success [in the underlying action] would have been greater," and plaintiff's other expert testified that it would be "speculation" as to whether the plaintiff would have been successful in the underlying action, but neither expert testified that the underlying action most probably would have had a better result if not for the defendant attorney's alleged malpractice); *Doe v. Howe*, 367 S.C. at 445-46, 626 S.E.2d at 31-32 (granting summary judgment to defendant attorney where plaintiff's expert testified that plaintiff most probably would have been successful in certain aspects of the underlying action had defendant attorney not been negligent as alleged, but where plaintiff's expert failed to establish that plaintiff most probably would have obtained a better result in the underlying action had defendant attorney not been negligent as alleged).

Plaintiff's only expert, Mark Sullivan's, opinions fall short of the standard required to survive summary judgment. In his initial affidavit and in his deposition, Mr. Sullivan could not opine that, had Attorney Floyd requested the inclusion of an indemnification clause or the division of "gross retired pay" in the Order, the Plaintiff most probably would have enjoyed a better result in the underlying action. He could not

gm

state whether such an award would have been upheld on appeal. In his Supplementary Affidavit, executed after his deposition and after Defendant moved for summary judgment, he revised his opinion to state that, based on his review of continuing legal education materials available in and around 2002, he now believes that the Family Court judge would have been aware of the problem of post-divorce disability election by military retirees and would have granted a request to include a curative provision in the final Order. The problem with Mr. Sullivan's opinion is that the educational materials that he relied on advocate negotiating for an indemnity provision in a consent settlement decree. Neither Mr. Sullivan nor the Plaintiff can cite any authority that allows the Family Court to include such a provision in a contested Order. Mr. Sullivan's belated Supplementary Affidavit is like those that the Court discounted in *Harris Teeter v. Moore & Van Allen, supra*: "Harris Teeter apparently recognized the clear insufficiency of the Scarmanich and Levick testimony, for it submitted post-deposition affidavits in an attempt to rescue its malpractice claims." The trial court properly characterized these post-deposition affidavits as 'sham' affidavits. See *Cothran v. Brown*, 357 S.C. 210, 218, 592 S.E.2d 629, 633 (2004) (setting forth six considerations a court may use to determine if a post-deposition affidavit is a 'sham affidavit'). 390 S.C. at 289, 701 S.E.2d at 749. Even if Mr. Sullivan's post-deposition Supplementary Affidavit is entitled to consideration, his opinion lacks substance because it is a legal opinion that is contrary to controlling precedent.

Plaintiff has failed to produce a scintilla of evidence to support negligence or causation in this case, and Defendant Cindy Floyd is therefore entitled to summary judgment as a matter of law. All of the authorities cited by Mr. Sullivan and the Plaintiff

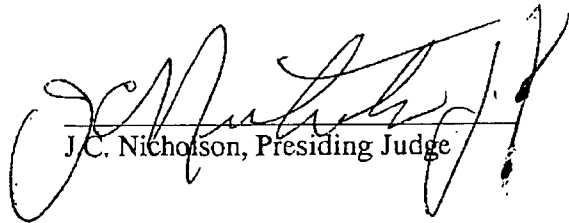
advocate being aware of the post-divorce disability election dilemma and negotiating to include an indemnification provision in settlement decrees. However, this was not a settlement, but a hotly contested case. Attorney Floyd obtained a good result for her client, sixty percent of the marital estate. No authority exists in South Carolina for the Family Court to circumvent the mandates of the Act, *Mansell*, and *Price* by apportioning gross retirement income or requiring a retiree to indemnify his former spouse if he should ever qualify for and elect disability benefits. This Court concludes as a matter of law that Attorney Floyd did not deviate from the generally accepted standard of care by failing to persuade the Family Court judge to do so.

CONCLUSION

For the foregoing reasons, the Court grants Cindy M. Floyd's Motion for Summary Judgment pursuant to Rule 56.

AND IT IS SO ORDERED.

October 21, 2014


J.C. Nicholson, Presiding Judge

 COPY

IN THE STATE OF SOUTH CAROLINA)

IN THE COUNTY OF CHARLESTON)

Hattie Mae Greene,)

Plaintiff,)

vs.)

Cindy M. Floyd,)

Defendant.)

IN THE COURT OF COMMON PLEAS)

Case No.:

**COMPLAINT
(JURY TRIAL DEMANDED)**

FILED
2019 DEC 27 PM 2:19
JILLIE J. ARMSTRONG
CLERK OF COURT

Hattie Mae Greene, complaining of the defendant, alleges:

1. Plaintiff is a citizen and resident of the County of Dorchester, State of South Carolina.
2. Upon information and belief, Defendant is a citizen and resident of the County of Charleston, State of South Carolina.
3. Defendant was retained by plaintiff as her lawyer to represent plaintiff in connection with a divorce from and division of marital assets between her and her then husband, Joseph Greene.
4. Joseph Greene, at all times relevant to this matter, was at least a seventeen (17) year active duty member of the United States Marine Corps and was entitled to military retirement pay which was subject to division between the parties as a marital asset.
5. Defendant held herself out to plaintiff as an attorney experienced in marital litigation and in marital litigation involving United States Military benefits.
6. Any reasonably competent attorney holding themselves out as competent to conduct marital litigation involving the United States Military would have been aware of case law holding that a retired member of the United States Military had the option, if they became

fully or partially disabled, to substitute tax free disability payments received from Veterans Affairs in lieu of retirement benefits and that for each dollar received from Veteran Affairs as tax free disability payments a dollar would be taken from the veteran's retirement benefits.

7. Defendant represented the plaintiff at the hearing where marital property was to be divided and failed to ask for an order containing language that anticipated that future disability related to Military service would allow the veteran in question to use the tax free disability payments from Veterans Affairs to reduce, dollar for dollar, the amount of retirement benefits which was relied upon to form the basis for plaintiff's share of this marital property.

8. The Family Court judge presiding over the hearing implementing this pension division ("Supplemental Order Division of Military Retired Pay") signed the order on November 8, 2002. The order directed the Defense Finance and Accounting Service (DFAS) to pay plaintiff 60% of the "disposable retired pay" of Mr. Greene or \$798.00 per month (60% of \$1,330.00) when the presence of an indemnity provision would have required Mr. Greene to indemnify plaintiff to the extent Mr. Greene claimed the tax free disability benefits that reduced from \$1701.00 to \$1039.00 the funds subject to the 60% payment to plaintiff.

9. Plaintiff's share of retired pay from DFAS diminished over time and plaintiff unsuccessfully sought relief from the Court. Plaintiff's husband is now being paid disability payments of \$662 per month which amount is deducted from her ex-husband's retired pay leaving retired pay totaling \$1,039.00 per month when the payment should be 60% of \$1701.00 or \$1,020.60 per month instead of 60% of \$1039.00 or \$623.40 or more fully 50% from DFAS and 10% directly from Joseph Greene.

10. Defendant's failure to include a provision in the settlement approved by the Court requiring defendant to indemnify plaintiff in the event defendant chose to receive Veterans

Affairs disability payments which were deducted from his retirement pay thereby reducing the amount against which plaintiff's 60% entitlement was applied was negligent, falling below the standard of care required of attorney practicing family law involving Military pay and retirement benefits.

11. As a direct and proximate result of defendant's negligence plaintiff has sustained monthly losses of income for each month which defendant has elected to accept disability payments that are deducted from his retirement pay thereby reducing his retirement pay subject to the 60% award.

12. Defendant, had she been minimally conversant with statutory provisions and case law interpreting the interplay between United States Military Disability pay and United States Military Retirement pay, would have, if competent, included a provision indemnifying plaintiff for any future reduction of Military retirement pay defendant elected to take.

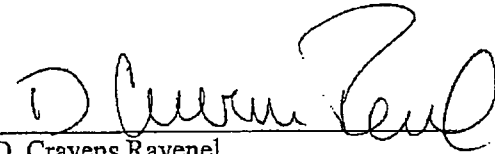
13. Defendant owed plaintiff a duty of care and was required to exercise the competence and diligence normally exercised by lawyers in similar circumstances in representing plaintiff.

14. Defendant's failure to anticipate and provide for reimbursement for any reduction in support achieved by the defendant voluntarily reducing his Military retirement pay by seeking disability payments that dollar for dollar reduced the retirement pay subject to Court ordered support thereby depriving plaintiff of support ordered by the Court without any net change in her husband's income constituted a failure on the part of defendant to exercise the competence and diligence normally exercised by lawyers in similar circumstances and resulted in financial loss that was reasonably anticipated and preventable by the exercise of the due care reasonably

expected of lawyers under such circumstances. See the attached Exhibit A, Affidavit of Mark Sullivan.

15. Defendant's lack of due care, lack of competence and lack of diligence directly and proximately caused and is continuing to cause otherwise avoidable financial loss to the plaintiff by reducing her monthly share of her husband's retirement provided by Order of the Family Court.

WHEREFORE, plaintiff demands a trial by jury and judgment against defendant for actual damages, including the fees paid to defendant for her representation and for past and future loss directly and proximately caused by the absence of an agreement to indemnify and for costs of this action, and for such other and further relief as this Court deems just and proper.



D. Cravens Ravenel
BAKER, RAVENEL & BENDER, LLP
3710 Landmark Drive, Suite 400
Post Office Box 8057
Columbia, South Carolina 29202
Telephone: (803) 799-9091
Facsimile: (803) 779-3423
cravenel@brblegal.com; Our File: 10743
Attorneys for Plaintiff

December 21, 2012
Columbia, South Carolina

EXHIBIT A

Affidavit of Mark E. Sullivan

HATTIE GREENE CASE: AFFIDAVIT OF MARK E. SULLIVAN

I, Mark E. Sullivan, declare under penalty of perjury the following:

Qualifications

1. I am an attorney licensed to practice in North Carolina. I have been certified since 1989 as a family law specialist by the North Carolina Board of Legal Specialization. I am a retired Army Reserve JAG colonel and author of The Military Divorce Handbook: A Practical Guide to Representing Military Personnel and Their Families (ABA, 2d Ed. 2011).
2. Since 1986, I have been a regular instructor at the Army JAG School (Charlottesville, VA) for military pension division, and I was named an Honorary Lifetime Faculty Member in 2002. In 2003, I began a regular rotation of teaching military pension division at the Naval Justice School in Newport, RI.
3. I served as a member of the Department of Defense panel of experts on revising the Former Spouses' Protection Act in 1997 and was also a member of the ABA President's Commission on Protecting the Rights of Servicemembers in 2003.
4. I am a past-chair of the Military Committee, ABA Section of Family Law, and I served as Director of the N.C. State Bar's Military Committee, which I helped form in 1981.
5. In 2002, I was awarded the Legion of Merit upon my retirement from the Army Reserve. The text of the award recognized me as "The Army's foremost expert in family law." I have also taught numerous bar association CLE programs on the topic, and I have been writing articles and teaching classes on military pension division since 1983.
6. I have been accepted as an expert for military pension division and given oral testimony in cases in Alabama, Ohio, and Maryland. I was recognized as a national expert in military pension division in a 2011 Minnesota Court of Appeals decision. In New York and South Carolina, I have provided expert testimony regarding military pension division calculations by means of an affidavit.
7. I have prepared military pension division orders for attorneys in 33 states.

8. In 2007, I wrote a successful appellate brief for an attorney in Tennessee in a military pension division and survivor benefits case, *Sullivan v. Sullivan*, 2008 Tenn. App. LEXIS 195.

Background

9. I was originally contacted by Cravens Ravenel, the attorney for Hattie Mae Greene, at the end of July 2012, in regard to the court's refusal to allow her reimbursement for the reduction in her share of her ex-husband's military pension. I have reviewed several packets of information from Mr. Ravenel's office, including court documents, the hearing transcript, correspondence and handwritten appeals by Ms. Greene. I have also spoken to Mr. Ravenel about the facts of the case and what he knows from his client. Based on this, it is my professional opinion that there was a significant omission in the court's Order of Separate Support and Maintenance dated October 15, 2002, and this was detrimental to Ms. Greene. Ms. Greene's attorney should have anticipated the problem, prepared an argument to address it, and asked the court in closing argument to order an indemnification clause to protect her client. She did not do this.

Facts: Greene v. Greene, Dorchester County, SC (2001-DR-18-124)

10. The relevant facts in this case are as follows –
- a. The defendant, Mr. Greene, entered active duty in May 1978. The parties were married in October 1981. Mr. Greene retired in 1998 with twenty years of creditable service, 17 of which were marital.
 - b. The court divided Mr. Greene's Navy retired pay in an "Order of Separate Support and Maintenance" filed October 15, 2002. Cindy Floyd represented Ms. Greene, and W. Scott Palmer represented Mr. Greene. Judge William J. Wylie, Jr. presided at the May 14, 2002 hearing, and he signed the order.
 - c. The order makes no mention of an evidentiary hearing, testimony or evidence. The relevant sentences in the order read:

At the call of the case, this Court inquired as to whether any of the pending issues had been resolved, to which both parties, through their attorneys, replied in the negative. This court then heard arguments from both counsel, and then issued its ruling.

- d. The court granted 60% of the defendant's military retirement to his wife, Ms. Greene. The affiant has read the transcript of the court session, and his summary thereof is found at ATCH 1, which is incorporated herein.
- e. Recognizing that the retired pay center would only honor an award of 50%, the judge ordered Mr. Greene to make up the difference by paying the remaining 10% directly to the plaintiff each month. See Para. 9.c. (Military Retirement).
- f. Judge Wylie signed an order implementing this pension division ("Supplemental Order Division of Military Retired Pay") on November 8, 2002. This order directed the Defense Finance and Accounting Service (DFAS) to pay to Ms. Greene 60% of the "disposable retired pay" of defendant. This was found to be equivalent to \$798 per month, which means that the retired pay of defendant was \$1,330 monthly.
- g. The parties were divorced pursuant to a divorce decree which was signed October 24, 2003 by Judge Judy C. Bridges,
- h. Ms. Greene states that she has found that the share of retired pay sent from DFAS has diminished, and she has attempted to obtain relief from the court. Her most recent attempt was initiated in a Rule to Show Cause, which resulted in an Order Rule to Show Cause dated April 12, 2012. In that order, the court found that:
 - i. Defendant's retired pay is \$1,701 per month.
 - ii. Plaintiff's 60% share of that would be \$1,020.60.
 - iii. Defendant was being paid for a disability; his "disability benefit" was \$662 per month.
 - iv. This amount was deducted from his retired pay, leaving \$1,039 a month.
 - v. Plaintiff's 60% of this sum would yield \$623.40 a month.
 - vi. Plaintiff testified that she was currently receiving \$539.50, which is \$83.90 less than 60% of \$1,039.

- vii. The court found that plaintiff's entitlement was "based on the current retirement benefit of \$1,039."

Analysis – Contents of Court Orders

11. The court initially divided the pension of defendant in its "Order of Separate Support and Maintenance." The subsequent military pension division order ("Supplemental Order Division of Military Retired Pay") implemented the original decision. The problem with the military pension division in the court's initial order is that the court failed to order an *indemnification clause* in case the defendant elected to receive disability compensation and that choice resulted in a reduced share of the pension for plaintiff.

Analysis - Indemnification

12. Indemnification and disability payments are interrelated; they represent a common issue in military retired pay cases.
- a. When a military retiree (in this case, Mr. Greene) elects disability pay, this choice can have a detrimental effect on the funds received by the former spouse. And the consequence is without the consent of the former spouse.
 - b. The usual disability compensation received is money from the Department of Veterans Affairs. This VA disability compensation is paid to a veteran to compensate for his service-connected disabilities.
 - c. If the rating for his disabilities is less than 50%, then the election means that the same amount of money is taken out of from his retired pay. He receives a check for the VA disability compensation from the Department of Veterans Affairs, but he loses the same amount of money from his retired paycheck. In the end, however, the retiree is ahead – because the VA money is tax-free, whereas the military pension is taxed just as any other deferred compensation payment is.
 - d. Since this is a substantial potential problem for the former spouse of any military retiree, those who teach and write about this subject have for many years suggested the use of a reimbursement mechanism to avoid the problem of reduced payments without

the consent of the former spouse. There are cases going back to the 1980's addressing this problem. The inclusion of an indemnification clause in the court's order would require the retiree to reimburse the former spouse for any shortfall in her share of retired pay.

13. Here is an example of how disability pay would impact military pension payments for a spouse or former spouse:
 - a. Assume that the retiree gets \$2,000 a month for his military pension, with no election of Survivor Benefit Plan, and the pension is 100% marital. The judge awards 60% of the pension to the wife, made up of 50% from DFAS and 10% from the retiree. Each month the wife is supposed to receive \$1,000 from DFAS and \$200 from her former husband, for a total of \$1,200. This is what the judge intended - \$1,200 a month.
 - b. If the retiree elects receipt of VA disability compensation, however, and his rating is less than 50%, then there is a reduction. His payment from VA (assumed to be \$600 in this example) is deducted from his retired pay before it is divided. That means that DFAS will only send 50% of the net amount (called the "disposable retired pay") to the ex-wife.
 - c. This net amount is \$2,000 - \$600, or \$1400. Thus DFAS will send 50% of that amount (\$1,400), or \$700 a month, to the former spouse (not \$1,000 a month, as the court intended).
 - d. The court's inclusion of a *reimbursement clause*, however, would give any judge in the future who presided at an enforcement hearing the appropriate tool to use in compelling defendant to pay the difference due (\$300) to the former spouse.
14. If the judge in this case had included an indemnification clause in the court's division of military retired pay, this would ensure that Mr. Greene could not unilaterally deprive his former spouse of marital property given to her in a court order. The most likely way in which the judge would have been informed about this issue is for the wife's attorney to make that argument to the court.

15. Such an indemnification clause need not be extensive or complicated. It can be as straightforward as:

>The court intends that the wife will receive her pension share based on the full military retired pay of the husband, without reduction for disability payments.

>If the husband does anything that reduces the share or amount of his military retired pay given herein to the wife, then he shall promptly reimburse her for the loss.

16. The former spouse would thus have a remedy in the trial court for reimbursement directly from the retiree, since the judge awarded her a share of *the military retirement*, not the defendant's *net pay after deductions*. She could petition the court for reimbursement through an order of enforcement. Price v. Price, 325 S.C. 379, 480 S.E.2d 92 (1996).
17. Since the court in April 2012 did not have the guidance of an order which contained an indemnification clause (stating what would happen if the defendant cut his ex-wife's share of the pension by electing VA disability compensation), the resulting Order Rule to Show Cause only gave Ms. Greene 60% of the net pay of Mr. Greene – not 60% of his military retirement.
18. Ms. Greene should have received \$1,020.60, consisting of \$539.50 from DFAS and the rest in the form of defendant's 10% of the 60% award, plus his indemnification payment, from the defendant himself.

Case Review

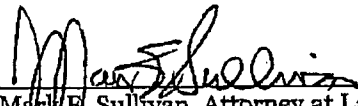
19. After reviewing the transcript of the hearing (ATCH 1), it is important to note that counsel for Ms. Greene should have argued for reimbursement on behalf of her client – an indemnification clause in case the pension suffered a reduction due to disability payments. The attorney failed to protect her client by not asking the judge for the indemnification clause that Ms. Greene needed. Her failure to educate the judge about the VA disability issue and the need for indemnification, and to request indemnification from the court as part of the order granted, was a breach of the duty of care required of a reasonably competent South Carolina attorney.
20. The attorney for Ms. Greene should have properly and fully informed the court of the need for an indemnification clause and the danger of harm to Ms. Greene's share of the military pension.

The attorney should have educated the judge about Mr. Greene's gaining an increased disability rating, as apparently occurred here. The attorney should have told the judge about the facts and the holding in Price v. Price. The attorney should have informed the judge of the impact of post-decree actions by Mr. Greene [accepting increased VA payments if his disability rating went up] upon Ms. Greene's share of the divided pension. If these things had been done, it is my opinion, with a reasonable degree of certainty, that the court would have granted relief for Ms. Greene in the form of an indemnification clause as the best way to protect her from destruction of part of her pension share due to the unilateral post-decree actions of Mr. Greene.

21. If the court heard such arguments and denied them, then it was incumbent on Ms. Greene's attorney to advise her on the state of the law in South Carolina and advise on an appeal.
22. I am over age 18 and am competent to testify to the matters stated herein.

This is the end of my affidavit.

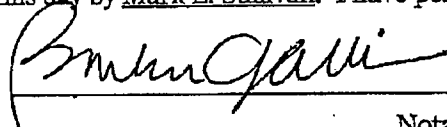
Date: 10/31/12


Mark E. Sullivan, Attorney at Law
Law Offices of Mark E. Sullivan, P.A.
2626 Glenwood Ave., Suite 195, Raleigh, NC 27608
Phone: (919) 832-8507

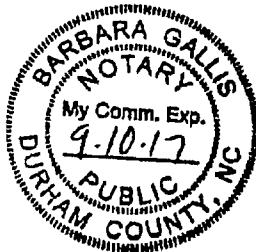
STATE OF NORTH CAROLINA
WAKE COUNTY

Sworn to and subscribed before me this day by Mark E. Sullivan. I have personal knowledge of the identity of the principal.

Date: 10.31.12


....., Notary Public

(Official Seal)



My commission expires: 9-10-17

ATCH 1 to HATTIE GREENE CASE: AFFIDAVIT OF MARK E. SULLIVAN

SUBJECT: Trial transcript, Hattie Greene v. Joseph Greene, 01-DR-18-0124, Summerville (Dorchester Co.), S.C., May 14, 2002

1. The salient facts regarding my review of this transcript are:
 - a. The parties married 10/17/1981 and Mr. Greene ("husband") retired from the Marine Corps as an E-7 in June 1998, with about 17 years of creditable service during the parties' marriage. He was in the military for 20 years.
 - b. Ms. Greene ("wife") did not want a divorce because of loss of medical benefits, which would mean Tricare and also medical treatment on-base.
 - c. She testified that what her husband received for military pension payments was on the Financial Declaration that was filed with the court.
 - d. The judge had each declaration notarized during the 5/14/02 court hearing. The husband's declaration shows \$1,330 as retirement, with a "deduction" of about \$128 from retirement. This is likely his VA disability waiver. The VA waiver is an amount deducted from his military retired pay reflecting the existing of a service-connected disability and the receipt of VA disability compensation. That amount was, in 2002, deducted dollar-for-dollar against the military pension; it still is today if the VA rating is less than 50%. Increased disability ratings mean increase payments of VA disability compensation.
 - e. Wife claimed that husband was getting \$1,296 a month from his military retired pay. Husband said that he was getting \$1,163 after tax each month; he said he was getting either \$1,330 or \$1,500 before taxes.
 - f. Husband indicated that he had no health problems.
 - g. Ms. Floyd questioned Mr. Greene about medical coverage on page 117, and her questions/statements show that she had sufficient knowledge of the requirement that -- for military medical coverage through Tricare -- there had to be 20 years of marriage, 20 years of military service and an overlap of at least 20 years for these two.
 - h. Ms. Floyd initially declined to make a closing argument. Later on, in response to Mr. Palmer's argument, she made an argument which took less than a page of transcript text and was confined to the "girlfriend issue" involving Mr. Greene.
2. The time for argument on INDEMNIFICATION was at closing. Rather than waiving final argument, as Ms. Floyd initially did, or confining her summation to a response to Mr. Palmer in regard to Mr. Greene's "girlfriend," she should have argued that:
 - a. Wife was entitled to half of the marital share of the pension.
 - b. Her payment should come from DFAS (Defense Finance and Accounting Service) in Cleveland, Ohio (the locations for DFAS Garnishment Operations), since the parties were married for over 10 years during which the husband performed 10 years of creditable military service.
 - c. The pension division should be set out in a military pension division order.

- d. Wife was entitled to an order that required husband to reimburse her for any disability deduction from his pension, since the VA election (and any increase in his VA rating) by husband would have an adverse effect on the wife's share of the pension. This election means a decrease in his disposable retired pay (gross retired pay - VA disability compensation = disposable retired pay).
- e. This was a serious omission, since it meant that the wife could not argue for this in her later attempt to obtain her full share of the pension. The indemnification issue was not addressed in the court's subsequent contempt decision. Without any guidance on this, the court has held that Ms. Greene is not entitled to any pay-back for the reductions which husband has caused due to his electing to receive VA disability compensation payments (or increased VA payments).

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO.: 2012-CP-10-08372
Hattie Mae Greene,	)	
	)	AMENDED ANSWER
Plaintiff,	)	ON BEHALF OF
	)	CINDY M. FLOYD
vs.	)	
	)	
Cindy M. Floyd,	)	
	)	
Defendant.	)	

TO: D. CRAVENS RAVENEL, ESQUIRE, COUNSEL FOR THE PLAINTIFF:

The Defendant Cindy M. Floyd ("Floyd"), by and through her undersigned attorneys, denying all allegations not hereinafter specifically or expressly admitted and reserving all rights to amend this pleading pursuant to South Carolina Rule of Civil Procedure 15(a), hereby answers the Plaintiff's Complaint by alleging as follows:

FOR A FIRST DEFENSE

1. Defendant Floyd lacks sufficient information and knowledge to form a belief as to the trust of the allegations in Paragraph 1 of Plaintiff's Complaint and therefore denies the allegations.
2. In answering the allegations in Paragraph 2 of Plaintiff's Complaint, Defendant Floyd admits that she is a citizen and resident of the County of Charleston, State of South Carolina.
3. Defendant Floyd admits the allegations contained in Paragraph 3 of Plaintiff's Complaint.

4. Defendant Floyd denies the allegations contained in Paragraph 4 of Plaintiff's Complaint as stated. The allegations of Paragraph 4 of Plaintiff's Complaint constitute conclusions of law, which need be neither admitted nor denied.

5. Defendant Floyd admits the allegations contained in Paragraph 5 of Plaintiff's Complaint.

6. Paragraph 6 of Plaintiff's Complaint constitutes conclusions of law to which no response is required. To the extent that a response is required, Defendant Floyd denies the allegations, but she alleges that she was aware at all times of those principles of law of which a reasonably competent marital litigation attorney would have been aware.

7. In answering Paragraph 7 of Plaintiff's Complaint, Defendant Floyd admits that she represented the Plaintiff at a hearing where marital property was to be divided. In further answering the allegations contained in Paragraph 7 of Plaintiff's Complaint, Defendant Floyd denies the allegations and demands strict proof thereof.

8. In answering the allegations in Paragraph 8 of Plaintiff's Complaint, Defendant Floyd admits that the Supplemental Order Division of Military Retired Pay was signed by the Family Court Judge on November 8, 2002. With regard to the provisions of that Order, Defendant Floyd craves reference to the Supplemental Order Division of Military Retired Pay that was signed on November 8, 2002, and denies any allegations contained in Paragraph 8 of Plaintiff's Complaint that are inconsistent therewith. The remaining allegations of Plaintiff's Complaint constitute conclusions of law to which Defendant Floyd is neither required to admit or deny. To the extent that a response is required, Defendant Floyd denies the remaining allegations contained in Paragraph 8 of Plaintiff's Complaint.

9. Defendant Floyd lacks sufficient information and knowledge to form a belief as to the truth of the allegations in Paragraph 9 of Plaintiff's Complaint and therefore denies those allegations.

10. Defendant Floyd denies the allegations in Paragraph 10 of Plaintiff's Complaint and demands strict proof thereof.

11. Defendant Floyd denies the allegations in Paragraph 11 of Plaintiff's Complaint and demands strict proof thereof.

12. The allegations in Paragraph 12 of Plaintiff's Complaint constitute conclusions of law to which Defendant Floyd is neither required to admit nor deny. To the extent that a response is required, Defendant Floyd denies the allegations in Paragraph 12 of Plaintiff's Complaint.

13. The allegations in Paragraph 13 of Plaintiff's Complaint constitute conclusions of law to which Defendant Floyd is neither required to admit nor deny. To the extent that a response is required, Defendant Floyd denies the allegations in Paragraph 13 of Plaintiff's Complaint.

14. Defendant Floyd denies the allegations in Paragraph 14 of Plaintiff's Complaint and demands strict proof thereof.

15. Defendant Floyd denies the allegations in Paragraph 15 of Plaintiff's Complaint and demands strict proof thereof.

16. Answering the WHEREFORE paragraph, Defendant Floyd denies the allegations.

FOR A SECOND DEFENSE
AND BY WAY OF AFFIRMATIVE DEFENSE
(Statute of Limitations)

17. The Plaintiff's claims are barred by the applicable statute of limitations.

FOR A THIRD DEFENSE
AND BY WAY OF AFFIRMATIVE DEFENSE
(Punitive Damages)

18. Any award of punitive damages to the Plaintiff would violate the Constitutional safeguards provided Defendant by the due process clause of the 14th Amendment of the United States constitution and under the due process clause of Article 1, Section 3 of the South Carolina Constitution. The determination of punitive damages does not bear any reasonable relationship between that of actual damages, if any, suffered by or awarded to Plaintiff.

FOR A THIRD DEFENSE
AND BY WAY OF AFFIRMATIVE DEFENSE
(Contributory/Comparative Negligence)

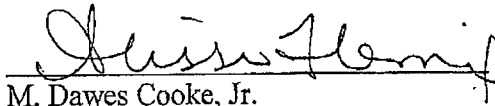
19. Any damages suffered by Plaintiff are the direct and proximate result of their own contributory and/or comparative negligence in (1) failing to inform the Defendant of all important facts, including but not limited to facts concerning her husband's physical condition and the likelihood that he would qualify for disability payments; and (2) failing to timely retain competent legal counsel to represent her after she learned that her Joseph Greene was receiving disability payments. Therefore, Plaintiff's recovery should be barred or alternatively, reduced proportionally to Plaintiff's comparative negligence.

FOR A FOURTH DEFENSE
AND BY WAY OF
AFFIRMATIVE DEFENSE

20. Defendant Floyd reserves any additional and further defenses as may be revealed by additional information through the course of discovery and investigation in a manner that is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered the Plaintiff's Complaint, Defendant Cindy M. Floyd, prays that the same be dismissed with costs and for such other and further relief as this Court may deem just and proper.

BARNWELL WHALEY
PATTERSON & HELMS, LLC



M. Dawes Cooke, Jr.

Alissa D. Fleming

288 Meeting Street, Suite 200 (Zip: 29401)

P.O. Drawer H

Charleston, SC 29402

(843) 577-7700

mdc@Barnwell-Whaley.com

afleming@Barnwell-Whaley.com

ATTORNEYS FOR THE DEFENDANT

Dated: March 11, 2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A No.: 2012-CP-10-8372

Hattie Mae Greene,	)	
	)	
Plaintiff,	)	DEFENDANT'S
	)	NOTICE OF MOTION AND
vs.	)	MOTION FOR SUMMARY
	)	JUDGMENT
	)	
Cindy M. Floyd,	)	
	)	
Defendant.	)	
_____	)	

The Defendant, Cindy M. Floyd (hereinafter "Attorney Floyd"), by and through her undersigned counsel, in accordance with Rule 56, SCRCP, hereby submits this Motion for Summary Judgment on the grounds that there is not a scintilla of evidence to support necessary elements of Plaintiff's claims, specifically that the Defendant failed to exercise proper judgment as a family lawyer or that making other decisions would have yielded a better result for the Plaintiff.

INTRODUCTION

This is an action for legal malpractice. Cindy M. Floyd has practiced law since 1987, and she has devoted most of her practice to Family Law. In 2002, she represented the Plaintiff in a proceeding for division of marital property with Plaintiff's now ex-husband, who is a retired Marine. The representation resulted in an Order of Separate Support and Maintenance, which awarded Plaintiff 60% of her now ex-husband's "military retirement." This was an extraordinarily favorable result in a contested trial. Almost ten years after the Order was entered, Plaintiff's ex-husband applied for and began receiving VA disability compensation. Because federal law prohibits equitable

division of disability compensation, Plaintiff began receiving less money than she had before the onset of the disability.

Plaintiff claims that the Defendant Attorney Floyd was negligent in failing to request that the family court include in its 2002 Order either a division of "gross retired pay" or an indemnification clause which would make Plaintiff's ex-husband responsible to compensate her in the event that her 60% share of his military retirement income was decreased. This would have been impossible under federal and South Carolina law. Federal law prohibits family courts from equitably dividing VA disability compensation, and the South Carolina Court of Appeals has held that South Carolina family courts lack jurisdiction to do so. Plaintiff's expert, while an expert in military family law, is not licensed in South Carolina. He posits that the Defendant Floyd should have asked the family court to include a provision in its Order effectively circumventing the law by defining the fund to be divided to include disability compensation or by requiring Mr. Greene to "indemnify" Ms. Green if her payments from his retirement pay should ever be reduced. In other words, even though the judge could not order that any part of Mr. Greene's future disability compensation be paid to Ms. Green, Plaintiff's expert believes the court might achieve the same result by dividing Mr. Greene's "gross retired pay" and defining it to include disability compensation, or simply by ordering Mr. Green to remit a portion of his disability compensation to Ms. Green. He admits that he cannot say whether Defendant Floyd could have persuaded the judge to include such a provision, or even whether this would be permissible under South Carolina law. In fact, as will be shown below, South Carolina law does not allow what Plaintiff's expert proposes -- to order indirectly what the law prohibits the courts from ordering directly.

The Defendant Floyd is entitled to judgment as a matter of law because there is no evidence that she could have persuaded the family court judge to include an improper equitable division provision in his Order and there is no evidence that Ms. Floyd was negligent for not trying to do so.

FACTS¹

Plaintiff alleges that she retained Attorney Floyd to represent her in connection with a divorce and division of martial assets. Compl. ¶3. Attorney Floyd represented Plaintiff at a hearing to divide martial property. Compl. ¶7. The 2002 Order following the hearing directed that Plaintiff would receive 60% of her husband's "military retirement" (attached hereto as Exhibit A). Compl. ¶8. Subsequently, Plaintiff's husband began receiving \$662 per month in disability benefits, which decreased his "Disposable Retired Pay"² and, thus, decreased the Plaintiff's 60% payment. Compl. ¶9. Specifically, Plaintiff claims that she should receive \$1,020.60 per month, which is 60% of her ex-husband's \$1,701 gross retired pay. *Id.* Instead, Plaintiff claims she now receives only \$623.40 per month, which is 60% of her ex-husband's \$1,039 Disposable Retired Pay, after his \$662 disability compensation is subtracted from his \$1,701 gross retired pay. *Id.*

During the discovery phase of this action, which ended on April 29, 2014, pursuant to the Amended Consent Scheduling Order, Plaintiff identified only one expert witness, Mark E. Sullivan, an attorney licensed to practice in North Carolina. Sullivan was deposed on December 19, 2013 and testified as follows³:

¹ The following recitation of facts are stated in a light most favorable to the Plaintiff, the non-moving party.

² Disposable Retired Pay is what the Defense Finance Accounting Service pays to a veteran and/or their spouse after any deductions, including disability pay, are deducted from the veteran's "Gross" or "Total" Retired Pay.

³ The full transcript of Mr. Sullivan's deposition is attached hereto as Exhibit B.

- He is not nor has he ever been licensed to practice in South Carolina. 5:7-15
- The opinions he developed are that Attorney Floyd failed to carry out her duty to protect the Plaintiff by: (1) failing to argue at the hearing that the Court should include an indemnification clause in the 2002 Order; and (2) failing to ensure that the 2002 Order divided "gross retired pay." 39:5-40:5.
- He is not aware whether indemnification clauses are routinely included in court orders in South Carolina. 45:9-13.
- He admitted that the South Carolina family Court does not have jurisdiction to divide disability pay. 53:13-15.
- He could not identify any South Carolina case law which addresses the propriety of an indemnification clause's inclusion in an order dividing marital property. 53:22-54:4.
- He has no understanding of how a South Carolina Family Court Judge in 2002 would issue an order dividing marital property. 55:3-6.
- He was clear at various points that he is not knowledgeable as to South Carolina law regarding division of marital property. 56:13-14; 56:20-21; 57:10-16; 59:14-16.
- Q: Okay. Now is it your opinion to a reasonable degree of certainty most probably that had Cindy Floyd made an argument for the inclusion of an indemnification clause, that the judge would have incorporated that clause into the final order?
A: I can't say that. I don't know what the judge would have done. 58:5-10
- Q: Okay. And likewise, is it your opinion to a reasonable degree of certainty most probably that had Cindy Floyd argued for the division of the gross military retired pay rather than the disposable retired pay, that the judge would have incorporated that specific term into the order?
A: Again, I don't know what the judge would have done. 58:12-19.
- Q: Okay. So had the judge refused to allow for the inclusion of an indemnification clause and Hattie Greene had the opportunity to consult with Cindy Floyd about the potential for an appeal, can you say to a reasonable degree of certainty most probably whether that denial of the

inclusion of an indemnification clause would have been successfully appealed?

A: I don't know. 59:25-60:8.

- Q: Likewise, if the judge had refused to incorporate the language regarding gross retired pay rather than disposable retired pay into the final order and Hattie had the opportunity to discuss with Cindy Floyd the possibility of an appeal, can you say to a reasonable degree of certainty most probably whether that issue would have been successfully appealed?

A: I cannot. 60:13-21.

ARGUMENT

To recover for legal malpractice, a plaintiff must prove the following: (1) the existence of an attorney-client relationship, (2) a breach of duty by the attorney, (3) damage to the client, and (4) proximate cause of the client's damages by the breach. Harris Teeter, Inc. v. Moore & Van Allen, PLLC, 390 S.C. 275, 282, 701 S.E.2d 742, 745 (2010). The plaintiff must prove that she "most probably would have been successful in the underlying suit if the attorney had not committed the alleged malpractice." Summer v. Carpenter, 328 S.C. 36, 42, 492 S.E.2d 55, 58 (1997); Doe v. Howe, 367 S.C. 432, 442, 626 S.E.2d 25, 30 (Ct. App. 2005).

The question of the success of the underlying claim, if suit had been brought, is a question of law. Manning v. Quinn, 294 S.C. 383, 386, 365 S.E.2d 24, 25 (1988) (holding in a legal malpractice case that the likelihood of success of action that the plaintiff alleged the defendant should have taken was a question of law "and decision of that question on summary judgment motion is appropriate"); Doe v. Howe, 367 S.C. at 442, 626 S.E.2d at 30. Here, Plaintiff has not produced a scintilla of evidence that she would have been more successful in the underlying action had Attorney Floyd not committed the alleged malpractice.

The United States Supreme Court, in Mansell v. Mansell, addressed the relationship between a retired serviceman's retirement pay and disability benefits as follows:

Members of the Armed Forces who serve for a specified period, generally at least 20 years, may retire with retired pay. . . . Veterans who became disabled as a result of military service are eligible for disability benefits. . . . In order to prevent double dipping, a military retiree may receive disability benefits only to the extent that he waives a corresponding amount of his military retired pay. . . . Because disability benefits are exempt from federal, state, and local taxation, . . . military retirees who waive their retirement pay in favor of disability benefits increase their after-tax income. Not surprisingly, waivers of retirement pay are common.

490 U.S. 581, 583-84 (1989) (internal citations omitted).

The Uniform Services Former Spouses' Protection Act (hereinafter "the Act") authorizes state courts to treat "disposable retired pay" as marital property that can be divided upon a couples' divorce or separation. 10 U.S.C. § 1408(c)(1); Mansell, 490 U.S. at 584. The Act defines "disposable retired pay" as total monthly retired pay minus certain deductions, which deductions include any amount waived in order to receive disability benefits. 10 U.S.C. § 1408(a)(4)(B); Mansell, 490 U.S. at 585. Accordingly, the Mansell Court reached the conclusion that the Act "does not grant state courts the power to treat as property divisible upon divorce military retirement pay that has been waived to receive veterans' disability benefits." 490 U.S. at 594-95. The Mansell Court recognized the harsh result the Act could have on former spouses, yet declined to rule in opposition of Congress' intent. Id.

The South Carolina Court of Appeals, in Price v. Price, recognized Mansell's directive that "disability benefits may not be equitably divided in a divorce proceeding" and that "[w]hile the Act allows state courts to treat *disposable* retired pay as divisible

property, courts do not have the authority to treat *total* retired pay as divisible property. 325 S.C. 379, 380, 480 S.E.2d 92, 92 n.2 (1996) (emphasis in original). It is thus crystal clear that the family court did not have jurisdiction to grant Ms. Greene the relief that her expert says Attorney Floyd should have demanded on her behalf.

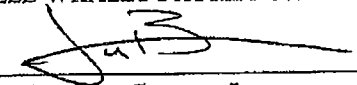
In order to succeed in this malpractice action, the Plaintiff would not only have to prove that Attorney Floyd breached her duty owed to the Plaintiff by failing to argue to and persuade the Family Court to include in its 2002 Order an indemnification clause or a division of "gross retired pay," but also that, had Attorney Floyd done so, such language would have most probably been included in the Order and the Plaintiff would have obtained a better result. See Harris Teeter, Inc., 390 S.C. at 290, 701 S.E.2d at 749-50 (granting summary judgment to defendant attorney where one of plaintiff's expert witnesses testified that, had defendant attorney not breached the standard of care, plaintiff's "percentage of success [in the underlying action] would have been greater," and plaintiff's other expert testified that it would be "speculation" as to whether the plaintiff would have been successful in the underlying action, but neither expert testified that the underlying action most probably would have had a better result if not for the defendant attorney's alleged malpractice); Doe v. Howe, 367 S.C. at 445-46, 626 S.E.2d at 31-32 (granting summary judgment to defendant attorney where plaintiff's expert testified that plaintiff most probably would have been successful in certain aspects of the underlying action had defendant attorney not been negligent as alleged, but where plaintiff's expert failed to testify that plaintiff most probably would have obtained a better result in the underlying action had defendant attorney not been negligent as alleged).

Plaintiff's only expert, Mark Sullivan's, opinions fall woefully short of the standard required to pass summary judgment. Mr. Sullivan is an advocate for aggressive, innovative efforts to circumvent the federal prohibition against equitable division of VA disability compensation benefits. However, he could not opine that, had Attorney Floyd requested the inclusion of an indemnification clause or the division of "gross retired pay" in the Order, the Plaintiff most probably would have enjoyed a better result in the underlying action. Ms. Floyd achieved a remarkable result for the Plaintiff, getting her sixty percent of her ex-husband's future retirement pay, whereas the norm is fifty percent of the marital share, which would have been forty-two percent in this case. She was powerless to stake a claim to future VA disability compensation. Plaintiff has failed to produce a scintilla of evidence to support negligence or causation in this case, and Defendant Cindy Floyd is therefore entitled to summary judgment as a matter of law.

CONCLUSION

Plaintiff's case fails as a matter of law, and Attorney Floyd is entitled to summary judgment as to the entire case.

BARNWELL WHALEY PATTERSON & HELMS, LLC

By: 

M. DAWES COOKE, JR.

ALISSA FLEMING

JEFFREY M. BOGDAN

Post Office Drawer H

Charleston, SC 29402

Tel: (843) 577-7700

Fax: (843) 577-7708

Email: mdc@barnwell-whaley.com

jbogdan@barnwell-whaley.com

ATTORNEYS FOR DEFENDANT CINDY FLOYD

Charleston, South Carolina
May 1, 2014

Exhibit A

Joseph Greene 201 204 011

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

HATTIE MAE GREENE,

Plaintiff,

vs.

JOSEPH GREENE,

Defendant.

IN THE FAMILY COURT

CASE NUMBER: 2001-DR-18-124

ORDER OF
SEPARATE SUPPORT
AND MAINTENANCE

2002 MAY 15 PM 1:16

DATE OF HEARING:

MAY 14, 2002

PRESIDING JUDGE:

THE HONORABLE WILLIAM J. WYLIE, JR.

PLAINTIFF'S ATTORNEY:

CINDY FLOYD, ESQUIRE

DEFENDANT'S ATTORNEY:

W. SCOTT PALMER, ESQUIRE

COURT REPORTER:

DINAH DeCELL

This matter came before me pursuant to a Summons and Complaint, which was accompanied by a Notice of Motion and Motion for Temporary Relief, wherein the Plaintiff sought pendente lite relief, in the form of child custody and support, alimony, spousal support, equitable distribution, and attorney's fees. A temporary hearing was held in this matter on June 19, 2001, which resulted in a Temporary Order signed by the Honorable Nancy Chapman McLin.

Both parties were present at the May 14th hearing, and were represented by their respective counsel of record. At the call of the case, this Court inquired as to whether any of the pending issues had been resolved, to which both parties, through their attorneys, replied in the negative. This Court then heard arguments from both counsel, and then issued its ruling.

FINDINGS OF FACT:

Based upon the evidence and testimony presented to me, and record, I find and conclude as follows:

Joseph Greene 25 23-6399

Greene v. Greene: 2001-DR-18-124

1. That the Plaintiff is a citizen and resident of the County of Charleston, State of South Carolina.
2. That the Defendant is a citizen and resident of the County of Dorchester, State of South Carolina.
3. That the parties are husband and wife, having been married on October 17, 1981 in Charleston, South Carolina.
4. That two (2) children were born of this marriage, namely: Lankencia Green, date of birth, December 14, 1976; and Joseph Greene, Jr., date of birth, August 11, 1984.
5. Based upon the evidence and my review of the file, I find that jurisdiction and venue are proper and the parties and subject matter are properly before me.
6. That the Plaintiff should be granted custody of the parties' minor son, with reasonable visitation granted unto the Defendant, to be conducted in accordance with the "Standard Visitation Schedule", attached hereto and incorporated herein, and subject to restrictions voted;
7. That the Defendant should be obligated to pay child support directly to the Plaintiff, pursuant to the DSS Guidelines, and as set forth on the enclosed Guidelines Worksheet, which is incorporated into this Final Order. The Defendant's monthly child support obligation shall be \$300.00. The first payment of child support under this Order shall be due commencing July 15, 2002, and shall be payable directly to the Plaintiff. However, should the Defendant be at least five (5) days late in making a payment, Plaintiff shall be given leave to file an affidavit with the Clerk of Court, attesting to the late payment, and shall serve a copy to Defendant, whose child support payments shall thereafter be made through the Clerk of Court with the required 5% service charge. This child support award shall terminate as of August 12, 2002, the date the parties child

Joseph Greene

Greene v. Greene; 2001-DR-18-124

reached the age of majority, and, therefore, became emancipated.

8. That the parties should each pay one-half (1/2) of the son's college expenses (tuition, room and board, books, fees) not covered by scholarships, grants, loans and other financial aid. Further, that the parties should pay for these expenses before the deadline for tuition payments each semester;

9. Marital Property: That all marital property should be divided 60/40 in favor of the Plaintiff, due to the Defendant's marital misconduct.

a. Marital Home: The Plaintiff should remain in the marital home, but should pay all costs associated with the home. The marital estate consists of the marital component of both parties' retirements and the equity in the marital home, which I find to be \$25,000.00, calculated from the fair market value (FMV) of the home, of \$66,500.00 less the total of the two (2) mortgages, equaling \$41,500.00. The Defendant's valuation of the marital home is rejected, as the Defendant admitted his figure was "speculation". Therefore, the Defendant shall be entitled to forty (40%) percent of the equity of \$25,000.00, equaling \$10,000.00. The parties shall, within sixty (60) days of the date of the signing of this Order, effectuate the division of the property identified as constituting the marital estate;

b. Parties' Retirement: The Plaintiff, as of the date of filing, had a 401(k) profit sharing plan with Quest Diagnostics, with a value of \$4,777.70. The parties' shall divide this account, with sixty (60%) percent, or \$2,866.62 to the Plaintiff, and forty (40%) percent, or \$1,911.08 to the Defendant. The Defendant shall be paid his forty (40%) percent of that retirement within sixty (60) days of the date of this Court Order. That, payment should be made by Qualified Domestic Relations Order (QUADRO);

Joseph Greene d.u. - d.u. ~~OTTE~~

Greene v. Greene: 2001-DR-18-124

- c. Military Retirement: The Defendant receives a military retirement check.

I find it is appropriate to award sixty (60%) percent of the Defendant's military retirement to the Plaintiff, allowing the Plaintiff to retain forty (40%) percent of each monthly payment. Since the Navy Finance Center will not pay the Plaintiff more than fifty (50%) percent, it is appropriate that the Defendant shall execute any paperwork necessary to arrange for the retirement to be divided, and fifty (50%) percent paid to the Plaintiff. The Defendant shall then be responsible for supplementing the Navy Finance Center's check of fifty (50%) percent of the retirement, by an additional ten (10%), and payable to the Plaintiff each and every month, beginning October 15, 2002, and being due no later than the 15th of each month thereafter;

- c. Personal Property: The personal property shall be divided so that the Defendant receives his military items and documents, including his DD214, title to his car, and his stereo.

10. That the Plaintiff's claim for alimony should be denied, as she has greater income than the Defendant;

11. That each party should pay their own attorney's fees;

12. That retroactive distribution of retirement is denied.

CONCLUSIONS OF LAW:

I hereby conclude by ordering the following relief:

1. That the Plaintiff is hereby granted a Decree of Separate Maintenance, from the Defendant;

2. That the Plaintiff is hereby granted custody of the parties' minor son, with reasonable visitation granted unto the Defendant;

Joseph Greene 251-23 79

Greene v. Greene: 2001-DR-18-124

3. That the Defendant shall pay child support as set forth herein;
4. That the parties shall each pay one-half (1/2) of the son's college expenses as set forth herein;
5. That all marital property shall be divided 60/40 in a manner as set forth in the findings of fact. The parties shall have sixty (60) days from the date of the signing of this Order to effectuate the property division;
6. That the personal property shall be divided as set forth herein;
7. That each party shall pay their own attorney's fees.

AND SO IT IS ORDERED.

October 11, 2002

William A. Wylie, Jr.
THE HONORABLE WILLIAM J. WYLIE, JR.
PRESIDING FAMILY COURT JUDGE

Exhibit B

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF CHARLESTON

3 HATTIE MAE GREENE,

4 Plaintiff,

5 vs.

CASE NO. 2012-CP-10-08372

6 CINDY M. FLOYD,

7 Defendant.

11 DEPOSITION OF: MARK E. SULLIVAN

12 DATE: December 19, 2013

13 TIME: 9:16 a.m.

14 LOCATION: Law Offices of Barnwell, Whaley,
15 Patterson & Helms
288 Meeting Street, Suite 200
Charleston, SC

16 TAKEN BY: Counsel for the Defendant

17 REPORTED BY: Ann P. Harris, NCRA Merit Reporter

20 A. WILLIAM ROBERTS, JR., & ASSOCIATES

21 Fast, Accurate & Friendly

22 Charleston, SC Hilton Head, SC Myrtle Beach, SC
23 (843) 722-8414 (843) 785-3263 (843) 839-3376

24 Columbia, SC Greenville, SC Charlotte, NC
25 (803) 731-5224 (864) 234-7030 (704) 573-3919

A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
scheduledepo.com

Page 2

Page 4

1 APPEARANCES OF COUNSEL:
2 ATTORNEYS FOR THE PLAINTIFF
3 HATTIE MAE GREENE:
4 BAKER, RAVENEL & BRNDER
5 BY: D. CRAVENS RAVENEL
6 3710 Landmark Drive, Suite 400
7 Columbia, SC 29204
8 (803) 799-9091
9 cravenel@brblegal.com
10
11 ATTORNEYS FOR THE DEFENDANT
12 CINDY M. FLOYD:
13 BARNWELL, WHALEY, PATTERSON & HELMS
14 BY: ALISSA D. FLEMING
15 288 Meeting Street, Suite 200
16 Charleston, SC 29401
17 (843) 577-7700
18 afleming@barnwell-whaley.com
19
20 ALSO PRESENT:
21 Cindy M. Floyd
22
23 (INDEX AT REAR OF TRANSCRIPT)
24
25

1 the home address.
2 Q. And are you currently practicing law in
3 North Carolina?
4 A. Yes.
5 Q. And so you are licensed to practice law
6 in North Carolina. Are you licensed in any other
7 states?
8 A. Yes, in Ohio. I was licensed in 1971
9 in Ohio, and I was licensed in 1975 or '76 in North
10 Carolina.
11 Q. And do you practice with any specific
12 area of law?
13 A. Yes, I practice in the area of family
14 law, and I have been board certified as a
15 specialist in family law since 1989.
16 Q. And what were the requirements to
17 obtain board certification in family law? Is that
18 in North Carolina?
19 A. That's correct.
20 Q. Okay.
21 A. Recommendations by other attorneys or
22 judges, passing an examination, and continuing
23 education of at least 15 CLE hours per year in the
24 specialty field, are the three main ones that I
25 remember.

Page 3

Page 5

1 STIPULATION
2 It is stipulated by and between Counsel
3 that this deposition is being taken in accordance
4 with the South Carolina Rules of Civil Procedure,
5 Rule 30; that all objections as to Notice of this
6 deposition are hereby waived; that all objections
7 except as to form are reserved until the time of
8 trial; and that the deponent does not waive reading
9 and signing of this deposition.
10 * * * * *
11 (DFT. EXH. 1, DEPOSITION NOTICE, was
12 marked for identification.)
13 MARK E. SULLIVAN,
14 being first duly sworn, testified as follows:
15 EXAMINATION
16 BY MS. FLEMING:
17 Q. Mr. Sullivan, can you please state your
18 full name for the record?
19 A. Mark Eugene Sullivan.
20 Q. And what is your current address?
21 A. Office or home?
22 Q. Both.
23 A. 5511 Capital Center Drive, Suite 320,
24 Raleigh, North Carolina, is the office address.
25 208 Emerywood Drive, Raleigh, North Carolina, is

1 Q. Okay. And you have maintained that
2 board certification since 19 --
3 A. Since 1989.
4 Q. Eighty-nine, okay. And what is the
5 name of your current law practice?
6 A. Sullivan & Tanner, PA.
7 Q. Okay. And are you licensed to practice
8 law in South Carolina?
9 A. No.
10 Q. Have you ever been licensed to practice
11 law in South Carolina?
12 A. No.
13 Q. Have you ever tried to become licensed
14 to practice law in South Carolina?
15 A. No.
16 Q. Have you given testimony in South
17 Carolina?
18 A. No.
19 Q. Okay. Have you reviewed cases for any
20 attorneys other than Mr. Ravenel in South Carolina?
21 A. I probably have because I am regularly
22 contacted by attorneys who have problems in the
23 area of military divorce. Ken Lester is the one
24 that referred this matter through Mr. Ravenel. He
25 is in Columbia. He and I have consulted on cases

Page 6

1 together. I have an ongoing case right with Jim
2 McLaren, also in Columbia. Mary Fran Quinlin, in
3 Beaufort, South Carolina, is a friend of mine who
4 consults with me from time to time. Attorneys in
5 Charleston as well.
6 **Q. Who in Charleston?**
7 A. Okay, the last name is going to be a
8 problem. First name is Diane. I can't remember
9 her last name, but she has consulted with me from
10 time to time. All of these are just attorney
11 consultations. I may have done some research in
12 them. I may have been able to give answers to
13 attorneys without the research. The ongoing one
14 with Mr. McLaren in Columbia may or may not involve
15 some research, which was the start of that military
16 divorce case.
17 **Q. So when you say you receive requests**
18 **for consult from some of the attorneys that you**
19 **identified who practice in South Carolina, are**
20 **those attorneys contacting you with regard to**
21 **ongoing Family Court matters?**
22 A. Yes.
23 **Q. Okay. And tell me a little bit about**
24 **what some of those consultations involve, what type**
25 **of matters.**

Page 7

1 A. When I consult with attorneys and also
2 when I give CLEs in this area, because I have done
3 that in South Carolina as well as nationwide, what
4 they ordinarily talk about are the following
5 things: In a military divorce, the pension is the
6 most valuable asset in the entire marriage in many
7 cases. Allocating the pension, how to divide the
8 pension is the first thing that they usually talk
9 about. When we finish with that, I then talk about
10 second base, which is the survival benefit plan,
11 SBP. A survival benefit plan is an annuity which
12 pays the former spouse if the service member dies
13 before her. The third thing we talk about is
14 indemnification. If he claims disability and the
15 disability reduces her share of the pension, how
16 can we ensure that he reimburses her for that loss
17 due to his claimed disability. After we finish
18 with those, we frequently talk about related
19 issues, such as military healthcare, dividing
20 accrued leave and so on.
21 **Q. When you say how to divide the pension,**
22 **are you looking at issues like number of years of**
23 **service, equity --**
24 A. Yes, years of service is very common
25 in a case like this. With a reserve or guard case,

Page 8

1 you would be looking at retirement points instead
2 of years of service. In a case like this, you
3 would be talking about how many months of marriage
4 during military service as the numerator of the
5 marital or coverture fraction. The denominator
6 would be total years of service, ordinarily unknown
7 at the time of trial if the individual is still
8 serving.
9 **Q. Okay.**
10 A. Spouse's share is presumptively
11 50 percent. All of that is multiplied by the final
12 retired pay of the individual at the time that he
13 retires.
14 **Q. Okay. And you mentioned that you have**
15 **given CLE's in South Carolina on these issues?**
16 A. I have.
17 **Q. What CLE's have you given, and when**
18 **have you given them?**
19 A. I can't recall specifically. I can
20 tell you that I was invited to Columbia about six
21 or seven years ago to speak on a topic called
22 hidden assets in military -- I am sorry, hidden
23 money in military divorce cases, and I made a
24 presentation on that. It was a hot topics program
25 in which each person got up and spoke for 10 or

Page 9

1 15 minutes on an issue. I have also spoken several
2 times at the regional on-site CLE programs that the
3 Army Reserve has given in Columbia and in
4 Charleston. I have 34 years of commission service,
5 most of it Army Reserve. I am a retired Army
6 Reservist. During those 34 years, I would come to
7 Columbia either to learn or to speak, because one
8 of the mandatory training programs that you have as
9 a reservist in the JAG Corps is to attend the
10 regional on-site, and since I was located in North
11 Carolina, our regional on-sites were always in
12 Columbia or Charleston. So I would sometimes speak
13 and most of the time be in the audience for those.
14 But on the times that I would speak, I would either
15 be talking about military divorce or military
16 pension division or the Service Member Civil relief
17 Act.
18 **Q. Okay. And I should back up a few**
19 **steps. I do have a copy of your most updated CV,**
20 **and I would like to go ahead and mark some of the**
21 **documents that were produced in response to the**
22 **deposition notice December 17th as Defendant's**
23 **Exhibit 2, and I believe your most updated CV is in**
24 **that set of documents.**
25 **(DFT. EXH. 2, DOCUMENTS PRODUCED**

Page 10

1 PURSUANT TO NOTICE, were marked for
2 identification.)
3 A. I also have for you a disc which
4 contains the documents that we are providing
5 pursuant to the subpoena.
6 Q. Okay. And I will go ahead and what I
7 will do is on a break make a copy of the disc,
8 photocopy, and we can mark that as Defendant's
9 Exhibit 3.
10 MR. RAVENEL: If you want to mark it
11 and retain possession of it, that will be fine.
12 MS. FLEMING: I'll do that. That will
13 be fine.
14 Q. And are the documents that are on this
15 disc that is dated 12/19/13 H. M. Greene, are those
16 in addition to some of the documents that were
17 produced on the 17th, or are these different
18 documents?
19 A. They are probably in addition to that.
20 Q. Okay.
21 A. Because it's much more extensive than
22 this.
23 Q. Okay.
24 A. We made some objections, however, to
25 producing some because they were just impossible to

Page 11

1 do.
2 Q. Okay. And actually I will ask you
3 about those, and if we look at the letter that
4 Mr. Ravenel sent, it does detail some of the
5 objections to the request in the deposition notice,
6 and what was produced on the 17th is Bates labeled
7 Expert Sullivan 208 through 305. So you are saying
8 that the documents on this disc could go beyond
9 305, okay.
10 MR. RAVENEL: You have received those
11 documents previously, I am sure. They are things
12 that we provided to you that he relied upon in
13 coming up with his opinions, and I am sure we
14 provided -- well, some of the things we objected to
15 were like create a list for us of all of the
16 whatever studies you have ever done, or something
17 like that. I can't remember precisely what they
18 were, but we felt like that was inappropriate to
19 ask us as part of a subpoena or a notice of
20 deposition to create lists of things, but subject
21 to those objections, I think we have produced
22 everything that has been given to Mr. Sullivan.
23 A. Also in the disc you will find an
24 entire file that is made up of all of the e-mails
25 back and forth between Cravens and myself. We

Page 12

1 created a single file for that, and you have
2 everything there.
3 Q. Okay.
4 A. I also brought a copy of my book. I
5 can't let you have it unless you pay for it, but I
6 have brought that because you asked for things that
7 I have written. I also brought this for you, which
8 is a recent writing that I will give for you to
9 keep concerning disability payments.
10 Q. Okay. And this is entitled Journal of
11 American Academy of Matrimonial Lawyers, dividing
12 military retired pay, disability payments, and the
13 puzzle of the parachute pension. And within this
14 publication that you just provided to me, is there
15 anything in this publication that is specifically
16 on point and has a bearing on your opinions in this
17 case?
18 A. Yes.
19 Q. Okay.
20 A. The article itself is very relevant
21 because it talks about the problem that exists when
22 a service member or retiree claims disability
23 payments, and that reduces the share of the pension
24 which is divided with the former spouse.
25 Q. Okay. And the book that you brought

Page 13

1 that is entitled the Military Divorce Handbook,
2 what edition is that?
3 A. That's the second edition, 2011.
4 Q. Okay, 2011. And are there any sections
5 in this handbook that you believe are relevant to
6 the issues in this case?
7 A. Yes, Chapter 8.
8 Q. Chapter 8?
9 A. Is about property division and pension
10 division.
11 Q. Okay.
12 A. It is over a hundred pages, not
13 including the disc in the back, and it contains
14 information about a problem that arises when a
15 retiree claims disability payments and that reduces
16 the share of the pension.
17 Q. Okay.
18 A. Also in there is an appendix, and I
19 brought a copy of some of the things that we have
20 already provided to you.
21 Q. Okay.
22 A. This appendix, 8 RR, is a selected list
23 of VA waiver cases summarizing what each one says,
24 going back to Owen versus Owen, a 1992 Virginia
25 Court of Appeals case, and carrying forward for

Page 14

1 several more pages. Each one of these talks about
2 the same issue that we are here on today, which is
3 a claim of disability payments and the reduction of
4 the pension share for the former spouse because of
5 the disability election. And so this is the
6 specific research that I did for the 2011 book that
7 is relevant to the issues that we are here on
8 today.

9 Q. Okay.

10 A. And that is in your materials.

11 Q. And in this appendix regarding review
12 of cases, are there any cases from South Carolina?

13 A. I don't know. I can tell you that
14 there should be, if I wanted to do it thoroughly,
15 because I would have included -- well, I have Price
16 versus Price right there. The Price case from 1996
17 South Carolina Court of Appeals is listed.

18 Q. Okay. Do you mind if I go ahead and
19 mark this?

20 A. That is my copy of it.

21 Q. Okay.

22 A. But yours is on the disc, and it says
23 the same things. For example, on the first page of
24 that packet, you will see in the disc a folder that
25 is called subpoena.

Page 15

1 Q. Okay.

2 A. And in the subpoena, then you will find
3 each of the folders for each of the numbers that
4 you propounded to us, and you will find the same
5 answer that I have given for each one. You are
6 looking at the resume, which is item number 1 on
7 your subpoena.

8 Q. Okay, great.

9 A. But you can certainly take a look at
10 that while you are doing this, and we can share it
11 while we are going through the deposition.

12 Q. Sure. And just to clarify, could you
13 go back for the record and just tell us your
14 educational background?

15 A. Yes, Kenyon College, graduated in 1968;
16 University of Virginia Law School, I was graduated
17 in 1971.

18 Q. Okay. And then you mentioned that you
19 have served as a JAG officer in the reserves?

20 A. Yes, I have 34 years of commissioned
21 service. I was originally commissioned June 2nd,
22 1968, through college ROTC, and I served until
23 2002, when I obtained maximum seniority, and they
24 had to let me go kicking and screaming.

25 Q. Okay. It looks like from 1972 through

Page 16

1 1976, you were a military attorney with the U.S.
2 Army at Fort Bragg?

3 A. Yes.

4 Q. Okay. And then following that, from
5 August 1976 through January of 1978, you were an
6 environmental attorney with the National
7 Association of Attorney Generals?

8 A. Correct.

9 Q. Okay. And where did you work in that
10 capacity?

11 A. In Raleigh.

12 Q. In Raleigh, okay. And then from 1978
13 to the present, you have been in private practice
14 in family law?

15 A. Correct.

16 Q. What percentage of your practice
17 involves military, divorces involving military?

18 A. Probably 75 percent.

19 Q. Okay.

20 A. And by that I mean I'm not trying those
21 75 percent or handling them in North Carolina. I'm
22 consulting with people like Dawes and yourself and
23 Cravens, who call me up and say, "I need some help
24 on this. I want to hire you to be my co-counsel or
25 my consultant," or like Jim McLaren, for example.

Page 17

1 And so I wind up assisting on those cases as a
2 consultant for attorneys in other states or in
3 North Carolina.

4 Q. And when you actually look at your
5 active practice of law versus your consulting
6 practice, what percentage of your practice, of that
7 75 percent of your practice that involves military
8 divorce, what percentage within that 75 percent
9 consists of consulting work versus actual client --
10 when I say client, I mean service member or the
11 nonservice member spouse where you represent
12 another party in a divorce action?

13 A. The 75 percent that I cited to you is
14 virtually all on a consulting basis.

15 Q. Okay. And do you actively represent
16 parties in divorce actions?

17 A. Yes.

18 Q. Okay. And what percentage of your
19 practice?

20 A. Twenty-five percent.

21 Q. Twenty-five percent, okay. And how
22 long has the division of your practice been
23 approximately 25 percent involved in active
24 practice of representing parties in divorce actions
25 versus the 75 percent which is allocated toward

1 consulting with other attorneys regarding issues
2 related to military divorce?
3 A. It hasn't been a stable 75 percent over
4 time. It has grown up to 75 percent. It became
5 larger with the first edition of my book in 2006.
6 It has grown since then, but I haven't kept track
7 of when it reached the 50 percent mark or when it
8 reached the 33 percent mark. I just know that an
9 educated guess now would be about three-quarters of
10 my cases are involved in consulting work for other
11 attorneys.
12 Q. Okay. Now, the 25 percent where you
13 actually represent service member and nonservice
14 member spouse in an active divorce?
15 A. No, the 25 percent is supposed to be
16 other domestic matters.
17 Q. Okay.
18 A. Those would be alimony and child
19 support and custody. I had a guardianship case
20 two weeks ago, and most of those have no military
21 overtones, although some do, but most of them are
22 just ordinary domestic cases that any practitioner
23 would be handling.
24 Q. Okay. If you allow me to finish asking
25 my questions before you talk so that the court

1 \$400 an hour for court work.
2 Q. And how much do you charge -- are your
3 rates different when you are actually representing
4 parties in domestic matters?
5 A. No.
6 Q. No? So you charge the same rates that
7 you just described for your consulting work for
8 your other representation of parties in domestic
9 cases?
10 A. Yes.
11 Q. Okay. Now, when you talked about your
12 consulting work, you mentioned that oftentimes you
13 are contacted or referred by one attorney to
14 another on an issue. Have you ever testified as an
15 expert in a legal malpractice case before, before
16 this case?
17 A. No.
18 Q. No, okay. Have you ever been consulted
19 in a legal malpractice case against an attorney?
20 A. I don't remember that I have.
21 Q. Have you ever testified on behalf of an
22 attorney on a legal malpractice case?
23 A. No, I haven't.
24 Q. Have you ever been asked to review a
25 legal malpractice case on behalf of a defendant

1 reporter can take down testimony, that will be very
2 helpful.
3 When you say of the 25 percent of the
4 cases where you are actively representing a party
5 in a domestic matter, you said most of those cases
6 have no military overtones to them. What
7 percentage of that 25 percent do you think actually
8 involves some type of military issue?
9 A. Probably 10 to 25 percent.
10 Q. Okay. Ten to 25 percent of that 25
11 percent of your total practice?
12 A. Yes.
13 Q. Okay. And for your consulting work, do
14 you advertise that service?
15 A. No.
16 Q. No, okay.
17 A. Not in the traditional sense of
18 advertising. The word gets around. I have written
19 a great number of things. Perhaps by CLEs or
20 knowing people, it is advertised, but if you are
21 asking about paid advertising, no.
22 Q. Okay. And what do you charge per hour
23 for your consulting services?
24 A. \$425 flat fee for the first hour, 375
25 an hour prorated after that for office work, and

1 attorney?
2 A. Yes, I have. There was a case -- I
3 don't remember the name of it, probably 15 or
4 20 years ago -- no, I do remember the last name,
5 Popkin, P-O-P-K-I-N, in which I was defending the
6 attorney involved in a military divorce matter who
7 had overlooked something. I don't remember
8 anything beyond that because it was so long ago,
9 but I do remember that the name of the case was
10 Popkin. Stuart Popkin I believe is the
11 individual's name, S-T-U-A-R-T, and I believe that
12 it was an issue involving his failure to pay
13 attention to something. I was trying to help him
14 explain that it was not negligence.
15 Q. Okay. And do you know where that case
16 was, what state?
17 A. It was in Raleigh, yes.
18 Q. And do you remember the name of the
19 attorney you worked with in defending that?
20 A. I don't remember whether it was an
21 attorney that I worked with or whether I was
22 defending Mr. Popkin myself.
23 Q. Okay. Now, in the group of documents
24 that you have produced that we have marked an
25 exhibit -- I will give you your copy back here --

Page 22

1 the document that is basically labeled Expert
2 Sullivan 222 through 226, does that represent your
3 most up-to-date curriculum vitae or resume?

4 A. Probably not, because on Monday or
5 Tuesday of this week our office prepared a current
6 copy of my resume and put it on the disc that you
7 have.

8 Q. Okay.

9 A. It gets updated every month because I
10 have some other article published. The only
11 difference would be that there might be something
12 on page 12 here for December of 2013, whereas 12 on
13 this copy shows something from November of '13, but
14 other than that, it's the same.

15 Q. Okay. And other than that, does this
16 copy of your CV through November of 2013 contain
17 all of your publications and courses and CLE
18 presentations that you have given throughout the
19 duration of your career?

20 A. Yes.

21 Q. Okay. And other than the publications
22 that you have referenced today that you have
23 brought with you or referred to, are there any
24 other publications listed on your CV that you
25 believe are relevant to the issues in this case?

Page 23

1 A. Would you state the question again?

2 Q. Sure. Other than the two publications
3 that you have cited specifically for us today,
4 which was the article from the Journal of American
5 Academy of Matrimonial Lawyers, and then the second
6 edition of your Military Divorce Handbook, are
7 there any other publications listed on your CV that
8 are relevant to the issues that are involved in
9 this case?

10 A. Well, yes, probably a third to a half
11 of the materials that are in the CV have to do with
12 dividing military pensions.

13 Q. Okay.

14 A. And many of those have in them the
15 three points that I mentioned earlier about
16 dividing the pension, SBP, and indemnification. So
17 I would say a good number of the articles that I
18 have listed in the CV contain information that is
19 relevant to this case.

20 Q. Okay. And the two publications that
21 you brought with you today, did you bring those
22 with you because those are the most recent
23 publications that you have done on the subject, or
24 was there something about those that stood out to
25 you?

Page 24

1 A. I actually brought three publications.

2 We have talked about the article in the Journal of
3 the American Academy of Matrimonial Lawyers, which
4 I brought because it is relevant to the topic of
5 disability payments and reduced pension share. I
6 brought the most recent copy because you asked for
7 it.

8 Q. Okay.

9 A. And I also brought another book that
10 predated my book, and that is what I am handing you
11 now, a book my Marshal Willick, called Military
12 Retirement Benefits in Divorce. I seem to recall
13 it was published around 1997, and that was a
14 predecessor to the first edition of my book.

15 Q. Okay. When you say it was a
16 predecessor to the first edition of your book, did
17 you assist in authoring this book by Mr. Willick?

18 A. No.

19 Q. Do you know Mr. Willick?

20 A. Yes.

21 Q. Okay. And how do you know him?

22 A. He and I go back to 20 years with
23 American Bar Association Family Law Section.

24 Q. Are there any sections in this book in
25 Military Retirement Benefits and Divorce that you

Page 25

1 have relied upon in forming your opinions regarding
2 this case?

3 A. Yes, page 189.

4 Q. Okay. And on that page it discusses
5 what issue?

6 A. Page 189, in the section before that,
7 starting at 185, talks about disability payments
8 and reduced pension share, and it says on page 19
9 the following: "The bottom line to these cases is
10 that it is incumbent upon the lawyers, particularly
11 the lawyer for the spouse, to anticipate post-
12 divorce status changes and bill that anticipation
13 into the decree." Now, that stood out to me when I
14 read this yesterday in preparation for today's
15 presentation, and I thought that I would bring this
16 because pages 185 to 189 deal with the issue that
17 we are talking about right now, namely post-
18 divorce, disability application by the member, and
19 how the attorney needs to anticipate that in
20 drafting or advising about the decree that the
21 judge issues.

22 Q. Okay. And I would like to reserve the
23 right to make a copy of the front page, as well as
24 the index, and pages 185 through 189.

25 MR. RAVENEL: Just go ahead and give it

1 to her and tell her to make a copy.
2 MS. FLEMING: Okay, that will be fine.
3 I am assuming the copies aren't on the disc.
4 THE WITNESS: No, they are not.
5 MS. FLEMING: Okay.
6 BY MS. FLEMING:
7 Q. Now, Mr. Sullivan, how did you first
8 come about getting involved in this case?
9 A. I got a communication from Mr. Ravenel.
10 He indicated that he had been referred to me by Ken
11 Lester, and he wanted some help concerning a
12 military pension division case.
13 Q. Okay. And what information were you
14 first told about this case by Mr. Ravenel?
15 A. I don't remember what I was told. I
16 know that it is on the disc that you have. It is
17 an e-mail in which he describes that Ken Lester
18 referred the case, and it's a matter of reduced
19 pension payments to Hattie Greene, and in that
20 communication or subsequent communications,
21 Mr. Ravenel said that he wanted to engage my
22 services to consult or be an expert witness in
23 regard to what should have been done in this case
24 to avoid that problem.
25 Q. Okay.

1 A. Or to cure the problem if it's possible
2 to cure it.
3 Q. And did you make any recommendations to
4 him at that time about potentially curing the
5 problem?
6 A. I didn't because at that time I did not
7 have the record of trial.
8 (The defendant, Cindy Floyd, entered
9 the conference room at this time.)
10 Q. I am sorry, you were saying that when
11 you were first contacted by Mr. Ravenel, he asked
12 you about potentially serving as an expert witness
13 or possibly offering ways to cure the reduction in
14 payments to Hattie Greene?
15 A. Yes.
16 Q. You didn't make any recommendations
17 regarding curing the problem at that time because
18 you didn't have a transcript from the underlying
19 hearing?
20 A. That's right. At the beginning of
21 this, and what I am talking about here is the first
22 couple of months of our communications, I knew of
23 the rule for show cause or the rules of show cause
24 Hattie Greene had prepared and filed, and I knew
25 that the judge had denied her request for relief,

1 but I did not have the record of trial, and so I
2 asked Cravens to obtain that so I could find out
3 what went wrong.
4 Q. Okay. And once you reviewed that
5 record of trial, did you make any recommendations
6 about how Ms. Greene could go about potentially
7 curing the problem that she encountered with regard
8 to the reduction in the portion of military
9 retirement pay that she was receiving?
10 A. No, I didn't, because I felt that the
11 judge had already made a ruling, the ruling was
12 clear, and the ruling was 11 years ago. In my neck
13 of the woods you can't come back to the judge
14 11 years later and ask the judge to insert some
15 additional language in a court order, and I
16 suspected it may be similar to that in South
17 Carolina.
18 Q. Okay.
19 A. I pointed out to Cravens the problem
20 that I saw with the presentation made to the judge,
21 and that is contained in my affidavit to Cravens,
22 which is in your materials, and also in the
23 appendix, which is a separate document that I
24 created at a different time. When I reviewed the
25 trial transcript, I took those notes and created a

1 one- or two-page appendix on what happened in the
2 trial, and that's what I pointed out to Cravens
3 when he asked me to prepare an affidavit in support
4 of his case here.
5 Q. Okay. And when you say that once you
6 reviewed the transcript, you didn't really make any
7 recommendations for further relief by Hattie Greene
8 because the ruling had been made over 11 years ago
9 in North Carolina, and you generally can't go back
10 to an order that is 11 years old, have you
11 discussed that issue with any attorneys practicing
12 in South Carolina, whether there is opportunity to
13 revisit a prior court order, to request additional
14 language or a change in language?
15 A. No, I haven't.
16 Q. Okay. And do you have any
17 understanding of whether there is a possibility of
18 even pursuing that type of action in South
19 Carolina?
20 A. No, I don't.
21 Q. Would that be important for you to know
22 in rendering opinions in this case?
23 A. I don't know how to answer that because
24 my opinions in this case have to do with whether
25 there was negligence at the time of the trial or

Page 30

1 the time of the preparation of the decree, or
2 whether that caused damages, whether the conduct of
3 the defendant was directly related to those
4 damages, and whether there was a duty to protect
5 the client. I think that the issue that you are
6 asking about is relevant to what a defense attorney
7 would do, which is called claims repair, and that
8 is before the case gets too far down the road to
9 make an application to the Court to add wording,
10 which would make it clear that the ex-husband is
11 obligated to pay a share of the gross retired pay
12 to the former spouse, and that if he does anything
13 to reduce her 60 percent share, then he will
14 reimburse her, but it's not the same thing as my
15 testifying about whether there was negligence.
16 Q. Okay. So you haven't offered any
17 opinions regarding any curative measures that could
18 be taken with regard to that order from a
19 retrospective standpoint?
20 A. Correct.
21 Q. Do you intend to offer any opinions on
22 that issue at the time of trial?
23 A. No, it is not my present intention to
24 do that.
25 Q. Okay. Before we start talking about

Page 31

1 your opinions in more detail, what materials have
2 you reviewed regarding this case?
3 A. All of the correspondence that Cravens
4 sent to me.
5 Q. Okay.
6 A. The Tirado and Price cases, the trial
7 transcript, the depositions of Joseph Greene and
8 Hattie Greene, a portion of Roy Stuckey's
9 manuscript on military pension division in South
10 Carolina, and also the court documents which
11 Mr. Ravenel provided to me.
12 Q. And when you say court documents, are
13 you referring to the court documents from the
14 underlying Family Court matter?
15 A. Yes.
16 Q. And in the process of reviewing those
17 materials, was there anything that you felt that
18 didn't have or that you needed in order to finalize
19 your opinions regarding the case?
20 A. Are you asking is there anything now
21 that I am missing, or are you asking whether early
22 on I asked Cravens to provide me additional
23 material that I didn't yet have?
24 Q. Both issues actually.
25 A. The one that stands out to me is the

Page 32

1 issue of the trial transcript. I told him early on
2 that I had to see what happened in the trial
3 transcript to be able to give a better idea whether
4 I felt that the conduct of the defendant was
5 negligent, and so he provided that to me, and as a
6 result of that, in reviewing the arguments that
7 were made, I was able to make a conclusion on
8 negligence. I do not feel now that I am missing
9 anything that is necessary to render an opinion.
10 Q. Okay. And you mentioned the transcript
11 of a publication by Roy Stuckey in South Carolina.
12 Was that a document that you requested, or was that
13 something that Mr. Ravenel provided to you?
14 A. He provided it to me.
15 Q. Okay. And did you review that
16 manuscript?
17 A. Yes.
18 Q. And was there anything in that
19 manuscript that you relied upon in formulating your
20 opinions related to this case?
21 A. Yes, I relied on the pages about
22 military retirement benefits.
23 Q. Okay.
24 A. And I am going to identify that for
25 convenience.

Page 33

1 Q. Okay.
2 A. If that's all right with you.
3 Q. And just to clarify, that publication
4 is called -- can you identify that publication for
5 the record?
6 A. Marital Litigation in South Carolina,
7 Substantive Law, Third Edition by Professor Roy T.
8 Stuckey. The particular pages that were relevant
9 to this case are pages 289 to 292.
10 Q. If you can say that again, 2 --
11 A. 289 to 292.
12 Q. Okay, 289 to 292?
13 A. Yes.
14 Q. Okay. And was there information within
15 those pages that you specifically relied upon in
16 formulating your opinions regarding this case?
17 A. Yes, those pages.
18 Q. Okay. And what specifically within
19 those pages did you rely upon?
20 A. Well, I relied on all of those pages,
21 but of the most relevant portion of that, I would
22 say I relied on page 292. I did not rely on
23 specific wording in that page, rather I relied on
24 the fact that the Price case and the Tirado case
25 are both mentioned there and both deal with the

Page 34 1 issue that we are talking about today. 2 Q. Okay. 3 A. And that is the post-divorce election 4 of disability benefits which causes a reduction in 5 the share of the former spouse of the military 6 pension. 7 Q. Okay. And what is your understanding 8 of what Price -- you mentioned Price and Tirado 9 several times. I am just curious about what your 10 understanding of those cases is, and you referenced 11 the fact that they both have to do with the post- 12 divorce election of disability retirement. 13 A. Yes. The Price case came about first. 14 Q. Okay. 15 A. That was in 1996. The Price case dealt 16 with a division of military retired pay that was 17 premised upon the gross retired pay of the service 18 member, and that's one of two things that must be 19 considered by an attorney who practices in this 20 area in arguing to the Court or in drafting the 21 order for the Court, dividing the gross retired 22 pay. The second was not mentioned in Price 23 specifically, and that is requiring an 24 indemnification clause in the order as well, but 25 the Price case flags the issue that you may divide	Page 36 1 military pension that is given to an individual 2 after his longevity service in the military. It is 3 before any deductions. 4 Q. Okay. And explain why the use of the 5 term "gross retired pay" -- that amount has to do 6 with the full military presentation prior to any 7 deductions. So are you saying that if you use the 8 term "gross retired military retirement pay," that 9 any later conversion to disability would not cause 10 a reduction in the amount to the former spouse? 11 A. Let me explain that. First of all, it 12 is not a conversion to disability. The actual 13 issue is the election of disability payments, and 14 under current law, if the disability rating from 15 the Department of Veterans Affairs is less than 16 50 percent, then that election of disability 17 payments requires a waiver on a dollar-for-dollar 18 basis of any military retired pay. 19 There are two important terms the 20 practitioner must know in order to do business in 21 this area, gross retired pay and disposable retired 22 pay. As I have mentioned, gross retired pay is 23 full retired pay without any deductions. 24 Disposable retired pay is defined in 10 U.S. Code, 25 1408(a)(4), which is the definitional section of
Page 35 1 gross retired pay, and if you do, then the 2 ex-husband can be later required to reimburse the 3 former spouse for any reduction of her share of the 4 pension due to disability elections by the 5 ex-husband. 6 Q. Okay. And just to clarify, did Price 7 involve an indemnification clause? 8 A. I don't think it did. I think it had 9 to do with the gross retired pay, and the way I 10 would explain that is this: This is called the 11 belt and suspenders approach. If you want to do it 12 right, the best way to do it is to divide gross 13 retired pay and to require indemnification if there 14 is any later reduction in the former spouse's share 15 due to disability elections. Those are the two 16 components that I would say are important for the 17 attorney that does this. The Price case dealt with 18 the first of those. The pension was divided on a 19 gross pension basis, and therefore later on the 20 Court required indemnification because the 21 ex-husband took a disability election, which 22 reduced the former spouse's share. 23 Q. Okay. Now, when you use the term 24 "gross retired pay," what does that term mean? 25 A. Gross retired pay means the full	Page 37 1 the Uniform Services Former Spouse's Protection 2 Act. Disposable retired pay is gross retired pay 3 less five statutory deductions, five statutory 4 items that come out of gross retired pay before you 5 arrive at disposable retired pay or DRP. 6 Disposable retired pay is what is divided at the 7 Retired Pay Center, which is DFAS, Defense Finance 8 and Accounting Service, in Cleveland, Ohio. And 9 one of those deductions from gross retired pay to 10 arrive at disposal retired pay is any VA waiver. 11 Q. Okay. And before we go down that road 12 any further, I wanted to ask you, when you first 13 reviewed the trial transcript and some of the other 14 documents in forming your opinions related to the 15 case, did you have the benefit of speaking with 16 Hattie Greene or Joseph Greene? 17 A. I have never spoken with Joseph Greene. 18 I don't think I have spoken with Hattie. I believe 19 all of my contacts have been through Cravens and 20 the written materials. 21 Q. Did you have the deposition transcripts 22 of either Joseph or Hattie Greene at the time that 23 you prepared your affidavit that was filed in 24 support of the complaint? 25 A. No.

Page 38

1 Q. Okay. Did you ever ask to speak with
2 Hattie Greene or Joseph Greene?
3 A. No.
4 Q. So prior to completing the affidavit
5 that was filed in support of your complaint, I
6 think it was in October of 2012, what materials had
7 you reviewed or relied upon in formulating your
8 opinions regarding the case?
9 A. First and foremost, the trial
10 transcript. In addition to that, the court order
11 dividing military retired pay, or orders, as well
12 as the rule for show cause applications and
13 decisions that Hattie Greene had filed, and other
14 court papers that Mr. Ravenel provided to me as
15 well as the correspondence that he gave me,
16 information that he gave me about the case. All of
17 those things produced on the disc for you are
18 things that I relied on for the affidavit that I
19 prepared.
20 Q. Okay. And when did you have the
21 opportunity to review the depositions of Hattie and
22 Joseph Greene?
23 A. In the last week.
24 Q. Did any of the testimony offered by
25 Joseph or Hattie Greene change your opinions in any

Page 39

1 way?
2 A. No.
3 Q. Okay. And what are your opinions
4 regarding this case?
5 A. There was a duty to protect the client.
6 The defendant failed to carry out that duty. Among
7 the problems that led to the failure to comply with
8 that duty was the closing argument of the
9 defendant, which focused on a girlfriend issue
10 instead of on the indemnification issue. The time
11 for making an argument about reimbursement or
12 indemnification is at closing argument. That was
13 not done. The order of the court contained no
14 language about gross retired pay, and it should
15 have been done pursuant to the Price case. It
16 contained no language about indemnification, which
17 should have been in there as well. As a result,
18 Hattie Greene suffered damages to the extent of
19 the reduced pension share that she receives every
20 month. She is getting 60 percent of a lower amount
21 than 60 percent of the gross retired pay of Mr.
22 Greene, and failure of the order to contain both of
23 those terms, gross retired pay and indemnification,
24 then led subsequent judges to rule against her in
25 her rule for show cause applications because they

Page 40

1 had no guidance from the initial judge on the
2 Court's intention that Mr. Greene should not be
3 able to reduce his retired pay by electing
4 disability payments and thereby reduce Hattie
5 Greene's share of his pension.
6 Q. And do you know anything about
7 Ms. Floyd's experience with military divorce and
8 the division of military pensions?
9 A. No.
10 Q. Have you asked anyone to provide you
11 information about her experience level in handling
12 this particular matter?
13 A. No, I haven't.
14 Q. We talked a little bit about Price and
15 Tirado. Did Tirado involve an indemnification
16 clause?
17 A. No, it did not. The Tirado case
18 involved the situation where the individual was
19 already receiving a 10 percent disability rating at
20 the time the settlement was executed, and it
21 referred only to military retirement in distinction
22 to the Price case, which specifically mentioned
23 gross retired pay.
24 Q. Are you doing okay?
25 A. Yes.

Page 41

1 Q. Okay. If you would like to take a
2 break at any point, just let me know.
3 A. Sure.
4 Q. We have been going a little over an
5 hour.
6 You mentioned with regard to your
7 opinions that Cindy Floyd had a duty to protect the
8 client, and among those issues was the failure to
9 request -- in closing argument to request an
10 indemnification clause. What facts existed at the
11 time that should have caused Ms. Floyd to request
12 an indemnification clause?
13 A. Any number of things.
14 Q. Okay.
15 A. Let's start out with South Carolina
16 case law. An attorney has a duty to be familiar
17 with case law involving a subject matter of the
18 case that she is handling. That includes knowledge
19 of the issues raised in the Price and Tirado cases.
20 Reading those cases, being aware of the issue that
21 came up in those cases would lead an attorney to
22 say that she needed to ensure that there was an
23 indemnification clause in the court order and that
24 the court order refers specifically to gross
25 retired pay. In addition to that, CLE materials,

1 such as that of Professor Stuckey, would be another
2 source of alerting the attorney to the problem.
3 Another would be the existing nationwide treatise
4 at the time, which is Marshal Willick's book on
5 military retirement benefits. This was published
6 in 1997. The divorce in this case was 2002. This
7 was the book on the street at that time, which was
8 available for an attorney who did not know enough
9 about the issue and needed help to ascertain the
10 best way of defending and protecting her client.
11 All of these books and cases would have alerted an
12 attorney that there is a problem here that needed
13 to be addressed by arguing for gross retired pay
14 and indemnification, and to the extent that an
15 attorney can, in South Carolina, or in this
16 particular case, asking the Court in a draft of the
17 court order to insert that. I do not know if Cindy
18 Floyd took that step and whether it was accepted or
19 rejected. That is beyond my knowledge. I am
20 simply saying that the best approach on something
21 like this would be to argue specifically for it, to
22 let the judge know that this is a problem, and then
23 in case the judge didn't get the message, also to
24 take a look at the order which the judge prepares
25 or counsel prepares, and try to insert both of

1 those provisions in there, gross retired pay and
2 indemnification, or at least one of them.
3 **Q. Okay. What was your understanding of**
4 **Mr. Greene's health at the time of the hearing in**
5 **2002?**
6 **A.** I believe that at the time, he was
7 suffering from hearing loss and was having
8 nightmares due to posttraumatic stress disorder.
9 **Q. And where did you obtain that**
10 **information?**
11 **A.** From the deposition of Hattie Greene
12 and Joseph Greene.
13 **Q. Okay.**
14 **A.** I prepared notes concerning my review
15 of those, and the notes are in your materials also.
16 Those are typed notes that I took in the last week
17 when I reviewed those, and that is in your
18 materials there.
19 **Q. You are talking about on the CD that**
20 **you produced today?**
21 **A. Yes.**
22 **Q. For the first time?**
23 **A.** That's right, and I produced the page
24 references in them. For example, if you see
25 58:1-3, that means it is on page 58 of the

1 deposition, lines 1-3.
2 **Q. What facts of this case should have put**
3 **Cindy Floyd on notice that the election of**
4 **disability was going to be an issue?**
5 **A.** There were no facts. From those two
6 depositions, I cannot find anything that would have
7 told Cindy Floyd this guy is suffering from X or Y.
8 **Q. Okay.**
9 **A.** I looked, and I can't find it. So the
10 answer is, it was not facts that should have put
11 her on notice; it was the law that should have put
12 her on notice.
13 **Q. And Mr. Greene, what is your**
14 **understanding of when Mr. Greene had actually**
15 **obtained a disability rating?**
16 **A.** 2010, 2011 is what he testified was the
17 time frame for his obtaining disability ratings.
18 **Q. Okay. Now, I think we talked about**
19 **Price somewhat and Tirado. Are there any cases, to**
20 **your knowledge, in South Carolina that deal with an**
21 **indemnification clause?**
22 **A.** I can't think of any right now. I am
23 sure I could do some research to find that out, but
24 I don't recall any right now.
25 **Q. Have you done any research regarding**

1 **the case law in South Carolina pertaining to**
2 **indemnification clauses?**
3 **A.** I probably did a year ago when I was
4 working up the affidavit. I don't remember
5 specifically what research I did. I know that I
6 came across these two cases. There are probably
7 some other cases in South Carolina that I went
8 through as well, but I don't remember their names.
9 **Q. Okay. Do you have any understanding of**
10 **whether indemnification clauses are routinely**
11 **adopted in court orders in South Carolina?**
12 **A.** I don't have any understanding one way
13 or the other.
14 **Q. Actually I think I would like to take a**
15 **quick break.**
16 **A. Sure.**
17 (A recess transpired.)
18 **BY MS. FLEMING:**
19 **Q. Mr. Sullivan, just for clarification,**
20 **we were talking about the hearing transcript from**
21 **the underlying Family Court case, and you mentioned**
22 **that Cindy Floyd should have made certain arguments**
23 **at closing. Do you recall that testimony?**
24 **A. Yes.**
25 **Q. And just for the record, you referenced**

Page 46

1 the defendant in that case making arguments to the
2 Court. When you referenced that, were you
3 referring to Cindy Floyd making arguments to the
4 Court?

5 A. Thank you for asking that. When I
6 speak of the defendant, I am speaking of the
7 defendant in this case, Ms. Floyd. I was not
8 referring to Joseph Greene or Hattie Greene in that
9 case. And if I do, I will be referring to them by
10 name rather than by party, to keep it simple.

11 Q. Great. Thank you so much. I just
12 wanted to make sure the record was clear on that
13 issue.

14 Now, you mentioned that at closing
15 argument Cindy Floyd requested the indemnification
16 clause, and that the order states refer to gross
17 retired pay rather than the disposable retired pay;
18 is that correct?

19 A. Yes.

20 Q. Okay. Now, have you reviewed
21 Mr. Greene's financial declaration that he filed
22 with the Family Court in support of that separation
23 of marital assets?

24 A. I did, but it was over a year ago.

25 Q. Okay.

Page 48

1 A. And that was eight or nine years before
2 he got his disability rating and received
3 disability compensation from the VA.

4 Q. Okay. I would like to go ahead and
5 mark the financial declaration of Joseph Greene as
6 Exhibit 5.

7 (DFT. EXH. 5, MILITARY RETIREMENT
8 BENEFITS, was marked for identification.)

9 Q. So as we were talking earlier, you
10 mentioned that Mr. Greene's disability rating came
11 several years after the hearing regarding the
12 separation of marital property?

13 A. Yes.

14 Q. Okay. And you were saying that there
15 were no facts that should have put Cindy Floyd on
16 notice but that the law in South Carolina should
17 have put her on notice to request indemnification?

18 A. Let me clarify that.

19 Q. Okay.

20 A. The facts that could have put Cindy
21 Floyd on notice was the fact that Mr. Greene served
22 20 years in the Marine Corps.

23 Q. Okay.

24 A. The Marine Corps, of all of the
25 branches of service, is the hardest service on

Page 47

1 A. I seem to remember that I put something
2 about that in the summary I attached to the
3 affidavit I prepared, and I seem to recall
4 something about the financial declaration showing a
5 monetary amount, which would be his retired pay.

6 Q. And we can look at that if that would
7 be helpful.

8 A. Sure.

9 Q. And I think you had referred in your
10 affidavit to the potential that Mr. Greene had
11 declared a certain portion or amount of his pay as
12 disability?

13 A. I remember seeing in the affidavit
14 something about that was probably his VA
15 disability, and that would not be a correct
16 statement in light of the affidavits that I just
17 finished reading because I remember that Mr. Greene
18 said that it was 2010 or 2011 where he applied for
19 VA disability compensation.

20 Q. Okay.

21 A. So if I could correct that statement,
22 there wouldn't have been any financial deduction on
23 the original declaration showing VA disability
24 waiver because this would have been done in 2002.

25 Q. Okay.

Page 49

1 putting stress and strain and pain on the body.
2 Every marine goes through the same basic combat
3 training. Every marine, whether cook or lawyer,
4 has to be able to pick up a rifle and fight.
5 That's not true in the Air Force or even in the
6 Army JAG Corps, but in the Marines, you are
7 expected to be a fighter as well as a truck driver,
8 and my experience tells me that the Marine Corps is
9 the one branch of the service where you get a large
10 number of people who have VA disability
11 compensation claims. Now, I cannot tell you
12 whether that should have alerted Cindy Floyd or
13 not. I know that that is a fact that I would take
14 into account, but I have to explain that I do this
15 for a living, military divorce work. I can't tell
16 you whether that fact in of itself should have been
17 enough to tell Cindy Floyd there might in the
18 future be a potential claim for disability
19 compensation from the Department of Veterans
20 Affairs, but that is one fact that stands out.

21 Q. Okay. And that would be just serving
22 in the Marine Corps for 20 years, that fact?

23 A. Yes.

24 Q. And are you familiar with Mr. Greene's
25 position while he was in the Marine Corps?

Page 50

1 A. I seem to recall the affidavit saying
2 something about trucks, whether he was the chief of
3 the truck section or something like that. I
4 believe he was in charge of transportation and
5 trucks, and I also recall him saying that he was in
6 Afghanistan and served at Mogadishu.
7 Q. Do you know what he did in Afghanistan
8 and Mogadishu?
9 A. No.
10 Q. Can you say to a reasonable degree of
11 certainty most probably that individuals who serve
12 in the U.S. Marines are more likely to suffer some
13 type of injury that subsequently leads them to
14 obtaining a disability rating?
15 A. I believe that's a correct statement.
16 Q. And what do you base that statement on?
17 A. On my experience over 30 years doing
18 military divorce cases.
19 Q. Okay. Are there any publications that
20 support that opinion?
21 A. No.
22 Q. And in the cases that you have handled,
23 what percentage of those military cases have
24 involved individuals who served in the U.S. Marines
25 versus other branches of the U.S. military?

Page 51

1 A. I don't know, and to be clear, I don't
2 think it is fair for me to say that Cindy Floyd
3 ought to have pulled out a crystal ball and known
4 in advance that this was going to happen. From the
5 facts that she was given, I'm not saying that her
6 knowledge of his prior service in the Marine Corps
7 should have triggered some heightened degree of
8 awareness. I know that, but I wouldn't think it
9 fair to accuse another attorney of not being aware
10 of the heightened potential of disability claim
11 because of Marine Corps service as opposed to Army
12 or Coast Guard service. As I've said earlier, it
13 is not a factual trigger that we are talking about,
14 it's the law and the potential for this occurring
15 as illustrated in the Price and Tirado cases that I
16 am concerned with.
17 Q. Now, when you talk about the law, you
18 mentioned the Price and Tirado cases, which are two
19 South Carolina cases, and you have also mentioned
20 an existing treatise, which was the Willick book,
21 as well as CLEs, and you have already told us that
22 you did review Roy Stuckey's publication in the
23 South Carolina -- I have forgotten the name of the
24 book exactly, The Marital Litigation in South
25 Carolina. Does Mr. Stuckey in that publication

Page 52

1 talk about VA disability pay?
2 A. Yes, he does.
3 Q. Okay. And does he mention or discuss
4 indemnification clauses or reimbursement clauses in
5 his publication?
6 A. I don't see any mention of it on pages
7 291 and 292, which are the two pages that refer to
8 the VA disability compensation.
9 Q. Okay. And do you know when this third
10 edition was published?
11 A. No.
12 Q. Now, we talked a little bit about Price
13 and Tirado. What is your understanding with regard
14 to whether Price and Tirado involved a prior
15 disability rating prior to the parties actually
16 reaching an agreement regarding property
17 distribution?
18 A. My understanding is that there was a
19 prior 10 percent disability rating in the Tirado
20 case at the time that the settlement was reached.
21 Q. All right.
22 A. And that there was not in the Price
23 case.
24 Q. Now, did Tirado or Price, did they
25 involve -- did the parties in those cases reach

Page 53

1 agreements that became part of a court order?
2 A. I believe that's the case.
3 Q. Okay. Do you have any understanding
4 regarding in this case whether Hattie and Joseph
5 Greene had reached a similar type of agreement
6 prior to there becoming a court order?
7 A. It is my understanding that they
8 reached an agreement about life insurance and the
9 survivor benefit plan, but they did not reach an
10 agreement concerning division of the military
11 retired pay, which necessitated the trial in this
12 case.
13 Q. Okay. Does the Family Court have
14 jurisdiction to divide disability pay?
15 A. No, it does not.
16 Q. Is there any authority in South
17 Carolina that supports your opinion for the
18 inclusion of an indemnification clause in a final
19 order of property division?
20 A. Could you restate the question? I'm
21 not sure I understand what you are asking.
22 Q. Sure. Is there any case law that you
23 are aware of in South Carolina that addresses the
24 issue of the inclusion of an indemnification clause
25 in a final order of division of property, marital

Page 54

1 property?

2 A. I can't tell you the name of any case.
3 I'm not going to say that there isn't, but I have
4 not done research on that.

5 Q. Okay. We talked a little bit about the
6 parties reaching an agreement that is eventually
7 rolled into or incorporated into a court order.
8 What effect does an agreement reached by the
9 parties have on becoming adopted into or being a
10 part of a court order?

11 A. I am not sure I can answer that because
12 I am not licensed in South Carolina. I know the
13 general results, and I know the results in North
14 Carolina, but I can't tell you the effect of an
15 agreement reached by the parties then being
16 incorporated into a court order in South Carolina
17 because that is a matter of South Carolina law.

18 Q. Okay. Would you tell us how it works
19 in North Carolina?

20 A. In North Carolina, an agreement of the
21 parties incorporated into a separation -- excuse
22 me, into a court order becomes a part of the court
23 order, it is enforceable in all respects as any
24 other court order that would have been the result
25 of a trial, and if modifiable at all, it can only

Page 55

1 be based on substantial change of circumstances
2 since the time of the injury in the order.

3 Q. Okay. Do you have any understanding in
4 Family Court in South Carolina in 2002 how a judge
5 would typically issue an order?

6 A. No.

7 Q. Okay. Now, we talked about in closing
8 argument that Cindy Floyd should have asked or
9 argued for inclusion of the indemnification clause
10 and that the order referred to gross retired pay
11 rather than disposable pay. Could you tell us the
12 difference between the gross retired pay -- you
13 already have -- and the disposable retired pay, and
14 how inclusion of a language regarding gross retired
15 pay would have changed the outcome in this case?

16 A. Yes. The gross retired pay in this
17 case is what should have been requested to be
18 divided in court, and that would mean that
19 regardless of subsequent deductions from that gross
20 retired pay, Mr. Greene would have been obligated
21 to pay 60 percent of the gross retired pay to
22 Hattie, and even if the Defense Finance and
23 Accounting Service deducted amounts from that for
24 the VA waiver, he would still independently have
25 the obligation to directly pay to Hattie the

Page 56

1 difference.

2 Q. Okay. And what authority in South
3 Carolina supports that position, or that opinion?

4 A. Price versus Price, and to a lesser
5 extent Tirado versus Tirado. There may be other
6 cases as well. Again, I am not speaking as a
7 research expert on it, but I know those two cases
8 make it clear that gross is what needs to be
9 requested.

10 Q. Can the division of property be changed
11 or altered in South Carolina after it is
12 incorporated into a final order?

13 A. I don't know the answer to that. It
14 would be a South Carolina law question.

15 Q. Okay. Based on your understanding of
16 the length of Hattie and Joseph Greene's marriage
17 and the statutory law, what portion or what share
18 of Joseph Greene's military retirement benefits was
19 Hattie Greene actually entitled to?

20 A. While that is a question of South
21 Carolina law, I think that what you are looking for
22 is how long were they married during military
23 service, which I believe was 17 years. He was in
24 for 20 years. So at least in North Carolina, the
25 answer would be 17/20ths is the marital share of

Page 57

1 the pension, and the spouse is presumptively
2 entitled to a 50 percent portion of that marital
3 share.

4 Q. Okay. And how much was Hattie Greene
5 awarded by the Family Court in 2002?

6 A. Sixty percent.

7 Q. So that would be more than what she was
8 statutorily entitled to based on her years of
9 marriage?

10 A. You are asking me to assume knowledge
11 of South Carolina law, which I can't tell you. I
12 can say generally you are probably correct in terms
13 of the law, but I can't speak to South Carolina's
14 equitable apportionment of retirement benefits or
15 the rules for equitable distribution in South
16 Carolina.

17 Q. Have you seen in your experience awards
18 of greater than 50 percent of the marital --

19 A. Yes.

20 Q. Is that fairly common?

21 A. No.

22 Q. Okay. And what factors in your
23 experience often lead to an award of more than
24 50 percent of the military pension?

25 A. Sometimes an issue of unfaithfulness is

Page 58

1 the reason. Sometimes economic disparity is a
2 reason. Those are the two that come to mind in the
3 nationwide cases that I keep track of involving an
4 award of greater than 50 percent.
5 Q. Okay. Now, is it your opinion to a
6 reasonable degree of certainty most probably that
7 had Cindy Floyd made an argument for the inclusion
8 of an indemnification clause, that the judge would
9 have incorporated that clause into the final order?
10 A. I can't say that. I don't know what
11 the judge would have done.
12 Q. Okay. And likewise, is it your opinion
13 to a reasonable degree of certainty most probably
14 that had Cindy Floyd argued for the division of the
15 gross military retired pay rather than the
16 disposable retired pay, that the judge would have
17 incorporated that specific term into the order?
18 A. Again, I don't know what the judge
19 would have done.
20 Q. Okay. And I think in your affidavit
21 you mentioned that had she made those arguments and
22 the judge denied the inclusion of an
23 indemnification clause or the terminology of gross
24 retired pay, that the remedy would have been an
25 appeal?

Page 59

1 A. No, I didn't say that.
2 Q. Okay.
3 A. I said that she would have consulted
4 with her attorney – with her client about an
5 appeal.
6 Q. Okay. So I am sorry, could you say
7 your full opinion, just clarify your full opinion
8 on that, the issue regarding an appeal?
9 A. That if the judge refused to allow an
10 indemnification clause and/or the disability –
11 excuse me, and/or the division of gross retired
12 pay, then she would have a duty to consult with the
13 client about whether to take an appeal of the
14 refusal of the Court to grant that. That in itself
15 would be an issue of South Carolina law, which I am
16 not allowed to give opinions on, to see whether or
17 not the Court of Appeals then could take up the
18 issue of a refused request for division of gross
19 retired pay or indemnification clause.
20 Q. Okay. And so just to clarify, what
21 percentage of orders in Family Court in South
22 Carolina regarding the division of property
23 actually are successfully appealed?
24 A. I don't know the answer to that.
25 Q. Okay. So had the judge refused to

Page 60

1 allow for the inclusion of an indemnification
2 clause and Hattie Greene had the opportunity to
3 consult with Cindy Floyd about the potential for an
4 appeal, can you say to a reasonable degree of
5 certainty most probably whether that denial of the
6 inclusion of an indemnification clause would have
7 been successfully appealed?
8 A. I don't know.
9 Q. Okay. And so I am sorry, you can't say
10 to a reasonable degree of certainty most probably
11 whether that appeal would have been successful?
12 A. That's correct.
13 Q. Likewise, if the judge had refused to
14 incorporate the language regarding the gross
15 retired pay rather than disposable pay into the
16 final order and Hattie had the opportunity to
17 discuss with Cindy Floyd the possibility of an
18 appeal, can you say to a reasonable degree of
19 certainty most probably whether that issue would
20 have been successfully appealed?
21 A. I cannot.
22 Q. Okay. Now, I think in your affidavit
23 you also talked about other opportunities that
24 Cindy Floyd – or that would have arisen that may
25 have given Cindy Floyd the opportunity to present

Page 61

1 or try to incorporate the indemnification clause or
2 the gross retired pay language into the final
3 order. Do you recall those opinions?
4 A. I don't understand the question.
5 Q. Sure. I think you said in addition to
6 the closing argument, that when the order was being
7 drafted, she could have inserted language for the
8 judge's consideration?
9 A. Yes. What I meant to say is that if
10 she had been given the opportunity to review the
11 order, whether prepared by the judge or opposing
12 counsel, or if she had been given the opportunity
13 to draft the order, as is common in North Carolina
14 for the prevailing party, she would have had
15 another opportunity to insist upon one of those two
16 approaches in the preparation of the order to be
17 signed by the judge.
18 Q. Okay. And had she been given the
19 opportunity to review the order and request – had
20 she requested the inclusion of the language
21 concerning the indemnification clause, can you say
22 to a reasonable degree of certainty most probably
23 whether the judge would have incorporated the
24 terminology for the inclusion of the
25 indemnification clause into that order?

Page 62

1 A. No.
2 Q. Okay. And likewise, had she tried to
3 propose or insert language concerning the gross
4 retired pay rather than the disposable retired pay
5 into that order, can you say to a reasonable degree
6 of certainty most probably whether the judge would
7 have included that language in the order?
8 A. No.
9 Q. Do you have any understanding of what
10 information Hattie Greene discussed with Cindy
11 Floyd regarding the division of Joseph Greene's
12 military pension benefits?
13 A. No.
14 Q. Okay. Would it be important for you in
15 forming your opinions to have an understanding of
16 what Hattie Greene's concerns were regarding the
17 military pension benefits?
18 A. It would be important for me to know if
19 Hattie Greene brought up something concerning
20 disability claims.
21 Q. Okay.
22 A. But it is so unlikely that a client is
23 going to know about this, which is uniquely the
24 province of a lawyer instead of a client, that I
25 recognized exactly what Hattie was saying in her

Page 63

1 affidavit when she said, "I left that to Ms.
2 Floyd."
3 Q. And you are saying in her deposition
4 transcript?
5 A. I am sorry, yes, you are right, in the
6 deposition transcript that I read of Hattie Greene,
7 she said she left that to the attorney, Ms. Floyd.
8 Q. Okay. Other than the opinions that you
9 have shared with us today, do you have any other
10 opinions that support your testimony in this case?
11 A. Not that I can think of.
12 Q. Okay. Do you intend to testify
13 regarding the damages suffered by Hattie Greene?
14 A. No.
15 Q. Okay. And I would like to just go
16 through some documents that have been produced
17 prior to today and clarify a few issues with you.
18 I think that you provided us with an affidavit in
19 support of the plaintiff's complaint in this case,
20 and can you identify that document for the record,
21 please?
22 A. Yes, this is a nine-page document with
23 the initial caption "Hattie Greene Case: Affidavit
24 of Mark E. Sullivan," and I submitted this to Mr.
25 Ravenel in the support of the claim for negligence

Page 64

1 in this case.
2 Q. Okay. And is this document that is
3 entitled "Hattie Greene Case: Affidavit of Mark
4 Sullivan," is this the final affidavit that you
5 completed with regard to your opinions in support
6 of the plaintiff's complaint?
7 A. Yes.
8 Q. Okay. I would like to go ahead and
9 mark the affidavit for the record as Defendant's
10 Exhibit 7, please.
11 (DFT. EXH. 7, AFFIDAVIT OF MARK E.
12 SULLIVAN, was marked for identification.)
13 Q. Okay. Now, I think that we were
14 provided with maybe a prior copy of an affidavit or
15 a prior affidavit, if I can find it. Would you
16 mind identifying that document for the record,
17 please?
18 A. This is a ten-page document that is
19 captioned "Affidavit of Mark E. Sullivan," and it
20 was executed on September 4, 2012, and I signed it
21 in front of a notary, and it concerns this case.
22 Q. Okay. And was this a draft of your
23 affidavit or a prior version of your final
24 affidavit that became part of the complaint?
25 A. Yes.

Page 65

1 Q. Okay. And in this affidavit dated
2 September 4th of 2012, on page 5 there is a section
3 entitled "First Problem in Indemnification," and I
4 believe we discussed that issue today, have we not?
5 A. Yes.
6 Q. Okay. And the second problem you
7 mentioned is the survivor benefit plan. That
8 begins on page 8 of the affidavit?
9 A. Yes.
10 Q. Do you have any opinions regarding the
11 survivor benefit plan, whether that was something
12 that should have been addressed by Cindy Floyd?
13 A. I think, if my recollection is correct,
14 that this case involved an agreement to provide
15 life insurance instead of the survivor benefit
16 plan, and so while I initially opined regarding
17 SBP, I withdrew that in the final affidavit because
18 it must have appeared to me that the parties had
19 agreed to an alternative death benefit, namely life
20 insurance instead of SBP.
21 Q. Okay. And so your opinions do not
22 include anything about the survivor benefit plan?
23 A. Correct.
24 Q. I would like to go ahead and mark the
25 September 4th, 2012, affidavit as Defendant's

Page 66

1 Exhibit 8, please.
2 (DFT. EXH. 8, 9/4/12 AFFIDAVIT, was
3 marked for identification.)
4 Q. You have been provided with a document
5 that is entitled "Transmittal Memo." Is this a
6 memorandum that you drafted?
7 A. Yes.
8 Q. Okay. And what was the purpose of this
9 memorandum?
10 A. To give Mr. Ravenel an overview of my
11 analysis of the trial transcript, in this case the
12 facts which I found from the trial transcript and
13 the issue of the indemnification and argument for
14 indemnification.
15 Q. Okay. And did you request any
16 information following your review of the trial
17 transcript?
18 A. Not to my recollection.
19 Q. Okay. We can go ahead and mark that
20 document as Defendant's Exhibit 9?
21 (DFT. EXH. 9, 9/24/12 TRANSMITTAL MEMO,
22 was marked for identification.)
23 Q. We will go ahead and take a quick break.
24 I might be almost finished. Take a few minutes.
25 (A recess transpired.)

Page 67

1 (DFT. EXH. 6, MR. GREENE'S FINANCIAL
2 DECLARATION, was marked for identification.)
3 BY MS. FLEMING:
4 Q. Mr. Sullivan, in the order of separate
5 support and maintenance that was entered following
6 the May 14th, 2002, hearing, what was the language
7 that was used in that order regarding the military
8 pension division? Do you recall?
9 A. I don't remember.
10 Q. Okay. I would like to go ahead and
11 show you a copy of that order. And I think if you
12 look at the bottom Bates labeled Expert Sullivan
13 024.
14 A. Yes, I have that open.
15 Q. Okay. Now, the order refers to
16 military retirement. It says, "I find it is
17 appropriate to award 60 percent of the defendant's
18 military retirement to the plaintiff." How is that
19 terminology different, or is it different than the
20 term "gross retirement pay"?
21 A. Well, it is different because it
22 doesn't have the word "gross" in it.
23 Q. Okay. How do you interpret military
24 retirement? What do you interpret that to mean?
25 A. It can have several meanings.

Page 68

1 Q. Okay.
2 A. It was interpreted in the Tirado case
3 because the unique circumstances in that case to
4 mean the net after VA disability waiver. I can see
5 in other cases it might have a different meaning.
6 I don't know what the judge intended here other
7 than he said -- he or she said 60 percent of the
8 defendant's military retirement, because the judge
9 did not address the issue of what would happen if
10 there were a subsequent reduction in the retired
11 pay to a claim of disability.
12 Q. Okay. So is it a fair statement to say
13 that that term "military retirement" can be
14 interpreted in several different ways?
15 A. Yes.
16 Q. One being the way that it was
17 interpreted in Tirado?
18 A. Yes.
19 Q. Okay. Now, there was also a subsequent
20 order, called "A Supplemental Order of Division of
21 Military Retired Pay." What is the purpose of that
22 type of order? And I will give you a copy to look
23 at.
24 Let's mark the Order of Separate
25 Support and Maintenance as Defendant's Exhibit 10,

Page 69

1 please.
2 (DFT. EXH. 10, ORDER OF SEPARATE
3 SUPPORT AND MAINTENANCE, was marked for
4 identification.)
5 Q. What is the purpose of the Supplemental
6 Order of Division of Military Retired Pay?
7 A. Ordinarily a supplemental order is
8 necessitated by the need to present to the Military
9 Retired Pay Center, in this case Defense Finance
10 and Accounting Service, an order that specifically
11 complies with the required language for division of
12 military retired pay, and that, I imagine, is the
13 reason for this Supplemental Order, Division of
14 Military Retired Pay, which has just been handed to
15 me.
16 Q. Okay. And this order, just to clarify,
17 is an order that is provided directly to DFAS?
18 A. Well, I don't know whether this one
19 was, but that is ordinarily the reason.
20 Q. Okay. That is what I am asking you,
21 ordinarily is the reason for the Supplemental
22 Order, Division of Military Retired Pay, to be
23 provided directly to DFAS so that DFAS can make the
24 payments to the service member's spouse as well as
25 the nonservice member's spouse?

Page 70

1 A. That's correct.
2 Q. Does DSS make any payments other than
3 disposable retired pay?
4 A. Let me go back for a minute. You said
5 in your last question to make the make payments to
6 the service member's spouse as well as the
7 nonservice member's spouse. The purpose of a
8 supplemental order like this would be only for the
9 nonservice member's spouse, the person we call the
10 former spouse.
11 Q. Sure.
12 A. They are already making the payments to
13 the retiree service member spouse, so this is only
14 to cut a portion of that retired pay out and give
15 it to the former spouse.
16 Q. Okay.
17 A. I am sorry, you asked for a follow-up
18 question based on that.
19 Q. Thank you for clarifying that. With
20 regard to the retired pay that is paid by DFAS to
21 the former spouse, does DFAS only pay the
22 disposable amount?
23 A. Yes, that's correct, they are required
24 by the Uniform Services Former Spouse Protection
25 Act to divide only disposable retired pay.

Page 71

1 MS. FLEMING: Okay. I don't think I
2 have any further questions. Thank you very much
3 for your time.
4 Let's go ahead and mark this
5 supplemental order as Defendant's Exhibit 11.
6 (DFT. EXH. 11, SUPPLEMENTAL ORDER, was
7 marked for identification.)
8 MS. FLEMING: I will get those other
9 two copies so that we can mark them as 3 and 4. I
10 don't think I have any further questions. Thank
11 you very much for your time, and I hope that you
12 have a safe trip back to Raleigh.
13 THE WITNESS: Thank you.
14 EXAMINATION
15 BY MR. RAVENEL:
16 Q. Mr. Sullivan, to your knowledge was
17 there any discovery done in the form of depositions
18 of Mr. Greene in this case?
19 A. You mean in this malpractice case or in
20 the underlying domestic case?
21 Q. In the underlying domestic case.
22 A. I don't know of any.
23 Q. Do you know whether there were any
24 written interrogatories sent by counsel for Hattie
25 Mae Greene in the Hattie Mae Greene versus Joseph

Page 72

1 Greene matter?
2 A. I don't know of any.
3 Q. Do you know of any inquiry with the
4 military, the United States Marine Corps, by
5 counsel for the Hattie Mae Greene in the Greene
6 versus Greene case related to the areas of service
7 and the combat situations to which he had been
8 exposed?
9 A. I don't know of any.
10 Q. Do you know, based upon information
11 that you currently have, whether or not Mr. Greene
12 did serve in combat areas?
13 A. Yes, I do.
14 Q. Do you know whether or not Mr. Greene
15 was suffering from what he related to as combat-
16 connected physical and mental problems during the
17 marriage?
18 A. I believe that he was, based on the
19 affidavits of Mr. Greene.
20 Q. The affidavit or the deposition?
21 A. I am sorry, the deposition of Mr.
22 Greene and Hattie Greene. I believe that he said
23 that he had loss of hearing and nightmares due to
24 subsequently diagnosed posttraumatic stress
25 disorder during the marriage.

Page 73

1 Q. How would the fact that Mr. Greene
2 served in combat areas have affected a lawyer
3 representing his wife in a termination of the
4 marriage and division of the retirement?
5 MS. FLEMING: Objection to the form.
6 A. If I may answer.
7 Q. Yes, please.
8 A. It would probably have alerted the
9 lawyer that there was an issue that involved
10 service-connected disability. By service
11 connected, I mean occurring during military service
12 without one's own misconduct. Any service-
13 connected disability that occurs during military
14 career is potentially compensable by the Department
15 of Veterans Affairs, the VA disability compensation
16 pursuant to Title 38 of the United States Code.
17 Combat service would have alerted an attorney that
18 there may be disability claim in the future.
19 Q. What would be the reason for a person
20 in the position of Joseph Greene to resist a
21 provision in the separation agreement or in the
22 order that would allow -- that would anticipate and
23 deal with the prospect that he, Mr. Greene, may
24 develop disabling conditions after the divorce?
25 A. I'm not sure if I can answer the

Page 74

1 question because it asks me to tell what Mr. Greene
2 would have said if something had happened. I don't
3 know.

4 Q. No, my question is really directed to
5 this. Just from being a lawyer, what would be the
6 reaction of you as a lawyer if you had proposed
7 that and it had been resisted by Mr. Greene? He
8 doesn't want to put something in there.

9 A. I would have explained to opposing
10 counsel that your client, if he ever develops a
11 disability and gets paid for it, is going to
12 actually have more money by getting the disability
13 than by not getting the disability because he is
14 getting the equivalent amount tax-free of those
15 dollars by waiving taxable dollars. So he ought to
16 be able to reimburse my client because he is
17 getting more money rather than less by electing a
18 VA disability claim.

19 Q. Well, in my hypothetical, would the
20 resistance of Mr. Greene cause you concern
21 regarding whether or not he in fact might have a
22 disability?

23 A. Yes, it would. It would possibly tell
24 me that there is some latent problem there that we
25 ought to pay attention to.

Page 75

1 Q. Well, do you know whether or not the
2 lawyer representing Hattie Mae Greene obtained his
3 medical records in order to confirm whether or not
4 he was -- had issues that he reported to the United
5 States Marine Corps during his active service?

6 A. No, I don't.

7 Q. I may have already asked you this, but
8 do you know whether Joseph Greene's deposition was
9 taken in this case? Not this case but the Joseph
10 Greene versus Hattie May Greene case.

11 A. I don't believe it was. I was never
12 shown a copy of the deposition or any discovery in
13 the underlying domestic case.

14 MR. RAVENEL: Thank you. That's all I
15 have.

16 MS. FLEMING: I do have a few
17 additional questions.

18 EXAMINATION

19 BY MS. FLEMING:

20 Q. Mr. Sullivan, in your practice have you
21 ever requested information or medical records from
22 the VA or the U.S. military on any opposing party?

23 A. I am sure I have, but I can't think of
24 any specific cases in which I have done it.

25 Q. Is that something that you routinely do

Page 76

1 when representing military couples?

2 A. No, I don't.

3 Q. Okay. You've reviewed the deposition
4 of Joseph Greene from this case. Did Mr. Greene
5 ever discuss any of his health issues with his
6 former wife, Hattie Greene?

7 A. I am sure that the deposition speaks
8 for itself, but my recollection of the deposition
9 is that he did not, although I know he also talked
10 about nightmares, and the issue of whether he
11 discussed that would be only half of the issue.

12 The other issue would be the nightmares themselves.
13 Q. Do you know whether they lived together
14 the entire time that he was in the military or
15 thereafter prior to the divorce?

16 A. I think we already established that
17 there was 17 years of marriage during the military,
18 and then there were about three or four years after
19 the retirement in '98 they would have been living
20 together. The divorce in this case was 2002.

21 Q. Okay. So you are relying on the
22 testimony and the transcripts to arrive at the
23 conclusion that they lived at the same residence
24 throughout that time?

25 A. No, I don't have any information on

Page 77

1 that because I don't know the grounds for divorce
2 in South Carolina. In North Carolina, you have to
3 have a year's separation as the grounds. I would
4 assume that when the trial occurred in this case,
5 they were not living together, but I don't have any
6 information on how long they had been separated
7 between his retirement in '98 and the divorce trial
8 in 2002.

9 Q. Okay. Or whether during the times that
10 Mr. Greene was actually in the military, whether
11 Hattie Greene lived with him during that time? Do
12 you know that?

13 A. No, I don't have specific information
14 on that either.

15 Q. Okay. Now, you were asked some
16 questions about service in combat areas. Do you
17 hold the opinion to a reasonable degree of
18 certainty most probably that service in a combat
19 area makes it more likely than not that a service
20 member will make a disability claim in the future?

21 A. I believe to a reasonable degree of
22 certainty that service in a combat area will most
23 likely result in a disability for that service
24 member, more likely than not, but I cannot say
25 whether the next step would be followed, and that

Page 78

Page 80

1 is whether the individual would make a claim for
2 disability compensation.
3 I have at least one case where my
4 client says, "I know my husband has these
5 disabilities, but he hasn't applied for anything."
6 And I keep telling her, "But he is going to, but he
7 is going to." And she says, "It has been
8 eight years, and he hasn't."
9 So I can't take the second step that
10 you suggested in your question and answer as to
11 whether he would apply. I do believe to a
12 reasonable degree of certainty a service in a
13 combat area will be more likely to produce service-
14 connected disabilities, which would also result in
15 combat-related disabilities, which is an entirely
16 different form of compensation.
17 Q. Okay. Now, whether or not someone
18 would eventually suffer a combat disability as a
19 result of service in the combat area, would it
20 depend on that individual service member's role and
21 responsibility within that combat area?
22 A. To some extent, it does, and to some
23 extent it is irrespective of whether they drive a
24 truck or they hold a rifle and shoot against the
25 enemy.

1 happen that would have a negative impact on their
2 client?
3 A. The lawyer has a duty to reasonably
4 inquire into things that will happen in the future
5 that could have an impact on the client in a
6 divorce case that involves in this particular
7 situation military pension division. The most
8 obvious one is the death of the service member, the
9 death of the other side, which in many cases leads
10 the attorney to inquire about a survivor annuity
11 called the survivor benefit plan, which we have
12 already talked about and was taken care of with an
13 agreement. But the second change issue that an
14 attorney needs to anticipate is the issue of a
15 future disability being diagnosed and then claimed
16 upon at the Department of Veterans Affairs, and its
17 impact upon the pension. Both of those are
18 reasonably foreseeable issues that should be
19 addressed by the attorney doing a pension division
20 case.
21 Q. Should those have been addressed in
22 this case involving Mr. Greene?
23 A. The first one, SBP, I don't know that
24 it should have been addressed because it seems to
25 me that the documents that I was presented showed

Page 79

Page 81

1 Q. Okay. And how do you arrive at that
2 conclusion that to some extent service in a combat
3 zone would more likely than not lead to disability?
4 A. Just to give you some examples, you
5 could as easily get wounded driving in a truck as
6 being in a frontline shooting against somebody.
7 You could as easily, in fact more easily, be
8 injured by an IED, an improvised explosive device,
9 driving a truck as opposed to walking along the
10 road. Each of those are examples of how the
11 combat-related aspect of an injury could occur to a
12 person who was driving a truck as opposed to being
13 an infantryman in a frontline.
14 Q. Is there any way to determine the
15 probability in which a service member serving in a
16 combat area would be likely to suffer from some
17 type of disability?
18 A. Not to my knowledge.
19 MS. FLEMING: I think that that's all I
20 have. Thank you very much.
21 EXAMINATION
22 BY MR. RAVENEL:
23 Q. What is the responsibility of the
24 lawyer representing the client in a domestic action
25 to try to anticipate things that may or may not

1 an agreement regarding life insurance. If that had
2 not occurred, I would say that should have been
3 requested of the Court at the trial as well.
4 Certainly the second of those should have been
5 addressed with the Court, and that is the potential
6 for a reduction in the pension because of
7 disability waiver.
8 Q. And the first one, as you say, was
9 dealt with by an agreement, was it not?
10 A. Yes.
11 MR. RAVENEL: All right. That's all I
12 have. Thank you.
13 MS. FLEMING: No further questions.
14 (DFT. EXH. 3, PHOTOCOPY OF DISC;
15 DFT. EXH. 4, PHOTOCOPY OF JOURNAL OF AMERICAN
16 ACADEMY OF MATRIMONIAL LAWYERS, were marked for
17 identification.)
18 (The witness, after having been advised
19 of his right to read and sign this transcript, does
20 not waive that right.)
21 (The deposition was concluded at
22 11:57.)
23
24
25

Page 82

1 SIGNATURE OF DEPONENT

2 DEPONENT: MARK E. SULLIVAN

3 DEPOSITION DATE: DECEMBER 19, 2013

4 REPORTER: ANN P. HARRIS

5 CASE CAPTION: HATTIE MAE GREENE vs. CINDY M. FLOYD

6 (Please return both Signature of Deponent pages)

7 I, the undersigned, MARK E. SULLIVAN, do

8 hereby certify that I have read the foregoing

9 deposition and find it to be a true and accurate

10 transcription of my testimony, with the following

11 corrections, if any:

12 PAGE	13 LINE	14 CHANGE	15 REASON
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

Page 83

1 SIGNATURE OF DEPONENT (CONTINUED)

2 DEPOSITION DATE: DECEMBER 19, 2013

3 REPORTER: ANN P. HARRIS

4 CASE CAPTION: HATTIE MAE GREENE vs. CINDY M. FLOYD

5 PAGE	6 LINE	7 CHANGE	8 REASON
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

12 MARK E. SULLIVAN Date

13 I, Ann P. Harris, Notary Public for the

14 State of South Carolina at Large, do hereby certify

15 that the deponent was advised of his or her right

16 to read and sign said deposition both verbally and

17 in writing. If the deponent fails to execute and

18 return foregoing signature of Deponent page within

19 the thirty (30) days allowed pursuant to the Rules

20 of Civil Procedure, the original transcript may be

21 filed with the court.

22

23

24 Ann P. Harris, RMR

25 My Commission expires

June 23, 2018

Page 84

1 CERTIFICATE OF REPORTER

2

3 I, Ann P. Harris, Certified Merit

4 Reporter and Notary Public for the State of South

5 Carolina at Large, do hereby certify that the

6 foregoing transcript is a true, accurate, and

7 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 30th day of December

13 2013 at Charleston, Charleston County, South

14 Carolina.

15

16

17

18

19

20

21

22

23 Ann P. Harris, RMR

24 My Commission expires

25 June 23, 2018

Page 85

1 INDEX

2	3	4 Page/Line
5 STIPULATION.....	6	7 3/1
8 WITNESS/EXAMINATION	9	10
11 MARK E. SULLIVAN	12	13
14 BY MS. FLEMING.....	15	16 3/16
17 BY MR. RAVENEL.....	18	19 71/15
20 BY MS. FLEMING.....	21	22 75/19
23 BY MR. RAVENEL.....	24	25 79/22
26 SIGNATURE OF DEPONENT PAGES.....	27	28 82 & 83
29 COURT REPORTER'S CERTIFICATE.....	30	31 84

12 EXHIBITS

13	14	15 Page/Line
16 DFT. EXH. 1, Deposition Notice.....	17	18 3/11
19 DFT. EXH. 2, Documents Produced.....	20	21 9/25
22 DFT. EXH. 3, Photocopy of Disc.....	23	24 81/14
25 DFT. EXH. 4, Photocopy of Journal.....	26	27 81/15
28 DFT. EXH. 5, Military Retirement Benefits	29	30 48/7
31 DFT. EXH. 6, Financial Declaration.....	32	33 67/1
34 DFT. EXH. 7, Mr. Sullivan's Affidavit...	35	36 64/9
37 DFT. EXH. 8, 9/4/12 Affidavit.....	38	39 66/2
40 DFT. EXH. 9, 9/24/12 Transmittal Memo...	41	42 66/21
43 DFT. EXH. 10, Order of Separate Support.	44	45 69/2
46 DFT. EXH. 11, Supplemental Order.....	47	48 71/6



COPY

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Hattie Mae Greene,)
Plaintiff,)
v.)
Cindy M. Floyd,)
Defendant.)

IN THE COURT OF COMMON PLEAS
OF THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-10-8372

**PLAINTIFF'S REPLY TO
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

FILED
2014 JUL 25 PM 12:20
CLERK OF COURT

Defendant's motion for summary judgment centers upon her theory that, as counsel for the wife of a marriage to a twenty year veteran of the United States Military (U.S. Marine Corp.), the plaintiff herein, she (Cindy M. Floyd) had no means to protect an award of sixty (60%) per cent of the military spouse's retirement from reduction should the military spouse, after the division of retirement benefits by the Court, ask for and receive VA Disability Benefits.

By statute, a military retiree has the right to ask for VA Disability Benefits and if he/she is awarded VA Disability Benefits, which are tax free, unlike retirement benefits, the retirement benefits available for division as marital assets are reduced dollar-for-dollar by each dollar received as disability payments.

Defendant, Ms. Floyd, did not discuss with her client, Hattie Mae Greene, the possibility that if plaintiff's husband sought and received VA Disability Benefits that the amount she received would be reduced. Ms. Floyd did not ask the Court to protect Mrs. Greene from this danger. See Appendix Transcript of Trial at 14-141 and the supplemental order prepared by Ms. Floyd attached hereto at Appendix, p. 192-195.

Ms. Floyd drafted the referenced Supplemental Order, Division of Retired Pay dated November 8, 2002 after failing to argue for language that would have protected Ms. Greene from later action by her then former husband voluntarily reducing the amount available against which to apply the sixty percent (60%) award.

Simply stated, Ms. Floyd's representation of Ms. Greene, which resulted in a sixty percent (60%) award of the military spouse (husband's) retirement, failed to bring to the Court's attention the very real likelihood that the award could be substantially reduced at the request of Sergeant Greene.

Ms. Floyd's expert (Manley) acknowledged that plaintiff's military spouse's service in two areas of combat, Iraq and Kuwait, made it reasonable to assume that he could have been exposed to stress and conditions that could be disabling. (Appendix 201, p. 22)

Despite the knowledge that Sergeant Greene served in combat areas, defendant's expert testified (1) Ms. Floyd **could not ask** the Court for language that would shelter Ms. Greene's award; but (2) that Ms. Floyd **should have but did not advise** Ms. Greene that any subsequent service connected disability would have the effect of reducing, not the percentage, but the amount of gross retirement, on a dollar-for-dollar basis if her ex-husband successfully sought an award of VA Disability Benefits. (Appendix 203, p. 29)

Even though Ms. Floyd prepared the order awarding Ms. Greene's sixty percent (60%) of Sergeant Greene's retirement benefits and denying alimony (Appendix 192-195) she did not propose a provision anticipating the voluntary act of Sergeant Greene in seeking VA Disability Benefits. This is particularly egregious when one considers that Sergeant Greene's right to make a personal election for disability payments had the effect of increasing his personal financial gain at the expense of Hattie Mae Greene by reducing dollar-for-dollar the amount of his taxable retirement for each disability dollar he received tax free.

Defendant's position that there is no evidence that she had a reasonable option to follow to avoid the impact of the military spouse's post-divorce award of VA disability is simply mistaken.

First, a review of the transcript of the Family Court trial, attached hereto at Appendix 14-141, shows Ms. Floyd made no attempt to provide for indemnification or that she was even aware of the possibility that Sergeant Greene, a veteran of the Iraq and Kuwait theatres of combat, could seek VA disability status which, if successful, would reduce the corpus against which the award granted by the Court to her client would be applied. No deposition of the military spouse was conducted by Ms. Floyd to see what Sergeant Greene's physical and mental condition was like, nor any effort made, to seek an independent medical exam.

As noted in *Marital Litigation in South Carolina* by Roy T. Stuckey at page 347:

d. Distributing Military Retirement Pay:

"Lawyers handling a division of military retirement benefits should carefully read the statutes or consult an expert."

It appears Ms. Floyd did neither. Ms. Floyd does not contend that she explained the potential problems faced when dividing military retirement benefits. Ms. Greene **does** contend that Ms. Floyd did not explain this issue.

Ms. Floyd, the author of the Supplemental Order, Division of Retired Pay dated November 8, 2002, attached here at Appendix 192-195 submitted to and signed by the Court, did not address a remedy for her client should Sergeant Greene voluntarily take any action that would reduce his retirement benefits and his payments to Ms. Greene even though "warned" by Roy Stuckey into consult an expert when dealing with this precise issue and being given notice by the South Carolina Bar to argue for language such as appears in *Hot Tips*, September 15, 2000 and *Cool Tips* May 19, 2000. Appendix 150 to 178.

Plaintiff's expert in the area of the division of military retirement benefits has given two affidavits, Appendix 1-9 and 10-13 from which Ms. Floyd should have argued for a provision requiring Sergeant Greene to indemnify her in the event Sergeant Greene took action to reduce the amount he received for retirement and that, more likely than not, the Court, if asked, would have included such a provision.

The problems faced by all military couples involved in a dissolution of marriage where military retirement benefits are in play were generally known to the members of the South Carolina Bar at the time plaintiff hired defendant to protect her interests. *Hot Tips*, September 15, 2000. Appendix 163-178.

See also the *Free Guide for Divorcing Couples*, "Divorce in South Carolina Piecing It All Together," Stephen V. Futeral, Esquire, Futeral & Nelson, LLC, a current review of this issue at Appendix 142-149. Clearly, competent South Carolina domestic relations lawyers saw and see the need to and were able to address the issue of preservation of a division of retirement benefits from a military spouse post-divorce seeking a VA Disability Award. A review of the transcript of the Greene's divorce hearing reveals a complete absence of inquiry into the potential for disability and entitlement to indemnification. (See Transcript of Trial generally) Appendix, pp. 14 through 141.

A review of this transcript shows that Ms. Floyd was put on notice that this twenty year veteran of the United States Marine Corp had been placed in harms way.

On page 87 of the transcript of the trial (Appendix 101), Gunnery Sergeant Greene told the court and Ms. Greene at line 22, "I went to war" and at Appendix 105, he testified, "I was deployed. I was in different countries all over the place . . . stationed in different places." (In his deposition in this action, Sergeant Greene, at page 13, Appendix 179, listed his duty stations and identified as "combat" status "Mogadishu and Saudi Arabia, the Gulf War.")

The substantial possibility of a future application by Sergeant Greene for disability benefits resulting in reduction of retirement benefits and Mrs. Greene's share of retirement while increasing the net received by Sergeant Greene was apparent for counsel to see. Ms. Floyd's failure to seek a provision in the supplemental order division of retired pay protecting Mrs. Greene from voluntary action by her military spouse to reduce amount of his retirement after the award was malpractice.

More likely than not the court would have agreed to language such as suggested by Mark Sullivan, Esquire, James Long, Esquire, plaintiff's expert, the author of the South Carolina Bar's *Hot Tips* and Charleston attorney, Stephen Futeral, in his guide where he explains in his military divorce section on military pensions that such pensions are subject to reduction by accepting disability payments. Mr. Futeral states that "If an eligible service member decides to receive disability payments by waiving a similar amount of retirement pay," he can do so. While noting that, "Unlike a military pension, disability pay is not subject to equitable division in a family court. So, it is important to address this contingency during the divorce so that the civilian spouse is not short changed." Appendix 148.

An argument by the defendant herein for the provision suggested in the South Carolina Bar's *Hot Tips* on May 19, 2000 and September 15, 2000, would, more likely than not, have been accepted by the Court. See Affidavits of Mark Sullivan, attached at Appendix 1-9 and 10-13.

The consequences of a successful post-divorce application by a military spouse for VA Disability Benefits are obvious to all practicing domestic law with military clients. It seems unlikely that a court would, on the one hand, order a division of retirement benefits as a marital asset between military and non-military spouses while simultaneously refusing to hear argument on and evaluate the right of the military spouse to unilaterally reduce the amount of military retirement divided by court order without an adjustment on his part.

Defendant's expert testified that "I've always discussed the possibility of post-divorce disability of a military spouse and the impact of that . . . on the division of property" (Manley at p. 50, l. 5-19) Appendix 208. Ms. Floyd's failure to discuss this with Ms. Greene constituted malpractice.

See *Hot Tips*, September 15, 2000) Appendix 150 through 178, where Family Court lawyers are instructed to lobby for the use of paragraphs that require the military retiree who takes any action that prevents, decreases or limits the collection by the non-military spouse of the sums paid hereunder, by application for the award of disability compensation . . . he shall make payments to the wife directly in an amount sufficient to neutralize, as to the wife, the effects of the action taken by the husband.

"If the [military spouse] takes any action that prevents, decreases, or limits the receipt by the [non-military spouse] of the sums to be paid herein from the appropriate military pay center, by application for the award of [additional] disability compensation combination of benefits with any other retired pay, waiver for any reason . . . he shall make payments to the [non-military spouse] directly in an amount sufficient to neutralize as to the [non-military spouse] the effect of the action taken by the husband."

"Hot Tips From the Best Domestic Law Practitioners" September 15, 2000, "The Tricks and Traps of Military Disability." See also "Cool Tips" May 19, 2000. Appendix 150-162.

As seen from this quote, at the time of Ms. Floyd's representation of Ms. Greene, the "Best Domestic Law Practitioner" gave the domestic practitioner in South Carolina specific language to protect their non-military spouse client from this known risk.

Nationally, such language is recommended to protect the non-military spouse and avoid the limitations imposed by the VA disability requirement of dollar-for-dollar reduction of the military spouse retirement once the military spouse applied for and received a disability rating. See also the above referenced affidavits of Mrs. Greene's expert, Mark Sullivan, filed at the inception of this action, Appendix 1-9, and his affidavit filed with this Reply to Defendant's

Motion for Summary Judgment, Appendix 10-13, in which Mr. Sullivan asserts that more likely than not the Court in Mrs. Greene's action would have added language of indemnification, if asked. As lawyers are aware, judges, like polite children, do not speak unless spoken to, and Ms. Floyd did not speak to the Court on this subject.



D. Cravens Ravenel
BAKER, RAVENEL & BENDER, LLP
3710 Landmark Drive, Suite 400
Post Office Box 8057
Columbia, South Carolina 29202
Telephone: (803) 799-9091; Fax: (803) 779-3423
cravenel@brblegal.com; Our File: 10743
Attorneys for Plaintiff

July 24, 2014
Columbia, South Carolina

HATTIE GREENE CASE: AFFIDAVIT OF MARK E. SULLIVAN

I, Mark E. Sullivan, declare under penalty of perjury the following:

Qualifications

1. I am an attorney licensed to practice in North Carolina. I have been certified since 1989 as a family law specialist by the North Carolina Board of Legal Specialization. I am a retired Army Reserve JAG colonel and author of The Military Divorce Handbook: A Practical Guide to Representing Military Personnel and Their Families (ABA, 2d Ed. 2011).
2. Since 1986, I have been a regular instructor at the Army JAG School (Charlottesville, VA) for military pension division, and I was named an Honorary Lifetime Faculty Member in 2002. In 2003, I began a regular rotation of teaching military pension division at the Naval Justice School in Newport, RI.
3. I served as a member of the Department of Defense panel of experts on revising the Former Spouses' Protection Act in 1997 and was also a member of the ABA President's Commission on Protecting the Rights of Servicemembers in 2003.
4. I am a past-chair of the Military Committee, ABA Section of Family Law, and I served as Director of the N.C. State Bar's Military Committee, which I helped form in 1981.
5. In 2002, I was awarded the Legion of Merit upon my retirement from the Army Reserve. The text of the award recognized me as "The Army's foremost expert in family law." I have also taught numerous bar association CLE programs on the topic, and I have been writing articles and teaching classes on military pension division since 1983.
6. I have been accepted as an expert for military pension division and given oral testimony in cases in Alabama, Ohio, and Maryland. I was recognized as a national expert in military pension division in a 2011 Minnesota Court of Appeals decision. In New York and South Carolina, I have provided expert testimony regarding military pension division calculations by means of an affidavit.
7. I have prepared military pension division orders for attorneys in 33 states.

8. In 2007, I wrote a successful appellate brief for an attorney in Tennessee in a military pension division and survivor benefits case, *Sullivan v. Sullivan*, 2008 Tenn. App. LEXIS 195.

Background

9. I was originally contacted by Cravens Ravenel, the attorney for Hattie Mae Greene, at the end of July 2012, in regard to the court's refusal to allow her reimbursement for the reduction in her share of her ex-husband's military pension. I have reviewed several packets of information from Mr. Ravenel's office, including court documents, the hearing transcript, correspondence and handwritten appeals by Ms. Greene. I have also spoken to Mr. Ravenel about the facts of the case and what he knows from his client. Based on this, it is my professional opinion that there was a significant omission in the court's Order of Separate Support and Maintenance dated October 15, 2002, and this was detrimental to Ms. Greene. Ms. Greene's attorney should have anticipated the problem, prepared an argument to address it, and asked the court in closing argument to order an indemnification clause to protect her client. She did not do this.

Facts: Greene v. Greene, Dorchester County, SC (2001-DR-18-124)

10. The relevant facts in this case are as follows -
- a. The defendant, Mr. Greene, entered active duty in May 1978. The parties were married in October 1981. Mr. Greene retired in 1998 with twenty years of creditable service, 17 of which were marital.
 - b. The court divided Mr. Greene's Navy retired pay in an "Order of Separate Support and Maintenance" filed October 15, 2002. Cindy Floyd represented Ms. Greene, and W. Scott Palmer represented Mr. Greene. Judge William J. Wyllie, Jr. presided at the May 14, 2002 hearing, and he signed the order.
 - c. The order makes no mention of an evidentiary hearing, testimony or evidence. The relevant sentences in the order read:

At the call of the case, this Court inquired as to whether any of the pending issues had been resolved, to which both parties, through their attorneys, replied in the negative. This court then heard arguments from both counsel, and then issued its ruling.

- d. The court granted 60% of the defendant's military retirement to his wife, Ms. Greene. The affiant has read the transcript of the court session, and his summary thereof is found at ATCH 1, which is incorporated herein.
- e. Recognizing that the retired pay center would only honor an award of 50%, the judge ordered Mr. Greene to make up the difference by paying the remaining 10% directly to the plaintiff each month. See Para. 9.c. (Military Retirement).
- f. Judge Wylie signed an order implementing this pension division ("Supplemental Order Division of Military Retired Pay") on November 8, 2002. This order directed the Defense Finance and Accounting Service (DFAS) to pay to Ms. Greene 60% of the "disposable retired pay" of defendant. This was found to be equivalent to \$798 per month, which means that the retired pay of defendant was \$1,330 monthly.
- g. The parties were divorced pursuant to a divorce decree which was signed October 24, 2003 by Judge Judy C. Bridges,
- h. Ms. Greene states that she has found that the share of retired pay sent from DFAS has diminished, and she has attempted to obtain relief from the court. Her most recent attempt was initiated in a Rule to Show Cause, which resulted in an Order Rule to Show Cause dated April 22, 2012. In that order, the court found that:

- i. Defendant's retired pay is \$1,701 per month.
- ii. Plaintiff's 60% share of that would be \$1,020.60.
- iii. Defendant was being paid for a disability; his "disability benefit" was \$662 per month.
- iv. This amount was deducted from his retired pay, leaving \$1,039 a month.
- v. Plaintiff's 60% of this sum would yield \$623.40 a month.
- vi. Plaintiff testified that she was currently receiving \$539.50, which is \$83.90 less than 60% of \$1,039.

- vii. The court found that plaintiff's entitlement was "based on the current retirement benefit of \$1,039."

Analysis - Contents of Court Orders

11. The court initially divided the pension of defendant in its "Order of Separate Support and Maintenance." The subsequent military pension division order ("Supplemental Order Division of Military Retired Pay") implemented the original decision. The problem with the military pension division in the court's initial order is that the court failed to order an *indemnification* clause in case the defendant elected to receive disability compensation and that choice resulted in a reduced share of the pension for plaintiff.

Analysis - Indemnification

12. Indemnification and disability payments are interrelated; they represent a common issue in military retired pay cases.
- a. When a military retiree (in this case, Mr. Greene) elects disability pay, this choice can have a detrimental effect on the funds received by the former spouse. And the consequence is without the consent of the former spouse.
 - b. The usual disability compensation received is money from the Department of Veterans Affairs. This VA disability compensation is paid to a veteran to compensate for his service-connected disabilities.
 - c. If the rating for his disabilities is less than 50%, then the election means that the same amount of money is taken out of from his retired pay. He receives a check for the VA disability compensation from the Department of Veterans Affairs, but he loses the same amount of money from his retired paycheck. In the end, however, the retiree is ahead - because the VA money is tax-free, whereas the military pension is taxed just as any other deferred compensation payment is.
 - d. Since this is a substantial potential problem for the former spouse of any military retiree, those who teach and write about this subject have for many years suggested the use of a reimbursement mechanism to avoid the problem of reduced payments without

the consent of the former spouse. There are cases going back to the 1980's addressing this problem. The inclusion of an indemnification clause in the court's order would require the retiree to reimburse the former spouse for any shortfall in her share of retired pay.

13. Here is an example of how disability pay would impact military pension payments for a spouse or former spouse:

- a. Assume that the retiree gets \$2,000 a month for his military pension, with no election of Survivor Benefit Plan, and the pension is 100% marital. The judge awards 60% of the pension to the wife, made up of 50% from DFAS and 10% from the retiree. Each month the wife is supposed to receive \$1,000 from DFAS and \$200 from her former husband, for a total of \$1,200. This is what the judge intended - \$1,200 a month.
- b. If the retiree elects receipt of VA disability compensation, however, and his rating is less than 50%, then there is a reduction. His payment from VA (assumed to be \$600 in this example) is deducted from his retired pay before it is divided. That means that DFAS will only send 50% of the net amount (called the "disposable retired pay") to the ex-wife.
- c. This net amount is \$2,000 - \$600, or \$1,400. Thus DFAS will send 50% of that amount (\$1,400), or \$700 a month, to the former spouse (~~not \$1,000 a month, as the court intended~~).
- d. The court's inclusion of a *reimbursement clause*, however, would give any judge in the future who presided at an enforcement hearing the appropriate tool to use in compelling defendant to pay the difference due (\$300) to the former spouse.

14. If the judge in this case had included an indemnification clause in the court's division of military retired pay, this would ensure that Mr. Greene could not unilaterally deprive his former spouse of marital property given to her in a court order. The most likely way in which the judge would have been informed about this issue is for the wife's attorney to make that argument to the court.

15. Such an indemnification clause need not be extensive or complicated. It can be as straightforward as:
- >The court intends that the wife will receive her pension share based on the full military retired pay of the husband, without reduction for disability payments.
 - >If the husband does anything that reduces the share or amount of his military retired pay given herein to the wife, then he shall promptly reimburse her for the loss.
16. The former spouse would thus have a remedy in the trial court for reimbursement directly from the retiree, since the judge awarded her a share of the military retirement, not the defendant's net pay after deductions. She could petition the court for reimbursement through an order of enforcement. Price v. Price, 325 S.C. 579, 480 S.E.2d 92 (1996).
17. Since the court in April 2012 did not have the guidance of an order which contained an indemnification clause (stating what would happen if the defendant cut his ex-wife's share of the pension by electing VA disability compensation), the resulting Order Rule to Show Cause only gave Ms. Greene 60% of the net pay of Mr. Greene - not 60% of his military retirement.
18. Ms. Greene should have received \$1,020.60, consisting of \$539.50 from DPAS and the rest in the form of defendant's 10% of the 60% award, plus his indemnification payment, from the defendant himself.

Case Review

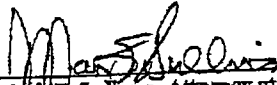
19. After reviewing the transcript of the hearing (ATCH 1), it is important to note that counsel for Ms. Greene should have argued for reimbursement on behalf of her client - an indemnification clause in case the pension suffered a reduction due to disability payments. The attorney failed to protect her client by not asking the judge for the indemnification clause that Ms. Greene needed. Her failure to educate the judge about the VA disability issue and the need for indemnification, and to request indemnification from the court as part of the order granted, was a breach of the duty of care required of a reasonably competent South Carolina attorney.
20. The attorney for Ms. Greene should have properly and fully informed the court of the need for an indemnification clause and the danger of harm to Ms. Greene's share of the military pension.

The attorney should have educated the judge about Mr. Greene's gaining an increased disability rating, as apparently occurred here. The attorney should have told the judge about the facts and the holding in Price v. Price. The attorney should have informed the judge of the impact of post-decree actions by Mr. Greene [accepting increased VA payments if his disability rating went up] upon Ms. Greene's share of the divided pension. If these things had been done, it is my opinion, with a reasonable degree of certainty, that the court would have granted relief for Ms. Greene in the form of an indemnification clause as the best way to protect her from destruction of part of her pension share due to the unilateral post-decree actions of Mr. Greene.

21. If the court heard such arguments and denied them, then it was incumbent on Ms. Greene's attorney to advise her on the state of the law in South Carolina and advise on an appeal.
22. I am over age 18 and am competent to testify to the matters stated herein.

This is the end of my affidavit.

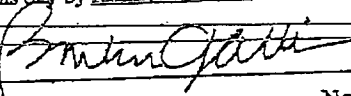
Date: 10/31/12


Mark E. Sullivan, Attorney at Law
Law Offices of Mark E. Sullivan, P.A.
2626 Glenwood Ave., Suite 195, Raleigh, NC 27608
Phone: (919) 832-8507

STATE OF NORTH CAROLINA
WAKE COUNTY

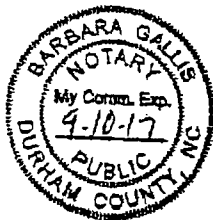
Sworn to and subscribed before me this day by Mark E. Sullivan. I have personal knowledge of the identity of the principal.

Date: 10.31.12


_____, Notary Public

My commission expires 9.10.17

(Official Seal)



ATCH 1 to HATTIE GREENE CASE: AFFIDAVIT OF MARK E. SULLIVAN

SUBJECT: Trial transcript, Hattie Greene v. Joseph Greene, 01-DR-18-0124, Summerville (Dorchester Co.), S.C., May 14, 2002

1. The salient facts regarding my review of this transcript are:

- a. The parties married 10/17/1981 and Mr. Greene ("husband") retired from the Marine Corps as an E-7 in June 1998, with about 17 years of creditable service during the parties' marriage. He was in the military for 20 years.
- b. Ms. Greene ("wife") did not want a divorce because of loss of medical benefits, which would mean Tricare and also medical treatment on-base.
- c. She testified that what her husband received for military pension payments was on the Financial Declaration that was filed with the court.
- d. The judge had each declaration notarized during the 5/14/02 court hearing. The husband's declaration shows \$1,330 as retirement, with a "deduction" of about \$128 from retirement. This is likely his VA disability waiver. The VA waiver is an amount deducted from his military retired pay reflecting the existing of a service-connected disability and the receipt of VA disability compensation. That amount was, in 2002, deducted dollar-for-dollar against the military pension; it still is today if the VA rating is less than 50%. Increased disability ratings mean increase payments of VA disability compensation.
- e. Wife claimed that husband was getting \$1,296 a month from his military retired pay. Husband said that he was getting \$1,163 after tax each month; he said he was getting either \$1,330 or \$1,500 before taxes.
- f. Husband indicated that he had no health problems.
- g. Ms. Floyd questioned Mr. Greene about medical coverage on page 117, and her questions/statements show that she had sufficient knowledge of the requirement that - for military medical coverage through Tricare - there had to be 20 years of marriage, 20 years of military service and an overlap of at least 20 years for these two.
- h. Ms. Floyd initially declined to make a closing argument. Later on, in response to Mr. Palmer's argument, she made an argument which took less than a page of transcript text and was confined to the "girlfriend issue" involving Mr. Greene.

2. The time for argument on INDEMNIFICATION was at closing. Rather than waiving final argument, as Ms. Floyd initially did, or confining her summation to a response to Mr. Palmer in regard to Mr. Greene's "girlfriend," she should have argued that:

- a. Wife was entitled to half of the marital share of the pension.
- b. Her payment should come from DEAS (Defense Finance and Accounting Service) in Cleveland, Ohio (the locations for DEAS Garnishment Operations), since the parties were married for over 10 years during which the husband performed 10 years of creditable military service.
- c. The pension division should be set out in a military pension division order.

-8-

- d. Wife was entitled to an order that required husband to reimburse her for any disability deduction from his pension, since the VA election (and any increase in his VA rating) by husband would have an adverse effect on the wife's share of the pension. This election means a decrease in his disposable retired pay (gross retired pay - VA disability compensation = disposable retired pay).
- e. This was a serious omission, since it meant that the wife could not argue for this in her later attempt to obtain her full share of the pension. The indemnification issue was not addressed in the court's subsequent contempt decision. Without any guidance on this, the court has held that Ms. Greene is not entitled to any pay-back for the reductions which husband has caused due to his electing to receive VA disability compensation payments (or increased VA payments).

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
C/A NO.: 2012-CP-10-8372

Hattie Mae Greene,

Plaintiff

v.

Cindy M. Floyd,

Defendant

SUPPLEMENTARY AFFIDAVIT OF
MARK E. SULLIVAN

I, Mark E. Sullivan, declare under penalty of perjury the following:

1. My qualifications are set out in the affidavit that I executed on October 31, 2012. That information and the statements of fact and professional opinion contained therein are confirmed and incorporated herein by reference.
2. I hereby state with a reasonable degree of certainty the following:
 - a. Ms. Cindy Floyd, the defendant herein, had a duty to request from the court in its Decree of Separate Maintenance an indemnification clause, replacement of "disposable retired pay" with total or gross retired pay, or both of these. The wording of the court's order was critical in providing the protections needed by the plaintiff herein as to post-decree shortfalls in her share of the military pension payments due from her ex-husband.
 - b. Ms. Floyd, the defendant, should have known that she needed to make such a request to the court, or to the ex-husband's attorney before the orders was signed and filed, in regard to the insertion of either or both of these. This was necessary to protect her client, the plaintiff herein, since these two approaches to the division of military retired pay were readily available to all attorneys in South Carolina at the time this case occurred - in 2002 - and earlier.

- c. Mr. James Long presented and published in May and September 2000 manuscripts for the South Carolina Bar Association which I have just this week been shown, and they deal specifically with the issue of military pension division and dealing with the prospect of disability compensation reducing the share of the former spouse, as happened in this case. They mention what must be done to protect the non-military spouse or former spouse, and they specifically state that the drafting attorney needs to employ language dividing total or gross retired pay and to include a reimbursement clause which requires pay-back by the military retiree if he chooses a disability payment that reduces the amount paid out in pension division. I received the two enclosed manuscripts, shown as Plaintiff's Affidavit Exhibit 1 and 2, on Monday, July 14, 2014. It is my belief that these were part of the common knowledge available to all South Carolina lawyers and judges in South Carolina who needed to learn about military pension division and the danger of disability payments.
- d. In light of the substantial military population in South Carolina, I am reasonably certain that the states trial judges would also avail themselves of such knowledge, and that a judge to whom such a request was made – for inclusion of total or gross retired pay, and/or for inclusion of an indemnification clause – would have given such a request favorable consideration and would have approved same.
- e. I stated in my 10/31/2012 affidavit at #20 on pp. 6-7, and I reiterate here, that if the defendant had told the judge about the issue of reduction of the military pension when there is a VA waiver, about the decision in the Price case and about the need for a remedy in the event of a VA election by Mr. Greene, it is

more likely that not that the court would have granted the relief requested for Ms. Greene and protected her share of the military pension.

f. While I stated in my deposition that I could not predict the actions that any single judge might have taken, I stand by the statements made in this affidavit, especially in light of the further reading and research which I have done into the state of knowledge of lawyers and judges in South Carolina in 2000 and afterwards, as a result of the submission of these two manuscripts to me.

g. Based on this, it is my professional opinion that a judge would have granted either or both of these requests if they had been made by the defendant in this case, that the state of the law and of legal knowledge in South Carolina among bench and bar in 2002 was such that lawyers and judges should have known about the dangers of disability elections post-divorce, and that it is more likely than not that the trial court judge in such a case would have taken action to provide a remedy for unilateral post-divorce reductions of military retired pay due to the rules about VA waivers. I said that in my October 2012 affidavit and I stand by that professional opinion.

h. I state these matters to a reasonable degree of professional certainty.

3. I am over age 18 and am competent to testify to the matters stated herein.

This is the end of my affidavit.

Date: July 21, 2014



Mark E. Sullivan, Attorney at Law
Sullivan and Tanner, P.A.
5511 Capital Center Drive #320, Raleigh, NC 27606
Phone: (919) 832-8507

STATE OF NORTH CAROLINA

WAKE COUNTY

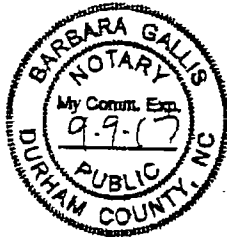
Sworn to and subscribed before me this day by Mark E. Sullivan. I have personal knowledge of the identity of the principal.

Date: July 21, 2014

Barbara Gallis
Notary Public

(Official Seal)

My commission expires: 9.9.17



STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE FAMILY COURT
01-DR-18-0124

HATTIE MAY GREENE,)
Plaintiff,)
vs.)
JOSEPH GREENE,)
Defendant.)

TRANSCRIPT OF RECORD

May 14, 2002
Summerville, South Carolina

B E F O R E:

THE HONORABLE WILLIAM J. WYLIE, JR., JUDGE

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

CINDY M. FLOYD, ESQ.
Attorney for the Plaintiff

SCOTT PALMER, ESQ.
Attorney for the Defendant

BONNIE M. BRITT
Official Court Reporter

1		<u>I N D E X</u>		
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u> <u>RECROSS</u>
3	SANDRA MURRAY			
4	Ms. Floyd	4		
5	Mr. Palmer		6	
6				
7	HATTIE GREENE			
8	Ms. Floyd	8		
9	Mr. Palmer		33	
10				
11	NYLER BACKMAN			
12	Ms. Floyd	60		66
13	Mr. Palmer		63	
14				
15	LAKENZIA GREENE			
16	Ms. Floyd	67		
17	Mr. Palmer			
18				
19	JOSEPH GREENE			
20	Mr. Palmer	74		120
21	Ms. Floyd		108	
22				
23	CERTIFICATE OF REPORTER		126	
24				
25				

1

E X H I B I T S

2

NO.DESCRIPTIONI.D.EVD.

3

P-1

Notarized agreement.... 6 6

4

P-2

Medical records..... 19 19

5

P-3

401-K plan..... 23 23

6

P-4

Affidavit of attorney

7

fees..... 33 33

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 (The following was reported on May 14, 2002.)

2 THE COURT: All right. We are now on the record in
3 the matter of Hattie May Greene vs. Joseph Greene. This is
4 under file number 2001-DR-18-124. Both parties are present
5 and represented by counsel. Ms. Floyd for the plaintiff
6 and Mr. Palmer for the defendant. We are here today for a
7 final hearing. My review of the pleadings makes it appear
8 that we are here for an action which is one for an order of
9 separate, support and maintenance.

10 Is that your understanding as well, Ms. Floyd?

11 MS. FLOYD: Yes, Your Honor.

12 THE COURT: And, Mr. Palmer?

13 MR. PALMER: Yes, Your Honor.

14 THE COURT: Is there to be an amendment to the
15 pleadings?

16 MS. FLOYD: No, sir.

17 THE COURT: Okay. Very good.

18 Before we begin with any testimony, I just want to
19 tell everyone present, particularly, the attorneys at this
20 point, that it is my practice to order that witnesses be
21 sequestered. So as to protect the testimony and make sure
22 that I get the best possible information that I can have in
23 order to make a decision.

24 And what that means, ladies and gentlemen who are here
25 observing, that if you are going to be a witness that you

1 cannot be in the courtroom until you are called. And
2 that's just so that you don't listen to the testimony that
3 goes before yours. Once you have finished testifying, it
4 may well be at that point that it will be entirely
5 appropriate for you just to remain in the proceedings if
6 you choose to. But to the extent any of you are here today
7 to be witnesses, then, I would ask that you wait in the
8 lobby area, and I'll have the deputy call you at the
9 appropriate time.

10 MS. FLOYD: Your Honor, I would like Ms. Sandra Murray
11 to stay in the courtroom, because she's going to be our
12 first witness.

13 THE COURT: Okay. That will be fine.

14 All right. Ms. Floyd, you may proceed.

15 MS. FLOYD: I call Sandra Murray.

16 THE COURT: If you'd come around to the witness stand,
17 Ms. Murray.

18 SANDRA MURRAY, being first duly sworn,
19 testified as follows:

20 DIRECT EXAMINATION

21 BY MS. FLOYD:

22 Q. Tell us your full name, please.

23 A. Sandra Thompson Murray.

24 Q. Okay. And are you a Notary Public for the State of
25 South Carolina?

1 A. I am.

2 Q. Do you know Hattie Greene and Joseph Greene?

3 A. I do.

4 Q. I'm going to show you a document or copy of a
5 document, and ask you if you recognize it?

6 A. Yes, I do.

7 Q. Okay. And tell us what this document is.

8 A. I was told it was an agreement between the two
9 individuals as to support or distribution of assets. I did
10 not read it.

11 Q. Okay. And who told you that?

12 A. Hattie did in Joseph's presence.

13 Q. Okay. When they came to your office is that when...

14 A. Yes.

15 Q. Did they just come in and sign it in your presence?
16 Is the way they did it?

17 A. I was called by Hattie to see if I could notarize an
18 agreement for them. And they came together in Joseph's
19 car, and came upstairs in the office and sat down. And
20 Joseph must not have seen it before then, because he sat
21 there and read it and went over it. And then they made
22 some changes. He made some changes to it. And then I
23 witnessed them signing it, and I notarized it.

24 Q. Okay.

25 MS. FLOYD: I would like to have this marked.

1 (Plaintiff's Exhibit Number 1 marked for
2 identification.)

3 MS. FLOYD: Any objections to this being entered into
4 evidence?

5 MR. PALMER: No objections, Your Honor.

6 MS. FLOYD: I move that it be entered into evidence.

7 THE COURT: All right. That will be without
8 objection, Plaintiff's Number 1.

9 (Plaintiff's Exhibit Number 1 received in evidence.)

10 MS. FLOYD: And I don't have any other questions of
11 this witness, Your Honor.

12 THE COURT: All right. Mr. Palmer, any
13 cross-examination?

14 CROSS-EXAMINATION

15 BY MR. PALMER:

16 Q. Who drew up the agreement?

17 A. I don't know for sure, but I'm assuming Hattie did.

18 Q. And who contacted you, ma'am?

19 A. Hattie did.

20 Q. Hattie did?

21 A. Yes.

22 Q. Did you know Joe before this incident?

23 A. Yes.

24 Q. How did you know him?

25 A. I'm their insurance agent.

1 Q. Okay. What kind of insurance?

2 A. Life insurance.

3 Q. Okay. And you had dealt with both of them?

4 A. Yes.

5 Q. But it was Hattie who contacted you to get this

6 notarized?

7 A. Yes. Hattie called me and set up the appointment for

8 a statement to be notarized.

9 Q. Okay. And did they show up together?

10 A. Yes, they did. In Joseph's car.

11 Q. In Joe's car?

12 A. In the same car. Uh-huh.

13 Q. And how long did Mr. Greene take to look this over?

14 A. Probably -- it would be hard to judge, because I was

15 working as they were looking it over, where I could observe

16 them. But I would say, probably, eight or nine minutes.

17 Q. Okay. And you said there were some changes made?

18 A. Yeah. They either made some changes or added some

19 statements, you know. I know there was a little

20 disagreement, and things were added to it. But whether

21 anything was lined out and changed or anything added, I

22 don't know, because I didn't read it.

23 Q. And this bears the date of October 16th of 2000? That

24 was the date that they showed up?

25 A. Yes.

1 Q. Okay. And what kind of disagreement was there?

2 A. I don't know.

3 Q. Were they in the same room with you?

4 A. Oh, yes. In a room twenty-four by twenty-four.

5 Q. Were you able to hear what kind of disagreement they
6 were having?

7 A. No. It wasn't very loud. It was just conversation.

8 Q. Okay. You don't know what it was about?

9 A. No.

10 Q. Thank you, ma'am.

11 THE COURT: Any redirect?

12 MS. FLOYD: No, sir. Your Honor, may this witness be
13 excused?

14 THE COURT: Certainly.

15 Thank you, very much.

16 WITNESS: Thank you.

17 (The witness leaves the stand.)

18 MS. FLOYD: I call Hattie Greene.

19 HATTIE GREENE, being first duly sworn,
20 testified as follows:

21 DIRECT EXAMINATION

22 BY MS. FLOYD:

23 Q. Tell us your full name, please.

24 A. Hattie May Greene.

25 Q. And what is your address?

- 1 A. It's 7621 Selma Street in North Charleston.
- 2 Q. Okay. And that's in Charleston County?
- 3 A. North Charleston. Yes. Charleston County.
- 4 Q. Okay. And when this action was filed, Mr. Greene
- 5 lived in Dorchester County; is that correct?
- 6 A. Yes, he did.
- 7 Q. And you're married to Joseph Greene; is that correct?
- 8 A. Yes.
- 9 Q. What kind of work do you do?
- 10 A. I'm a Phlebotomist.
- 11 COURT REPORTER: I'm sorry? What?
- 12 WITNESS: Phlebotomist.
- 13 BY MS. FLOYD:
- 14 Q. Can you tell us in laymen's terms what that is?
- 15 A. I draw up blood.
- 16 Q. You work for a doctor?
- 17 A. In a lab. Yes.
- 18 Q. Okay. Do you have any children?
- 19 A. I have two.
- 20 Q. And how old are they?
- 21 A. They are twenty-five and seventeen.
- 22 Q. Okay. The twenty-five year old is a daughter. And
- 23 her name is?
- 24 A. Lakencia (ph) Greene.
- 25 Q. And your son?

- 1 A. Is Joseph Greene, Jr.
- 2 Q. And were you married on October 17, 1981?
- 3 A. Yes.
- 4 Q. And Mr. Greene was in the military when you married;
- 5 is that correct?
- 6 A. Yes.
- 7 Q. And he's retired from the military, now; is that also
- 8 correct?
- 9 A. Yes.
- 10 Q. When did he retire?
- 11 A. I believe it was in June of '99.
- 12 Q. Or '98?
- 13 A. '98. '98.
- 14 Q. How long was he in the military?
- 15 A. For twenty years.
- 16 Q. And you were married to him for how many years while
- 17 he was in the military?
- 18 A. Seventeen years.
- 19 Q. And how many years altogether were you married at the
- 20 time this action was filed?
- 21 A. Twenty years.
- 22 Q. Twenty years?
- 23 A. Yes.
- 24 Q. When did you first notice problems in your marriage?
- 25 A. Just, probably, bad problems I would think, probably.

1 a few weeks before he told me he was leaving.

2 Q. Okay. And when did he leave?

3 A. That was September 22nd.

4 Q. What year?

5 A. Of 2000.

6 Q. Okay. And up until then did you think everything was

7 fine?

8 A. Yes.

9 Q. Did you do anything to cause him to leave?

10 A. No. I did not.

11 Q. Was it a surprise to you when he left?

12 A. Yes, it was.

13 Q. Okay. Did he give you any indication that he might be

14 considering leaving?

15 A. Not until that three weeks period.

16 Q. When he left, where did he go? Where did he move to?

17 A. The first of October he moved into Sommerset

18 Apartments, October 1, 2000.

19 Q. Okay. And where is Sommerset Apartments?

20 A. In Summerville, South Carolina.

21 Q. Was he living there alone?

22 A. No. He was not.

23 Q. Okay. And how do you know that?

24 A. Because I received a phone call from that address on

25 -- it was during the night of October 30th through the next

1 morning which would have been November 1st.

2 Q. Okay. You mean, October 31st?

3 A. Yeah. October 31st to April 1st the calls been coming
4 through.

5 Q. Okay. And who was calling?

6 A. I don't know her name.

7 Q. But it was a woman?

8 A. Yes.

9 Q. And what was the purpose of the phone call?

10 A. She was looking for Joseph.

11 Q. And how do you know she was calling from there?

12 A. Because my daughter answered the phone after it kept
13 ringing and the person would hang up. She answered the
14 phone. And I asked her who was calling, and she didn't
15 know; but she Star-69'd the number. As I was going down to
16 the den to check the Caller ID, she called out the number
17 from the Star-69. And I said, Well, that sounds like your
18 dad's number.

19 Then, by the time I got to the Caller ID in the den,
20 then I noticed his name and number printed out on the
21 Caller ID.

22 Q. Okay. So the woman was calling from his apartment?

23 A. Right.

24 Q. And when you got the calls on October 31st, what did
25 you do?

1 A. Well, after I verified it was his number, I called the
2 number back. And that's when the woman answered the phone.

3 Q. Okay. And as a result of that conversation, what
4 conclusion did you draw?

5 A. Well, she said she was looking for Joseph. I said,
6 Well, who is this? You know.

7 And she said, I'm his girlfriend.

8 And I'm, like, Well, he's married.

9 And she just hung up the phone. I said, Who are you?
10 And she wouldn't say who she was. She hung up the phone.

11 MR. PALMER: Your Honor, I'm going to have to object
12 to the hearsay. I mean, a little bit I really won't mind,
13 because we understand the issues in the case. But these
14 extended conversations ---

15 THE COURT: Sustained.

16 MS. FLOYD: Your Honor, we're not using this for the
17 truth of the matter asserted in the conversation, just the
18 fact that the conversation took place. That's the only
19 thing we're offering that for.

20 THE COURT: Okay. Well, there's no need to get into
21 the details as stated.

22 MS. FLOYD: All right.

23 BY MS. FLOYD:

24 Q. Okay. So you got a telephone call from a woman who
25 said she was looking for your husband. So then, what did

1 you do? Did you stay home?

2 A. No. Me and my daughter got in the car.

3 Q. And where were you going?

4 A. We went to his apartment.

5 Q. Okay. And then, where did you go?

6 A. We ---

7 Q. Well, okay. You went to his apartment. What did you

8 do?

9 A. We knocked on the door, and no one answered. So a man

10 came out, because he heard us in the hallway.

11 Q. He came out from where?

12 A. From the apartment across the way from my husband's.

13 Q. Okay.

14 A. And he told me that some woman lived in there -- a

15 lovely woman lived in there with this man. And I told him

16 it was my husband.

17 Q. Okay. And where did you go after that?

18 A. We went home. I had to go to work. So I went to

19 work. My daughter went home.

20 Q. Okay. And did you, eventually, find out where Mr.

21 Greene was?

22 A. Well, no. We didn't.

23 Q. What about -- did you ever go to a house in Holly

24 Hill?

25 A. Yes. Yes.

1 Q. Would you tell me about that?

2 A. Okay. Well, that was on October 31st, that night.

3 Q. Okay.

4 A. Yes.

5 Q. Well, tell us what you did. Tell us about that

6 episode.

7 A. Okay. A friend of mine and I, we drove out to Holly

8 Hill and saw my husband's car parked out behind this

9 trailer.

10 Q. Uh-huh.

11 A. And I noticed the license plate number, because I know

12 the license plate. And I went up and I knocked on the

13 door.

14 Q. Okay. How did you find that address?

15 A. I asked the lady's daughter -- I mean, the lady's son.

16 Q. Okay. Well, how did you ask him? How did you have

17 access to the son to ask for the address?

18 A. Okay. I called after I found the number in my

19 husband's car.

20 Q. Uh-huh.

21 A. I called the number, and the little boy answered the

22 phone. So I asked him what was the address.

23 Q. Okay. And then you went to that address with your

24 friend?

25 A. Yeah. That night at 11:30.

1 Q. And your friend's name is what?

2 A. Nyler Backman.

3 Q. Okay. And about what time did you arrive there?

4 A. At 11:30.

5 Q. Okay. And then, what did you do after you got there?

6 A. Saw his car parked up behind the trailer. I went to

7 the front door and knocked on the door. Ms. Johnson opened

8 the door, and I walked in.

9 Q. Okay. And what did you see when you walked in there?

10 A. Joseph was sitting on the chair with his arms reclined

11 up on the chair, and he was asleep.

12 Q. And what was that address?

13 A. 130 Good Farm Road.

14 Q. And where does Mr. Greene live, now?

15 A. 130 Good Farm Road. There.

16 Q. And to your knowledge, is there anyone else who lives

17 at the address with him?

18 A. I assume her son. And I think it was another person

19 in there.

20 Q. What's the name of the woman who also lives at that

21 address?

22 A. Lillian Johnson.

23 Q. Okay. And he's been quite opened? He's never denied

24 that that's where he lives?

25 A. He never admit it. No. He never admit it.

1 Q. Okay.

2 A. But the bank statement, he changed our mortgage
3 payment, and it has her address on it. So he confirmed it
4 in other ways.

5 Q. Okay. All right. Did you ever receive any other
6 calls purporting to be Joseph's girlfriend?

7 A. Yes. On November 12th or 13th -- I think 12th -- a
8 woman called me from the same number. I checked the ID.

9 Q. And that was his apartment -- the telephone number
10 that was registered in his name?

11 A. Yes.

12 Q. And you had another conversation with her that night?

13 A. Yes. She said she caught him with another woman in a
14 night club.

15 Q. Okay. Did you have yourself checked medically after
16 you found out that he was unfaithful?

17 A. Yes. The first of October I went to the Naval Weapons
18 Station and had myself checked out.

19 Q. And what was the diagnosis?

20 A. I found out that I had a bacteria -- a sexually
21 transmitted bacteria called gonorrhea. And I had to be
22 medicated for, like, over a week.

23 Q. Okay. I'm going to show you those documents. And
24 what are they?

25 A. These are the papers from my chart at the Naval

1 Weapons Station. And also a printout of what gonorrhea
2 consists of and how it comes about.

3 Q. And this one?

4 A. Okay. This one was -- after everything that was going
5 on and I was seeing the doctor and found out about what was
6 going on, I became very depressed and started seeing a
7 psychiatrist.

8 MS. FLOYD: I ask that these be marked and move that
9 they be placed into evidence.

10 MR. PALMER: Your Honor, the only problem I have is
11 with the attachment. It's a printout of some sort of
12 dictionary, it appears to be. But it doesn't identify what
13 it is, how current it is, what the authoritative body this
14 is. I understand she's got her printout from the Naval
15 Hospital, but this other thing we just don't know what it
16 is.

17 THE COURT: Well, Ms. Floyd, why don't you have your
18 client lay a little greater foundation for that.

19 MS. FLOYD: Okay.

20 BY MS. FLOYD:

21 Q. Would you tell us what the attachment is to the
22 medical record?

23 A. Okay. This is -- I work at a doctor's office. And
24 this is the medical dictionary that the transcriptionists
25 use to type out diagnosis that the doctor gives them that a

1 patient have. The doctor -- they use this book to type it
2 out exactly what it consists of. And this is at my
3 doctor's office at Internal Medicine.

4 THE COURT: All right. That will be admitted, then,
5 without objection.

6 COURT REPORTER: Do you want this all collective?

7 MS. FLOYD: Yes.

8 (Plaintiff's Exhibit Number 2 marked for
9 identification and received in evidence.)

10 BY MS. FLOYD:

11 Q. Okay. You are not asking the Court for a divorce
12 today?

13 A. No, I'm not.

14 Q. Why not?

15 A. Because for religious reason and also I would lose my
16 medical benefits with the Naval Hospital where my doctor is
17 at. I've been seeing him for a while. And my medication
18 that I'm having to take.

19 Q. Okay. And Mr. Greene, we've already established, is
20 retired from the military, and he receives a military
21 pension; is that correct?

22 A. Yes.

23 Q. And that's shown -- the amount that he receives at the
24 present time is shown on his financial declaration; is that
25 correct?

1 A. Yes.

2 Q. Do you believe that you're entitled to a share of that
3 pension?

4 A. Yes, I do.

5 Q. Okay. And what about the survivor benefit package
6 that comes with the military retirement?

7 A. Well, Joseph and I had determined that since the
8 survivor's benefit was more expensive than to have the
9 regular life insurance, that we would come out of it. But
10 now that we're not together or whatever, if he should die,
11 you know, or whatever, I would not get my retirement check
12 any more -- half of the retirement check.

13 Q. So is there already an insurance policy in place?

14 A. Yes, it is.

15 Q. And what's the amount of the policy?

16 A. The amount of the policy is a hundred dollars,
17 monthly.

18 Q. That's the premium. What's the face amount? What
19 would you receive?

20 A. It's a hundred and fifty thousand.

21 Q. Okay. Do you believe that the Court should order him
22 to maintain that policy?

23 A. Yes.

24 Q. And who should pay the premium?

25 A. He should.

- 1 Q. And you now have health insurance through Tricare,
2 that's a military health insurance; is that correct?
- 3 A. Yes.
- 4 Q. And what's the premium for that?
- 5 A. It's thirty-eight dollars, monthly.
- 6 Q. And that's for a family plan or an individual?
- 7 A. It's a family plan.
- 8 Q. And is your son also covered by that?
- 9 A. Yes.
- 10 Q. And do you think that should be continued?
- 11 A. Yes.
- 12 Q. And who should pay for that?
- 13 A. Joseph should pay his portion of that and a half of
14 his son's portion.
- 15 Q. Do you have dental insurance?
- 16 A. Yes, I do.
- 17 Q. And that's through your employment; is that correct?
- 18 A. Yes.
- 19 Q. And what's the premium for that?
- 20 A. That is twenty dollars and thirty cent a month.
- 21 Q. And you've been paying that?
- 22 A. Yes.
- 23 Q. Do you have a military identification card?
- 24 A. Yes.
- 25 Q. Because your a spouse of a retired military member?

- 1 A. Yes.
- 2 Q. And do you utilize that card?
- 3 A. Yes, I do.
- 4 Q. And do you want the Court to ask or require Mr. Greene
5 to cooperate with you in keeping that card current?
- 6 A. Yes.
- 7 Q. It's for you and your son?
- 8 A. Yes.
- 9 Q. Okay. Do you have a life insurance policy on your
10 son?
- 11 A. Yes, I do.
- 12 Q. And how much is the premium for that?
- 13 A. It's twelve dollars and fifty cent per month.
- 14 Q. And who do you think should be responsible for that?
- 15 A. Joseph should pay a half of that.
- 16 Q. And is Mr. Greene currently employed with the State of
17 South Carolina?
- 18 A. Yes, he is
- 19 Q. And do you believe that you're entitled to a share of
20 his retirement that he receives from the State?
- 21 A. Yes.
- 22 Q. Does he contribute to a 401-K plan?
- 23 A. I have no idea.
- 24 Q. Okay. If he does, do you think you should get a
25 portion of that?

1 A. Yes.

2 Q. Do you have a 401-K plan through your employment?

3 A. Yes, I do.

4 Q. Okay. I'm showing you a document and ask if you can
5 tell us what that is?

6 A. This is my 401-K plan with the company that I work
7 for.

8 Q. And what's the amount of that?

9 A. The amount to this -- is three thousand, five hundred
10 and fifty-one dollars and twenty cent.

11 Q. Okay. And what's the date on this statement?

12 A. It's January 2001.

13 Q. And this case was filed on January 25, 2001?

14 A. Yes.

15 Q. So this is the same -- closest to the filing date?

16 A. Yes.

17 (Plaintiff's Exhibit Number 3 is marked for
18 identification.)

19 MS. FLOYD: Any objection to this being placed into
20 evidence?

21 MR. PALMER: No. I've seen it.

22 (Plaintiff's Exhibit 3 received in evidence.)

23 BY MS. FLOYD:

24 Q. Have you continued to contribute to that plan?

25 A. Yes.

- 1 Q. And what is the value of it, now?
- 2 A. Maybe, about four thousand.
- 3 Q. Is he entitled to a portion of your retirement?
- 4 A. No.
- 5 Q. Why not?
- 6 A. Because it's for me and my children. And I don't
- 7 think that he's entitled to that.
- 8 Q. Okay. Did you and Mr. Greene have any savings other
- 9 than your retirement when you separated?
- 10 A. We had some bonds that was in his name.
- 11 Q. About how much were those worth?
- 12 A. Around six thousand.
- 13 Q. Okay. Did you have anything else?
- 14 A. Fidelity stocks. And they were, I guess, about seven
- 15 thousand.
- 16 Q. Okay. And what were the savings bonds supposed to be
- 17 used for?
- 18 A. The savings bonds was for the children's education.
- 19 Q. And what happened to the savings bonds?
- 20 A. He took them all when he left.
- 21 Q. And then, what is the value of the stocks that you
- 22 had? The stocks -- the Fidelity Fund that you're talking
- 23 about, that was in your name?
- 24 A. Yes.
- 25 Q. And what is the value of those stocks, now?

- 1 A. About seven hundred.
- 2 Q. Okay. And what has that money been used for? Where
3 has that money gone?
- 4 A. It was used for the upkeep of my house. It was to pay
5 bills that was left when he left. And medical, dental,
6 everything that required to upkeep, you know, me and my
7 family.
- 8 Q. And you say you had a house?
- 9 A. Yes.
- 10 Q. And that's at 7621 Selma Street?
- 11 A. Yes.
- 12 Q. In North Charleston?
- 13 A. Yes.
- 14 Q. And what is the value of that house?
- 15 A. Sixty-six, five.
- 16 Q. Sixty-six thousand, five hundred dollars?
- 17 A. Yes.
- 18 Q. Is there a mortgage on the house?
- 19 A. Yes.
- 20 Q. And what's the mortgage?
- 21 A. One of the mortgages is six-fifty and one is for
22 twenty-seven, ninety-five.
- 23 Q. Twenty-seven, ninety-five?
- 24 A. Yes.
- 25 Q. And one is for six hundred and fifty dollars?

1 A. Yes.

2 Q. And that's the balance on the mortgage?

3 A. If what is the balance?

4 Q. I'm asking you.

5 A. No. That's not a balance.

6 Q. Okay. All right. There's a first mortgage.

7 A. Okay.

8 Q. And what is the balance -- what's the value -- what's

9 the balance of the first mortgage on the house?

10 A. Oh. It's about thirty-some thousand.

11 Q. About thirty-two thousand, five hundred dollars?

12 A. Yes.

13 Q. And what about the second mortgage?

14 A. It's about nine thousand and something.

15 Q. Okay. So it's about nine thousand dollars. So is it

16 about forty-two thousand dollars total in mortgages on your

17 house?

18 A. Yes.

19 Q. So that would make the equity about twenty-five

20 thousand dollars; is that correct?

21 A. Yes.

22 Q. Okay. Who should keep the house?

23 A. Me and my children.

24 Q. Okay. And how should the equity be divided?

25 A. I would say, not by half. I would think not.

1 Q. Well, you need to tell the Court what you want,
2 Hattie.

3 A. I would say, seventy-five-twenty-five.

4 Q. Okay. And who should get the seventy-five?

5 A. He should -- I mean, I should get the seventy-five.
6 He should get the twenty-five.

7 Q. And you both had cars when you separated; is that
8 correct?

9 A. Yes.

10 Q. And you're willing -- you should keep the car you had
11 and he should keep the car he had?

12 A. Yes.

13 Q. What about the personal property -- other personal
14 property, furniture and that sort of stuff? Has that been
15 divided?

16 A. Yes. That's already been divided. He bought extra
17 stuff, and he also took all that he took from the house
18 already: bedroom, microwave, t.v., v.c.r., everything he
19 took to set up his apartment.

20 Q. Do you believe that you've received your share of the
21 retirement pay since the time this action was filed?

22 A. No. I have not.

23 Q. You're asking the Court to give you retroactive
24 retirement pay?

25 A. Yes.

- 1 Q. What is the total you're asking for?
- 2 A. Ten thousand, I think, it's like four hundred dollars.
- 3 Q. And how did you arrive at that figure?
- 4 A. It's six, seventy-eight times the eighteen months.
- 5 Q. So you've been separated for eighteen months, and you
- 6 think your share of the retirement would be six hundred and
- 7 seventy-eight dollars per month?
- 8 A. Yes.
- 9 Q. Okay. Your son still lives at home with you; is that
- 10 correct?
- 11 A. Yes.
- 12 Q. And how old is he?
- 13 A. He's seventeen.
- 14 Q. And when will he be eighteen?
- 15 A. In August 11th.
- 16 Q. What year?
- 17 A. Of 2002.
- 18 Q. And what grade is he in school?
- 19 A. He's in twelfth grade.
- 20 Q. And is he graduating from high school this year?
- 21 A. Yes. May 25th.
- 22 Q. And what are his plans for college?
- 23 A. He's enrolled in SCU, the University of South
- 24 Carolina.
- 25 Q. Okay. What's his major that he's planning?

- 1 A. His major is music education. To be a teacher.
- 2 Q. Okay. What is the cost going to be for him to go
- 3 there each year?
- 4 A. It's ten thousand per year.
- 5 Q. Okay. And has he applied for financial aid?
- 6 A. Yes, he has.
- 7 Q. Has he received any scholarships?
- 8 A. Yes, he has.
- 9 Q. And what has he received?
- 10 A. He has one for fifteen hundred per semester. And he
- 11 got one yesterday for five hundred, but that's a one-time
- 12 payment of five hundred.
- 13 Q. Okay. Has he gotten any other grants or anything?
- 14 A. He's filed for a grant, but he would have to pay back
- 15 that grant. He told me he would have to pay back that
- 16 grant.
- 17 Q. Does he work to help with his expenses?
- 18 A. Yes. He works.
- 19 Q. Where does he work?
- 20 A. At Ryan's Steakhouse.
- 21 Q. Do you believe that Mr. Greene should be required to
- 22 contribute to your son's college education?
- 23 A. Yes.
- 24 Q. And how should he do that?
- 25 A. A third of his education.

1 Q. Okay. And he's now paying child support?

2 A. Yes.

3 Q. Are you asking the Court for alimony or spousal
4 support?

5 A. Spousal support.

6 Q. And how much do you believe that you should receive?

7 A. Five hundred -- I mean, four hundred dollars, now.

8 And once Jay has completed his education, five hundred per
9 month.

10 Q. And that's in addition to your share of the military
11 retirement?

12 A. Yes.

13 Q. How old are you?

14 A. I am forty-four.

15 Q. And how old were you when you got married?

16 A. Twenty-three or something.

17 Q. How is your health?

18 A. Okay.

19 Q. When you and Mr. Greene were together and he was in
20 the military, did you have to move because of his career?

21 A. Yes.

22 Q. How many times?

23 A. Probably, six to seven or more.

24 Q. Okay. Did this effect your ability to earn money, to
25 get jobs, and to progress in your career?

- 1 A. Yes.
- 2 Q. Have you worked throughout the marriage?
- 3 A. Yes, I did.
- 4 Q. And what's your level of education?
- 5 A. Thirteen years.
- 6 Q. Okay. And to the best of your knowledge, will you be
- 7 able to continue working and earning at the level you are
- 8 now until you retire?
- 9 A. Yes.
- 10 Q. If Mr. Greene files for divorce, will you be able to
- 11 keep the benefits that you have with the military?
- 12 A. No. I would not.
- 13 Q. Would you want the Court to allow you to ask for
- 14 alimony to cover the cost of health insurance and
- 15 medications in the event that he does ask for a divorce in
- 16 the future?
- 17 A. Yes.
- 18 Q. Have either of you been married before?
- 19 A. No.
- 20 Q. Now, you had to hire a lawyer to bring this action
- 21 against Mr. Greene; is that correct?
- 22 A. Yes.
- 23 Q. And you hired Mr. Thaddeus Doughty at first; is that
- 24 correct?
- 25 A. Yes.

1 Q. And how much did you pay Mr. Doughty?

2 A. Six hundred and seventy-three dollars.

3 Q. Okay. And then later on you hired Mr. Stan
4 Jaskiewicz; is that correct?

5 A. Yes.

6 Q. And how much did you pay Mr. Jaskiewicz?

7 A. One thousand dollars.

8 Q. Okay. And what did -- Mr. Doughty drafted the
9 pleadings to start the action for you?

10 A. Yes.

11 Q. And he went to court with you and did a temporary
12 order; is that correct?

13 A. Yes.

14 Q. And Mr. Jaskiewicz did some discovery for you?

15 A. Yes.

16 Q. And he negotiated with your husband's attorney,
17 Mr. Scott Palmer; is that correct?

18 A. Yes, he did.

19 Q. Okay. And then you hired me?

20 A. Yes.

21 Q. I'm going to show you an affidavit of attorney's fees,
22 and ask if you'd look it over and see if that is a
23 representation of the services that I performed for you?

24 A. Yes.

25 Q. And what are the amount of attorney's fees are we

1 asking for today?

2 A. It's four thousand, five hundred and fifty-four
3 dollars and ninety-six cent.

4 MS. FLOYD: Do you want this marked?

5 THE COURT: Any objection?

6 MR. PALMER: I've seen it, Judge.

7 THE COURT: Yes. Let's go ahead and mark it, then.

8 MS. FLOYD: I move that it be placed into evidence.

9 (Plaintiff's Exhibit Number 4 marked for
10 identification and received in evidence.)

11 MS. FLOYD: I have no further questions, Your Honor.

12 THE COURT: All right. Mr. Palmer?

13 CROSS-EXAMINATION

14 BY MR. PALMER:

15 Q. I want to ask you about this agreement that your
16 lawyer's put into the record.

17 A. Yes.

18 Q. Are you familiar with it? You reviewed it recently?

19 A. Yes.

20 Q. Now, you drew up that agreement; didn't you?

21 A. I wrote it.

22 Q. Yeah. That's your handwriting; isn't it?

23 A. Yes. I wrote it.

24 Q. And you wrote it after you and Joe separated?

25 A. No. Joseph was there when this originally was wrote

1 up. He was there.

2 Q. He was still in the house?

3 A. Right. But this is not the first one. He did one a
4 month before he left. He did one in September on the 29th.
5 He did that before this one.

6 Q. You don't have that one? Well, let me just ask you,
7 the first agreement, was it ever signed?

8 A. Yes.

9 Q. And why was it necessary to do another one?

10 A. Because when I took it to my -- when I talked to
11 attorney -- the attorney's office ---

12 Q. Is this Mr. Doughty, your first lawyer?

13 A. Well, it wasn't Mr. Doughty that I first talked to. I
14 talked to Mr. Jaskiewicz first, but I did not hire him.
15 But I had talked to him. And I had given him eight hundred
16 dollars, but then I went and got it back, because I was in
17 a pre-paid legal program. And Mr. Jaskiewicz was not in
18 that program.

19 Q. I see.

20 A. So that's why I switched from Mr. Jaskiewicz at first.

21 Q. Okay. But let me ask you, this first agreement that
22 you made reference to, did Joe draw that up, or did
23 Mr. Jaskiewicz draw it up, or did you draw it up?

24 A. We both draw it up. Joseph and I.

25 Q. While you were still together in the house?

1 A. He was not with me in September 29th, but we was
2 together. He was on base. He was living in base, waiting
3 for his apartment to be ready.

4 Q. Okay.

5 A. So I went on base and we draw it up, and we signed
6 that on the 29th of September.

7 Q. And what base was this?

8 A. The Air Force Base.

9 Q. Here in Charleston?

10 A. Yes.

11 Q. He was living on base?

12 A. Yes.

13 Q. And you were living where?

14 A. At the house, 7621 Selma Street.

15 Q. Okay. All right. So you were, obviously, still
16 married, still acting as husband and wife?

17 A. No.

18 Q. So this is after you had made these discoveries that
19 you've talked about?

20 A. No. He left on the 22nd of September.

21 Q. Okay. And when was the first agreement drawn up?

22 A. The first agreement was made before he actually left.
23 We was at our dining room table, and the first agreement
24 was made up.

25 Q. Okay.

1 A. But because we made changes to the agreement, then, it
2 had to been drawn up again. And he signed it. But then
3 when I found out from Mr. Jaskiewicz, unless it was in the
4 court -- it had to been filed in the court system. Then,
5 that's when it had to be rewritten, again, and notarized
6 for the Court. So that's how we came to this.

7 Q. Okay. So you had one agreement at least drawn up and
8 signed before Joe left in September?

9 A. Right.

10 Q. And then this agreement was drawn up when?

11 A. This agreement was drawn up on October 16th.

12 Q. Okay. And at that point, did you have a lawyer?

13 A. Did I have a lawyer? No. I did not hire a lawyer,
14 yet.

15 Q. Okay. You talked to Mr. Jaskiewicz, but you hadn't
16 hired anyone; is that right?

17 A. No.

18 Q. And Joe didn't have lawyer?

19 A. Huh-huh.

20 Q. Okay. And so you and he got together at the insurance
21 office, and you wrote this up and he signed it; is that
22 right?

23 A. We got where?

24 Q. At the insurance office. The office of this lady who
25 testified.

1 A. No. This was already drawn up before we gone to the
2 insurance office. This was drawn up with me and him. We
3 was at my house before we went to the insurance lady's
4 office.

5 Q. Okay. Okay. I understand. Okay. But you're still
6 together. This is before he left in September, you had the
7 first agreement, and then after he left, you did this
8 agreement?

9 A. Right.

10 Q. Okay. And how does -- when did you first start
11 getting these phone calls that you've talked about?

12 A. The first phone call was on the 31st of October.
13 These calls started coming, and they would, you know, be
14 hanging up the phone.

15 Q. Okay. And that was after Joe had left?

16 A. Yeah. That's when the most regular -- I mean, there
17 was still phone calls while he was there, but it wasn't
18 that noticeable as all night long like it did that night.

19 Q. Okay. At the point you drew up the first agreement,
20 had Joe given you any indication that he was going to
21 leave?

22 A. The first agreement?

23 Q. Yeah. The first agreement back in September before
24 you had separated?

25 A. Right. Yeah. About three weeks he went out of town

1 around the 15th; I guess, of September; and came back and
2 said he had a girlfriend. And that's when we started
3 working on the agreement that he was going to leave. But
4 he wasn't supposed to leave from what he said until October
5 first.

6 Q. Okay. So you agreed that he would leave, and that you
7 would get together and handle these financial issues?

8 A. I wasn't -- no. We didn't agree that he was going to
9 leave. He said he was going to leave. It was not my thing
10 that he leave.

11 Q. But after the point he told you he wasn't happy and he
12 was going to leave, then, you decided to work with him to
13 handle these financial issues?

14 A. Yeah. Because I know if he had just walked out, we
15 still had to survive.

16 Q. Sure.

17 A. So if he, in fact, did walk out, then he know what he
18 would have been obligated to do once he left.

19 Q. Okay. Now, this agreement has some language in it
20 about the house.

21 A. Yes.

22 Q. And it says if the house is sold, I will receive half
23 of the money from the sale. Now, "I" being Joe, because
24 you wrote it up for him to sign; is that right?

25 A. Yes.

1 Q. Okay. So the agreement was if the house was sold and
2 there was any net proceeds that you would divide it evenly?

3 A. Yes. If the house was ever sold.

4 Q. But, now, you're saying that you should get
5 seventy-five percent of the equity in the house?

6 A. Because the house is not -- we're talking about me
7 keeping the house. That was if I was for some reason to
8 sell the house. He can still put that in there if I sell
9 the house, he want half of it; but I'm not selling the
10 house. It was not my intention to ever sell my house.

11 Q. So the distinction is that he's entitled to more
12 equity, but only if the house was sold?

13 A. That was his thing. If I sold the house, he wanted
14 half of what I sold it for. I never had any intentions of
15 selling my house.

16 Q. But you agreed to that, though; right?

17 A. If I sold the house.

18 Q. Right. And that's why it ended up in the agreement?

19 A. Right. If I ever sold the house.

20 Q. All right. Now ---

21 A. And if I did, then, yeah. I agree. But I'm not
22 selling my house.

23 Q. Now, the agreement also talks about fifteen hundred a
24 month?

25 A. Yes.

- 1 Q. That was your agreement?
- 2 A. Yes.
- 3 Q. And at that time he was getting military retirement?
- 4 A. Yes.
- 5 Q. He was getting what? About twelve hundred a month?
- 6 A. Twelve ninety-six or something like that.
- 7 Q. Okay. And he was also earning his pay at MacDougall?
- 8 A. Right.
- 9 Q. Which he's making a little bit more now, but it was,
- 10 roughly, the same kind of money?
- 11 A. Right.
- 12 Q. And he agreed to pay the fifteen hundred a month?
- 13 A. Yes.
- 14 Q. In fact, he did pay that; didn't he?
- 15 A. He did until he obtained his attorney, Mr. Scott
- 16 Palmer, who told him he no longer had to pay it.
- 17 Q. How do you know that?
- 18 A. That's what he told me.
- 19 Q. Okay. But he's paying now; isn't he?
- 20 A. He's paying -- no. He's paying what?
- 21 Q. You're saying he isn't paying under the Court order?
- 22 A. He's paying what the Court ordered him to pay. He's
- 23 not paying per that agreement. No.
- 24 Q. Okay.
- 25 A. He wasn't paying that since March of 2001.

1 Q. But when you went into court, you didn't have this
2 agreement; did you?

3 A. Yes. We did have that agreement.

4 Q. Okay. And what happened to it? Why wasn't the
5 agreement approved?

6 A. Because my attorney did not show up to court. He sent
7 someone else in his place who had no idea of what was going
8 on with my case.

9 Q. And this is the attorney you're asking my client to
10 pay for that didn't even show up in court?

11 A. He sent his partner who was Mr. Moise. I'm asking
12 your client to pay for attorneys that I had to obtain for
13 reasons that he made in my life. I'm not asking the Court,
14 specifically, to pay for it. I wouldn't have had to obtain
15 that attorney or any attorney if I wasn't put in this
16 position.

17 Q. But wait a minute. You said that he paid the fifteen
18 hundred a month after you signed that agreement; right?

19 A. Until March.

20 Q. Well, you had hired a lawyer before March?

21 A. March of 2000 -- I mean, 2001? Yeah. I had to obtain
22 a lawyer before that time.

23 Q. You hired a lawyer to file suit and start a Family
24 Court case, and that's what he did?

25 A. Right.

1 Q. In fact, you went to a temporary hearing with this
2 attorney and Mr. Greene showed up without a lawyer; isn't
3 that correct?

4 A. In April.

5 Q. Okay. And up until that point he had been making
6 these payments; hadn't he?

7 A. He did until he came to Mr. Palmer in March. We
8 didn't go to court until April if that's what you're
9 talking about. He obtained you in March.

10 Q. Right. But he was making those payments even after
11 you hired a lawyer ---

12 A. Not in April.

13 Q. --- he was making payments, though; wasn't he?

14 A. I obtained a lawyer in November. Yes. I was getting
15 the fifteen hundred dollars a month.

16 Q. So if he was making the payments when you hired a
17 lawyer, why did you feel like you needed a lawyer?

18 A. Because I was told by the attorney that even though we
19 had that agreement, if it was not filed in the court then
20 it would not stand if he decided not to pay me the next
21 day. I would have to go through the court process. So
22 that's when I decided that I was going to go ahead and get
23 it filed in court. And we went and got it notarized so we
24 can get it filed in court, that's when he decided he was
25 going to get his attorney or whatever he decided he was

1 going to do. But, no. I never intended for this to be in
2 court. That's why we sit and had the agreement. We was
3 just going to get it filed in the court so he would abide
4 by it, and it would be a legal document and binding
5 document.

6 Q. Now, you're telling the Court that even though you've
7 been through three lawyers, your husband was paying under
8 the agreement, and you decided to hire a lawyer and sue him
9 anyway ---

10 A. That's not ---

11 Q. And now, you've refused to settle the case, that you
12 didn't think you needed a lawyer? You didn't want to bring
13 it to court?

14 A. I never had a problem with settling the case. His
15 attorney never settled the case. He never settled the
16 case. I never wanted to even get it started. This was the
17 agreement was supposed to have been it. That's it.

18 Q. Now, Ms. Greene, you're familiar with the provisions
19 that the Court ordered in the temporary order?

20 A. Yes.

21 Q. Okay. And do you understand -- have you actually read
22 the language of that order?

23 A. Well, I wouldn't say I'm an attorney, but ---

24 Q. Oh, no. I'm not asking you that. What I want to know
25 is that do you understand how the Court arrived at the

1 figures that's in the order?

2 A. No. I don't understand how the -- because the figures
3 was incorrect.

4 Q. Okay. Well, let me just go over it with you briefly.
5 The Court found as of the date of the hearing of that
6 particular year -- and this was June 19, 2001 -- that your
7 year-to-date earnings were seven thousand, seven hundred
8 fifty-four dollars and thirty-three cents; right? Or two
9 thousand, one hundred fifty-three dollars and ninety-eight
10 cents per month. And then she also found that Mr. Greene
11 should pay child support in the amount of four hundred and
12 forty-two dollars and ninety cents per month, which he's
13 paying now; right?

14 A. He's paying that, but I don't agree with your other
15 figure that you gave.

16 Q. Well, you don't disagree that it's in the Court order?

17 A. It is in the Court order, because the incorrect
18 information was given.

19 Q. Okay. Well, we'll talk about that later. Then, you
20 understand the judge ordered him to pay an additional seven
21 hundred and four dollars and thirty cents per month toward
22 the mortgage payments?

23 A. He was ordered to pay that, but he didn't continue
24 paying that. So he did not abide by the Court order.

25 Q. You're saying he's not paying that now?

- 1 A. No. He's not.
- 2 Q. When was the last time he paid it?
- 3 A. I think the last time he paid it was probably in -- I
- 4 don't know. Probably, about, maybe, six months ago or
- 5 something was when he stopped paying it. Maybe it was.
- 6 Q. And you told your lawyer about this?
- 7 A. Yes, I did.
- 8 Q. And have you asked your lawyer to bring him back to
- 9 court?
- 10 A. Yes.
- 11 Q. For not abiding by the Court order?
- 12 A. Right.
- 13 Q. Okay. Now, you're saying you don't agree with the
- 14 figures in the Court order; that you don't earn,
- 15 approximately, two thousand dollars per month?
- 16 A. No. I don't earn two thousand dollars per month.
- 17 Q. What do you earn per month?
- 18 A. I earn eight hundred and somewhat dollars bi-weekly.
- 19 And two times that is about sixteen -- close to seventeen
- 20 hundred a month is what I earn.
- 21 Q. Seventeen hundred a month? And that's what's on your
- 22 financial declaration? Is that the same figure that's on
- 23 your financial declaration?
- 24 A. It should be.
- 25 Q. Okay.

1 A. But that's now what was on the Court order.

2 Q. Okay. Now, has your pay gone up or down since April
3 of 2001?

4 A. Yes. And that's where I am now.

5 Q. Well, what does "yes" mean? Has it gone up or down?

6 A. It's gone up. And now it's the seventeen -- whatever
7 I just told you a minute ago.

8 Q. Okay. And if your company had requested ---

9 A. So it was lower then.

10 Q. If your company had reported that you make eighteen
11 sixty-one, sixty a month, would you disagree with that?

12 A. Yes.

13 Q. Okay.

14 COURT REPORTER: Judge, I need to change my paper.

15 THE COURT: Okay. While the court reporter is
16 changing her paper, let me get counsel -- both these
17 financial declarations have not been notarized. So you can
18 do that.

19 (Attorneys comply.)

20 THE COURT: We are now back on the record. So we have
21 our financial declarations notarized. And, apparently, Mr.
22 Palmer handed you something, Ms. Floyd, that you wish to
23 express some objection to?

24 MR. PALMER: Your Honor, this is information I had
25 subpoenaed from Quest Diagnostics. Earlier in the case, I

1 believe, I had provided it as part of my discovery
2 responses to Mr. Jaskiewicz. But, Your Honor, I would
3 nevertheless contend to use it for impeachment purposes.
4 I'm not sure I need to provide her a previous copy.

5 MS. FLOYD: If it was subpoenaed, Your Honor, it's
6 part of discover, and I would have to get a copy of it.
7 I don't have it in my file, Your Honor. If he supplied it
8 to Mr. Jaskiewicz, I don't have a record of it.

9 MR. PALMER: Your Honor, let me say -- let me just
10 comment on that, too. And I've been working with Ms. Floyd
11 about this, but Mr. Jaskiewicz started this discovery. And
12 I've responded to his discovery requests. He didn't like
13 the answers. I amended them. We went back and forth with
14 it. But at the same time, I served his office with a set
15 of discovery requests, and we've never gotten an answer at
16 all. And then, again, it's nothing to do with Ms. Floyd.
17 She took over the case from him. But at the time she got
18 the case, we still had this outstanding issue.

19 Now, I haven't filed a motion to compel, but I did ask
20 for all this stuff in discovery. And I provided in with my
21 responses that were even served after mine were ---

22 THE COURT: What you're seeking to introduce now is
23 employment information about her employment from her
24 employer?

25 MR. PALMER: Yes, sir. That we subpoenaed from way

1 back when from Quest Diagnostics back in 2001. And the
2 only reason, Your Honor, is to -- because it differs with
3 what her account of what her income is.

4 MS. FLOYD: Your Honor, this is just a very
5 nondescript, plain paper document, no certification on it,
6 no cover letter, no nothing. So I don't...

7 MR. PALMER: I can provide the cover letter, Your
8 Honor.

9 THE COURT: Well, Mr. Palmer, at this point, maybe you
10 can just question her about her income a little bit more,
11 and that may provide a greater foundation for your use of
12 this in some sort of reply or rebuttal testimony or for
13 impeachment purposes. But at this point, I'm going to
14 sustain the objection, but I'll note for the record that I
15 don't know whether or not it was produced in discovery.
16 With the change of attorneys, that makes that a little more
17 difficult. But, you know, as long as you can authenticate
18 these documents, I just don't see how Ms. Greene can be
19 prejudiced by records from her own employer.

20 MR. PALMER: Thank you, Your Honor.

21 BY MR. PALMER:

22 Q. What is your salary, yearly?

23 A. Excuse me?

24 Q. That you're paid on annual basis?

25 A. Am I paid through my job on an annual basis?

- 1 Q. No. I'm not asking when you get your paychecks.
2 You've already told us that.
- 3 A. Right.
- 4 Q. But how is your salary calculated? Is it per week?
5 Per year? Is it per hour?
- 6 A. I get paid per hour.
- 7 Q. Okay. And what is your hourly rate, ma'am?
- 8 A. It's ten, seventy-four, now.
- 9 Q. Okay. And how many hours do you work per week?
- 10 A. Forty hours.
- 11 Q. Okay. Sorry. I probably should have asked you that
12 from the get-go. We could have avoided all this. So would
13 you have any other sources of income besides that?
- 14 A. No.
- 15 Q. No other side income?
- 16 A. Side income -- you mean, like, child support?
- 17 Q. Well, no, not that. Not anything that the Court's
18 ordered in this case, but any other sort of income? Any
19 other side jobs or anything like that?
- 20 A. No.
- 21 Q. So ten, seventy-four per hour times forty hours a week
22 ---
- 23 A. Yes.
- 24 Q. --- would give us an accurate income figure for you?
- 25 A. Yes.

1 Q. Okay. That's fair enough. Now, your asking for how
2 much of his military retirement?

3 A. One half.

4 Q. Exactly one half?

5 A. Yes.

6 Q. And you think that's fair?

7 A. Yes.

8 Q. Okay. And are you also saving up for retirement?

9 A. Yes.

10 Q. And your contention is that he's not entitled to any
11 of yours?

12 A. No, he's not.

13 Q. But you saved up your income during the marriage; did
14 you not?

15 A. I did. But it's gone now.

16 Q. I'm sorry. Your retirement? How is it gone?

17 A. Well, not my retirement. I still have my 401-K. But
18 wait. Hold on a second. I only was with my company now
19 for five years.

20 Q. Okay.

21 A. So my 401-K started, like, probably, like, four years
22 ago. And that's all I have.

23 Q. Okay.

24 A. So it's not like I had this going on all these years.

25 No.

- 1 Q. Okay. And four years ago you and Joe were together?
- 2 A. Yes.
- 3 Q. And that was -- well, let's see. You separated about
- 4 a year and a half ago; right?
- 5 A. About eighteen months.
- 6 Q. About eighteen months?
- 7 A. Uh-huh.
- 8 Q. So during the time that you saved up the 401-K, you
- 9 were together?
- 10 A. No. I mean, when we was still together that only it
- 11 count for, probably, like, three years of my 401-K.
- 12 Q. Okay.
- 13 A. Not, you know, the whole five years. No.
- 14 Q. Okay. But regardless of that, you think he's not
- 15 entitled to any of it?
- 16 A. No.
- 17 Q. Well, how does that work? If he's not entitled to
- 18 yours, why are you entitled to his?
- 19 A. Because I still have a responsibility to the home, to
- 20 our children. He does not provide anything for our family
- 21 dwelling as far as his children, grandchildren -- well,
- 22 grandchild -- or nothing. So me and my children are
- 23 entitled, because I'm going to be the sole provider for my
- 24 children and myself and our future.
- 25 Q. Now, wait a minute. Now, are you or are you not still

1 of the position that he should be paying the fifteen
2 hundred dollars he agreed to?

3 A. If he had continued to pay the fifteen hundred
4 dollars, we would not have been where we are right now.

5 Q. Okay. We wouldn't even be in court; would we?

6 A. No. We would not.

7 Q. Okay. And he kept paying up until the time you took
8 him to court?

9 A. No. He didn't kept paying until I took him to court.
10 No.

11 Q. Okay. So that's your reason for dividing -- proposing
12 to divide the retirement the way you've suggested is that
13 you're the sole provider?

14 A. No. I'm entitled to that. I was married to him, in
15 military, for seventeen years.

16 Q. Okay.

17 A. I'm entitled to part of that military pay. And when I
18 called the military benefits line, they said that portion
19 -- and also on base at the Naval Weapons Station Legal --
20 say I'm entitled to half percentage of that military pay
21 from the time that he walked out the door.

22 Q. Okay. But you understand that that is ultimately
23 going to be decided by this Court?

24 A. And that's why I'm presenting that to the Court.

25 Q. Okay. I understand. Now, the fifteen hundred dollars

1 that you agreed to is actually the entire check; isn't it?

2 A. The entire check?

3 Q. Yeah. He was only getting about twelve hundred a
4 month; wasn't he?

5 A. Of the retirement check?

6 Q. Yeah.

7 A. He had bills to pay. He still had a mortgage. He
8 still had credit cards. He still had things that he left
9 unpaid. I wouldn't say the whole twelve hundred dollars
10 was just going to one thing. He was still paying for
11 things that he should have been paying for.

12 Q. No. I'm not suggesting that. What I'm asking you is
13 is that if you and he agreed that he would pay you fifteen
14 hundred dollars ---

15 A. Right.

16 Q. --- and you didn't really care where that came from as
17 long as you got it; right?

18 A. Right.

19 Q. Okay. That was, in fact, more than his entire
20 retirement check; wasn't it?

21 A. Well, we did not take that under consideration,
22 because we had three mortgages to pay, plus, we had car
23 insurance. We was adding all the stuff that we still had
24 to been responsible for once he walked out the door.
25 That's how we arrived at the fifteen hundred dollars.

1 Q. Okay. So what is your position, now, with regard to
2 the mortgage payments?

3 A. What is my position?

4 Q. What are you asking the Court to order as far as the
5 payment of the ongoing mortgage payments?

6 A. What I'm asking? I'm asking the Court to order my
7 retro-pay for the part of the military retirement that I'm
8 entitled to, the child support, and my spousal support.
9 And I will take care of the mortgage, myself, if I get what
10 I'm asking the Court for.

11 Q. Okay. So you're going to take over the mortgage and
12 be solely responsible for what ever mortgages there are?

13 A. Right. I wouldn't expect him to continue paying the
14 mortgage, of course.

15 Q. Okay. As long as you get half of the retirement and
16 the other things you've mentioned?

17 A. Yes.

18 Q. Right. And the child support, regardless of whether
19 you even have a house, is going to be a continuing
20 obligation? He's got a legal responsibility for that?

21 A. (The witness nods her head in the affirmative
22 response.)

23 Q. And he's paying that through the court; right?

24 A. Yes. He's paying that.

25 Q. Okay. So you don't have any problem with the way the

1 child support is going?

2 A. Well, the child support should be more also, because
3 he's now got a raise the beginning of 2002 with the
4 military retirement. So he hadn't, of course, paid the
5 amount that he should be paying on the child support,
6 either, to this date.

7 Q. Okay. Let me ask you that in a different way.
8 Assuming that, as a result of this hearing and all the
9 figures that come out into the record that the Court
10 recalculates the child support so it's correct, according
11 to your income and his income, and if it's modified then it
12 would be modified, you won't have any problem with that?

13 A. No.

14 Q. Whatever it turns out to be, more or less or the same?

15 A. Yes.

16 Q. Okay. And what about -- you said that everybody has
17 split up all the property they have; right?

18 A. Right.

19 Q. You don't have anything he wants?

20 A. No.

21 Q. Has he asked you for his military awards, his medals
22 and his memorabilia?

23 A. He's come and got them.

24 Q. He already has them?

25 A. He came to get it, but he said he did not have room in

1 his car to take it. So he stick it back in the closet.
2 That was almost a year ago, and he never came back for it.
3 It's still in the back closet.
4 Q. Well, you don't have any problem with him getting it,
5 now?
6 A. He can get it and take it any where he wanted to.
7 Q. So that's not an issue?
8 A. Huh-huh.
9 Q. And there's no cars to be fought over?
10 A. No.
11 Q. So all we're really talking about is money?
12 A. We talking about financial support.
13 Q. And he's not after your house; is he?
14 A. No. Not as I know.
15 Q. He's not trying to get the kids?
16 A. No.
17 Q. All that's agreed to; right?
18 A. Right.
19 Q. He's never fought you on those issues; has he?
20 A. On what issue?
21 Q. On who's going to live in the house?
22 A. Oh, no.
23 Q. Who's going to have custody of the kids?
24 A. No.
25 Q. Who's going to get the furniture and all that?

- 1 A. No.
- 2 Q. Who's going to drive what car?
- 3 A. No.
- 4 Q. He's always agreed to all those; hasn't he?
- 5 A. Yes.
- 6 Q. So the only thing you've had differences on is how
- 7 much money is going to be paid from this side to your side?
- 8 A. Yes.
- 9 Q. Right?
- 10 A. Yes.
- 11 Q. And how the other money is going to be split up. Now,
- 12 let me ask you something. You said that he took stocks and
- 13 bonds when he left?
- 14 A. Yes, he did.
- 15 Q. And what did he do with them?
- 16 A. Spent them.
- 17 Q. On what?
- 18 A. Him and his woman in the apartment.
- 19 Q. Now, did you have a car at the time?
- 20 A. Yes, I did.
- 21 Q. Did it ever require any repairs?
- 22 A. Yes.
- 23 Q. What kind of repairs?
- 24 A. A lot of repairs.
- 25 Q. Did you ever have to put a new motor in it?

- 1 A. Yes, we did.
- 2 Q. And who did you go to to pay for that?
- 3 A. Probably, to the bank.
- 4 Q. Probably? You're not sure?
- 5 A. To the bank. Yes. We always go to the bank.
- 6 Q. Now, was that before or after you separated?
- 7 A. That was before.
- 8 Q. Okay. And after the separation, didn't your daughter
- 9 have a problem with her car?
- 10 A. Yes. And so did he.
- 11 Q. And he had a problem with his car, too?
- 12 A. Right.
- 13 Q. And who paid for those repairs?
- 14 A. We went to the bank and got it taken care of.
- 15 Q. What do you mean by that?
- 16 A. We either went and did bank loans and had it taken
- 17 care of.
- 18 Q. And who's paying for those bank loans?
- 19 A. Well, I am, mainly.
- 20 Q. Okay. Has Joe paid for any of that stuff?
- 21 A. I don't know of him paying any loan bills.
- 22 Q. You're not sure or you just don't know?
- 23 A. The only payment that I know he's making is the
- 24 mortgage payment.
- 25 Q. Okay. Well, I thought you just said ---

- 1 A. And the child support.
- 2 Q. I just thought you said he wasn't making the mortgage
3 payment?
- 4 A. He's paying the six-fifty. I told you he's paying
5 six-fifty a month on one of the mortgage. And I'm paying
6 four twenty-seven, ninety-five for the other mortgage.
- 7 Q. Now, are you talking about something different than
8 what's in the Court order?
- 9 A. No.
- 10 Q. Because he's ordered to pay about seven hundred bucks?
- 11 A. Seven hundred and four dollars is what he was ordered
12 pay, but that's not what he's paying.
- 13 Q. But you're saying he's paying six-fifty. Was he
14 giving that to you or is he sending it ---
- 15 A. He's paying that to the bank.
- 16 Q. He's paying it to the bank?
- 17 A. Uh-huh.
- 18 Q. Okay. But that's not in the Court order?
- 19 A. Listen, that was my problem, too. Why is he paying
20 six hundred and fifty, when the Court order says seven
21 hundred and four? I had a issue with that myself.
- 22 Q. Okay. The Court order says, though, that he'll make
23 that portion of the mortgage payments; right?
- 24 A. Yes. Seven hundred and four dollars.
- 25 Q. Okay.

1 MR. PALMER: That's all I have, Judge, for this
2 witness.

3 THE COURT: All right. Thank you.

4 Any redirect?

5 MS. FLOYD: No, Your Honor.

6 THE COURT: All right. Thank you. You may step down.

7 (The witness leaves the stand.)

8 MS. FLOYD: Nyler Backman.

9 NYLER BACKMAN, being first duly sworn,
10 testified as follows:

11 THE COURT: If you'd please tell me your full name?

12 WITNESS: Nyler Jaletha Backman.

13 THE COURT: I'm going to need you to speak up a little
14 for me, please.

15 WITNESS: Nyler Jaletha Backman

16 THE COURT: All right. Ms. Backman, if you'd please
17 answer Ms. Floyd's questions.

18 DIRECT EXAMINATION

19 BY MS. FLOYD:

20 Q. Ms. Backman, you know Mr. and Ms. Greene; is that
21 correct?

22 A. Yes.

23 Q. And how would you characterize your relationship with
24 Ms. Greene?

25 A. She's been my friend for over twenty-five years.

1 Q. Okay. And were you with her on the night of October
2 31st the year 2000?

3 A. Yes.

4 Q. Okay. And did y'all take a trip together somewhere?

5 A. Yes.

6 Q. Where did you go?

7 A. We ended up in Ravenel. I think it was Ravenel. And
8 the road was Good Farm Road.

9 Q. Was that Holly Hill or Ravenel? Where did you go?

10 A. It's way up there.

11 Q. It's way out in the country? And it was Good Farm
12 Road?

13 A. Yes. It was way out there. Yes.

14 Q. Okay. And what did you see when you got there?

15 A. Okay. We turned down this road, and then we passed
16 Good Farm Road. So then she turned around. And then I
17 said, There's the road right there you're looking for.

18 So we went down, all the way down, and as we were
19 going by this house and a trailer -- so we went around.
20 Then we came to a stop where it looked like a field. And
21 she backed up. And she said, That's my husband car there.

22 I said, How you know, because it's dark -- the car is
23 dark. It could be a black car.

24 She said, And when it's night, the car looked black.

25 Q. Uh-huh.

1 A. So she backed up and she pulled behind the car. And
2 she said, That's the car. That's the license plate.

3 So I said, Okay.

4 Q. So then what did she do?

5 A. She backed up and she went around to the front, the
6 front of the trailer.

7 Q. Okay.

8 A. Then, after she stopped, she got out and she went up
9 to the door. Then she ring the bell and she knocked on the
10 door.

11 Q. Uh-huh.

12 A. And Ms. Lillian came to the door, and she went in.

13 Q. Who went in?

14 A. Hattie did.

15 Q. Okay.

16 A. And I don't know what they said or anything like that.
17 All I know is I saw Mr. Greene came out the house. Then,
18 Hattie and Ms. Lillian.

19 Q. Came out?

20 A. Uh-huh.

21 Q. And what time of night was this?

22 A. That was at 11:30 p.m.

23 MS. FLOYD: I don't have any other questions.

24 THE COURT: All right.

25 Mr. Palmer?

1 CROSS-EXAMINATION

2 BY MR. PALMER:

3 Q. Ms. Backman, you said you're a long-time friend of the
4 plaintiff?

5 A. Uh-huh.

6 Q. And you also knew Mr. Greene?

7 A. Uh-huh. I was in their wedding.

8 Q. You were?

9 A. Uh-huh.

10 Q. His wedding, too?

11 A. Uh-huh.

12 Q. Between them?

13 A. Uh-huh.

14 Q. Let me just ask you a couple of things about that.
15 You had a pretty close relationship with both of them?

16 A. Well, I didn't spend much time with Joseph, but I know
17 him. He seemed to be a very nice person.

18 Q. Okay. You were aware that they separated in September
19 of 2000?

20 A. Well, yeah.

21 Q. You were aware of it then?

22 A. Yes. She told me about it.

23 Q. And this was before you and she went up to Holly Hill
24 that night?

25 A. This was in October 31, 2000.

1 Q. So if they separated in September, it was, obviously,
2 after then. And Ms. Greene was living in her house with
3 the children, but Joe wasn't there; was he?

4 A. No. He wasn't there at that time. He had moved into
5 his own apartment.

6 Q. Okay. And you knew where he'd moved into; right?

7 A. Well, only because she told me that he had moved in.
8 But that night after we had left Ms. Lillian residence, she
9 had went to his apartment to talk to him. That's how I
10 knew where the apartment was at.

11 Q. Okay. So why do you call her "Ms. Lillian"? Did you
12 know her?

13 A. No.

14 Q. Do you know her, now?

15 A. No.

16 Q. Okay. You just know her name that's why you call her
17 "Ms. Lillian"?

18 A. Uh-huh.

19 Q. I'm just wondering -- and you knew my client's wife's
20 religious affiliation?

21 A. Yes.

22 Q. Are you practicing that same religion?

23 A. No.

24 Q. Okay. And you understand that she doesn't want to get
25 a divorce on religious grounds?

1 A. Well, the religion that she's in they practice that.

2 Q. Okay. So we're not going to get a divorce.

3 A. Okay. That's good.

4 Q. Well, not me, but I mean these parties. And I'm just
5 wondering why were y'all following Joe Greene that night?

6 A. Well, that night she called me on the phone and said
7 she wanted me to go somewhere with her. And I said, Well,
8 okay.

9 She said, We going way out there.

10 I think it was Ravenel or either Holly Hill this woman
11 lived.

12 Q. Sure.

13 A. So I said, Okay. Well, I have on my bed clothes. So
14 I would have to change into something. So I didn't want
15 her to go by herself.

16 Q. Okay. So you went because she asked you to go?

17 A. Yes.

18 Q. Okay. That's fair enough. And after you saw Joe come
19 out of the apartment, nothing else happened after that?

20 A. Well, some word was exchanged, but I was sitting in
21 the car. So I really couldn't hear no more than a little
22 bit or something about I can buy you or pay for you
23 something to that.

24 Q. Who was saying that?

25 A. Ms. Lillian was telling her that.

1 Q. Okay. So the words were between Lillian and
2 Ms. Greene?

3 A. Yes.

4 Q. And what was Joe doing?

5 A. Well, he just came out of the house, and jumped in his
6 car and left.

7 Q. Did he cause any trouble of any kind?

8 A. No.

9 Q. Were the cops called? Was it that kind of situation?

10 A. No. Huh-huh.

11 Q. Okay. So it ended up without any kind of fight or
12 altercation?

13 A. No. I didn't hear him say anything. No more than
14 came out of the house, and went around and jumped in his
15 car and left.

16 Q. Okay. Thank you, ma'am.

17 WITNESS: Okay. That's it?

18 MS. FLOYD: I just want to get something straight.

19 REDIRECT EXAMINATION

20 BY MS. FLOYD:

21 Q. You went to a trailer?

22 A. Yeah.

23 Q. Way out in the country?

24 A. Uh-huh. Off of a dirt road.

25 Q. Right. And then you also went by an apartment?

1 A. Yes.

2 Q. And where did you see Mr. Greene?

3 A. The only time I saw him was at Ms. Lillian house.

4 That's the only time, because he never came back. He never
5 came to the apartment which she thought he would have went
6 home. But he didn't. Because she wanted to talk to him to
7 see if they could work it out.

8 Q. Right. So the only place you saw him that night was
9 way out in the country?

10 A. Uh-huh.

11 MS. FLOYD: Okay. I don't have any other questions.

12 THE COURT: All right. Thank you. You may step down.

13 (The witness leaves the stand.)

14 THE COURT: Ms. Backman, I don't think there's any
15 objection to your staying at this point, but I would ask
16 that you go behind the little swinging gate there. The
17 back section is for the spectators, if you will. Thank
18 you.

19 MS. FLOYD: Lakenzia (ph) Greene, please.

20 LAKENZIA GREENE, being first duly
21 sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MS. FLOYD:

24 Q. Okay. Tell us your full name, please.

25 A. Lakenzia Greene.

1 Q. You're going to have to speak up, because the court
2 reporter is going to have to hear everything that you say.

3 A. Lakenzia Greene.

4 Q. You are the daughter of...

5 A. Joseph and Hattie Greene.

6 Q. Hattie Greene. And how old are you?

7 A. Twenty-five.

8 Q. I want to ask you about the night of October 31, 2000.
9 Do you remember that night?

10 A. Yes.

11 Q. Okay. Can you tell us what you remember that
12 happened?

13 A. The phone was ringing continuously. And I, finally,
14 answered the phone. And I said, Hello.

15 And no one replied to my answer. And, eventually,
16 they hung up the phone. And I got up and Star-69'd the
17 number. My mother was asking who was calling and I said
18 that I didn't know. And I called the number out to her.
19 And she told me that was my father's number.

20 Q. Okay. Was it just one phone call?

21 A. It was constantly throughout the night.

22 Q. And after you determined that it was the telephone at
23 your father's apartment, what did your mother do then?

24 A. She called the number.

25 Q. Was there a telephone conversation that took place?

1 A. Yes. It was an argument over the phone. And this
2 person said ---

3 Q. Well, now, did you hear both sides of the
4 conversation?

5 A. I only heard one side.

6 Q. Okay. And what was your mother saying?

7 A. That the woman was saying that she -- I get what
8 you're saying. I'm trying to put it in words.

9 Q. Was your mother responding to the person on the other
10 end of the phone?

11 A. Yes. Yes.

12 Q. Okay. And then after that telephone conversation,
13 what did your mother do?

14 A. She hung up the phone and said that we were going over
15 there to see who this strange woman was that had answered
16 the phone. We went by there and no one was there when we
17 got there. And there was a guy that came out from the
18 apartment across the hall. And my mother asked him if a
19 woman was staying in the apartment. And he replied, yes,
20 there is a lovely woman that stays in the apartment with a
21 gentleman. And my mother replied that she's shacking up
22 with my father.

23 Q. Okay.

24 A. And the man said that he didn't know anything about
25 that. And afterwards, we left.

1 Q. And then later on, did your mother go out with Nyler
2 Backman or was that before that?

3 A. That was after.

4 MS. FLOYD: I don't have any other questions.

5 MR. PALMER: No questions.

6 THE COURT: All right. Thank you. You may step down.
7 (The witness leaves the stand.)

8 MS. FLOYD: Lillian Johnson.

9 LILLIAN JOHNSON, being first duly
10 sworn, testified as follows:

11 MS. FLOYD: Your Honor, I'm calling this witness as a
12 hostile witness. I request permission to ask leading
13 questions.

14 MR. PALMER: We understand and would not object, Your
15 Honor.

16 THE COURT: Okay. Ms. Johnson, that doesn't
17 necessarily mean there's anything wrong with you. Just
18 being a hostile witness just means that perhaps your
19 interests in this matter are contrary to Ms. Hattie May
20 Greene's. All that means is she can ask you leading
21 questions. In other words, questions that suggest an
22 answer, questions that usually call for a "yes" or "no"
23 answer. And you have to answer them that way. But that
24 does not mean that you don't get to explain your answer.
25 You can answer "yes" or "no" and then take whatever time

1 you feel you need to explain your answer.

2 Okay?

3 WITNESS: Okay.

4 THE COURT: Very good. Thank you.

5 DIRECT EXAMINATION

6 BY MS. FLOYD:

7 Q. Tell us your full name, please.

8 A. Lilly Johnson.

9 Q. Okay. And your address is 131 Good Farm Road in Holly
10 Hill, South Carolina; is that correct?

11 A. Yes.

12 Q. And you work at Lieber Correctional Institute; is that
13 correct?

14 A. No.

15 Q. Where do you work?

16 A. MacDougall.

17 Q. MacDougall Correctional Institute. And Mr. Greene
18 also works there; is that correct?

19 A. Yes.

20 Q. And on October 31st of the year 2000, Hattie May
21 Greene came to your residence in Holly Hill; is that
22 correct?

23 A. Yes.

24 Q. And she knocked on the door, and you answered the
25 door; is that correct?

1 A. No.

2 Q. No? You didn't answer the door?

3 A. No, I didn't.

4 Q. Okay. Well, who answered the door? Did your son
5 answer the door?

6 A. The door was open and she walked in.

7 Q. The door was open and she walked in. And Mr. Greene
8 was there?

9 A. Yes, he was.

10 Q. And this was about 11:30 in the evening; is that
11 correct?

12 A. Somewhere around that time.

13 Q. Okay. And isn't it true that Mr. Greene resides
14 there, now?

15 A. Yes, it is.

16 Q. And you don't deny the fact that Mr. Greene lives at
17 131 Good Farm Road in Holly Hill?

18 A. No, I don't.

19 Q. And you also still reside at that address?

20 A. Yes, I do.

21 MS. FLOYD: I don't have any other questions, Your
22 Honor.

23 THE COURT: All right. Mr. Palmer?

24 MR. PALMER: No questions.

25 THE COURT: Okay. You may step down. Thank you.

1 (The witness leaves the stand.)

2 MS. FLOYD: Your Honor, can I beg your indulgence to
3 speak with my client?

4 THE COURT: You may. We've been going for an hour and
5 a half. Why don't we just take a little recess. That will
6 let everybody talk a little more comfortably. And we'll
7 reconvene at quarter till, that's roughly ten or eleven
8 minutes. Thank you.

9 (WHEREUPON, there was a brief recess.)

10 THE COURT: All right. Ms. Floyd, anything further on
11 behalf of the plaintiff?

12 MS. FLOYD: Just, Your Honor, that I was able to go
13 over the financial information with my client during the
14 break. And I would like to exchange financial
15 declarations. Mr. Palmer was correct in his calculations
16 in support. So I can just change that.

17 THE COURT: Okay. So just in terms of the
18 mathematical. There's no dispute as to her earnings and
19 hourly wage?

20 MS. FLOYD: Right. That looks like it was calculated
21 as being paid twice a month, instead of every two weeks as
22 she is actually paid.

23 THE COURT: Very good.

24 MS. FLOYD: So the plaintiff rests, Your Honor.

25 THE COURT: All right. Thank you.

1 All right. Mr. Palmer, you may proceed.

2 MR. PALMER: I call Joseph Greene, Your Honor.

3 JOSEPH GREENE, being first duly sworn,
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. PALMER:

7 Q. Would you state your full name, please?

8 A. Joseph Greene.

9 Q. Joe, how old are you?

10 A. Forty-four.

11 Q. Do they call you "Joe" by the way?

12 A. No.

13 Q. Joseph?

14 A. Joseph.

15 Q. Joseph, I'm sorry. And you are employed where?

16 A. At MacDougall Correctional Institution.

17 Q. Okay. And that's here in Dorchester County?

18 A. That's in Ridgville in Dorchester County

19 Q. Okay. And what job do you have there?

20 A. I'm a correctional officer.

21 Q. So you work for the State of South Carolina?

22 A. For the State, right.

23 Q. How long have you being doing that job?

24 A. Three years -- three and a half years, now.

25 Q. Okay. And do you have State benefits from that job?

- 1 A. Yes, I do.
- 2 Q. And give us a rough idea of what the benefits are?
- 3 A. It's the State Police Retirement Fund. I think I pay
4 about six or seven dollars a month for it.
- 5 Q. Okay. If you would speak more slowly and, maybe, a
6 little louder so we could all understand. This is a big
7 room.
- 8 A. Okay.
- 9 Q. You said you get State Police benefits?
- 10 A. Yes. It's called the State Police Retirement Plan.
- 11 Q. And do you pay into that plan?
- 12 A. I pay into it. Yes.
- 13 Q. How much do you pay?
- 14 A. It varies. Sometimes it's sixty dollars a month, and
15 sometimes it's sixty-one dollars a month.
- 16 Q. Okay. And you've been paying into that plan since
17 you've started with the State?
- 18 A. Right.
- 19 Q. And is that mandatory that you contribute to that?
- 20 A. Yes, it is. Uh-huh.
- 21 Q. So you don't have any choice?
- 22 A. No, I don't.
- 23 Q. And do you plan to retire at some point from the State
24 of South Carolina?
- 25 A. Right now I'm not for sure.

1 Q. Okay. Well, you're relatively young. But, I mean, do
2 you plan to keep this job until the foreseeable future?
3 A. Yes. Right. Uh-huh.
4 Q. And you're in good standing with that institution?
5 A. Yes, I am.
6 Q. You don't have any rational idea that you might lose
7 your job any time soon?
8 A. No, sir.
9 Q. Okay. Now, you're retired from the military; is that
10 right?
11 A. Right.
12 Q. United States Marine Corp?
13 A. Right.
14 Q. How long were you in the Marine Corp?
15 A. Twenty years, three months.
16 Q. And what is the highest rank or rate that you
17 obtained?
18 A. E-7 which is a Gunnery Sargent.
19 Q. And that is the retirement rank that you have?
20 A. Right.
21 Q. And you are receiving military retirement pay?
22 A. Yes, I am.
23 Q. And when did that start?
24 A. It start the day I retired in October of 1998.
25 Q. Okay. And at that point you started getting a check,

1 what, every month?

2 A. Right.

3 Q. And how much were you getting then?

4 A. It's about eleven hundred dollars, then it went up to

5 eleven sixty-three, now, I think.

6 Q. Okay. And is that before or after they take out the

7 Federal tax?

8 A. That's after they take out the Federal tax.

9 Q. So that's the actual amount of the check that you get?

10 A. Right. Uh-huh.

11 Q. So it goes up every once in a while when the

12 government raises the military pay?

13 A. Right.

14 Q. All right. Now, you are married, of course, to Hattie

15 Greene?

16 A. Yes, I am.

17 Q. Been married how long?

18 A. Right now it should be about nineteen years.

19 Q. Was that your first marriage?

20 A. Yes, it is.

21 Q. And was it her first marriage?

22 A. Yes, it is.

23 Q. And you are now separated?

24 A. Yes, we are.

25 Q. When did you separate?

1 A. In September -- the 14th, if I'm not mistaken.

2 Q. Of what year?

3 A. About 2000.

4 Q. And tell us about the circumstances that led you to
5 separate?

6 A. Well, we was having problems for, say, forever. We
7 all have problems. So we talked one night, and I just said
8 well, you know, I was unhappy, you know. I stated that I
9 was going to leave, but I never did leave.

10 Q. Well, let me ask you before you go on, you stated what
11 I consider to be a very abstract term, "forever" -- you
12 were having problems "forever." Can you give us a little
13 more idea of what you're talking about there as far as the
14 length of time?

15 A. Well, it's like, you know, she want to control
16 everything; tell me what I can do and what I can't do. And
17 that's how we were having all our problems.

18 Q. But how long had that situation been present in your
19 marriage?

20 A. Ever since we first got married we were having
21 problems.

22 Q. Okay. So the whole seventeen years you say that that
23 was a problem?

24 A. Right.

25 Q. Okay. And what happened, specifically, if anything

1 did to cause you to separate in September?

2 A. Nothing happened specifically. I was just unhappy.
3 And I told her I was unhappy. And I told her that I was
4 leaving, but I never got the chance to leave. Then, she
5 proceeded to leave. She packed up all of her stuff and she
6 walked out of the house. And about an hour later, she came
7 back in the house and put her stuff back in the house.
8 Then I went to the store. When I came back, all of my
9 stuff was outside in the rain, the door locked, and she
10 wouldn't even let me back into the house.

11 Q. And what day was this on?

12 A. That was September 14th if I'm not mistaken.

13 Q. Okay. So what did you do?

14 A. Well, that night, the night that she wouldn't let me
15 back in the house, I slept in my car. And I put most of
16 the stuff that I could, you know, in my car. The rest of
17 it it got all wet up and stuff. So the next morning I just
18 picked everything up, put it in my car, and I went and got
19 a room for that day. I decided, you know, this was not for
20 me anymore. So I never, you know, went back.

21 And then, the next day I went back to the house. Her
22 father was there; changed the lock on the door so I
23 couldn't get back into the house, again. So it's not the
24 fact that I left. It's the fact that she put me out. And
25 she tells people that she put me out.

1 Q. Okay. Well, after she put you out, did you ever meet
2 with her to discuss these issues?

3 A. Yeah. We talked about it. But, you know, it was just
4 the fact that, you know, we could never agree on nothing.
5 That's the way it's always been. We never could agree on
6 nothing.

7 Q. Well, after you were locked out of the house, did your
8 wife make it clear that you were not to return?

9 A. She told me to get out. Get out and stay out.

10 Q. Okay. And what do you think it was -- anything
11 particular that happened that caused her to say that to
12 you?

13 A. Because I told her that I was leaving, but I didn't
14 never leave.

15 Q. Okay. Did you intend to leave?

16 A. At that point, I really don't know. I was just
17 unhappy.

18 Q. Okay. Well, you told us what you did that day and the
19 next day. But what did you do as far as living
20 arrangements after that happened?

21 A. After that happened I went and try to get a place, and
22 that following weekend -- Monday I went on base and got a
23 place to stay for a while until at the time I had to go
24 find another apartment, some place to live. So that's what
25 I did. I stayed on base for about a week or so until I

1 found a place to stay.

2 Q. Okay. And what place did you find to stay?

3 A. I was in Sommerset in Summerville.

4 Q. Is that an apartment complex?

5 A. Right. It's an apartment.

6 Q. So you rented an apartment in your own name?

7 A. Right. Uh-huh.

8 Q. And did you stay there?

9 A. Yes, I did.

10 Q. Did you stay there by yourself?

11 A. Yes, I did.

12 Q. And how long did you stay there by yourself?

13 A. I was there until about six months, until I couldn't,
14 actually, afford it no more. So I had to give it up.

15 Q. Okay. And during that time, did you and your wife
16 have any discussions about how you were going to resolve
17 the financial aspects of your separation?

18 A. Yes, sir. We did during that time. And I signed that
19 agreement which I did which I know now it was a mistake,
20 because I really didn't have the money to give to her at
21 that time.

22 Q. Now, are you talking about this agreement that's been
23 put into evidence?

24 A. Right. Right.

25 Q. So you don't have any problem acknowledging that you

1 signed this?

2 A. No, I don't.

3 Q. And did you or your wife actually write it out?

4 A. She did.

5 Q. Were you there when she wrote it out?

6 A. No, I wasn't.

7 Q. And did you read it before you signed it?

8 A. I read it. But, you know, at the time I really didn't

9 read completely through it. I just glanced over it, and

10 then I signed it.

11 Q. Okay. Were you in a hurry to sign it?

12 A. Not really. I just wanted to, you know, to get it

13 taken care of so we could quit harassing each other.

14 Q. Okay. Did you think signing it would end the

15 harassment?

16 A. Yes, I did. I did.

17 Q. And who was providing the harassment?

18 A. She was.

19 Q. Okay. And what was she harassing you about?

20 A. Well, she was -- it's, like, you know, she would

21 follow me around, you know. She'd come to my job and sit

22 outside until I get off work and then follow me to where I

23 live. And then she went into my car and took a phone

24 number out of my car, which I thought she had no right to

25 do on that part, either. But that's what she did.

1 Q. Now, this was after the separation?

2 A. Right.

3 Q. Okay. In this agreement there is a sum of fifteen
4 hundred dollars, which by the terms of the agreement, you
5 were to pay to her. Is that something you were aware of at
6 the time?

7 A. I was -- the problem with that was that the fifteen
8 hundred dollars was to pay off the three mortgage that I
9 had. I was paying all the mortgage from out of that check.

10 Q. And these were the mortgages on the house that she
11 has?

12 A. Right. Right.

13 Q. At Selma Lane?

14 A. Yes. Selma Street.

15 Q. Okay. And so the fifteen hundred dollars represented
16 the total of all the mortgage payments?

17 A. Right. Uh-huh.

18 Q. Is that what you're saying?

19 A. Right.

20 Q. And is that why you agreed to pay it?

21 A. Basically, yes. Just to keep the bills going. That's
22 exactly what I was doing even though I wasn't there. I was
23 still paying for them to live.

24 Q. Did you ever tell your wife that you refuse to pay
25 these bills or help out with the mortgage, or actually pay

1 the whole mortgage?

2 A. No. I offered to pay the whole mortgage, until she
3 brought me to court. Matter of fact, I was paying
4 everything. Because right now we only have one bill to the
5 house, and that's the house mortgage. All the other stuff
6 you're talking about, I have no idea. We have no cars or
7 nothing. The only thing we have is that one mortgage
8 payment between the two of us. That's all we have. Just
9 that one mortgage payment.

10 Q. So the cars are all paid for?

11 A. Everything is paid for except the house. And the
12 house is paid for except the mortgage. And that is it.

13 Q. Now, does the house still have three mortgages on it?

14 A. No. It had two. I paid one of them off. Now, we
15 have two of them. She pay one and I pay one.

16 Q. Okay.

17 A. Okay. But what she's saying the one that I was to pay
18 for seven twenty or whatever it was, what happened -- I
19 paid off the one before that. Now, I'm paying the one for
20 six-fifty, and she's paying the other one for four
21 twenty-seven.

22 Q. Okay. So this other mortgage, this third mortgage
23 that you paid off, did you pay it off before or after we
24 went to the temporary hearing?

25 A. After.

1 Q. After?

2 A. Right.

3 Q. Okay. And the temporary payments that you're ordered
4 to make under this order that we're here in court before,
5 seven hundred and four dollars, are you making those
6 payments?

7 A. I'm making -- I was making it until I paid off one
8 mortgage. Now, I'm paying six-fifty for the other mortgage
9 right now.

10 Q. Okay. And you're paying that directly to the lender?

11 A. To the bank. Right.

12 Q. All right. And you're also paying on top of that the
13 child support that was ordered?

14 A. Right.

15 Q. Okay.

16 A. It was four hundred and something dollars.

17 Q. Now, when you went into this agreement with your wife
18 about the fifteen hundred, did you and she contemplate that
19 that would also include your obligation to your children?
20 I mean, was that a package deal so to speak?

21 A. It was just a ball-park figure, I thought, you know.

22 Q. Okay. But what I'm trying to determine is you have
23 this signed agreement, but did y'all contemplate that that
24 was going to be all you had to pay, or did y'all talk about
25 child support in addition to that?

1 A. No. No. No.

2 Q. Okay. So the fifteen hundred dollars ---

3 A. It was just ---

4 Q. --- would take care of everything?

5 A. Right. Uh-huh.

6 Q. And after you signed this agreement, did you start

7 paying the fifteen hundred dollars?

8 A. I was struggling to make it, but I was going to make

9 it until we came to court. Until the first day we came to

10 court, that's when I quit paying everything.

11 Q. And when was that?

12 A. That was in 2001, I believe. I think.

13 Q. So you appeared at a temporary hearing in this court?

14 A. Right.

15 Q. And you didn't have an attorney then?

16 A. No, I didn't.

17 Q. And your wife had Mr. Doughty?

18 A. Yes. She sure did.

19 Q. Okay. And was there an order issued from that

20 hearing?

21 A. The first hearing?

22 Q. Yes.

23 A. No. Because I would have had to have waited until my

24 attorney was present, the first one. You weren't there at

25 the first hearing.

1 Q. Okay. So the judge gave you an opportunity to get an
2 attorney?

3 A. Right.

4 Q. And return to court?

5 A. Yes.

6 Q. And that's when we did the other temporary hearing?

7 A. Right.

8 Q. Okay. Have you ever refused to pay toward those
9 mortgages?

10 A. Never did. Never did.

11 Q. Now, you've heard your wife testify about what she
12 would expect to receive out of this case. Now, as I
13 understand it, some of the most important issues on the
14 military retirement that you're getting, that's one issue.
15 And while we're on that, let me ask you, do you think that
16 retirement should be divided in some way?

17 A. I do. But not in half.

18 Q. Okay.

19 A. Because my personal opinion of it, it wasn't her. It
20 was me. It was me.

21 Q. It was you what?

22 A. That served all these years, went to war, and did all
23 this stuff. Not her. But I say, you know, she does
24 deserve something of it; but not half of it which I think
25 is fair.

1 Q. Well, having said that, how would you propose that the
2 Court would fairly split the retirement?

3 A. I would say -- I would give her three hundred dollars
4 a month out of my retirement. That's what I think she
5 should get.

6 Q. Now, what figure did you say?

7 A. Three hundred dollars a month.

8 Q. Three hundred dollars a month would be her share?

9 A. Right.

10 Q. And you would receive the balance?

11 A. Right.

12 Q. Okay. And likewise, knowing that the Court is most
13 likely going to recalculate child support, do you have any
14 problem with the amount of child support you're paying,
15 now?

16 A. No, I don't.

17 Q. So there's no issues there?

18 A. No.

19 Q. And what ever the guidelines turn out to prescribe for
20 child support would be agreeable with you?

21 A. Right.

22 Q. Okay. Now, we've talked about the mortgage -- I mean,
23 the retirement. There's a house.

24 A. Right.

25 Q. What are your intentions with regard to who keeps the

1 house?

2 A. Right now I would think that it would be unfair for me
3 to continue paying for a house that I can't even live in,
4 because she's the one that told me to leave. So my
5 position if she want the house, she can have it; but she's
6 going to finish paying for it.

7 Q. Okay. And what if that -- let's say theoretically,
8 what if that wasn't acceptable to her, what would you
9 suggest as an alternative position what to do with the
10 house?

11 A. We sell it. We sell it. She get half and I get half.

12 Q. Okay. And assuming that the Court took that
13 suggestion and made it part of the Court order, and the
14 house was ordered to be sold, just assume, and the
15 mortgages were paid out of the sales proceeds and whatever
16 was left, how would you purpose to divide that?

17 A. In half.

18 Q. Okay. Now, the house is in both your names?

19 A. Right. Yes, it is.

20 Q. And you bought it together?

21 A. Right.

22 Q. During the marriage?

23 A. Right.

24 Q. Anybody put a down payment on it?

25 A. No -- yes, we did. I went and got a loan through the

1 government called a VA loan.

2 Q. Uh-huh.

3 A. So, actually, the loan is in my name. The loan is in
4 my name, but the house is in both our names.

5 Q. Okay. And during the time after you moved in and got
6 settled in the house, you started making payments on it?

7 A. Right.

8 Q. And your wife was making income at that time?

9 A. Yes, she was.

10 Q. And you were making income because you had a military
11 retirement and your job with the State?

12 A. Well, when we got the house I wasn't retired. I was
13 still in the military at the time..

14 Q. Okay. And then who made the payments on the house?

15 A. We both did.

16 Q. Okay. Would you say that you contributed it equally?

17 A. No. Because at the time I was making more money then.

18 Q. Was there any discussion about who was going to pay
19 what portion of it?

20 A. No, it wasn't.

21 Q. Did it all go into the single account?

22 A. Right.

23 Q. And you paid it out of that?

24 A. Right. Yeah. Right.

25 Q. And so when you got paid twice a month, like you did

1 in the military, you would just put it in the family bank
2 account?

3 A. Now, at the time -- most of the time I wasn't around.
4 I was gone from all over the world and stuff. What had
5 happened she had had an allotment for the month. I think
6 it was twelve hundred dollars a month, you know, to take
7 care of the family while I was gone.

8 Q. So you were gone? You were deployed?

9 A. Yeah. I was deployed. I was in different countries
10 all over the place at the time -- stationed different
11 places. So what I did, I made her an allotment out to take
12 care of the bills no matter where I was at at that time.

13 Q. Okay. So your pay just, basically, came home?

14 A. Right.

15 Q. And your wife handled all the bills?

16 A. Right.

17 Q. And she was working at the time?

18 A. Yes, she was.

19 Q. And has she pretty much worked throughout the
20 marriage?

21 A. She worked throughout the whole marriage.

22 Q. Okay. And how has her earning -- I know you can't
23 give us specific figures of all of that time, but,
24 generally, how has her earning capacity been compared to
25 yours?

- 1 A. I would say about half.
- 2 Q. You mean, she's made half of what you made?
- 3 A. Right.
- 4 Q. Okay. That's a little different, now?
- 5 A. Yes, it is. Well, she's making more now than before.
- 6 Q. Well, for one thing, you're retired?
- 7 A. Right.. Uh-huh.
- 8 Q. And you have a second job?
- 9 A. Yes, I do.
- 10 Q. There's no dispute with you about any splitting up any
- 11 personal property like furniture or anything like that?
- 12 A. No. I just want my stuff from there that she will not
- 13 let me get. She said that she didn't, but she said she
- 14 have it.
- 15 Q. Okay.
- 16 A. She have all my military stuff is still there. My
- 17 DD-214 form that's inside the safe that I need. And she
- 18 had the title to my car that I want. And I want my stereo,
- 19 which is mine. And she said I took what I wanted. That's
- 20 not true.
- 21 Q. Okay. And you've heard your wife testify about
- 22 spousal support and alimony? And you understand what that
- 23 is?
- 24 A. Yes, I do.
- 25 Q. And what is your position on that?

1 A. I really don't think she should get that, because she
2 makes just as more money than I do right now.

3 Q. Okay.

4 A. And the only thing she got to take care of is just
5 herself, because I'm taking care of my son. I'm paying
6 child support for my son.

7 Q. I meant to ask you a couple more questions about the
8 house. Do you have any notion of what that house is worth?

9 A. Right now it should be about between seventy-five and
10 eighty thousand dollars, because we had it redone --
11 remodeled and stuff. So it's about seventy-five or eighty
12 thousand dollars.

13 Q. Okay. And do you have any notion as to what the total
14 payoff is right now, including all the mortgages?

15 A. It's thirty -- should be about thirty-two thousand
16 dollars total.

17 Q. Thirty?

18 A. Thirty-two thousand.

19 Q. Thirty-two thousand payoff?

20 A. Right. Right.

21 Q. Okay.

22 A. That's with both mortgages.

23 Q. Okay. Now, do you remember an incident that happened
24 on October 31st following when y'all separated?

25 A. Right.

1 Q. There's been some testimony from the witnesses about
2 that. What do you know about that?

3 A. Which one? The one that...

4 Q. Well, let me ask you this way: You said you moved to
5 Summerville and rented an apartment?

6 A. Right. Uh-huh.

7 Q. Did you ever have occasion to go out to Holly Hill?

8 A. Yes, I did.

9 Q. Okay.

10 A. Yes, I did.

11 Q. Okay. And where did you go in Holly Hill?

12 A. I went to Lilly Johnson's house. She was a friend at
13 that time.

14 Q. And how long had you known Ms. Johnson?

15 A. I met her in October. That was way after I had left
16 home. Between October and November some time around there.

17 Q. Okay. And that was the October time-frame following
18 the month that you and your wife separated?

19 A. Right. Uh-huh.

20 Q. Where did you meet Ms. Johnson?

21 A. At work. You know, we just talked. We talked at
22 work.

23 Q. So you know her from work?

24 A. Right. Uh-huh.

25 Q. All right. And how long had you been working at

1 MacDougall at that point?

2 A. About two years.

3 Q. And had you ever met Ms. Johnson before that at work?

4 A. No.

5 Q. Did she work in another department?

6 A. No. She wasn't even there.

7 Q. Okay. So she came to work there ---

8 A. After the fact. Yeah.

9 Q. Oh, okay. And you acknowledge, then, that you were
10 there -- out there on October 31st?

11 A. Yes, I was.

12 Q. Okay. And what happened that night?

13 A. What happened we was just sitting, watching t.v., and
14 someone just -- Hattie just came in the house, and start
15 talking loud.

16 Q. What did you do?

17 A. I figure -- I saw who it was. So I got up and got in
18 my car. And then I left so I wouldn't start no problems.
19 I got in my car, and then I left. I just drove away.

20 Q. And is this after you signed this agreement?

21 A. Right.

22 Q. And at that point, did you have any idea that the
23 marriage was going to go anywhere?

24 A. Nope.

25 Q. Did you think the marriage was over?

- 1 A. Yep.
- 2 Q. And you considered it to be over?
- 3 A. I still do today.
- 4 Q. Okay. At any time after that, had you had any -- made
5 any effort to hire a lawyer and file a case in Family
6 Court?
- 7 A. No, I didn't.
- 8 Q. Okay. And at some point you got served with papers?
- 9 A. Right. Uh-huh.
- 10 Q. Okay. Now, did you intend to abide by this agreement?
- 11 A. Yes, I did. But I couldn't abide by it, because I
12 just didn't had the money to do it at that time.
- 13 Q. Okay. So you had your pay from MacDougall. Roughly,
14 how much do you make out there?
- 15 A. About seven hundred dollars a payday, but after child
16 support, it's about four hundred and something dollars a
17 month.
- 18 Q. And you have brought an updated paystub to court
19 today?
- 20 A. Right.
- 21 Q. And that's why we had to change your financial
22 declaration?
- 23 A. Right.
- 24 Q. And then you also get the military retirement?
- 25 A. Right.

1 Q. Which is how much?

2 A. About eleven hundred dollars -- eleven hundred and
3 sixty-three dollars, I think, if I'm not mistaken.

4 Q. And that's after the government takes out the Federal
5 tax?

6 A. Right.

7 Q. You don't pay State tax?

8 A. No, I don't.

9 Q. Do you have any idea how much it is before the
10 deduction?

11 A. I think it's fifteen hundred and something if I'm not
12 mistaken.

13 Q. We put thirteen thirty on your financial declaration.
14 Would you agree with that figure?

15 A. Yeah. That's pretty close.

16 Q. Okay. Was Ms. Johnson a friend of yours at the time
17 you told your wife that you were unhappy and you wanted to
18 leave?

19 A. I never even had met her yet, at that time.

20 Q. Okay.

21 A. I didn't even know who she was at the time.

22 Q. Okay. Did anyone ever live with you in your apartment
23 in Summerville?

24 A. No. No.

25 Q. Did your wife ever come to the apartment in

1 Summerville?

2 A. I don't know for sure. I don't know. The only time I
3 know she came is when she followed me from work one
4 morning, and took that number from out of my car. But
5 otherwise, me not knowing she being there, I don't know.

6 Q. Okay. Now, there's been a lot of talk about military
7 benefits. And your wife has testified, of course, that she
8 doesn't want a divorce because of the military benefits.
9 What type of benefits does she get?

10 A. Right now she gets -- the only benefits she gets is
11 base privileges. And she pays for medical for insurance to
12 go to the hospital. I think we pay Champus about
13 fifty-seven dollars a month for that.

14 Q. How much?

15 A. About fifty-seven dollars a month, I think. I'm not
16 for sure. But that's, basically, the only benefits there
17 is. Not for me, because I'm already retired.

18 Q. Okay. So she has base privileges. She has, what, a
19 pink I.D. card?

20 A. Yes. Uh-huh.

21 Q. A dependent's I.D. card?

22 A. She has a dependent's I.D. card.

23 Q. And this -- you called it "Champus". Is it also
24 called Tricare?

25 A. It's Champus, Tricare, one of those. Yeah.

1 Q. That's a benefit that's available because she's
2 married to a military retired member?

3 A. Right. Uh-huh.

4 Q. Now, isn't that in effect a benefit? Let me ask you
5 another way. Would you expect it if she didn't have that
6 available, that she would have to get health insurance out
7 in the economy?

8 A. Yes. That's right.

9 Q. And it may cost more than fifty dollars a month?

10 A. Possibly, yes. It probably would. Yes.

11 Q. Okay. And what is your position as to her not wanting
12 a divorce?

13 A. I really -- I would like a divorce so that I could
14 move on.

15 Q. Well, let me ask you this: Are you and her -- do you
16 practice the same religion?

17 A. Well, no. And that's one of the problems we got. You
18 know what I'm saying? Right now, she is a minister, and
19 I'm not. I'm saved but I'm not saved. See what I'm
20 saying? So in other words, I would have to change my whole
21 life for her. Like, quit drinking. Right now, I can't
22 even drink in my house. I can't listen to music in the
23 house. None of that stuff. I would have to change my
24 whole life for her.

25 Q. Are you talking about where you're currently living?

1 A. No. Whenever I was there before. The same thing
2 happened whenever I lived there before. That was part of
3 our problem. She wanted to control me and tell me what I
4 can do and what I can't do in my own house.

5 Q. Okay. Well, let me ask you this now that you've
6 brought it up: How big a part of your life is drinking?
7 Do you have a problem with it?

8 A. No, I don't. No, I don't.

9 Q. Okay. What type of beverages do you like to drink?

10 A. I drink beer.

11 Q. You like beer?

12 A. Uh-huh.

13 Q. And was that an issue between you and your wife?

14 A. Yes, it is.

15 Q. It still is?

16 A. No. Because I'm not there anymore.

17 Q. You say you're not drinking anymore?

18 A. No. What I'm saying is it's not a problem because I
19 can do whatever I want now without nobody harassing me,
20 telling me what I can and cannot do.

21 Q. Okay. You're not in the apartment in Summerville
22 anymore?

23 A. No, I'm not.

24 Q. You're living out in Holly Hill?

25 A. Right. Uh-huh.

1 Q. At the same address Ms. Johnson is?
2 A. Yes, I am.
3 Q. So you, basically, moved in with her?
4 A. Right.
5 Q. And when did that occur?
6 A. After I couldn't afford the apartment in Summerville.
7 And then she offered me -- I can stay with her if I give
8 her five hundred dollars a month. So that's what I do.
9 Q. Okay. And Ms. Johnson doesn't have any problem with
10 you drinking a beer?
11 A. No, she doesn't.
12 Q. Or doing anything else that was a problem before you
13 left?
14 A. Nope.
15 Q. Okay. And are you saying that's the reason you
16 decided to separate?
17 A. That's part of the reason. We just had problems. We
18 have problems. We can't agree on nothing. Every time we
19 talk it's a big argument about everything.
20 Q. Did your arguments ever get to be more than that?
21 A. No.
22 Q. Was there ever any problem with any kind of physical
23 problems or anything like that?
24 A. No. It just holding it in and hoping that it would go
25 away, but it never goes away.

1 Q. Okay. Now, since you left in September, you've never
2 been back?

3 A. I went back a couple of times to see my son. And I
4 went back to pick up some stuff from the house, which she
5 would not let me take at the time. She had wanted me to
6 take everything at one time. So, eventually, I couldn't
7 take nothing, because the stuff I wanted she would not let
8 me take at that time. So to not start the argument, I just
9 left with nothing.

10 Q. Okay. Now, let me ask you this: After you signed
11 this agreement, have you ever tried to get back together
12 with her to settle these issues?

13 A. No.

14 Q. No?

15 A. No.

16 Q. Okay. And what about the children? You have a child
17 that's high school aged?

18 A. Yes.

19 Q. And your daughter -- we've already met her -- she's in
20 her twenties. How do you get along with them?

21 A. Pretty good. If I ever get a chance to talk to them
22 it goes pretty good. I call my son some, but now I can't
23 because she told me I that I can't call my son at the house
24 no more. So...

25 Q. Do you ever make any other attempts to have contact

1 with your son besides calling him?

2 A. One time I did, but not lately. I haven't. No.

3 Q. Okay. And, of course, you don't have any problem with
4 him remaining in her custody?

5 A. No. Of course, not.

6 Q. Now, there was some talk about college for him. What
7 are your thoughts on that?

8 A. My thoughts on that are I don't feel that it's right
9 for me to have to pay the whole thing for his college.
10 It's our child. You know, I'm willing to pay for part of
11 my son's college. But I don't think it's right for me to
12 pay the whole thing for my son's college.

13 Q. Well, you're willing to contribute to it?

14 A. Right. Uh-huh.

15 Q. Okay. Now, did y'all own any stocks or investments
16 when you were married?

17 A. Yes. Yes, we did. We had -- well, I had some bonds.
18 I started the bond before we even got married. It's the
19 same one that she's talking about, which I did. And what
20 happened with that, yeah, I had it and I cashed it in. But
21 I used the money to put a new motor in her car -- her van,
22 a motor in my daughter car and a motor in my car.

23 Q. Okay. And you didn't go to the Federal Credit Union
24 and borrow the money for that?

25 A. No. No. No. No. I cash in the bonds myself for

1 that purposes.

2 Q. And when did you do that?

3 A. That was during the year of -- between '99 and 2000.

4 Q. Oh, that was even before you separated?

5 A. Right. Uh-huh.

6 Q. Oh. Okay. And how much -- after you cashed it in,
7 how much money was there?

8 A. I'll say about five -- five thousand dollars.

9 Q. Five thousand?

10 A. Five thousand. Yeah. Right.

11 Q. Okay. And did you spend all of it on the motors on
12 the cars?

13 A. Most of it. Most of it.

14 Q. What did you do with the rest?

15 A. Well, I had to use it to pay my bills for me to live
16 off.

17 Q. Are those bills that you incurred after y'all
18 separated?

19 A. Right. Uh-huh. Most of them.

20 Q. So you still had some money left at the time you
21 separated, and that's what you used it for?

22 A. Yeah. To pay for a place, you know, for me to live,
23 because at the time, you know, everything was going to her.

24 Q. Okay. Did your wife ever give up any career
25 opportunities during your marriage?

- 1 A. No.
- 2 Q. Did she have any job offers that she had to turn down
3 because of the military?
- 4 A. No.
- 5 Q. Did she have any job offers at all?
- 6 A. Not that I know of. She used to work, but she never
7 had no offers.
- 8 Q. What was her occupation?
- 9 A. She was doing, like, some of everything. Caring for
10 people, you know, for the mentally retarded. And,
11 basically, what she is doing now.
- 12 Q. And when y'all met, had she already finished her
13 education?
- 14 A. No, she haven't.
- 15 Q. She had not finished?
- 16 A. No.
- 17 Q. She was still in school when you met her?
- 18 A. No. She had just finished high school, I think.
- 19 Q. She had just finished high school?
- 20 A. Right.
- 21 Q. So during the marriage, she went back and got more
22 education?
- 23 A. Right. Uh-huh. During the marriage.
- 24 Q. Okay. And you had already finished your education?
- 25 A. No. I was in the military at that time.

- 1 Q. So you were out of high school?
- 2 A. Right.
- 3 Q. And you enlisted in the military?
- 4 A. Right.
- 5 Q. And did you ever go back to school and get any kind of
- 6 degree?
- 7 A. No. I did not.
- 8 Q. So your education is high school?
- 9 A. Right.
- 10 Q. And her education is what?
- 11 A. She went to college.
- 12 Q. And where did she get a degree from?
- 13 A. She got her license she got now in California. I
- 14 don't know exactly what year it was. But she went back to
- 15 school for that now.
- 16 Q. Did she go to a full four-year college?
- 17 A. No. They had some kind of a program that you could go
- 18 through every week or so until she could get enough time
- 19 for it.
- 20 Q. Okay. All right. And you are how old, now?
- 21 A. Forty-four.
- 22 Q. How is your health?
- 23 A. I'm in good health.
- 24 Q. Do you have any health problems at all?
- 25 A. No.

1 Q. Are you aware of any health problems that your wife
2 has?

3 A. No.

4 Q. Do your children have any special requirements or are
5 they healthy?

6 A. They healthy.

7 Q. They do well in school?

8 A. Right.

9 Q. You don't expect to have to assist them after their
10 adults and educated?

11 A. Of course not.

12 Q. Okay. Are there any financial issues in this case
13 that have not been discussed?

14 A. No. The only financial case we have is just the
15 mortgage payment. That's all we have together is just the
16 mortgage payment. Everything else is paid for.

17 Q. Okay. Nobody's run up any credit cards? We're not
18 talking about ---

19 A. We have none. Together we don't.

20 Q. Okay. So any consumer debt that you have like that
21 would be each others?

22 A. Right.

23 Q. Incurred after the separation?

24 A. Right.

25 Q. Okay. Nobody's filed bankruptcy?

1 A. No

2 MR. PALMER: That's all my questions.

3 THE COURT: All right. Ms. Floyd?

4 CROSS-EXAMINATION

5 BY MS. FLOYD:

6 Q. You said you were in the military for twenty years and
7 three months?

8 A. Right.

9 Q. And retired at a rank of E-7; is that correct?

10 A. Right.

11 Q. And you've already given us the figures for your
12 retirement that you receive?

13 A. Right.

14 Q. And I believe you showed us an LES statement before we
15 came in here to verify that today?

16 A. Yes.

17 Q. And you admit that you're living with Ms. Johnson in
18 Holly Hill?

19 A. Yes, I am.

20 Q. And you've lived there for a number of months?

21 A. Right. Uh-huh.

22 Q. And you met her at work?

23 A. Right.

24 Q. Didn't you used to be her supervisor?

25 A. No.

- 1 Q. You never were her supervisor?
- 2 A. No.
- 3 Q. You and Ms. Johnson have bank accounts together
- 4 A. No.
- 5 Q. You don't have any bank accounts together?
- 6 A. No.
- 7 Q. And you say Ms. Greene took a telephone number out of
- 8 your car?
- 9 A. Right.
- 10 Q. And that was Ms. Johnson's telephone number?
- 11 A. Right.
- 12 Q. And that's how she found out that you were staying out
- 13 there and seeing Ms. Johnson?
- 14 A. Right.
- 15 Q. You talked about those mortgages. Let me back up for
- 16 a minute. And you deny that there was -- you had a woman
- 17 living with you in your apartment?
- 18 A. Right. I didn't.
- 19 Q. You did have a woman living with you?
- 20 A. No. I deny that. Because there wasn't no woman
- 21 living there.
- 22 Q. Okay. She wasn't living there?
- 23 A. Someone was there, but she wasn't living there.
- 24 Q. She wasn't living there? So there was a woman there,
- 25 and she was making phone calls, or it was possible that she

1 was making phone calls from your apartment?

2 A. I don't know. I don't know.

3 Q. You don't know, but it's possible?

4 A. Anything's possible. I don't know.

5 Q. Okay. Okay. So there was a woman who had access to
6 your apartment in Summerville?

7 A. Access, yes.

8 Q. And that was different from Lilly Johnson? That was a
9 different woman?

10 A. Right. Uh-huh.

11 Q. And what was that woman's name?

12 A. I don't think I can tell you her name.

13 Q. You don't know her name?

14 A. Right now, it's not important, because she's not a
15 part of my life no more.

16 Q. Okay. But what is her name?

17 A. Like I just say, she's not a part of my life anymore.
18 I don't think I can answer that.

19 MS. FLOYD: Your Honor, I asked a question, and he's
20 not answering it.

21 THE COURT: Well, and that's true, but, you know, I
22 don't know that we need to just gratuitously bring people's
23 names into this proceeding. Is there any relevance to know
24 this woman's name to any issue before the Court?

25 MS. FLOYD: Well, Your Honor, it would be nice to know

1 that the person has a name.

2 THE COURT: Well, I'm not going to ---

3 MS. FLOYD: I don't know there's any particular
4 relevance. No, sir.

5 THE COURT: Then, I'm not going to make him answer the
6 question.

7 MS. FLOYD: All right.

8 BY MS. FLOYD:

9 Q. And how old did you say you are?

10 A. Forty-four.

11 Q. And how old were you when you got married?

12 A. I guess, about twenty-three or twenty-four.

13 Q. And how old was Hattie Greene when y'all got married?

14 A. Same age.

15 Q. And, yet, you say she had just finished high school?

16 I believe that was your testimony?

17 A. I ---

18 Q. Hadn't she already been to school before y'all got
19 married?

20 A. Right.

21 Q. So the information you gave before was incorrect?

22 A. Yes, it was. I just miscalculated. That's all it
23 was.

24 Q. Right. Well, I'm just trying to get the record
25 straight. So she did not attend school while y'all were

1 married, except, maybe, get the certificate that she has
2 now?

3 A. Right.

4 Q. Would that be more accurate than what was said before?

5 A. Right.

6 Q. And you talked about the mortgages. How many
7 mortgages were there on the house?

8 A. Three.

9 Q. Okay. There was the first mortgage. That would be
10 the one -- the VA loan where you purchased the house; is
11 that correct?

12 A. Right.

13 Q. And then the second mortgage, what was that for?

14 A. She had power of attorney. She did all this while I
15 was in the military and gone away. When I came back, this
16 is what I got to pay for.

17 Q. Okay. And wasn't one of those loans a consolidation
18 loan, and wasn't that used to help pay for your car, also?

19 A. One of them. Yes.

20 Q. Okay.

21 A. One of them.

22 Q. So there were three. One was the original one, one
23 was to pay for your car and also to consolidate some bills?

24 A. Right.

25 Q. And then your testimony is you don't know what the

1 other one was for?

2 A. Right.

3 Q. And you said that you were deployed a good bit of the
4 time when you and Ms. Greene were together?

5 A. Right.

6 Q. And so when you were deployed she had to take care of
7 the house and the children all by herself; isn't that
8 correct?

9 A. That's why she had to have the power of attorney.
10 That's what you call military life. I'm sorry. I can't
11 help that.

12 Q. Right. Right. And your testimony was that she was
13 also working and earning money -- bringing money home?

14 A. Right.

15 Q. During that period of time. And for the personal
16 property, you said you wanted a stereo. Didn't you take a
17 stereo with you when you left?

18 A. No. That's mines.

19 Q. Okay. But you already have a stereo?

20 A. No. That's not the one -- that's not the stereo I'm
21 talking about. I'm talking about my big wall-to-wall
22 stereo. That's the one I'm talking about.

23 Q. Oh, okay. So you took a stereo, but there's still
24 another stereo?

25 A. Right.

1 Q. So do you want to exchange stereos or you want both
2 stereos?

3 A. I can exchange them, but I want my big stereo because
4 it's mine.

5 Q. Okay. So you would like to have the big stereo, but
6 it's okay with you if she has the other stereo?

7 A. Right.

8 Q. Okay. Now, you gave a value for the house, but you
9 did not have that house appraised by anyone; did you?

10 A. No.

11 Q. And you did not check to see what other houses were
12 selling for in the neighborhood; did you?

13 A. When? Lately or before I bought the house.

14 Q. Lately.

15 A. No, I haven't.

16 Q. Okay. So you don't -- you were just guessing at what
17 the value of the house would be?

18 A. Right.

19 Q. And do you have any objection to keeping the insurance
20 policy, the hundred and fifty thousand insurance policy
21 active on your life?

22 A. What hundred and fifty thousand life insurance policy?
23 I don't even have that. I don't know what you're talking
24 about.

25 Q. Okay. Well, if there were one, you would cooperate

1 with keeping it going?

2 A. No.

3 Q. No?

4 A. No.

5 Q. So, all right. Then, for the survivor ---

6 A. You mean, for me to pay for a life policy for her to

7 have?

8 Q. Right. Instead of the survivor benefit policy.

9 Instead of the survivor benefit plan. You could have

10 signed up to get a survivor benefit plan when you retired

11 from the military?

12 A. I know. Right. Uh-huh. I did.

13 Q. And instead, y'all have an insurance policy on your

14 life; isn't that true?

15 A. No.

16 Q. You don't know about that?

17 A. No. Because she ---

18 Q. Well, did you sign up for the survivor benefits?

19 A. No, I didn't. No, I didn't. I did, but we got -- we

20 agreed to stop it, because it was costing us too much

21 money. And we decided instead of going that route, we

22 would get insurance.

23 Q. Okay. So you don't have any objection to continuing

24 with that insurance?

25 A. No. Because she had drop it.

1 Q. The survivor benefit plan she dropped?

2 A. No. The survivor benefit plan was dropped way before.

3 Q. Before what?

4 A. Before she came out with this new policy, hundred and
5 fifty thousand dollar policy.

6 Q. Okay. All right. I'm confused. Because you said
7 there is no hundred and fifty thousand dollar policy, and
8 now, you're saying there is one?

9 A. No. The only time I heard about a hundred and fifty
10 thousand dollar is now.

11 Q. Okay.

12 A. But I remember she had wanted me to sign some
13 paperwork for a policy which I never did sign.

14 Q. Okay. All right. But if there is such a policy, you
15 don't have any objection to that continuing; do you?

16 A. I'm not going to pay for it.

17 Q. You don't think you should pay for it, but you don't
18 have any problem with keeping it enforced? If there was
19 something that you had to do other than pay for it to keep
20 it enforced, would you cooperate with it or should we ask
21 the Court to require you to do that?

22 A. No. I don't have a problem with it if that's what,
23 you know, she's decided she wanted to do.

24 Q. And you were saying that you would like to have a
25 divorce, eventually?

1 A. Right.

2 Q. And you understand that your wife would lose her
3 health insurance benefits as of ---

4 A. No. She would not lose her health insurance, because
5 she has a military I.D. card.

6 Q. Well, if the law were such that unless y'all had been
7 married for twenty years while you were on active military
8 duty for twenty years, and that's the only way she can keep
9 those insurance benefits -- if that were the law and y'all
10 were not married for twenty years while you were in the
11 military; is that correct?

12 A. Right.

13 Q. Okay. So if I told you that the law is that y'all had
14 to be married for twenty years while you were on active
15 military duty, or otherwise she couldn't keep that
16 insurance -- and I am telling you that's the law -- so if
17 she had to get private insurance, wouldn't it be reasonable
18 for you to contribute to that -- for you to pay for that
19 since she can get it for very little now?

20 A. So you saying pay for her insurance?

21 Q. Right.

22 A. No.

23 Q. So you don't want to be responsible?

24 A. I don't agree with that.

25 Q. You don't agree with that?

1 A. No.

2 Q. But you would cooperate with her getting her military
3 I.D. or anything that she was entitled to while she was
4 still entitled to it?

5 A. She has it.

6 Q. And it's your testimony that you spent the six
7 thousand dollar before y'all separated that were the
8 savings bonds?

9 A. No. It was five thousand dollars.

10 Q. Okay. It was five thousand dollars. Okay. And
11 weren't those savings bonds supposed to be used for the
12 children's college education?

13 A. No. No. That was never discussed. That was mines.
14 I did that before I even got married.

15 Q. Uh-huh. You had six thousand dollars in savings bonds
16 before -- or five thousand dollars in savings bonds before
17 you got married?

18 A. No. I had that separate. I put that aside every
19 month. Matter of fact, I didn't realize how much it was
20 until I retired, because it was just coming out
21 automatically. And the kids had nothing to do with the --
22 at the time, I considered it as my savings for me for being
23 in the military for twenty years for me. And what happened
24 -- and then I took it and I spent it on the family.

25 Q. Okay. And you've already testified that you have no

1 objection to continuing paying child support; is that
2 correct?

3 A. Until my son turns eighteen in August.

4 Q. Okay. And then, your son's already been accepted in
5 college. So you're going to contribute to his college
6 education?

7 A. I can pay a part of that, but I don't think I should
8 pay the whole thing.

9 Q. Okay. Well, how much do you think you should have to
10 be willing to contribute to that?

11 A. It depends on -- I'm willing to continue paying at
12 least half of what I'm doing now with child support a
13 month.

14 Q. Okay. So you'd continue to pay half of what you pay
15 now in child support while your son's in college?

16 A. Right.

17 MS. FLOYD: I don't have any other questions, Your
18 Honor. Well -- excuse me.

19 (Attorney confers with her client.)

20 BY MS. FLOYD:

21 Q. May I show you this? Is that your signature?

22 A. Yes, it is.

23 Q. Okay. And this is a life insurance policy?

24 A. Yes, it is. But can I explain?

25 Q. Sure.

1 A. That's the one she was supposed to cancel because she
2 had wanted me to pay the whole thing. And she was supposed
3 to drop me from off of that policy.

4 Q. Okay.

5 MS. FLOYD: Now, I have no further questions.

6 THE COURT: Well, I have a question about this life
7 insurance. Is this the policy the two of you got when you
8 made the decision to opt out of the survivor benefit?

9 WITNESS: Yes, it was.

10 THE COURT: Okay. And it's supposed to pay out a
11 hundred and fifty thousand dollars on your death?

12 WITNESS: Right.

13 THE COURT: Okay. Is this a term-life policy?

14 WITNESS: I have no idea. She did all the paperwork.
15 I have no idea.

16 THE COURT: Okay. All right.

17 Mr. Palmer?

18 MR. PALMER: Thank you, Your Honor. I actually --
19 that has peaked my curiosity about the insurance.

20 REDIRECT EXAMINATION

21 BY MR. PALMER:

22 Q. You don't know how the payments are structured?

23 A. No.

24 Q. Whether or not the premiums will increase over the
25 years as you age?

1 A. No.

2 Q. Okay.

3 MR. PALMER: That's all the questions I have, Judge.

4 THE COURT: Okay. You may step down.

5 (The witness leaves the stand.)

6 MR. PALMER: Your Honor, besides the defendant, I
7 wasn't planning on presenting any other witnesses.

8 THE COURT: Okay.

9 Ms. Floyd, anything by way of reply testimony?

10 MS. FLOYD: No, Your Honor.

11 THE COURT: Well, from the record before me and the
12 testimony that I've heard, I do believe that I have a good
13 understanding of the issues and the position of the
14 parties. But, certainly, Counsel, if either of you wish to
15 make any sort of closing statement or argument, I'll be
16 happy to allow that.

17 MS. FLOYD: None from the plaintiff, Your Honor.

18 MR. PALMER: Your Honor, I just want to make a couple
19 of comments in a broad sense. I think it's clear, Your
20 Honor, from the case that -- at least as far as what's been
21 presented as tangible evidence by way of proof -- it's not
22 quite as clear as to what caused these parties to break up
23 as the plaintiff would suggest. She pulled in a string of
24 witnesses about this October incident. That was, clearly,
25 after the parties separated. And I didn't hear any

1 evidence that went into the record that would suggest that
2 my client was engaging in unmarital conduct -- kind of a
3 rough shot at a word, but that's the one I thought of --
4 conduct adverse to the integrity of the marriage, prior to
5 their separation in September and deemed by way of his
6 testimony it was another reason that they broke up that
7 perhaps was indirectly a result of their different
8 religious affiliations or their different views on what
9 should and should not take place in the marital home.

10 So, Your Honor -- and I present this, simply, because
11 I know this is a division case. And I know that the
12 equitable division statute has fought for the break up
13 right near the top of the list. So I think -- and I know
14 the Court is going to consider that. And I would, simply,
15 point that out.

16 The other thing I just wanted to point out, Your Honor
17 -- and it's pretty abundantly clear to me -- that my client
18 has not really been that resistant to trying to work this
19 out. Indeed, the first exhibit they entered was a document
20 where he agreed to give her fifteen hundred dollars a
21 month. In the testimony -- it was unrefuted -- was that he
22 did exactly that until he was hound into court by her
23 attorney. And since then, he's been making some type of
24 payment if not the Court ordered payment, but certainly a
25 substantial payment toward the mortgage, the six-fifty.

1 And I think the only reason he changed is because one of
2 the mortgages got paid off.

3 So, Your Honor, I think my client's had a pretty
4 cooperative attitude throughout all this, even though he is
5 clear that he does not want to be in the marriage anymore,
6 and the marriage is, in fact, over. He has not attempted
7 to shirk his responsibilities to his family. And he's been
8 paying, in other words. And I know Your Honor's going to
9 require him to continue to pay in some fashion, but would
10 like Your Honor to take that into consideration in issuing
11 your ruling.

12 And, finally, Your Honor, looking at this affidavit of
13 attorney's fees, I understand that in cases like this the
14 Court is routinely asked to rule on issues like that. And
15 I would never suggest that opposing counsel is not worth
16 every penny of what she's claiming. But, however, the same
17 argument applies that my client has been cooperative from
18 the get-go under the circumstances. Ms. Greene wants him
19 to pay for her three lawyers. It wasn't really clear how
20 and why she decided she wasn't satisfied with her other
21 previous counsel. And I don't want to ask her, because it
22 gets into privileged stuff. But, you know, it certainly
23 isn't a case where he's tried to leave town and left them
24 penniless, and it required an attorney to vigorously
25 prosecute him and bring him to the Court to make him pay.

1 It's clear he's been trying to do the right thing.
2 And we would ask that the Court consider that in either
3 awarding, or, hopefully, denying the request for attorney's
4 fees. We have not made the same request. And we would,
5 certainly, be more than satisfied to have the Court order
6 that each party pay their own fees. Thank you, Your Honor.

7 THE COURT: Thank you.

8 MS. FLOYD: Your Honor, since Mr. Palmer decided to
9 get up and make those statements, I think I need to make a
10 counter. I think he was mistaken about the record, because
11 my client did testify that Mr. Greene did tell her that he
12 had a girlfriend, and that's one reason he was leaving. He
13 may have had other reasons, but he told her he had a
14 girlfriend, and she testified to that effect.

15 And I think Mr. Greene admitted that there was a woman
16 who had access to his apartment within a month after they
17 separated. He wouldn't tell us her name or give us any
18 more details. He just said she's no longer part of his
19 life. But for Mr. Palmer to suggest that all of this
20 conduct that was -- adulterous conduct took place after the
21 separation. It was pretty close after the separation even
22 if he's technically correct. But I think the implications
23 are clear that Mr. Greene had a pretty active
24 extracurricular life before the parties separated just by
25 the implications in the testimony. So I think a different

1 conclusion can be drawn from that. But that's our job as
2 lawyers to suggest to you the different conclusions that
3 can be drawn.

4 THE COURT: All right. Thank you. Well, I don't
5 think that it would be fair to the parties for me to just,
6 simply, rule off the cuff without carefully reviewing my
7 notes as to the testimony, without reading these exhibits
8 that have been introduced, without considering the
9 arguments that your attorneys have made on your behalf. So
10 I will do that. I will tell you that I do have a number of
11 cases under advisement. So I don't want you to be sitting
12 on pins and needles, expecting this decision in the next
13 couple of days. But, certainly, I will try to do my best
14 to get a decision within a reasonable amount of time, and I
15 will communicate that to your attorneys.

16 Thank you.

17 MR. PALMER: Thank you, Your Honor.

18 MS. FLOYD: Thank you, Your Honor.

19 THE COURT: All right. And let me just say so there's
20 no confusion, the provisions that are in effect with this
21 temporary order remain in effect until the new order is put
22 in place. Thank you.

23

24

25

1 I, the undersigned BONNIE M. BRITT, Official Court
2 Reporter for the Ninth Judicial Circuit of the State of
3 South Carolina, do hereby certify that the foregoing is a
4 true, accurate, and complete transcript of record of all
5 the proceedings had and evidence introduced in the trial of
6 the captioned case, relative to appeal, in the Family Court
7 for Dorchester County, South Carolina, on the 14th day of
8 May 2002.

9 I do further certify that I am neither of kin,
10 counsel, nor interest to any party hereto.

11 March 1, 2004

12
13 Bonnie M. Britt

14 Official Court Reporter
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
)
COUNTY OF CHARLESTON) Case No. 2012-CP-10-8372

HATTIE MAE GREENE,
Plaintiff,

VS.

CINDY M. FLOYD,
Defendant.

DEPOSITION OF
CINDY M. FLOYD

DATE: February 6, 2014

TIME: 10:17 a.m. - 11:33 a.m.

LOCATION: Barnwell Whaley Patterson & Helms, LLC
288 Meeting Street, Suite 200
Charleston, South Carolina

REPORTED BY: Toby L. Davis

LAW SERVICES OF S.C.
Post Office Box 1498
Goose Creek, SC 29445
Tel.: (843) 607-3779
LAW.Services.SC@gmail.com

1 This transcript may not be reproduced,
2 emailed to another party or transcribed in any form
3 or by any means, electronic, mechanical,
4 photocopying, recording or otherwise, without the
5 prior written permission of the Court Reporter.

6
7 A-P-P-E-A-R-A-N-C-E-S

8 For the Plaintiff:

9 By: D. Cravens Ravenel, Esquire
10 BAKER, RAVENEL & BENDER, LLP
11 Post Office Box 8057
12 Columbia, SC 29202
13 (803) 799-9091
14 cravenel@brblegal.com

15 For the Defendant:

16 By: M. Dawes Cooke, Jr., Esquire
17 BARNWELL WHALEY PATTERSON & HELMS, LLC
18 288 Meeting Street, Suite 200
19 Charleston, SC 29401
20 (843) 577-7700
21 mdc@barnwell-whaley.com

22 Also Present: Alissa D. Fleming, Esquire

23 Hattie Mae Greene
24
25

1 INDEX TO EXAMINATIONS

2 CINDY M. FLOYD, sworn

Page

3 Examination by Mr. Ravenel

4

4

5 EXHIBITS

6 Plaintiff's:

7 Exh. No. 1 Notice of Taking Deposition of Cindy M.
8 Floyd (2 Pages)

4

9 Exh. No. 2 Order of Separate Support and Maintenance
10 (5 Pages)

25

11 Exh. No. 3 Supplemental Order, Division of Military
12 Retired Pay (3 Pages)

25

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 It is stipulated between the parties that
2 this deposition is taken pursuant to notice and that all
3 questions as to notice are waived; that all objections,
4 save as to the form of the question, are reserved until
5 the time of trial; that this deposition is taken pursuant
6 to the South Carolina Rules of Civil Procedure for the
7 purposes allowed therein; and that the deponent was
8 explained her right to read and sign the transcript of the
9 deposition and chose to exercise that right.

10 (CINDY M. FLOYD, being first duly sworn, deposes and
11 says as follows:)

12 E-X-A-M-I-N-A-T-I-O-N

13 BY MR. RAVENEL:

14 Q Would you state your name, please?

15 A Cindy Moore Floyd.

16 Q Ms. Floyd, I send a notice of taking your
17 deposition to your lawyer, and I'm sure that you are aware
18 of that. And this is a copy of it that I'm going to have
19 marked as Exhibit 1 for identification to this deposition.
20 And it merely recites that we are supposed to start here
21 at 10:00 today to take your deposition.

22 (Notice of Taking Deposition of Cindy M. Floyd (2
23 pages), Plaintiff's Exhibit No. 1 is marked for
24 identification and made part of this deposition.)

25 BY MR. RAVENEL:

1 Q What is your date of birth?

2 A 12/26/49.

3 Q And what does the "M" stand for?

4 A Moore.

5 Q Moore. I'm sorry.

6 A It's my dad's middle name.

7 Q Your birth place?

8 A Hartsville, South Carolina.

9 Q Are you married?

10 A Yes.

11 Q To whom are you married?

12 A Peter Laurie.

13 Q That's a great name.

14 A L-A-U-R-I-E, not -- not L-O-R-R-E. Sorry. We
15 get that a lot.

16 Q And how long have y'all been married?

17 A Since 1978. How long is that?

18 Q Okay. That's fine, 1978. Married in '78.

19 Any divorces?

20 A No.

21 Q Where --

22 A Not that I'm aware of. I haven't had any.

23 Q What does Mr. Laurie do for a living?

24 A He's retired from the South Carolina

25 Department of Natural Resources.

1 Q Natural Resources?

2 A Uh-huh. And he's a writer. He does natural
3 history writing.

4 Q I'm sorry. He does what?

5 A Natural history writer.

6 Q Okay. And what area does he write in? Just
7 anything --

8 A Natural --

9 Q -- about natural --

10 A No.

11 Q Anything about --

12 A Huh-uh. Yeah. If you're familiar with South
13 Carolina Wildlife magazine?

14 Q I am.

15 A He has a number of articles in there.

16 Q Right.

17 A Notice who wrote the articles next time.

18 Q I'll notice that; yes.

19 What is your residence address?

20 A 750 Copperhead Trail, Johns Island, South
21 Carolina.

22 Q And how long have you lived at that address?

23 A Since 1982.

24 Q Where did you live before that?

25 A 612 Flint Street, on James Island.

1 Q Okay. And then how long did you live
2 there?

3 A From '74 until '82, approximately.

4 Q Okay. And do you have a religious
5 affiliation?

6 A I was raised Episcopalian.

7 Q Okay. Do you attend a particular church?

8 A No.

9 Q Okay. You're an Episcopalian, then, just like
10 me.

11 Are you a member of any social organizations?

12 A Such as?

13 Q A dance club, a book club, a -- whatever?

14 A There's a -- some women lawyers that have a
15 book club.

16 Q Okay.

17 A We don't have a name for it or anything, you
18 know.

19 Q Okay.

20 A And I'm a member of the Lowcountry Dog Agility
21 Association.

22 Q Okay.

23 A I do agility with my dogs. I think that's ...

24 Q So Lowcountry -- did you say --

25 A Dog. Uh-huh. Agility Association; yes.

1 Q And how many women are in the women's
2 lawyers book club?

3 A Less than ten. It varies.

4 Q What are their names?

5 A Oh, gosh.

6 Q As best you can.

7 A Okay. Karen McCormick, Liz Stringer, Cynthia
8 Odell, Nancy Vavra, Mary Ann Hall. I'm going to leave
9 somebody out. Abbie Duffey. Wendy Freeman. I think
10 that's it.

11 Q And the dog agility organization?

12 A Don't ask me theirs. There's a bunch.
13 There's --

14 Q Bunches of those people?

15 A There are a number of people who belong to
16 that, so I can't tell you all of them.

17 Q Okay. Anybody in there that you're closer to
18 than others, that you can think of?

19 A No. Not really.

20 Q Okay. And what does dog agility do? I just
21 can't imagine. Do you have a --

22 A I can show you the video. It's --

23 Q Lack of agility?

24 A No. It's sort of --

25 MR. COOKE: I'm going to get my dog in that.

1 A It's sort of -- yeah. It's -- it's
2 like -- it -- it's sort of like jumping horses in a -- you
3 know, so. You have a course and you have different
4 obstacles, and you train your dog to go through them.

5 Q Okay. And they --

6 A If you --

7 Q -- They're taught to respond to instructions?

8 A Uh-huh. If you watch --

9 Q I understand.

10 A If you watch the dog shows, those -- they've
11 started having some agility demonstrations --

12 Q Okay.

13 A -- at those, lately. It's -- it's a real
14 popular sport.

15 Q Any other organizations? Hunting clubs,
16 fishing clubs?

17 A Huh-uh. No. Not that I can think of.

18 Q Okay.

19 A I mean I was -- well, I don't know anymore.
20 I'm on the -- I don't know if you --

21 Q Past would be good. I'd like that, too.

22 A Oh. Well, I was a member -- I was a board
23 member of the Girl Scouts until recently. I was on the
24 board of the Charleston Center for Women; I just cycled
25 off of that. I'm a member of the Charleston County

1 Planning Commission.

2 Q Okay. How about professional organizations,
3 other than the South Carolina Bar?

4 A Charleston County Bar Association and the
5 South Carolina Association for Justice. And the women's
6 law association: South Carolina Women's Law Association.

7 Q And I think you probably already included
8 these, but anything that would fall under the description
9 of charitable organizations, that you haven't already
10 mentioned?

11 A No, not really. Not -- I mean not formally
12 affiliated. I mean I donate, but.

13 Q Okay. What's your educational background?

14 A I went to high school, went through a school
15 in Hartsville. And then I attended -- I went -- graduated
16 from Reed College in Portland, Oregon and the University
17 of South Carolina School of Law.

18 Q I think my daughter went to an environmental
19 law school or a school in --

20 A Louis and Clark?

21 Q Louis and Clark. Yeah. For a semester, as a
22 part of her studies.

23 What about your work experience? Where have
24 you worked?

25 A I clerked for Judge William Howell when he was

1 on the Circuit Court bench, right after I got out
2 of law school, and then I opened up my own practice.

3 Q So you --

4 A You mean even before I went to law school?

5 Q Yes.

6 A Okay. I started out with the Department of
7 Natural Resources, which was the Wildlife Department back
8 then, and I worked there as a laboratory technician. And
9 then I worked at the Medical University of South Carolina
10 as a lab technician. And then I went to law school.

11 Q Okay. And since graduating from law school,
12 the only employment that you've had are self-employment as
13 a lawyer?

14 A Except when I was clerking for Judge Howell.

15 Q Oh, yeah. Right. Other than that. Have you
16 ever practiced with someone other than the time that you
17 worked for Judge -- and you weren't really practicing with
18 him; you were working for him?

19 A I've shared space with people, but I haven't
20 actually been in a partnership or anything like that.

21 Q Who have you shared space with?

22 A Richard Lawrence. And then I -- well, it
23 wasn't really sharing; I was renting from him, so. I
24 rented office space from Richard. And then I was renting
25 space from George Kefalos and Jeff Wagner and -- oh, gosh.

1 I've drawn a blank. Elliott Barrow. And then I
2 moved, bought office space at my address, my present
3 address, in 2006.

4 Q And what is your present address?

5 A 1327 Ashley River Road, Charleston, 29407.

6 Q What is the area of your practice? And if
7 it's -- well, the concentration. And if it's changed,
8 tell me about that.

9 A As far as -- most of my practice is Family
10 Court. I do some probate and some Social Security
11 disability, but not much, just kind of -- and an
12 occasional personal injury case. So I'd say I have a -- a
13 general civil practice. No criminal; no real estate.

14 Q Okay.

15 A Ever.

16 Q What percentage would you estimate of your
17 practice is now family law?

18 A At least eighty -- you know, in the 80
19 percent, maybe more than that. If you mean number of
20 cases or percentage of income or --

21 Q Probably percentage of income. That's -- I
22 mean your time. Do you charge by the hour, I assume?

23 A Uh-huh.

24 Q Except for --

25 A Except for personal injury and the Social

1 Security disability, I mean, because that's
2 pretty much fixed.

3 Q Okay. You said -- you nodded your head and
4 said, "Uh-huh." It's hard for her to pick it up. Could
5 you speak, what -- articulate what your answer was on that
6 one?

7 A Which question was it?

8 Q The question was, you had asked -- you had
9 asked a question of me when I asked the question about
10 percentage.

11 A Uh-huh.

12 Q And you said, "Well, are you talking about the
13 percentage, dollar-wise or hour-wise." And I was -- said
14 something. But anyway, you were -- I think you were
15 responding to that by telling me what percentage of your
16 dollars --

17 A Okay.

18 Q -- were generated by family practice.

19 A Probably 90 percent.

20 Q Okay.

21 A And that -- these are just guesstimates.

22 Q Sure.

23 A And it varies from year to year, you know. If
24 I get a personal injury case -- I mean I may go a whole
25 year without getting a personal injury case.

1 Q And as far as the number of cases you
2 handle in a year, I know it varies, but what would you
3 estimate the average to be of Family Court cases that you
4 would --

5 A I have no idea.

6 Q I mean is it greater than a hundred?

7 A I -- I really -- I just don't know.

8 Q Okay. I mean there would be no number I could
9 pick that you'd say, "I know that's not right?"

10 A Well, I mean if you picked like, you know,
11 500, I could tell you it wasn't that many.

12 Q Okay. All right.

13 A But I've really -- I've never sat down and
14 actually counted the number --

15 Q Sure.

16 A -- of cases that I take in, in a year.

17 Q Of the family law cases that you've handled,
18 what percentage of them would be related to -- would
19 there -- excuse me.

20 Of the Family Court cases that you handle
21 annually, what percentage of them would be Family Court
22 cases involving military people?

23 A I can't -- I can't give you a figure on that,
24 either.

25 Q All right.

1 A Because I mean that varies from year
2 to year. Early in my practice when the Navy Base was
3 still in town, you know, a great deal of it was.

4 Q Okay. And when you say "early," when would
5 that have been? What years?

6 A When -- I think the Navy Base left and I
7 started practicing in '87, '88. And I think the Navy Base
8 left in '96, so.

9 Q And when it left in '96, how did that impact
10 you as far as having military-related --

11 A Then the percentage of the military cases that
12 I handled went down.

13 Q Substantially?

14 A Substantially.

15 Q Well, since '96, how many case a year do you
16 suppose that you would have had that were military --

17 A Again, I -- I'm sorry, because I really -- I
18 can't give you a figure because --

19 Q Okay. Well --

20 A -- it's going to vary from year to year.

21 Q You don't have to apologize. Just say you
22 don't know. That's fine.

23 A I don't know.

24 Q Currently, how many military cases do you
25 have?

1 A I don't know.

2 Q You don't know whether you have one or none?

3 A I'm trying to think. I don't believe I
4 have -- I can't really say that because I mean sometimes
5 they're retired military. I -- you know; I -- I wouldn't
6 want to venture a guess.

7 Q How many active duty military clients do you
8 represent who are the wives or husbands of military
9 people?

10 A Right now?

11 Q Right now.

12 A I don't think I have any, but I'm not sure.

13 Q All right.

14 A I mean -- you know; I just don't -- I don't
15 categorize them that way. They're all Family Court cases.

16 Q Sure.

17 A So it's hard to pick out which ones are
18 military.

19 Q Is there -- if it is a military case, are
20 there some specific things that are peculiar to military
21 cases that you need be aware of, different than the
22 non-military?

23 A Not really. I mean -- you know; the -- the --
24 the issue of the military retirement is always there.

25 Q Right.

1 A Especially if somebody's been -- you
2 know, been in has been in practice for more than 20 --
3 I've been practicing -- I mean in service for more than 20
4 years.

5 Q Right.

6 A Because then they're eligible for it. But
7 you -- you know; retirement cases are always -- you know.
8 Retirement for civilian cases, the retirements for people
9 who are civilians, also are divisible in Family Court as
10 property, so. The -- the issues are -- are very similar.

11 Q Have you attended, in the last ten years, any
12 seminars that focused on military division of property,
13 whether it was somebody on active duty or retired from the
14 military?

15 A Specifically just for that subject?

16 Q Just -- well, where the wage owner was someone
17 employed by the military or who drew benefits --
18 retirement benefits -- from the military?

19 A Generally -- okay. In south Carolina, I
20 usually go to the continuing education courses that the
21 Bar presents.

22 Q All right.

23 A And every year, just about -- I think it's
24 every year -- they -- they have the -- the Family Court
25 Bar has the Hot Tips. And on several -- I don't think

1 there was anything for the military this year.
2 But, you know, a section of that -- it would not be
3 unusual for a section of that to cover military law.

4 Q Right.

5 A But I -- I -- I don't recall going to a
6 seminar that just covered military divorce law and nothing
7 else, in the last ten years.

8 Q Okay. In the last ten years, have you
9 attended -- other than the Hot Tips, have you attended a
10 CLE that focused on domestic relations and that's it?

11 A Just went to one at the Bar convention.

12 Q I mean other than -- I mean that's the Hot
13 Tips one; right?

14 A No.

15 Q I'm sorry.

16 A The one at the Bar convention was -- is not.

17 Q Okay.

18 A That's -- it's a separate one. So they --
19 the -- I usually go to the Bar convention because it's a
20 good place to pick up all your CLE credits, and like
21 always go to the family law section presentation there.

22 Q Do you keep a list of the particular courses,
23 CLE course that you -- CLE courses you attend?

24 A Well, you have to report them to the Bar.

25 Q Right. But I mean do you keep that list so it

1 would be available to me, if I want to ask you to
2 produce it to me?

3 A I don't know how many years it would go back.
4 But I do keep it in a file, so -- because, you know, they
5 send you the statements that you have to -- you know.

6 Q Okay. Well --

7 A Send in your CLE credits, the -- when they --
8 they have what they have -- the Bar has what it has listed
9 and whether it's accurate and you add. So I -- I would --
10 I would keep those.

11 Q Sure.

12 A To make sure that I didn't need anything at
13 the end of the year.

14 Q Have you been to any seminars where the United
15 States Supreme Court Mansell vs. Mansell case was
16 discussed?

17 A I'm sure I have, but it would -- it would have
18 been a while ago. But I don't -- and I don't know when it
19 was.

20 Q Well, what did Mansell -- what was it -- I
21 mean if you're familiar -- I don't remember case names,
22 so. But it's the one that --

23 A But I don't remember--

24 Q -- dealt with the issue in front of us.

25 A Yeah. Right. I don't -- well, the

1 jurisdiction for the issue in front of us; yes.

2 Right? There is no jurisdiction over military disability
3 pay.

4 Q Right. I mean they -- maybe they discussed --

5 A As part -- as -- right.

6 Q Right.

7 A It cannot be divided as property like military
8 retirement can.

9 Q Okay. Right. And that was a 1989 case. How
10 did that affect your representation?

11 A It's one of the things that I -- you know:
12 Part of the knowledge that I brought to the table.

13 Q All right. And how would that impact what you
14 did, questions you asked and the actions that you took, in
15 a case where you were representing military personnel?

16 A I'm not sure what you're asking.

17 Q I'm sorry?

18 A I'm not sure what your question is.

19 Q My question is, how did, if at all, the heart
20 of the decision in Mansell vs. Mansell affect your
21 representation of your clients in cases in which there
22 were military wages, retirement, at issue?

23 A Well, I'm -- I'm still not quite sure -- I
24 mean it's -- it's -- you know; like I said, it's -- it's
25 part of the body of knowledge out there on the --

1 Q Right. And --

2 A And -- I don't know --

3 Q What was your opinion, prior to Mansell, about
4 the issue in Mansell --

5 A What was my --

6 Q About the division of retirement benefits when
7 disability is involved?

8 A When I -- right at -- in 1986-87 -- that was
9 right when I started practicing -- that's when
10 retirements, in general, became eligible to be divided as
11 property. Okay? And then -- you know; then the military
12 retirement could be divisible. So it was all part of
13 the -- you know, like the ongoing development of that area
14 of the law.

15 Q Well, I guess my question is, did you develop
16 any intake information sheet or sheets that would reveal
17 factual issues that would be related to the Mansell
18 question, the questions raised in Mansell, and then,
19 later, in Price v. Price and Tirado v. Tirado, two South
20 Carolina cases?

21 A You would always want to know what the income
22 stream was. So, in that respect -- but I mean those were
23 questions that you would ask anyway. You know, in the
24 Family Court you have the financial declaration that you
25 fill out, so. You know; when you're looking at the

1 issues, you would want to know what the income
2 is on the other side and where it comes from. So those
3 are just questions that would -- you would ask --

4 Q Right.

5 A -- in dealing -- you know, just general
6 questions that you would ask anyway.

7 Q All right. In the -- I hate to send you back
8 to law school, but would you compare --

9 A Uh-huh. "On the one hand/on the other hand"
10 distinctions?

11 Q Right, we've got that -- the Price case came
12 down. And what do you recall it deciding?

13 A Okay. The Price case stands for -- okay. The
14 Family Court does not have jurisdiction to divide military
15 retirement pay and -- or disability pay. Excuse me; I
16 misspoke. Military disability pay. And -- but that's not
17 really different from other disability pay. Okay? So
18 in -- for -- like for State disability pay, you're going
19 to -- that's considered income. It's not property. Okay?

20 Q Right.

21 A So V.A. disability pay is -- is considered
22 income, not property, but it is part of the package that
23 you're entitled to as part of your retirement in the
24 military, you know. Generally, big -- not -- it's not
25 retirement pay, but if you didn't have -- if you weren't

1 retired from the military, you wouldn't be able
2 to get the V.A. disability pay.

3 Well, that's not true. You can get it while
4 you're still practicing.

5 But -- so the Price case said that these
6 people came in and made an agreement and they -- they --
7 the thing that they divided in the agreement was the
8 retirement pay and the disability pay.

9 Now the Family Court has jurisdiction to
10 approve agreements. These people came in and said, this
11 is our agreement, and the Supreme Court in South
12 Carolina -- court -- Supreme Court, Court of Appeals,
13 whichever one it was -- said you made this agreement;
14 you've got to live with it.

15 Q And -- okay. Well, how does the Price case
16 vary from that?

17 A That is the --

18 Q Oh. That is the --

19 A -- Price --

20 Q -- Price case.

21 A That is the Price case.

22 Q How about the Tirado case; how does it vary
23 from that?

24 A In the Tirado case, they didn't say
25 specifically that they were including the V.A. disability

1 pay, so. That was just military retirement pay.

2 So when he switched over to the disability pay, that was
3 not included in their agreement. That's what the Supreme
4 Court said.

5 Q Okay. Well, from the standpoint of a
6 practitioner, does that have anything from the way that
7 you should craft the language in agreements and orders?

8 A It has -- it -- it does, with agreements.
9 Because, by agreement, you can agree that the -- that
10 the -- and I always try to roll these into my agreements,
11 that -- so if somebody does start getting disability later
12 on, the -- the non-member spouse, if I am representing
13 that person, the amount that they are receiving would not
14 go down. I always put -- try to put that. I'm not always
15 successful.

16 Q Right.

17 A But I certainly do try to put that into the
18 agreement. I can only think of one time when I didn't --
19 that that didn't -- they wouldn't agree to that. And if
20 they're already receiving V.A. disability, you can count
21 that as income for purposes of alimony.

22 Q Did you give that line of cases consideration
23 when you were representing Mrs. Greene?

24 A Ms. Greene didn't have an agreement. We went
25 to trial.

1 Q Right.

2 A And that's the difference.

3 Q But did you craft the language in the Order
4 and present it to the judge for his signature?

5 A I didn't write the Order in that case.

6 Q Who wrote the Order?

7 A Scott Palmer.

8 Q And --

9 A He was Mr. Greene's attorney.

10 Q Right. But I mean your name appears on the
11 document.

12 A Right.

13 Q You didn't review the document?

14 A Right. Yeah.

15 Q Did you review the document?

16 A Well, under Rule 11 you've got to -- you've
17 got to -- he has to send it to you before they send it to
18 the judge.

19 Q Right.

20 (Order of Separate Support and Maintenance (5
21 pages), Plaintiff's Exhibit No. 2 is marked for
22 identification and made part of this deposition.)

23 (Supplemental Order, Division of Military Retired
24 Pay (3 pages), Plaintiff's Exhibit No. 3 is marked for
25 identification and made part of this deposition.)

1 BY MR. RAVENEL:

2 Q And was there anything in the language of the
3 Order of Separate Support and Maintenance which is here,
4 Exhibit 2, or in the Supplemental Division of Military
5 Retired Pay which is Exhibit 3, which gave you concerns
6 about the issue that developed about the reduction of
7 Mrs. Greene's benefits because of disability?

8 A Right. Mr. Palmer drafted the Order of
9 Separate Support and Maintenance. I drafted the
10 Supplemental Order for the division of military retired
11 pay.

12 Q Okay.

13 A The way Mr. Palmer's Order followed the
14 judge's ruling, I'm assume -- I don't -- the judge would
15 have issued a ruling. He probably would have given it to
16 us in writing besides a memo, so his Order apparently
17 followed the judge's ruling. So I said okay.

18 Q You weren't there?

19 A I wasn't there?

20 Q You weren't at that hearing?

21 A I was at the hearing, but he took it under
22 advisement and -- the judge took it under advisement and
23 ruled later.

24 Q All right. And did you see anything in that
25 document that would justify a motion for reconsideration?

1 A Okay. Ms. Greene did extremely well
2 in this. She got 60 percent of everything. Her -- so
3 I -- you know. That's what the judge ruled; that's what
4 this Order gave, so. I didn't see anything in there that
5 would need to go for reconsideration. Why would you want
6 to go back and ask the judge to reconsider something where
7 you'd gotten -- she'd gotten 18 percent more than she
8 would normally be entitled to as a spousal share.

9 Q I'm only asking you, is there anything in the
10 Mansell, Tirado, Price line of cases that would suggest
11 that the use of some slightly different language might
12 have an impact on a later outcome?

13 A No, sir.

14 Q And what language in that Order, Exhibit 2,
15 caused you to want to supplement it with Exhibit 3?

16 A That's the way it was handled back then when
17 you were going to get payments from the -- from DEFAS, the
18 department of financial whatever it is. Okay? Now they
19 have a form that you fill in. They finally figured out it
20 would be easier for them if they just had, you know, a
21 form that everybody sent in the same thing. So this is
22 the instruction to -- to the -- to DEFAS.

23 And the seminars that I went to at the time
24 said this was the way to do it so they didn't have to go
25 through the whole Order, you know, with all -- like if

1 there was a house involved and -- and -- and the
2 grandkids.

3 Q The DEFAS did?

4 A Yeah. So DEFAS wouldn't have to wade through
5 everything in the Order. You could just set out what the
6 military portion was and send it off to DEFAS.

7 Q Well, did either of those Orders cause you
8 concern about whether or not a subsequent disability would
9 adversely affect Mrs. Greene's ability to get the income
10 she was granted in the original Order?

11 A The court doesn't have any jurisdiction --
12 didn't have any jurisdiction over military disability pay
13 at the time of this hearing, because he wasn't receiving
14 it.

15 Q All right, but the language in the Order --

16 A I don't think that the language in the Order
17 could have made any difference in that. If the court
18 doesn't have jurisdiction -- you can't stick something in
19 there that's going to affect something the court doesn't
20 have any jurisdiction over, I don't think.

21 Q So you read Tirado and Price not to present
22 you with an -- as a practitioner, not to present you with
23 an opportunity to use language that will impact a later
24 determination, as far as the court is concerned, about
25 what benefits you're entitled to -- your client's entitled

1 to?

2 A The Price and Tirado cases were both
3 concerning agreements. The Family Court has jurisdiction
4 over agreements; it does not have any jurisdiction over
5 the division of military disability pay.

6 Q Well --

7 A And the -- and we didn't have an agreement in
8 the Greene case. The Court ruled.

9 Q Right.

10 A So the court didn't have any jurisdiction over
11 that, over that issue.

12 Q Well, didn't it rule on that very issue?

13 A No, not the disability pay, because he wasn't
14 receiving it.

15 Q I understand that. But my question to you is,
16 could you have crafted something, reading Tirado and Price
17 and Mansell, that would have presented the underpinnings
18 for a claim by your client?

19 A No, because the Price case and the Tirado case
20 were both concerning agreements. They were not going in
21 and asking the court to divide the assets. The parties
22 came to an agreement as to the division of the assets.
23 That's the distinction.

24 Q But they approved it; right?

25 A They approved the agreement because the court

1 has jurisdiction over the approval of agreements.

2 Q And --

3 A Family Court is a court --

4 Q Are you saying that --

5 A -- of limited jurisdiction.

6 Q Excuse me.

7 A Uh-huh.

8 Q Are you saying that the Family Court did not
9 have jurisdiction to do what it did, in the Order you
10 prepared?

11 A No, because we did -- we -- the Order -- the
12 Order that Mr. Palmer prepared divided military retirement
13 pay. The court has jurisdiction over that.

14 Q In item -- paragraph seven, it says, "For
15 purposes of this order" -- and I'm referring to Exhibit 3.
16 "For purposes of this order the Defendant's military
17 retired pay is defined as "disposable retired pay" as this
18 term is defined" -- it goes on to give the section.

19 8, "The Plaintiff will receive 60% of the
20 amount of disposable retired pay."

21 You prepared -- chose that language; did you
22 not?

23 A Correct.

24 Q And you don't think that impacted your
25 client's ability to avoid a later reduction because of the

1 amount of money received that was related to
2 disability?

3 A No, sir.

4 Q Did you discuss this with your client?

5 A Discuss what?

6 Q The potential for the amount that was awarded
7 by the court to change, by virtue of the language chosen,
8 to describe what was being divided?

9 A I don't recall discussing that with her, but
10 we're working on 10-year-old memories.

11 Q So what you're telling me is that only had it
12 been an agreement between the Greenes would you have been
13 able to impact this at all?

14 A Yes. That's exactly --

15 Q Even though --

16 A -- what I'm saying.

17 Q Even though you prepared the supplemental --

18 A That's exactly what I'm saying.

19 Q All right. So if the Supplement Order had
20 contained language consistent with the language -- I can't
21 remember which one was the last case -- the Tirado case,
22 you don't think that would have helped?

23 A No.

24 Q And tell me again why you hold that position.

25 A Because this was a ruling by the court. Okay?

1 It didn't concern an agreement between Mr. and
2 Mrs. Greene. Okay?

3 Q So --

4 A The Family Court has no jurisdiction over
5 military disability pay unless it's in an agreement. The
6 Family Court has jurisdiction to approve agreements.

7 Q Right.

8 A The Tirado case and the Price case were both
9 concerning agreements.

10 Q Was this not an agreement?

11 A No.

12 Q So it was resisted? You posed language that
13 would have taken care of this issue and it was resisted by
14 the other side?

15 A I honestly don't recall. I don't recall
16 settlement negotiations. Well, this case was in 2002.
17 I'm assuming that we had in the -- I spoke with
18 Mr. Palmer, but I mean I don't -- I don't really recall
19 that, any of that. I mean that would have been the normal
20 thing: For us to try to figure out, you know, what we
21 could agree on.

22 And usually when you go into a case, there are
23 some issues you can agree on. We didn't have any
24 agreement on any issues in this case. That's why we went
25 to trial.

1 Q And that status continued until the
2 judge ruled?

3 A Correct.

4 Q Did you propose any strategy that would avoid
5 the impact of these cases?

6 A If we had an agreement, that possibly --

7 Q Would you --

8 A Possibly -- I don't -- I -- I don't really
9 recall that. Like I said, I don't really recall any
10 settlement negotiations.

11 Q But do you have any recollection of discussing
12 this issue with Mrs. Greene when you were --

13 A What --

14 Q -- trying to --

15 A What issue?

16 Q -- fashion --

17 A What issue?

18 Q The issue of disability impacting any
19 agreement?

20 A I -- well, there was no agreement, so there
21 would be no reason to bring that up.

22 Q Right. But you were negotiating for an
23 agreement? You were trying to get one?

24 A I would assume that I did because that's the
25 normal thing that you do in a case.

1 Q And did you --

2 A But I -- I really don't recall any of the
3 details of that.

4 Q Okay. So I'm going to ask the question
5 anyway.

6 A Okay.

7 Q And you can say you don't remember.

8 A Okay.

9 Q But you don't have a recollection of
10 explaining to Mrs. Greene, this aspect of the lawsuit?

11 A No. I don't have any recollection of that.

12 Q So the answer would be to -- did you propose
13 as strategy to avoid that impact, during the negotiations?

14 A Since I -- I don't remember.

15 Q Why did you choose the language that was used
16 to describe what was at issue?

17 A Where?

18 Q In the final supplemental agreement.

19 A Because I went to a seminar and they told me
20 that was -- that was the way to do it.

21 Q To use -- excuse me. Let me borrow that a
22 minute.

23 A Because -- well, because my understanding is
24 that DEFAS can only deal with disposable pay. Okay? So
25 that's the way -- that was the language that, in one of

1 these seminars that I went to on how to do this
2 stuff, that they told me to, to pose it.

3 Q Okay.

4 A And that's -- you know; that's the federal
5 statute there.

6 Q Right.

7 A That covers that, the Title 10, United States
8 Code 1408, Section 1408(a)(4).

9 Q So you're saying there is nothing you could
10 have done in crafting -- in suggesting language to the
11 judge, that would have altered the outcome that later
12 occurred insofar as impacting -- reducing Mrs. Greene's --

13 A I don't believe that I could.

14 Q -- income?

15 A I don't believe that I could, because of the
16 Family Court's lack of jurisdiction over the matter.

17 And you'll notice, I put a dollar amount in
18 there.

19 Q I see that. And the significance of that is?

20 A So that it's -- so that it was clear as to
21 what she should be receiving because it was so unusual to
22 get 60 percent, and she was getting a portion of it from
23 DEFAS. So her total amount would have been that, and she
24 would only get a certain portion from DEFAS.

25 Q Right.

1 A So then she would know how much she
2 needed to go after him for, personally, then -- directly,
3 because he was paying it direct pay. Because DEFAS will
4 not pay out more than 50 percent; that's a rule that they
5 have.

6 Q I have learned about that.

7 THE DEPONENT: Real heavy truck.

8 MR. COOKE: Life in the city.

9 BY MR. RAVENEL:

10 Q So you have had an opportunity to review the
11 Tirado and the Price cases? You would have had that
12 knowledge when you drafted this document?

13 A Right. Because that -- they came out in -- I
14 don't remember. I think Price was 1996. I can't remember
15 when Tirado was, but they were both before 2002.

16 Q One was 2000. Tirado was 2000. And you don't
17 think if you had used the words "gross military retirement
18 pay," that that would have altered the outcome in this?

19 A No sir.

20 Q Tell me why.

21 A Because, again, the Family Court doesn't have
22 jurisdiction over that.

23 Q Well, it says the Plaintiff will receive 60
24 percent of the amount of disposable retired pay.

25 A Uh-huh.

1 Q That's what you used; right?

2 A Right.

3 Q And you're saying the court doesn't have
4 jurisdiction over that?

5 A The court has jurisdiction over military
6 retirement pay. I don't think call -- you know,
7 especially since I put the dollar amount in there, I don't
8 think calling it "gross" or "disposable" would have made a
9 difference.

10 Q Okay. Did you discuss with Mrs. Greene the
11 potential of how disability could -- later, disability
12 could impact the ruling of the court?

13 A I don't recall discussing that with her.

14 Q That's not your normal routine in these
15 military matters?

16 A Not if it's not brought to my attention.
17 Except, you know, just generally, when we are trying to
18 draft an agreement I will try to put that in there. But,
19 you know, there was no -- there was no indication -- he
20 had already been retired for several years. There was no
21 indication that he was -- had any physical problems back
22 then.

23 Q Right. But -- and I know it's been time, but
24 I've just got to get the answer to this. I think I know
25 what it is, but. You didn't discuss it with Mrs. Greene?

1 A I certainly don't remember discussing
2 it with her.

3 Q All right. Did you discuss with her and tell
4 her that, look; if we could get an agreement, we can avoid
5 any potential for disability impacting it later on?

6 A I don't recall having that discussion with
7 her, either.

8 Q And as I understand it from prior
9 communications of you, her file was destroyed?

10 A I can't find it. I'm assuming it was
11 destroyed.

12 Q Well, do you have any other files from that
13 period of time?

14 A No.

15 Q What is your destruction policy?

16 A I don't really have a -- I don't have a formal
17 destruction policy. I store my files at my house, and so
18 when we run out of space, I -- I take the older files and
19 dispose of them.

20 Q So a 2002 file, it wouldn't have been unusual
21 for you to have destroyed it?

22 A That correct.

23 Q Do you have any other 2002 files?

24 A Well, nobody has asked me to go look for them,
25 so.

1 Q Okay.

2 A There might be a stray one. You know,
3 sometimes I will pull them out to review something and
4 they get stuck in a different box, so there might be some.

5 Q What were the circumstances that led to your
6 representation of Mrs. Greene?

7 A I don't really recall that. But, normally,
8 she would call and make an appointment to come in.

9 Q No; I was just -- she had been represented by
10 other lawyers.

11 A Right.

12 Q And I was just trying to find out how you got
13 into the takeover.

14 A She -- I -- she -- I don't specifically
15 remember. But, normally, she would just call and say
16 that, you know, either she had already dismissed
17 Mr. Jaskowicz or she was considering getting another
18 attorney. So I would just talk to her and tell her that I
19 couldn't represent her until she, you know, was no longer
20 represented by the -- the previous attorney. And then I
21 would agree to represent her then.

22 Q And I think I have asked you this in other
23 ways but did you discuss the division of Mr. Greene's
24 military retirement as an asset in which she had a
25 recognized interest?

1 A I don't think I had to discuss that
2 with her. I think she knew that already.

3 Q But my question is, did you discuss it with
4 her?

5 A I would assume that I did because that --
6 that's what I would normally do. A lot of people don't
7 know that retirement is an asset that can be divided as
8 property, so it's not unusual for me to have that
9 conversation with clients that come in.

10 Q Were you aware of the military background of
11 Mr. Greene; in other words, where he had served, was he in
12 combat zones or anything like that?

13 A I knew he had been in the military. I didn't
14 know anything else about his service.

15 Q Did you ask about whether or not he had any
16 disabilities or whether he had served in combat zones or
17 anything like that?

18 A I don't think I asked whether he served in
19 combat zones. At the trial, I did ask about his health
20 and I -- my recollection is, from review of transcripts,
21 that he had -- he was in good health, and I don't recall
22 Ms. Greene telling me about any physical problems or
23 health problems that he had. And that is something that's
24 on my questionnaire when people come into the office. I
25 ask about the health of the spouse.

1 Q Do you use the same questionnaire
2 that you used at the time you talked to Mrs. Greene?

3 A I've tweaked it from time to time, but the
4 basic information has -- has been the same my whole -- I
5 actually picked up that form -- that was something that
6 Richard Lawrence did. It was a form that he had that I
7 have modified a little bit over the years. But that basic
8 information is still in there.

9 Q I thought I'd asked for it, but perhaps I
10 didn't. But I'll send you a request for that.

11 A I think I provided that already.

12 Q Did you?

13 A Uh-huh.

14 Q Well, maybe I just hadn't --

15 A I don't -- I don't have, you know, the exact
16 one that I used --

17 Q Sure.

18 A -- when she came in.

19 Q Well --

20 A But the one I use now is very similar.

21 Q Okay. Well, I'll check that.

22 A I've added stuff like, do you have a -- an
23 internet presence now?

24 Q Is divisibility of the retirement a state law
25 issue?

1 A All domestic law is a state law
2 issue. But -- but -- but, you know the federal law
3 determines, in this case, whether the state law has
4 jurisdiction over it.

5 Q All right. So the answer to my question "is
6 divisibility a state law issue" is, what? "Yes?"

7 A Yeah.

8 Q Okay.

9 A Yes. To the extent that the court has
10 jurisdiction.

11 Q Sure. The State Court has jurisdiction over
12 the disposable retired pay?

13 A The State Court has jurisdiction over the
14 division of military retirement pay.

15 Q Right. That is accurate; right?

16 A Correct.

17 Q Okay. All right. Do you think this is an
18 accurate disposition of disposable retired pay: The total
19 monthly retired pay minus overpayments, recoupments,
20 deductions from retired pay due to court martials,
21 deduction for group life health insurance premiums and
22 disability pay benefits?

23 A I'm sorry. Could you ask that again?

24 Q Yeah. The definition of disposable retired
25 pay is total monthly retired pay minus overpayments,

1 recoupments, deductions from retired pay due to
2 court martials, deduction for group life health insurance
3 premiums and disability pay benefits?

4 A I'm assuming you're reading that from some
5 statute, so I would assume --

6 Q Well, I --

7 A -- that would be accurate.

8 Q Don't assume anything. Does that sound right
9 to you? Do you know about those things?

10 A Sure. I mean -- you know; those are all
11 things that you can ...

12 Q And would it be fair to say that you were an
13 experienced practitioner in dealing with issues regarding
14 the division of retired pay?

15 A I -- like I said, I've handled military cases
16 since I started practicing in 1986, and so by 1982 I would
17 have had some experience in that; yes -- I mean nineteen
18 -- 2002. I would have had some experience with that.

19 Q And had you not had the experience, you would
20 have sought advice from somebody?

21 A If had not had the experience?

22 Q Or researched it or done --

23 A Of course. I mean that --

24 Q Okay.

25 A You always -- you're always doing that, as --

1 as a practitioner.

2 Q Were you aware of the possible reduction of
3 Mrs. Greene's portion of the retirement of Mr. Greene in
4 the event of disability?

5 A That is the way the -- the law works.

6 Q But were you aware of it --

7 A And I was aware --

8 Q -- at that time?

9 A I was aware. I was aware of the law.

10 Q Did you discuss it with Mrs. Greene?

11 A I don't recall discussing that particular
12 issue with Mrs. Greene.

13 Q Okay. Were there any steps that you could
14 have taken to avoid the outcome that ultimately occurred?
15 I think you've already answered that.

16 A If we had come to an agreement, we could have
17 possibly --

18 Q Absolute agreement?

19 A Not that I -- not that I know of.

20 Q Did you consider inserting an indemnification
21 clause or propose an indemnification clause to the court?

22 A I am not aware of any indemnification clause
23 that's available under South Carolina law.

24 Q Okay.

25 A For this particular -- from this issue,

1 because of the court's lack of jurisdiction.

2 Q I think you explained this already but I'm not
3 sure that I understood. What was the need for the
4 Supplemental Order?

5 A It was -- it was just a procedure that we
6 followed at that time.

7 Q Well, you told me -- yeah -- that --

8 A So that -- because divorce decrees can have
9 all sorts of other issues in there such as the division of
10 the house, the division of the other retirement pay, that
11 just singles out the military portion and you would send
12 that off to DEFAS. And, you know, you have to have magic
13 language in there that the parties were married for ten
14 years while the military spouse was on active duty, before
15 DEFAS will pay the -- the non-member spouse directly.

16 Q I do.

17 A You put that language in there and that -- you
18 know. If it didn't --

19 Q Yeah. Sorry to put you through that again;
20 you explained that the first time.

21 I think I've asked you this, as well. But, as
22 I understand it, you crafted the language in response to
23 the judge's ruling that -- and why did you choose
24 disposable retired pay?

25 A Because I went to a seminar and they told me

1 that was the language that you were supposed to
2 use.

3 Q The Supplemental Order that we've just been
4 talking about; there was no purpose beyond making it
5 easier to have something to submit to the DEFAS?

6 A That's correct.

7 Q Okay.

8 A And like I said, I put the dollar -- you know,
9 the dollar amount that she was actually awarded. And,
10 that way, she would know, you know, she got this amount
11 from DEFAS. And then the balance, she would -- he would
12 have to pay her directly.

13 Q And again -- I'm sorry for repeating myself.
14 But did you know what impact disability payments would
15 have on the amount Mrs. Greene received, should a
16 disability develop?

17 A In general, I had that knowledge.

18 Q Did you talk to Mrs. Greene about that?

19 A I don't recall talking to her about that. But
20 she never mentioned any -- anything about him having any
21 physical disabilities and -- or -- you know.

22 Q Okay.

23 A And he was not receiving it, at that time.

24 Q And let me I make sure that I understand what
25 you're saying. You do not believe that the judge would

1 have signed an order that described a term other
2 than "disposable retired pay?"

3 A I don't know. I -- I can't speak for the
4 judge. But like I said, that was -- this was the
5 procedure that we followed, at that time.

6 Q Well, I'm not --

7 A I know.

8 Q -- questioning the procedure; I am questioning
9 the choice of the words to describe the fund that you're
10 talking about.

11 A What -- I don't know the answer to that
12 question.

13 Q Well, the question is, did you have a reason
14 for using it or --

15 A Using what?

16 Q "Disposable retired pay."

17 A Because that was my understanding of the
18 proper way to do it.

19 Q And that was based upon?

20 A A -- a -- a seminar, one of these seminars
21 that I went to, you know. And i -- I can -- I don't think
22 I have that, those seminar materials anymore but I -- you
23 know.

24 Q Sure.

25 A It was -- it was -- there was -- there was a

1 lot of good stuff in there. I remember what it
2 looked like. I remember the guy that presented it. It
3 was -- you know; like Mr. Sullivan set up his own expert
4 in that matter, in that -- in those matters.

5 Q Do you have, or did your view as a reference
6 book, the one done by the local domestic relations --

7 A Stuckey?

8 Q Stuckey; yeah.

9 A Yes.

10 Q So whatever was in there was available to you?

11 A Yes.

12 Q Okay. And did you read the issues with Tirado
13 and the other case?

14 A Price.

15 Q Price, were discussed?

16 A Yes.

17 Q Okay. So you were familiar with that?

18 A Right.

19 Q All right.

20 A And I believe he says that the court doesn't
21 have jurisdiction.

22 Q Well, it says whatever it says. But I just
23 wanted to make sure you had access to that at the time
24 that you were drafting these documents.

25 A I -- I'm pretty sure I've had that since it's

1 come out.

2 Q Okay.

3 Well, thank you very much. I'm going to take
4 a minute to ask Ms. Greene something, but then I think I'm
5 pretty well finished.

6 (At this point there is a break in the deposition.)

7 BY MR. RAVENEL:

8 Q There were two orders that we've discussed.
9 One of them you say was drafted by Mr. Palmer?

10 A Uh-huh. Yes.

11 Q Did you review that before it was submitted to
12 the judge?

13 A Yes.

14 Q Did you have any comments or questions or did
15 you --

16 A When I reviewed the file, there was a letter
17 to Mr. Palmer telling him that the Order was fine, so. I
18 don't know whether we went back and forth before then.
19 I'm assuming that we did. We normally do.

20 Q So you would have had some input into it?

21 A Possibly.

22 Q All right.

23 A But it was -- you know; the judge would send
24 his -- usually, the judge would send out a -- a memo with
25 a ruling on it and you just -- you'd follow the memo. So

1 if he followed the judge's memo, I would have
2 said it was okay.

3 Q In your review of Mr. Palmer's proposed Order,
4 did you satisfy yourself that it would cover Mrs. Greene,
5 from the military retirement aspect of that Order?

6 A Yes.

7 Q Is there any reason that you didn't -- and I
8 may be presuming something that's not true. But -- I
9 assume it's not true. Did you suggest to the court, the
10 inclusion of an indemnification clause?

11 A No.

12 Q And why not? In the event that there was a
13 reduction?

14 A Because the Family Court lacks jurisdiction
15 over that.

16 Q Okay. So you didn't suggest that they include
17 such an Order?

18 A No.

19 Q I mean clause? Excuse me.

20 A No; I did not. I'm not aware of any inclusion
21 of that clause in any case law in South Carolina, for
22 Family Court.

23 Q Do you recall Mrs. Greene calling you after
24 the Order was issued, asking to see you?

25 A There was an issue of child support that she

1 contacted me about.

2 Q This would have been -- well, did she come in
3 and meet with you about the child support issue?

4 A No. I wrote her a letter. I don't -- I don't
5 recall her coming in, but I wrote her a letter.

6 Q Do you recall writing her a letter, or you
7 have it in her file somewhere?

8 A It was in the file that I provided for you.

9 Q Okay. So if I've got that letter, then it
10 would answer that question?

11 A Correct.

12 Q Did she ask to come in to see you
13 face-to-face?

14 A I don't recall. I don't recall whether we
15 just talked on the phone or if she came in to see me. But
16 I -- I -- because that letter's in there, I know she had
17 an issue about the child support after the case was over.

18 Q Did you fail to see her when she called you,
19 face-to-face? In other words, did she call you to seek a
20 face-to-face meeting with you to discuss issues in the
21 judge's Order?

22 A Back in 2003?

23 Q Two thousand and --

24 MR. RAVENEL: When was it?

25 MRS. GREENE: That was when this -- when I

1 went -- the --

2 MR. RAVENEL: 2012?

3 MRS. GREENE: -- Rule to Show Cause; yeah.

4 MR. RAVENEL: Okay.

5 BY MR. RAVENEL:

6 Q When you filed the Rule to Show Cause -- in
7 2012, I think it was, or '11?

8 A Did she call?

9 Q I think she represents to me, and I'm
10 representing to you, assuming that's right, do you have a
11 recollection of it?

12 A Ms. Greene called me a couple of times and
13 wrote me letters, and I did not respond. I wrote her --
14 yeah.

15 Q And you furnished me with a copy --

16 A Because the case was --

17 Q -- of that letter?

18 A The case was over.

19 Q Okay. And so you didn't want to get involved
20 in a Rule to Show Cause?

21 A I -- I -- I think what she's talking about
22 is -- I explained to her that that would be a separate
23 case.

24 Q Right.

25 A And she would have to pay another retainer,

1 and she has not finished paying me for the money
2 that she owes me from the original case.

3 Q Okay.

4 A So she'd would have to bring that current and
5 come up with another retainer before I would represent her
6 again.

7 Q So -- I know the answer to this. But, you
8 didn't offer to go back to the judge for a reconsideration
9 of that?

10 A For a reconsideration of what?

11 Q Of, the -- to have an amendment to the Order,
12 given the change of condition of Mr. Greene?

13 A Which Order are we talking about?

14 Q The final Order setting out the percentage of
15 her entitlement.

16 A The last time I represented Ms. Greene was at
17 the final hearing in this matter.

18 Q Right. But she contacted you seeking
19 representation; isn't that right?

20 A The only one I really recall is the -- I think
21 it was the child support issue.

22 Q She didn't contact you when she was seeking
23 some legal --

24 A Going back for a Rule to Show Cause?

25 Q Yeah.

1 A She may have. But I would -- you
2 know. And I have a vague recollection of that, but I'm
3 not real sure about it. But I would have explained to her
4 because -- you know, that it was a separate action. And
5 that's in my contract. That's -- that --

6 Q Right.

7 A Those -- anything like that is separate and it
8 requires a separate retainer.

9 Q And did she not offer to pay you or --

10 A No; she didn't.

11 Q Okay. So you didn't say you wouldn't
12 represent her; you just said you've got to pay me first?

13 A I don't really recall what -- what's in that
14 letter. I -- I wouldn't -- I can't remember the phrasing
15 that I would have used.

16 Q Okay. So whatever is in the letter is what
17 you said?

18 A Correct.

19 Q Okay.

20 (At this point there is off-the-record conversation
21 followed by a break in the deposition.)

22 MR. RAVENEL: I think that's pretty much it.
23 I just wanted one clarification on the later contact that
24 Mrs. Greene may have had with you.

25 BY MR. RAVENEL:

1 Q She's referencing the Rule to Show
2 Cause, not a child support or issue of custody or anything
3 like that. So with that in mind, do you have a
4 recollection of that conversation and telling her that --

5 A See, and I think -- I think I -- like I said,
6 I think -- I have a vague recollection but I'm not really
7 sure. But I mean my normal, you know, response would be,
8 you know, that's a separate action; that requires a
9 separate retainer. And she still owes me money, so --

10 Q Did she--

11 A -- she'd have to bring that current and pay
12 the retainer.

13 Q Right.

14 A Pay the second retainer, before I could
15 represent her in a Rule to Show Cause.

16 Q Do you recall writing a letter about that
17 issue? Because I don't think we have a letter of --

18 A I don't. I -- like I said, I -- I have a
19 vague recollection of that. But I don't -- like I don't
20 remember whether it was a telephone conversation or a
21 letter.

22 Q Okay.

23 MR. RAVENEL: Ms. Greene, I'm getting ready to
24 shut it down.

25 MRS. GREENE: Okay. Yes.

1 MR. RAVENEL: Thank you. That's it.

2 MR. COOKE: No questions. We will reserve
3 reading and signing, though. Thank you.

4 (The deposition concludes at 11:33 a.m.)
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, Toby L. Davis, Court Reporter and Notary Public in and for the state of South Carolina, do hereby certify that the aforementioned deposition of CINDY M. FLOYD was recorded by me and transcribed through computer-aided transcription by me to the best of my ability.

I FURTHER CERTIFY that the foregoing transcript is a true and correct transcript of the testimony given by the said deponent at the time and place specified.

I FURTHER CERTIFY that I am neither attorney nor counsel for, nor related to nor employed by any of the parties to the action in which this deposition is taken, neither am I financially interested in this action.

IN WITNESS WHEREOF, I have set my hand and seal this 23rd day of February, 2014.

Toby L. Davis
Notary Public for South Carolina
My Commission Expires: 09/08/2020

A-T-T-E-S-T-A-T-I-O-N

In Re: HATTIE MAE GREENE v. CINDY M. FLOYD

Case No.: 2012-CP-10-8372

Deposition of: CINDY M. FLOYD

Date Taken: FEBRUARY 6, 2014

Taken Before: TOBY L. DAVIS

Attorneys: D. CRAVENS RAVENEL; M. DAWES COOKE, JR.

Having read my deposition, no changes are
necessary: _____

Having read my deposition, I make the following
changes:

Page ____ Line ____ Correction _____

Page ____ Line ____ Correction _____

Page ____ Line ____ Correction _____

Page ____ Line ____ Correction _____

Page ____ Line ____ Correction _____

Page ____ Line ____ Correction _____

Page ____ Line ____ Correction _____

Page ____ Line ____ Correction _____

Page ____ Line ____ Correction _____

Page ____ Line ____ Correction _____

Sworn to and subscribed before me this ____ day
of _____, 2014. My commission expires _____.

Signed: _____

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) THE NINTH JUDICIAL CIRCUIT
) CASE NO. 2012-CP-10-8372
)

HATTIE MAE GREENE,

PLAINTIFF,

VS.

CINDY M. FLOYD,

DEFENDANT.

DEPOSITION

OF

JOSEPH GREENE

COPY

THE DEPOSITION OF JOSEPH GREENE WAS TAKEN
BEFORE SUESAN L. RICHARDSON, A NOTARY PUBLIC IN AND FOR THE
STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF 10:14
A.M., SEPTEMBER 10, 2013, AT THE ORANGEBURG COUNTY
COURTHOUSE, THIRD FLOOR CONFERENCE ROOM, 1406 AMELIA STREET,
ORANGEBURG, SOUTH CAROLINA.

REPORTED BY
SUESAN L. RICHARDSON

APPEARANCES

FOR THE PLAINTIFF:

D. Cravens Ravenel, Esquire
Baker, Ravenel & Bender, LLP
Post Office Box 8057
Columbia, South Carolina 29202

FOR THE DEFENDANT:

Alissa D. Fleming, Esquire
Barnwell Whaley Patterson & Helms, LLC
288 Meeting Street, Suite 200
Charleston, South Carolina 29401

INDEX

STIPULATIONS.....	3
DIRECT EXAMINATION BY MR. RAVENEL.....	3
CROSS-EXAMINATION BY MS. FLEMING.....	27
REDIRECT EXAMINATION BY MR. RAVENEL.....	40
RECROSS-EXAMINATION BY MS. FLEMING.....	42
REDIRECT EXAMINATION BY MR. RAVENEL.....	44
CERTIFICATE.....	49

EXHIBITS

Plaintiff's

1	Retiree Account Statement dated 4/16/12	20

Defendant's

1	Certified letter dated 4/26/13 from Alissa Fleming, Esquire to Mr. Joseph Greene	39
2	Certified letter dated 6/20/13 from Alissa Fleming, Esquire to Mr. Joseph Greene	39

*DIGITALLY RECORDED AUDIO RETAINED FOR TWELVE (12) MONTHS
FROM DATE OF CERTIFICATION.

STIPULATIONS

The deposition of JOSEPH GREENE is taken in accordance with provisions of the circuit court rules for the purpose of discovery or for use as evidence, or for both purposes, and all questions as notice are waived.

It is stipulated that all objections will be reserved until the time of trial, with the exception of objections as to the form of the question.

It is stipulated that the witness reserves the reading and the signing of the deposition.

- - - -

JOSEPH GREENE, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. RAVENEL:

Q Mr. Greene, would you state your full name for the record?

A Joseph Greene.

Q Joseph?

A Uh-huh (affirmative).

Q Mr. Greene, my name is Cravens Ravenel. I introduced myself earlier. I represent your former wife. This is Ms. Fleming who represents the -- Ms. Floyd. And, I scheduled this deposition to get some information, not

1 necessarily about the marriage, but about some
2 financial issues that have occurred -- developed. If I
3 ask you a question and you do not understand it, please
4 ask me to repeat it because the whole purpose of this
5 is to get an accurate record --

6 A Right.

7 Q -- of what your thoughts are about questions I ask. So
8 if my question is confusing and that -- they tend to be
9 too long or something, ask me to repeat it or state it
10 in another manner and I'll be glad to do so. There may
11 be occasions in which either I or Ms. Fleming will make
12 an objection.

13 A Okay.

14 Q Normally in a deposition it would be an objection to
15 the form of the question. Which means she's putting me
16 on notice that she doesn't like the way I'm asking the
17 question and that I -- she's giving me an opportunity
18 to cure that. I don't have to do it, but you don't
19 have to worry about that. You just -- if you hear
20 "form of the question," you don't have to stop. Now,
21 if somebody says, "I object and I instruct the witness
22 not to answer," or whatever, we want to call the judge
23 and get the judge involved in it or something like
24 that, then of course, you would not do that. If you
25 have a question about a question that either I or Ms.

1 Fleming asks you direct your request for an explanation
2 to the lawyer who's asking the question.

3 A Okay.

4 Q Okay. You will have a right at the conclusion of this
5 deposition to get a copy of it after it's typed up to
6 review and to sign indicating that it's accurate in
7 your opinion. It also gives you the opportunity if the
8 -- if you believe the court reporter did not accurately
9 take down what you said, you could -- you can make a
10 change in it. You can't change it in the sense of
11 erasing it, but you can say, "I said the color was
12 blue. If I said that, I was wrong. The color was
13 red." And that -- what she will do is she will send
14 you the deposition, if you want to do this, after it's
15 typed up with what we call an errata sheet, which is a
16 -- it's got -- you can put down there Line 1, Page 7 --

17 A Uh-huh (affirmative).

18 Q -- I said X and I meant Y, or that's wrong, or I didn't
19 say that or whatever it might be. And if it's a matter
20 of you say -- you think you didn't actually say what
21 was said, the court reporter can get together with you
22 and she will have a recording of this and she can let
23 you read what you said at the time so as to make that
24 correction. Seldom have ever does that occur. The
25 court reporter's very accurate. But it's available to

1 you. I think the best thing to do is maybe to wait
2 till the end of the deposition, and then I will ask
3 you, "Do you wish to read and sign the deposition, or
4 do you want to waive it?" And you have the right to
5 give up that right to read and sign. So, at the end of
6 the deposition, if it's -- everything has gone pretty
7 straight forward and you don't feel like there's a
8 problem, you can waive that. I will try to remember to
9 ask you that. But remember you've got that right. And
10 I'll ask the court reporter to remind you and me that
11 that's a decision you're going to make at the
12 conclusion of the deposition.

13 A Okay.

14 Q After I ask you some questions, Ms. Fleming will have
15 an opportunity to ask you some questions, and then I
16 may come back and there may be a little back and forth
17 as we're focusing in on the -- what we believe the
18 issues will be in this case. All right, you've
19 identified yourself. Where do you live?

20 A Holly Hill, South Carolina.

21 Q And what is the address in Holly Hill?

22 A 131 Good Farm Road.

23 Q And do you live there with anyone else?

24 A My wife.

25 Q And your wife is?

1 A Lily Greene.

2 Q Lily Greene.

3 A Right.

4 Q What was her maiden name?

5 A Lily Johnson.

6 Q Johnson. Are -- so you're both residents of Orangeburg
7 County?

8 A Correct.

9 Q All right. The reason I ask some of these questions is
10 because if we have to try this case and there's a jury
11 drawn, I want to make sure that I -- anybody that maybe
12 directly related to you or to your wife is not
13 accidentally allowed on the jury because they may have
14 some issues and we just like know it. Do you or does
15 your current wife have any relatives related to you by
16 blood or by marriage that live in Charleston County?

17 A No.

18 Q All right. Where were you born?

19 A Charleston, South Carolina.

20 Q Charleston. So, you did have family at one time --

21 A Right.

22 Q -- that lived there.

23 A Uh-huh (affirmative).

24 Q But how recent has been the --

25 A That I move?

1 Q Did your family move?

2 A I move, but my family still in Charleston, but I -- I
3 move from Charleston about ten years ago -- about 12
4 years ago.

5 Q Okay.

6 A Yeah.

7 Q And, you don't have any family members that live there?

8 A I'm sorry. In Charleston, I do, yeah, my whole family
9 is in Charleston.

10 Q Yeah, that was what I was asking.

11 A I'm sorry.

12 Q Yeah. No, that's fine.

13 A I misunderstood you.

14 Q All right. No, that's quite all right. Other than the
15 last name of Greene, can you give me the names of any
16 of your family members, blood or marriage, that live in
17 Charleston County today?

18 A Robinson.

19 Q Is that R-O-B-I-N?

20 A Uh-huh (affirmative).

21 Q All right.

22 A Gray.

23 Q G-R-A-Y or E-Y?

24 A Yeah, G-R-A-Y.

25 Q Okay.

1 A The rest is Greene. The rest --
2 Q The rest of them are Greenes.
3 A Uh-huh (affirmative).
4 Q What does -- what is the first name of the Robinson to
5 whom you are related?
6 A Laura Robinson, Ronald Robinson, my first cousin.
7 Q All right.
8 A Ronald's her son, so...
9 Q Royal?
10 A Ronald.
11 Q Ronald. All right, what does Ronald do for a living,
12 if you know?
13 A I have no idea now.
14 Q What about his mom, what does she do?
15 A She deceased.
16 Q All right. And the Grays, what --
17 A My first cousin.
18 Q Okay. And what's his first name?
19 A Alvina.
20 Q Alvina. It's a female?
21 A Right.
22 Q And do you know where she works?
23 A She used to work with the -- on the Naval base. I
24 think she worked -- probably retired now.
25 Q Okay. Do you know whether she has any children 18

1 years of age or older that live in Charleston County?

2 A I think she have a daughter.

3 Q Do you know what her name is?

4 A I forgot her -- I don't know.

5 Q Do you know -- is she married?

6 A No, she's not.

7 Q All right. Do you know where she works?

8 A No.

9 Q All right. So Robinson and Gray and then Greenes are
10 the relatives of yours that reside in Charleston
11 County?

12 A Correct. Uh-huh (affirmative).

13 Q And, what are the closest relatives to you that's --
14 whose last name is Greene?

15 A My sister.

16 Q Okay. What's her name?

17 A Laverne.

18 Q And is she married?

19 A No, she's not.

20 Q Where does she work?

21 A She work -- she has her own -- she take care of older
22 people.

23 Q Okay.

24 A That's her business.

25 Q All right. And other relatives with the last name

1 Greene?

2 A Just Laverne. My -- my brothers -- brother Joey

3 Greene, and that's it.

4 Q Okay. Where does he work?

5 A He doesn't work.

6 Q All right. And, any other brothers?

7 A No.

8 Q Okay. So we got Joey, your sister.

9 A And, Stephanie also.

10 Q Okay.

11 A That my little sister Stephanie Greene.

12 Q What is her relationship to you?

13 A My sister Stephanie.

14 Q Another sister?

15 A I got two sisters and one brother in Charleston.

16 Q Okay. All right. And do you know where Stephanie

17 works?

18 A She work -- she used to work with -- for Comcast Cable

19 one time. I don't know where she works at now.

20 Q Okay. Does your current wife have relatives that live

21 in Charleston?

22 A I -- I --

23 Q That you know of.

24 A All her family live in Charleston. I don't know.

25 Q Okay. So -- but do you know specifically the names of

1 any of them?

2 A Yeah.

3 Q Could you tell me what they are?

4 A Her brother's Jessie. William. And she got a older
5 sister named Laurus.

6 Q That's it.

7 A That's all. That's all.

8 Q Okay. Do you know where Jessie works?

9 A No, I sure don't.

10 Q Okay.

11 A No, I don't. I'm sorry.

12 Q That's all right. And William?

13 A No.

14 Q And Laurus?

15 A No.

16 Q All right. You just know that they're there in
17 Charleston County?

18 A Exactly.

19 Q All right. I understand that you are a retired United
20 States Career or United States Marine Corp Veteran; is
21 that true?

22 A Correct.

23 Q All right. Tell me when you went in -- enlisted in the
24 Marine Corp.

25 A 1978.

1 Q And what is your MOS?
2 A 3537.
3 Q And what is a 3537?
4 A The truck master.
5 Q Truck --
6 A -- master.
7 Q T-R-U-C-K --
8 A Yeah.
9 Q -- M-A-S-T-E-R?
10 A Uh-huh (affirmative).
11 Q Okay. And tell me what that includes.
12 A Including transportation for the base, taking people
13 around all over the -- where --
14 Q Okay.
15 A -- they needs to go.
16 Q And where did you serve?
17 A Captain June -- you want all of it?
18 Q Yeah.
19 A Captain June; California; Okinawa, Japan; Korea; Saudi
20 Arabia; Mogadishu; and Hawaii.
21 Q Were any of those considered combat?
22 A Right. Uh-huh (affirmative).
23 Q That would be Mogadishu?
24 A Mogadishu and Saudi Arabia, the Gulf War.
25 Q And what?

1 A The Gulf War.

2 Q Okay. But where were you stationed during the Gulf
3 War?

4 A Okinawa, Japan.

5 Q In Okinawa. Were you actually in combat?

6 A Correct.

7 Q All right. And where were you in combat?

8 A In Saudi Arabia.

9 Q Saudi. And, was that as a part of the invasion of
10 Iraq?

11 A No, I was -- I was out of Kuwait.

12 Q Kuwait. Okay. So you went with the -- you were
13 involved in transportation with delivering troops or
14 supplies or whatever?

15 A Right, and I was attached to another unit, an artillery
16 unit.

17 Q And artillery unit. So you provided trucking
18 facilities --

19 A Right.

20 Q -- to support the artillery --

21 A Right, carried the weapons.

22 Q -- when they went into Kuwait?

23 A Right. Correct. Uh-huh (affirmative).

24 Q All right. Were you injured during any combat
25 connected activity?

1 A You mean like I got hurt or something?

2 Q Yeah.

3 A No. No.

4 Q All right.

5 A No.

6 Q What was your health like while you were in the Marine
7 Corp?

8 A I guess I was healthy, I guess. Healthy, you know.
9 They didn't kick me out so I guess I was healthy.

10 Q Right. Since you got out of the Marine Corp, has your
11 health changed?

12 A Yeah, it did.

13 Q Tell me about that.

14 A Okay. I got lost hearing. My hearing got bad. Lost
15 hearing. And I had post traumatic stress disorder.

16 Q All right. So, you've answered my next question then,
17 or I think you have. Are any of the problems that you
18 have -- that you've just described, the hearing or the
19 post traumatic stress disorder, related to your
20 service?

21 A Yes, sir, all of it does.

22 Q All right. So both the hearing and the post traumatic
23 stress disorder?

24 A Yes, sir.

25 Q And when did you begin to have symptoms of post

1 traumatic stress disorder?

2 A Ever since I got out of -- ever since -- ever since I
3 came back from the -- from those two wars, the Gulf
4 War, and also Mogadishu.

5 Q Okay. And would you have complained about that or
6 would your wife have observed that you were having
7 those problems?

8 A No, because she wasn't there.

9 Q Where were you when you were having these problems?

10 A I was -- I was -- mostly, I just keep it to myself.

11 Q Okay.

12 A And so I finally decided to go get help.

13 Q Okay. And that was after you got out of the Marine
14 Corp?

15 A Exactly.

16 Q All right. But you relate the condition to the service
17 in the Marine Corp?

18 A Exactly.

19 Q What were the symptoms that you would -- when you were
20 having a issue with post traumatic stress disorder?

21 A Things that I've seen during the war.

22 Q Right. But how would it affect you?

23 A How would it affect me? Nightmares.

24 Q Well, do you know whether you were having nightmares
25 when you were married?

1 A When I was married? Yeah.

2 Q Yeah.

3 A Uh-huh (affirmative).

4 Q And, what about your hearing issues, was that hearing
5 issue -- how did it manifest itself as far as your day-
6 to-day activities before you had gotten a divorce?

7 A Just couldn't hear. I guess I had -- let's see I got
8 tendinitis in one of my ears though and that come from
9 -- they said from my job position, being in the
10 military for all these years, all these loud noise and
11 guns going all the time.

12 Q Artillery --

13 A Artillery so they say.

14 Q Well, how would someone who was in your presence on a
15 regular basis know that you had a hearing problem?

16 A By going get tested through the VA system.

17 Q Right. But my question to you is, if I was in your
18 company, I stayed with you for two or three weeks, when
19 you were having these hearing issues that you've
20 described, would I be able to know that? I mean, would
21 you say, "Huh? What did you say?" Or would you -- how
22 would you express that so somebody else would know
23 that?

24 A Just like you just said. Hard of hearing.

25 Q All right.

1 A You got to ask the same thing over and over again,
2 "What'd you say?"
3 Q Right. So you would do that to your wife?
4 A Yeah, I sure did. I used to do it.
5 Q Okay. Did you receive treatment for either the post
6 traumatic stress disorder or the hearing problem while
7 you were married and in the Marine Corp?
8 A Nope, I wasn't. No, I didn't.
9 Q You did not?
10 A No.
11 Q Who has treated you since the divorce for either the
12 post traumatic stress disorder or your hearing problem?
13 A VA.
14 Q Any particular doctor at VA?
15 A No.
16 Q Which VA?
17 A The one in Columbia.
18 Q So Williams Jennings Bryan --
19 A Right.
20 Q -- Dorn Hospital?
21 A Correct.
22 Q As a result of seeking treatment for the -- at the VA
23 for the two conditions you've described, have you
24 received any rating -- disability rating?
25 A Yes, I have.

1 Q And, what was the disability rating you received for
2 your hearing?

3 A Ten percent.

4 Q And, is that a -- considered a permanent partial
5 disability?

6 A It's permanent.

7 Q Permanent?

8 A Uh-huh (affirmative).

9 Q Okay. And what about the post traumatic stress
10 disorder?

11 A Thirty percent.

12 Q So you have a total of --

13 A Of four --

14 Q -- 30 percent -- I mean 40 percent --

15 A Correct.

16 Q -- disability if you --

17 A Correct.

18 Q -- combine those two?

19 A Correct.

20 Q When did you seek treatment; what year?

21 A I think it was 2010 or 2011. I'm not sure. I think it
22 was 2011, I think, or 2010 because -- yeah, about --

23 Q 2010?

24 A -- 2010, yeah.

25 Q All right. As a -- when did you first get a rating?

1 A A rating?

2 Q Uh-huh (affirmative).

3 A The first one was in -- the first one was, I think it
4 was in 2010, I think. 2010. The other one was 2011.

5 Q Do you have any paperwork that the VA sent you or that
6 the Marine Corp sent you --

7 A Uh-huh (affirmative).

8 Q -- indicating that you have -- that you are disabled in
9 the manner in which you've described?

10 A I got my -- I got my -- the disability -- the pay that
11 they give me for it.

12 Q Okay. Could you make a copy of that and --

13 A [Deponent hands document to Mr. Ravenel.]

14 Q Would you like this back?

15 A No, you can have that.

16 Q Okay. Okay. Well, let's mark this as an exhibit.

17 [Whereupon, Plaintiff's Exhibit No. 1 is marked
18 for identification.]

19 Q We've now marked as Exhibit 1 the document that you
20 handed to me and it says at the top, "Retiree Account
21 Statement, April the 16th, 2012." And it describes --
22 well, let me ask you this: Looking at Exhibit 1, what
23 was your gross pay on April the 16th, 2012?

24 A 1701.

25 Q All right. And, was that pay reduced at all?

1 A Correct.

2 Q And how -- by what amount was it reduced?

3 A By \$622.

4 Q And, as a result of that reduction, you now receive --
5 or you did it at that time, received as pay how much
6 money?

7 A Before the -- before --

8 Q After -- after -- after you received -- you had a -- it
9 says a "VA Waiver of 622".

10 A Exactly. Uh-huh (affirmative).

11 Q So that left you how much in income?

12 A 539.

13 Q All right. Even though you had -- you received the
14 money, you just -- because it was disability money, you
15 didn't have to pay taxes on it and it reduced the
16 amount of money that you received from -- for pay?

17 A From retirement, yeah.

18 Q For retirement?

19 A Right.

20 Q Okay. And this Exhibit 1 has on it, "Former Spouse
21 DED".

22 A Uh-huh (affirmative). Yes.

23 Q Is that what you were paying --

24 A That's what she gets.

25 Q That's what she gets.

- 1 A That's her part.
- 2 Q Okay. And she used to get more than that because --
- 3 before the VA Waiver reduced it?
- 4 A Correct.
- 5 Q Okay. Have there been any changes to this status
- 6 that's reflected in Exhibit 1?
- 7 A No, not -- not since the -- not since this year, no.
- 8 Q All right. Had the -- was there an earlier time when
- 9 your pay was reduced by a prior VA Waiver, or is this
- 10 the only waiver you've gotten?
- 11 A That's the one before -- before the 10 percent. The
- 12 first one was different for the 10 percent, but then I
- 13 got the 30 percent, so they -- they --
- 14 Q All right.
- 15 A -- they did it again. So that's --
- 16 Q Okay. This is the one that reflects both the 10
- 17 percent --
- 18 A That's --
- 19 Q -- and the 30 percent?
- 20 A -- the forty -- the whole thing.
- 21 Q All right. That's what Exhibit 1 is?
- 22 A Right.
- 23 Q Do you have one --
- 24 A No, I don't --
- 25 Q -- showing the --

1 A -- I don't have that.

2 Q All right.

3 A Because I didn't know I'd need that.

4 Q All right. When did you --

5 MS. FLEMING: I'm sorry, I didn't --

6 Q -- get the --

7 MS. FLEMING: -- I didn't hear his answer.

8 MR. RAVENEL: All right. Let me ask it again.

9 MS. FLEMING: I heard that part, but he said
10 something about receiving a disability waiver when he
11 received the 10 percent disability rating.

12 MR. RAVENEL: You want me to go back over that?

13 MS. FLEMING: Could you?

14 MR. RAVENEL: Sure. Sure.

15 MS. FLEMING: I just couldn't hear.

16 Q We were talking about Exhibit 1, and I think you told
17 me, and correct me if I'm wrong, the Exhibit 1 includes
18 the 10 percent and the 30 percent.

19 A Exactly.

20 Q But you used to get retiree account statements which
21 just included the 10 percent.

22 A No.

23 Q Just the 30 percent?

24 A Yeah, I'm sorry, yes, I did. I did. Before. Before.

25 Q Yeah, before.

1 A And I was getting the 10 percent first. And then the
2 VA approved the 30 percent down the road.

3 Q Do you recall when you started receiving the 10 percent
4 disability?

5 A That was in, what, 2010. That was the first one I got
6 was 2010 probably.

7 Q So --

8 A I don't know -- I don't know the exact date.

9 Q No, no, I'm just -- but the year, let's try that.

10 A Yeah.

11 Q Sometime in 2010 --

12 A Two thousand --

13 Q -- is when you first received --

14 A Two thousand --

15 Q -- disability?

16 A Exactly. 2010/2009.

17 Q Okay. So sometime in 2009 or 2010 you received a 10
18 percent rating -- disability rating --

19 A Correct.

20 Q -- because of your hearing?

21 A Correct.

22 Q And then in 2012 or --

23 A 2011, I think.

24 Q Okay.

25 A 2011.

1 Q 2011 you --

2 A 2011.

3 Q -- they rated you an additional 30 percent because of
4 your post traumatic stress disorder?

5 A Correct.

6 Q All right. Making a total of 40 percent?

7 A Correct.

8 MR. RAVENEL: [Whispers to Ms. Fleming.]

9 MS. FLEMING: Thank you.

10 MR. RAVENEL: Sure.

11 Q I think I've asked you this, so bear with me because I
12 have a bad memory. You have bad hearing. I have bad
13 hearing.

14 A Uh-huh (affirmative).

15 Q But do you receive care from the VA now?

16 A Yes, I do.

17 Q For the disability issues?

18 A Exactly.

19 Q And you don't recall the names of the physicians who
20 are treating you?

21 A I go to -- I go just to the VA hear in Orangeburg.

22 Q Okay.

23 A And --

24 Q So there's a facility here in --

25 A Right.

1 Q -- Orangeburg?

2 A Yes, sir.

3 Q And it's got a --

4 A VA Hospital facility.

5 Q In Orangeburg?

6 A Uh-huh (affirmative).

7 Q Okay. Do you go over to Columbia at all?

8 A That's a part of -- part for them. Instead of me going

9 all the way to Columbia, they got a branch here in

10 Orangeburg --

11 Q I see.

12 A -- that is closer to me instead of going all the way to

13 Columbia.

14 Q I see. At the time of your divorce -- when was your

15 divorce?

16 A 2000 -- 2000/2001. I think it 2000.

17 Q Okay. As I understand it, at that time you were

18 experiencing hearing problems but you didn't go to the

19 military unit for treatment at that time?

20 A No, I didn't. Not at the time.

21 Q And as I understand it, you were experiencing symptoms

22 of post traumatic stress disorder which included

23 nightmares but you didn't seek treatment at that time?

24 A Not at that -- not at the time because I didn't want to

25 be bothered with it. I just thought that it was time

1 for me to go and -- and get my benefit that I rate, so
2 that's what I did.

3 Q Okay.

4 MR. RAVENEL: That's all the questions I have.

5 CROSS-EXAMINATION

6 BY MS. FLEMING:

7 Q Mr. Greene?

8 A Yes, ma'am.

9 Q Can you hear me okay down here?

10 A Uh-huh (affirmative).

11 Q Okay. If not, I'll move closer.

12 A I can hear.

13 Q Okay. As Mr. Ravenel mention, my name is Alissa
14 Fleming and my law firm represents the Defendant Cindy
15 Floyd.

16 A Yeah, I know.

17 Q Okay. Were you aware that your ex-wife Hattie Greene
18 was suing Cindy Floyd, her former lawyer?

19 A I can't -- I know -- I know when they was trying to get
20 me to -- to -- well, I knew -- I know now because they
21 keeps calling me to ask me for this paper. I didn't
22 know what was going on so I didn't sign nothing.

23 Q Okay.

24 A They want to get my information.

25 Q Okay. Have you had any conversations with your ex-wife

1 about her lawsuit?

2 A No.

3 Q Or the reason why she's suing her former --

4 A No.

5 Q -- lawyer?

6 A We didn't speak to each other.

7 Q Okay. I have a few questions about your military
8 service. How many years did you serve --

9 A Twenty years.

10 Q -- in active duty? Twenty?

11 A Twenty.

12 Q Okay. And, what year did you retire?

13 A In '98.

14 Q Okay. Now, you mentioned that you experienced, or you
15 -- as a result of your service you developed hearing
16 loss and post traumatic stress disorder. When did you
17 first seek treatment for the hearing loss?

18 A In 2010. I think 2010 or 2009. I'm not --

19 Q Okay.

20 A -- I'm not for sure.

21 Q And, would that information be in your medical records
22 from the VA?

23 A It is. Correct.

24 Q Okay. And with regard to the PTSD, when did you first
25 seek treatment for the symptoms of your PTSD?

1 A 2010 or 2011. I'm not certain of the exact day.

2 Q Okay. And again, would that information be -- most
3 likely be in your medical --

4 A Exactly.

5 Q -- records?

6 A Exactly.

7 Q Okay. What led you to seek treatment for your hearing
8 loss in 2009/2010?

9 A Because I -- it got worse. I thought -- I thought it
10 was getting worse so I said, "Well, it's time for me to
11 go -- go in and get my benefit that I rated." So, I
12 went in and got tested and they -- they tested me for
13 it and they said I -- they thought it was a problem.

14 Q Okay. And, likewise, with regard to the PTSD, you told
15 us about some of the symptoms that --

16 A Uh-huh (affirmative).

17 Q -- you were having as a result of that condition. What
18 led you to finally go and get treatment for the
19 symptoms?

20 A I just got tired of the nightmares. And, the
21 flashbacks, and so, I --

22 Q Okay.

23 A -- decided to go -- go get tested. Go down and -- go
24 to the VA and that's what I did.

25 Q Okay. And, prior to going to the VA for your hearing

1 loss and for the symptoms that you were experiencing as
2 a result of what turned out to be the PTSD, did you
3 have any conversations with Hattie Greene about those
4 symptoms?

5 A No, not really, no.

6 Q No. Okay. Did you have any conversations with either
7 of your children about the symptoms that you were
8 experiencing related to your hearing loss or your --
9 what came to be diagnosed as PTSD?

10 A My wife. My wife.

11 Q And --

12 A My wife now.

13 Q Your current wife?

14 A Correct. Uh-huh (affirmative).

15 Q Okay. When did you marry your current wife?

16 A 2001. Yeah, I think 2001.

17 Q And, what was the date of your marriage?

18 A December the 21st -- 5th. I think it was 2001.

19 Q Now, after you sought treatment for your hearing loss
20 and your symptoms related to your PTSD, did you ever
21 tell Hattie Greene that you were receiving treatment?

22 A No.

23 Q No?

24 A No.

25 Q Okay. Now, I think you mentioned that you received

1 some papers related to the lawsuit in the mail.

2 A Right. Uh-huh (affirmative).

3 Q Okay. I think that my law firm actually sent you some

4 --

5 A Oh, that was you?

6 Q -- requests.

7 A Okay.

8 Q Are you aware that in the current lawsuit that your ex-
9 wife has brought against Cindy Floyd, she's claiming
10 that her lawyer committed malpractice during your
11 divorce proceedings?

12 A I mean, she got it -- everything. What else -- I mean,
13 that's --

14 Q And that part of the basis of her lawsuit relates to
15 the fact that you later received treatment for the
16 disabilities and received a disability rating which
17 resulted in a reduction in the amount of military
18 retirement pay that Hattie Greene receives? Were you
19 aware of that?

20 MR. RAVENEL: Form of the question, but go ahead.

21 A I -- I -- I guess I do now. I don't know.

22 Q Okay.

23 A I don't know. I don't know what it's about. I'm just
24 told I was to come down here.

25 Q Okay. And I'm just wondering what you --

1 A That's fine.

2 Q -- know or what you don't know, so...

3 A Okay.

4 Q Now, if -- would you be willing just to help us get an
5 idea of when you were diagnosed with the hearing loss?
6 I know you've told us about 2009/2010. And the PTSD
7 sometime in, I think you said --

8 A Uh-huh (affirmative).

9 Q -- 2010.

10 A 2010/2011.

11 Q Would you be willing to sign an authorization to allow
12 us to obtain some of your medical records from the VA
13 to show us the exact dates in which you received
14 treatment and the exact date that you received your
15 disability ratings?

16 A I need to talk to my attorney about that first.

17 Q Okay. And the reason I ask that is because your ex-
18 wife is claiming the amount of the deduction --

19 A Uh-huh (affirmative).

20 Q -- in her military retirement pay that she receives
21 directly from DFAS as damages in this lawsuit. And, in
22 order to figure out the exact amount that she's
23 claiming, it would be really helpful for us to know the
24 dates, and the exact date that you received treatment
25 and the exact date that you received your disability

1 rating. So that we could see what the amounts were.

2 So...

3 A I need to talk to my attorney about that first.

4 Q Okay. Do you have an attorney right now?

5 A My attorney was -- is Scott Palmer.

6 Q Okay. Okay. And so -- okay. That's fine. And
7 likewise, we would like to obtain your records similar
8 to the statement that you provided to Mr. Ravenel from
9 the Defense Finance and Accounting Service, the
10 statements directly from them.

11 MR. RAVENEL: I'm sorry. I can't hear what you're
12 saying. What did you just say?

13 MS. FLEMING: I'm sorry.

14 MR. RAVENEL: That's okay.

15 Q I said we would like to obtain the records directly
16 from the Defense Finance and Accounting Services
17 showing the amount of your military retirement pay and
18 showing the amount that it was reduced by following
19 your 10 percent rating and then again once you received
20 that 30 percent rating. Because I think there's some
21 variability there. Would you be willing to sign an
22 authorization giving us the ability to do that?

23 A Again, I need to talk to my attorney before I sign
24 anything over to anybody.

25 Q Okay. Do you have statements in your possession from

1 DFAS --

2 A Yeah. Yeah.

3 Q -- relating back to when you first got that first 10
4 percent disability --

5 A No.

6 Q -- rating?

7 A No. No, I don't. I have none.

8 Q What happened to those statements?

9 A I probably got it. I just that I -- I didn't thought
10 that -- I probably got it at home but I just didn't
11 thought that I needed it. I just thought that y'all
12 needed the one for the -- for the whole 40 percent to
13 hold -- that one disability.

14 Q Okay. Now, the information -- and actually, may I see
15 that document because I haven't seen it yet.

16 A [Complies.]

17 Q The information that's reflected in this document, does
18 this reflect the current amount that you're receiving?

19 A That's -- that's coming from -- that came from DFAS
20 itself.

21 Q Okay. And so, have there been any changes in the total
22 amount between April 16th, 2012 and today?

23 A No.

24 Q No. Okay. And do you have statements in your
25 possession from -- obviously, you gave us the one dated

1 April 16th, 2012. Do you have any additional
2 statements in your possession following April 16th,
3 2012?

4 A No, I -- I just get one -- one statement per year.

5 Q Okay.

6 A That's it. Just one -- just that one per year. And --

7 Q Okay.

8 A -- if I get -- if it changes, they'll send me another
9 one. But don't change, it's the same statement.

10 Q Okay. Otherwise, you just receive a check --

11 A Exactly.

12 Q -- every month?

13 A Exactly.

14 Q Okay. And, did you receive a statement in 2013 from
15 DFS -- DFAS?

16 A No, I don't think I -- no, I didn't. Because we didn't
17 -- we didn't -- there was no changes, so we didn't get
18 -- we didn't got a pay raise in 2013.

19 Q Okay. Okay. And do you have a --

20 A Hold on, I take that back. I got a correction. We got
21 a one-point -- I think 1.4 percent pay raise in
22 December, in I think 2013.

23 Q 1.4 percent --

24 A I think it 1.4 percent.

25 Q -- pay raise?

1 A Right. I'm sorry.

2 Q Do you have a statement showing that 1.4 percent pay
3 raise?

4 A No, I don't.

5 Q Okay. Did that pay raise effect your total amount of
6 gross pay for 2013?

7 A It changes it. It's on the statement right -- the
8 different -- and...

9 Q I'm sorry, I didn't hear you.

10 A I said it's -- this not the one -- this is -- okay,
11 this isn't the one. The one that would have --
12 whenever it changes, this changes the -- her. Okay,
13 this -- these would change if I do lose -- get a pay
14 raise. So hers will go up and mine will go up. So --

15 Q Okay.

16 A -- it didn't change -- I don't have the one that it
17 changed it for that one percent. I don't have that.

18 Q You don't have the statement showing the --

19 A The one percent, no.

20 Q -- changing the monetary amount to the one percent?

21 A No. Unh-unh (negative). No.

22 Q Okay. Okay. And that was -- when did that take effect
23 in 2013?

24 A 2013? January 1st.

25 Q January 1st. Okay. And do you know off the top of

1 your head the exact amount that you receive?

2 A Total?

3 Q Total? Uh-huh (affirmative).

4 MR. RAVENEL: Mr. Greene, I think you -- if you
5 can take your hand in front of your mouth --

6 THE DEPONENT: Okay, I'm sorry.

7 MR. RAVENEL: No, that's all right.

8 MS. FLEMING: That's okay.

9 THE DEPONENT: All right. Yeah.

10 A The total amount for the one percent, or the whole --
11 or the total -- or just --

12 Q The total amount of gross --

13 A -- the gross -- the gross payments?

14 Q -- gross pay?

15 A I guess 170 -- I think it was 17 -- I think before it
16 was sixteen -- sixteen something, I think. I'm not --
17 I'm not sure. Sixteen hundred something.

18 Q Okay. This says that in April -- on April 16th of 2012
19 your gross pay was \$1701.

20 A So that's -- right.

21 Q And so you think in -- on January 1st, 2013 you
22 received a 1.4 percent pay raise on top of that?

23 A So that -- okay -- okay, no. So that -- that will make
24 it 17.1 percent [sic]. That's for 2013.

25 Q I'm sorry?

1 A That's 1701 is the total amount that I got.

2 MR. RAVENEL: Includes I think is what he's
3 saying.

4 MS. FLEMING: Okay.

5 A Includes.

6 Q Okay. Okay.

7 A Yeah.

8 Q I was just trying to clarify because you said the pay
9 raise took effect January 1, 2013 but the statement is
10 dated April 16th, 2012. So, I was confused --

11 A Okay.

12 Q -- about what number -- what the number of your -- what
13 the amount of your total --

14 A Uh-huh (affirmative).

15 Q -- gross pay was beginning January 1, 2013.

16 A In 2013 -- I think -- I think it's the same thing.
17 See, I don't -- I don't know for sure, but it wouldn't
18 -- wouldn't have changed at that -- that much of a
19 difference.

20 Q Okay.

21 A Because it was only --

22 Q Okay.

23 A -- 1.4 percent.

24 Q Okay.

25 A A couple dollars more.

1 Q Okay. Okay. And just to -- just for the record, do
2 you recognize these documents?

3 A Yes, I do.

4 Q Okay. Are those the documents that you said that you
5 received in the mail relating to this --

6 A Yes, I did.

7 Q -- lawsuit?

8 A Uh-huh (affirmative).

9 Q Okay.

10 A Yes, I did.

11 Q I'd like to just mark those for identification.

12 THE COURT REPORTER: Mark them separate?

13 MS. FLEMING: Please.

14 [Whereupon, Defendant's Exhibit No. 1 and 2 is
15 marked for identification.]

16 Q Okay. Now, did you and -- do you recall your ex-wife
17 filing a document with the court in -- sometime in 2012
18 challenging the amount that she was receiving related
19 to your military retirement pay?

20 A Yes, we did. I think we went -- went to court. Yes,
21 we did.

22 Q Okay.

23 A She was -- after I got my disability then we went back
24 -- back to the court.

25 Q Okay. And what is your understanding of what she was

1 asking for at that time?

2 A She wanted the whole -- she wanted her -- the whole 60
3 percent. Which she is getting 60 percent.

4 MS. FLEMING: I don't think I have any further
5 questions.

6 REDIRECT EXAMINATION

7 BY MR. RAVENEL:

8 Q The last answer that you gave that she wanted her whole
9 60 percent. She wanted 60 percent of everything that
10 you got including the amount by which your retirement
11 was reduced because of the disability?

12 A She -- she -- yes, 60 percent of my retirement, yeah.

13 Q Right.

14 A Exactly. Exactly. Of my retirement.

15 Q And she was -- she wanted to include not only the
16 retirement that you got but also the amount by which it
17 reduced the other retirement; in other words, the
18 disability part of it?

19 A Yeah, but -- okay, yeah.

20 Q Just for the record, let me --

21 A Yeah.

22 Q -- see if I understand this correctly. When you become
23 disabled and apply for VA disability benefits, when you
24 get the VA disability benefits, it -- they reduce the
25 amount you get from retirement; is that right?

1 A Exactly. Exactly.

2 Q And, according to the court, when y'all went back to
3 court, she's still only entitled to get 60 percent of
4 what your retirement is, not the part that's been
5 reduced for disability?

6 A Exactly.

7 Q Okay. From the time that you were divorced and were
8 working under that order requiring you to pay 60
9 percent of your retirement, did you get any raises like
10 this 1.4 percent raise? In other words, did your
11 retirement go up --

12 A Yeah, it did.

13 Q -- over the years?

14 A Yes, it did.

15 Q Okay.

16 A It did.

17 Q And, when it went up, did you pay 60 percent of the
18 increased figure?

19 A No, it didn't. The DFAS pay her 50 percent. I had to
20 pay her 10 percent.

21 Q Well, that's what I mean, that's when I say "you".

22 A Yeah.

23 Q From your --

24 A Exactly. Yeah.

25 Q -- retirement benefits --

1 A Uh-huh (affirmative).

2 Q -- 60 percent was paid on the new total --

3 A Exactly.

4 Q -- each time it went up?

5 A Exactly.

6 Q All right. Thank you, that's all I have.

7 MS. FLEMING: I actually have one or two more
8 questions for you.

9 RECROSS-EXAMINATION

10 BY MS. FLEMING:

11 Q You mentioned that after you got out of the Gulf War
12 you began having the symptoms of PTSD. Is that
13 correct?

14 A Actually, the Gulf War and Mogadishu, Somalia and just
15 -- actually, just being in the military for 20 years.

16 Q Okay. And when -- would that have been -- what -- do
17 you recall when you first experienced the symptoms of
18 the PTSD?

19 A Right after the Gulf War. Right after the war.

20 Q And what year was that?

21 A 1991. '91. 1991

22 Q Did you ever tell Hattie that you were having
23 nightmares and symptoms that eventually led to the
24 diagnosis of PTSD?

25 A No.

1 Q Okay. And was there any reason why you didn't tell
2 her?

3 A It's something that being in the military you keep to
4 yourself.

5 Q Okay. And I'm sorry, I forgot to ask you: Are you
6 currently employed?

7 A Yes, I am.

8 Q Okay. And where are you employed?

9 A Department of Correction.

10 Q And how long have you been employed by the Department
11 of Corrections?

12 A Fifteen -- almost 15 years now.

13 Q Okay. And what is your position with the Department of
14 Corrections?

15 A Sergeant.

16 Q And what are your job duties?

17 A Supervisor.

18 Q Okay. And what do you supervise?

19 A Officers and inmates.

20 Q Officers and inmates. Okay. When is the last time
21 that you had any communication with Hattie Greene?

22 A Last time we went to court.

23 Q Okay. And that would've been in -- sometime in 2012?

24 A 2012 right.

25 MR. RAVENEL: I'm sorry?

1 A I think it was 2012 or -- yeah, I think in 2012 when we
2 went to court.

3 MS. FLEMING: I think that's all I have. Thank
4 you.

5 REDIRECT EXAMINATION

6 BY MR. RAVENEL:

7 Q Sergeant Greene, what was the highest rank you achieved
8 in the Marine Corp?

9 A E7.

10 Q And E7 is a --

11 A -- a gunnery sergeant.

12 MS. FLEMING: I'm sorry, is what?

13 THE DEPONENT: A gunnery sergeant.

14 MS. FLEMING: Okay.

15 Q Did you bring other information here with you today? I
16 know that you pulled this Exhibit 1 out of your
17 envelope there. Are there other papers that you care
18 to share with us?

19 A Just the letter that you sent me.

20 Q All right. Thank you.

21 MR. RAVENEL: That's all the questions I have.

22 Now, you recall I told you that you would have the
23 right to read this document before it's made a part of
24 the permanent record, and sign it to indicate you've
25 read it, or you have the right to say, "I don't want to

1 read it. I'm satisfied with the way it went." It's
2 totally up to you. And the court reporter will
3 arrange, and she will -- if you want to exercise that
4 right, she'll send it to you in the mail. You'll have
5 to read it. And if you have corrections, you'll have
6 to make the corrections there. Like I said, you can't
7 change what you said --

8 THE DEPONENT: Uh-huh (affirmative).

9 MR. RAVENEL: -- but you can give an explanation
10 as to why you -- I said "red," it could've been black,
11 or whatever.

12 THE DEPONENT: I would like a copy of it.

13 MR. RAVENEL: You'd like to read and sign?

14 THE DEPONENT: Right. Exactly.

15 MR. RAVENEL: Okay. So if you would do that,
16 Madame Court Reporter.

17 THE COURT REPORTER: I will do.

18 WHEREUPON, THERE BEING NO FURTHER QUESTIONS, THE
19 DEPOSITION IS CONCLUDED AT 11:01 A.M.

20 THE DEPONENT RESERVES THE READING AND SIGNING OF THE
21 DEPOSITION.

D. Cravens Ravenel, Esquire
Baker, Ravenel & Bender, LLP
Post Office Box 8057
Columbia, South Carolina 29202

RE: Greene vs. Floyd

Dear Mr. Ravenel:

Enclosed you will find both the original and copy of the deposition of JOSEPH GREENE taken September 10, 2013 in the above referenced action.

As you may recall, the deponent requested to read and sign his deposition. Therefore, by copy of this letter, I am forwarding a copy of the transcript to the deponent, along with the original signature page, errata sheet and instructions for reading and signing.

Upon completion of the signature page and errata sheet, the original of these pages will be sealed under separate cover and forwarded to you with a copy to all counsel. If the said pages are not completed within the thirty day period or when required in court, the original deposition shall be considered complete with this letter in lieu of the signature page.

It was a pleasure working with you. If we can be of assistance to you in the future, please give us a call.

Very truly yours,



Suesan L. Richardson,
Professional Court Reporter

Enclosures

cc: Mr. Joseph Greene
Alissa D. Fleming, Esquire
Original Deposition
Copies of Deposition

JOSEPH GREENE

Low Country Court Reporting Service suesan.richardson@gmail.com
3567 Colston Road, Bamberg, SC 29003

STATE OF SOUTH CAROLINA)

COUNTY OF BAMBERG)

CERTIFICATE

Be it known that I took the foregoing deposition
of JOSEPH GREENE;

That I was then and there a Notary Public in and
for the State of South Carolina-At-Large;

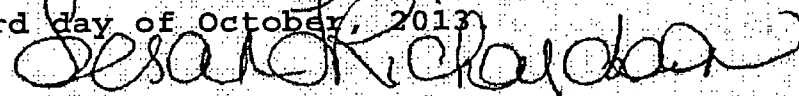
That by virtue thereof I was duly authorized to
administer an oath;

That the witness was by me first duly sworn or
affirmed to testify the truth, the whole truth, and
nothing but the truth, concerning the matter in
controversy aforesaid;

The foregoing transcript represents a true,
accurate and complete transcript of the testimony given
by said deponent after first being duly sworn, at the
time and place aforesaid, to the best of my skill and
ability; said deposition was reported by method of
Stenomask utilizing speech recognition with digital
backup. This transcript may contain quoted material;
said material is transcribed as read or quoted by the
speaker.

I further certify that I am neither employed by
nor related to any of the parties in this matter nor
their counsel; nor do I have any interest, financial or
otherwise, in the outcome of this action.

IN WITNESS WHEREOF I have hereunto set my hand and
seal this 3rd day of October, 2013.



Suesan L. Richardson
Professional Court Reporter

Notary in and for the State of South Carolina

My Commission Expires: August 3, 2017

COPY

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
 2 COUNTY OF CHARLESTON) Case No. 2012-CP-10-8372

3

4 HATTIE MAE GREENE,
 5 Plaintiff,

6 vs.

7 CINDY M. FLOYD,
 8 Defendant.

COPY

9

10

11

12

**DEPOSITION OF
 JOSEPH TODD MANLEY**

13

14

15

16 DATE: April 17, 2014

17 TIME: 2:30 p.m. - 3:40 p.m.

18 LOCATION: Barnwell Whaley Patterson & Helms, LLC
 19 288 Meeting Street, Suite 200
 Charleston, South Carolina

20 REPORTED BY: Jeanette Seabrook

21 *****

22 LAW SERVICES OF S.C.
 23 Post Office Box 1498
 Goose Creek, SC 29445
 24 Tel.: (843) 607-3779
 LAW.Services.SC@gmail.com

25

1 This transcript may not be reproduced,
2 emailed to another party or transcribed in any form
3 or by any means, electronic, mechanical,
4 photocopying, recording or otherwise, without the
5 prior written permission of the Court Reporter.

6

7 **A-P-P-E-A-R-A-N-C-E-S**

8 For the Plaintiff:

9 By: D. Cravens Ravenel, Esquire
10 BAKER, RAVENEL & BENDER, LLP
11 Post Office Box 8057
12 Columbia, SC 29202
13 (803) 799-9091
14 cravenel@brblegal.com

15 For the Defendant:

16 By: Jeffrey M. Bogdan, Esquire
17 BARNWELL WHALEY PATTERSON & HELMS, LLC
18 288 Meeting Street, Suite 200
19 Charleston, SC 29401
20 (843) 577-7700
21 jbogdan@barnwell-whaley.com

22

23

24

25

26

27

28

29

30

1

INDEX TO EXAMINATIONS

2

TODD MANLEY, swornPage

3

Examination by Mr. Ravenel

4

4

5

EXHIBITS

6

Plaintiff's: (** Retracted after the deposition.)

7

Exh. No. 1 Deponent's Complete File**

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 It is stipulated by and between the
2 parties that this deposition is taken pursuant to notice
3 and that all questions as to notice are waived; that all
4 objections, save as to the form of the question, are
5 reserved until the time of trial; that this deposition is
6 taken pursuant to the South Rules of Civil Procedure for
7 the purposes allowed therein; and that the deponent was
8 explained his right to read and sign the transcript of the
9 deposition and waived that right.

10 (JOSEPH TODD MANLEY, having been first duly sworn,
11 testifies as follows:)

12 **E-X-A-M-I-N-A-T-I-O-N**

13 BY MR. RAVENEL:

14 Q Mr. Manley, my name is Cravens Ravenel. I'm
15 representing the Plaintiff in the case of Hattie Greene
16 versus Cindy Floyd. It's Case No. 2012-CP-10-08372. I've
17 been advised by Counsel for the Plaintiff -- I mean for
18 the Defendant -- that you are going to be appearing as an
19 expert witness; is that correct?

20 A That's my understanding.

21 Q All right. And could you describe for me what
22 you were retained to do?

23 A As best as I recall, I was contacted by
24 Mr. Cooke's office and asked if I would look into an
25 expert matter. I told them that I would. They told me

1 who the parties were. Thereafter, to the best
2 of my recollection, they sent me the Greene file -- the
3 case file, if you will -- that had the transcript, the
4 pleadings. It looked like everything from the court file,
5 the first time around.

6 Q From the domestic matter?

7 A Domestic matter. I reviewed that and told
8 them I would be willing to give them what my opinion was.

9 Q All right. And what was your opinion?

10 A My opinion, based on what I have read in this
11 lawsuit, was that Cindy Floyd had not deviated from the
12 standard of care applicable to attorneys in the state of
13 South Carolina.

14 Q And what was the issue?

15 A The issue -- my understanding at the time I
16 had read the lawsuit -- and I believe I also read the
17 affidavit of Mark Sullivan, so. My understanding was that
18 Ms. Greene was suing Cindy Floyd based on legal
19 malpractice or negligence, stating that Ms. Floyd did not
20 protect her rights with regard to military retirement
21 benefits, or disability benefits thereafter.

22 Q Are you suggesting that there was some
23 contention that Mrs. Greene was entitled to some
24 disability benefits?

25 A That is not my contention.

1 Q What is your contention, so far as
2 disability is concerned?

3 A My understanding of the law consistent with
4 the *Mansell* case in 1989, Supreme Court case, is that --
5 if I may, let me back up just a little.

6 Q Sure.

7 A The state of South Carolina, under the
8 Equitable Apportionment Act, allows the court to split up
9 or divide marital assets. Under that, it has been found
10 that retirement benefits are marital assets, those
11 acquired during the length of marriage. Since 1988, I
12 believe South Carolina has determined that military
13 benefits or retirement benefits fall into that category of
14 retirement divisible as a marital asset.

15 Thereafter, the *Mansell* case -- effectively,
16 what took place was the retiree -- military retiree -- had
17 military retirement, but thereafter waived a portion of
18 that retirement to receive VA disability benefits with
19 pay. The *Mansell* case effectively said that the Uniform
20 Act prohibits the States from dividing those disability
21 pay benefits, and, further, acknowledged that even though
22 it's unfair to the former spouse, it's the federal law and
23 there's no way to preempt that from a state standpoint.

24 Q Is there any way to protect the client from
25 such an event?

1 A In a settlement negotiation, I
2 suppose there's always a way to attempt to protect a
3 client from that. You could ask the other side, in the
4 settlement negotiation, to allow all of the VA disability
5 benefits to go into the retirement pot. That would be
6 something that I wouldn't advise a client to do because
7 the state of the law is that the court can't divide those
8 benefits. But that is something you could do.

9 Q Are there any other ways that you could seek
10 court relief to get a defined benefit for -- if the -- the
11 spouse of a military person?

12 A Under South Carolina law, I'm not aware of
13 any, other than seeking alimony for your client. That
14 would be the only thing that would be modifiable after the
15 time of that divorce. And so under that theory, if you
16 were granted alimony and the retiree then waives some of
17 those military retirement pay benefits, you could seek the
18 relief of the court to modify the alimony.

19 Q Could you request any specific language in a
20 divorce decree -- not an agreement, but in a divorce
21 decree -- that would provide protection from the
22 eventually of a subsequent disability?

23 A Could you? Sure. Can you, consistent with
24 the law? No; you cannot. I would challenge whether or
25 not that is without some ethical concerns, Rule 11

1 concerns, seeking relief from the court that
2 you're not entitled to as a matter of law.

3 Q So you couldn't say that the -- I mean there's
4 not language that you could incorporate into a court order
5 which would protect a spouse of a military retiree from a
6 subsequent reduction, voluntary reduction on his part, by
7 taking VA benefits rather than -- VA disability benefits
8 rather than retirement?

9 A I think it's a dichotomy, if you will. If
10 there were settlement negotiations and they were in
11 agreement, sure. There are any number of things. The
12 court has the right to approve an agreement that says
13 we're going to split up all the military retirement and
14 the VA disability benefits, if that should occur in the
15 future.

16 However, on the other side, if you go to trial
17 on that, the court doesn't have the jurisdiction to award
18 any portion of those benefits. And any attempt to award a
19 portion of those benefits I think is violative of federal
20 law and *Mansell*.

21 Q So you don't believe that you could, by
22 describing the fact that she would be entitled to 60
23 percent of the initial retirement benefits, that that
24 would pass muster?

25 A That wouldn't pass muster under the law. I

1 understand where it is a shame, if you will, for
2 the former spouse. But consistent with the law, and even
3 the *Mansell* case, it's an unfairness that is recognized by
4 the law and mandated by the law.

5 Q And the unfairness being what?

6 A That a former spouse who was receiving a
7 certain amount of retirement benefits, thereafter would
8 receive a lesser amount of the total retirement and VA
9 disability pay. That would seem to some to be an unfair
10 result.

11 Q Well, no; I -- I appreciate that. We think it
12 is unfair. But you're just saying there's no possible way
13 to resolve it, absent an agreement?

14 A I know of no way other than for the court to
15 have awarded alimony and, thereafter, to modify the
16 alimony. Or in this case -- and again, I can't speak for
17 Judge Wylie -- one way to potentially remedy it is to give
18 the former spouse a greater than 50/50 share to somehow
19 anticipate this maybe coming down the path at some point.

20 Q So I take it you don't agree with -- perhaps
21 you haven't read -- have you read Mark Sullivan's
22 deposition?

23 A I have.

24 Q And I take it you don't agree with his
25 conclusions?

1 A I don't agree with his legal
2 conclusions. I don't disagree with some of the things he
3 says as a matter of theory, as a matter of constructive
4 thought process at the legislative level. I disagree
5 completely with his assessment that Cindy Floyd violated a
6 standard of care to her client as a reasonably-proven
7 lawyer in the state of South Carolina.

8 Q Well, what could she have done other than what
9 she did?

10 A I think she did everything she could have,
11 especially considering she had to try the case. This was
12 not a settlement; this was a trial. She requested
13 alimony. Her client was denied alimony. My recollection
14 of the court order is the finding was, Mrs. Greene made
15 more money than Mr. Greene and the court used that as the
16 rationality to deny alimony.

17 All she could do is ask for an equitable
18 distribution of the marital estate which included the
19 military retirement. And she got 60 percent -- or
20 Mrs. Greene got 60 percent for herself, whichever you
21 choose to ...

22 Q Are there any cases, in South Carolina or
23 otherwise, that you rely upon for the position that you
24 took?

25 A It's actually the absence of cases past

1 *Mansell* upon which I've relied.

2 Q Well, now, you've got two cases, don't you;
3 *Tirado* and -- the other one, I can't recall?

4 A It's *Price*. The *Price* and the *Tirado* case are
5 both cases that I don't think are on point here. Both of
6 those cases are settlements. And in one of those cases,
7 Mr. Price I believe specifically agreed to split up the
8 disability benefits, and, thereafter, tried to get out of
9 it.

10 And in the *Tirado* case, he specifically said
11 the entire retirement benefit, that they had initially not
12 split up the disability. That was the court's rationale
13 for not giving Ms. *Tirado* any of those VA disability
14 benefits. Completely different here, because Mr. and Mrs.
15 Greene tried their case on the issue of military
16 retirement.

17 Q Is there any reason that Ms. Floyd couldn't
18 have asked for language which would have protected
19 Mrs. Greene on the issue we're talking about?

20 A There's no reason why she could not have asked
21 for language. I simply say there's -- there's no law to
22 back up any chance at receiving that for her client.

23 Q So do you believe that Cindy Floyd knew that
24 there was a potential for subsequent disability --
25 service-connected disability -- to reduce the payments

1 that she was receiving from the order?

2 MR. BOGDAN: Object to the form.

3 A I really can't speculate what Mrs. Floyd knew
4 or did not know. I know that as an attorney I've
5 litigated cases against her, but I don't know specifically
6 what she knew or did not know about military retirement
7 benefits, other than she knew to ask for them for her
8 client at the trial level.

9 Q You haven't discussed this with her?

10 A I've not discussed the specific event with
11 her. I've had a mediation with her since I was hired as a
12 expert.

13 Q A mediate -- I mean unrelated to this?

14 A Unrelated to this. I've discussed -- I've had
15 conversations with her unrelated to this.

16 Q But there's nothing to prevent -- there was
17 nothing to prevent Ms. Floyd to ask the court to include
18 language which would have protected her should the --
19 should disability arise, service-related disability arise
20 and be voluntarily used by the husband, the ex-spouse, to
21 reduce retirement benefits?

22 A Other than I believe the law prohibits that.
23 There's nothing that stopped her from asking for that.

24 Q And to your knowledge, did she ask for that?

25 A Not according to the transcript that I read.

1 Q And do you know whether or not she
2 appealed the order that was drafted and signed by the
3 judge?

4 A I do not know that she appealed it.

5 Q Do you know who drafted the order?

6 A I do not know who drafted the order.

7 Q Is it the normal routine in domestic relations
8 cases in Charleston County for -- or whatever district
9 y'all are in -- for the court to draft the orders, or does
10 he invite lawyers to draft the orders?

11 A Usually -- for the most part, they invite
12 lawyers to draft.

13 Q And in that process, do they share that
14 information before it's submitted to the court?

15 A Absolutely.

16 Q And so there's an opportunity to object, at
17 that point?

18 A There's an opportunity to say I don't think
19 it's consistent with your ruling; yes.

20 Q Right. And there's an opportunity for an
21 appeal?

22 A Yes.

23 Q When you talked to Ms. Floyd, what did she
24 tell you about this issue?

25 A About this case, specifically?

1 Q This case specifically; yeah.

2 A I don't recall that she discussed the case.

3 But to give it some context, this has probably been three
4 or four months ago that I had the mediation. And when I
5 walk into her room, she's there with her client for that
6 day, so. My recollection would be she wouldn't have
7 mentioned the case.

8 Q What information did you receive from Counsel?

9 A About this case?

10 Q Yeah.

11 A I initially received -- do you mind if I refer
12 to my file?

13 Q Yeah. Please do.

14 A I initially received a cover letter, just a
15 simple "Please find enclosed all the correspondence from
16 Counsel has been" -- a "please find enclosed letter," and
17 then the enclosures. I believe the first one would have
18 been a 1 through 103 exhibit list that -- they call it the
19 Greene Court File. This is the one that I spoke about
20 earlier.

21 Once I took the case on, if you will, since
22 then I have received deposition transcripts of Mark
23 Sullivan, Mr. Greene, Ms. Greene. I have not received the
24 deposition transcript of Cindy Floyd. I would have
25 received, in this case, the pleadings and Mark Sullivan's

1 affidavit. I believe that's everything I have
2 received.

3 Q Is the three-page list of documents the lion's
4 share of what you received?

5 A Clearly, the lion's share of my file from a
6 volume of documents.

7 Q Okay. Is there any way to separate --
8 differentiate what you received, other than the list that
9 you have? Is there a somewhat easy way that you can pull
10 it out and say this is what I got, unrelated to the --

11 A I think -- I think so. Let me say this: I
12 didn't bring my whole file for the simple reason: I live
13 about four blocks from here and I wanted to carry one
14 file, and I didn't think it would be necessary. So what I
15 did bring were those items -- so let me pull those out. I
16 believe I left the deposition transcripts because I didn't
17 think that I would have to.

18 Q I'm not interested in that.

19 A Okay. Let me see here. This would be the
20 pleadings, if you will.

21 Q Okay.

22 A Or the Complaint, in your case.

23 This should be the Greene Court File that has
24 the three-page exhibit list. Past that, I've got the
25 *Mansell* case. I wrote myself some notes this morning

1 about the deposition. I've got the Uniformed
2 Services Former Spouse Protection Act federal law.

3 Q Okay.

4 A I've got the subpoena and the Amended Notice
5 of Taking Deposition with, I think, some correspondence
6 going back and forth.

7 I've got the attachment to the deposition.

8 Here is the -- this is my correspondence file,
9 if you will, the "please find enclosed letters" that I
10 spoke about. There's four of those.

11 That's the entirety of my file with the
12 exception of the deposition transcripts I spoke about
13 earlier.

14 Q Okay. I just hate killing all these trees,
15 but I hate walking out of here without knowing exactly
16 what you've looked at.

17 A I understand.

18 Q The information that's in the larger stack; is
19 that replicated in the list that you have?

20 A I believe the list -- if you went through the
21 list of 1 through 103, you would find them in here. But I
22 haven't cross-referenced them in some time.

23 Q Okay. Well, I'm -- I guess I'm going to make
24 them an exhibit. I hate to do it, but I just need to know
25 what you have looked at. So why don't we just mark that

1 as one massive exhibit, your file?

2 MR. BOGDAN: Do you want to do the whole --
3 aggregate or separate?

4 MR. RAVENEL: I'm going to do the -- I mean
5 it's just easier. And I don't want to waste your time
6 while I'm sitting here going through it.

7 THE DEPONENT: Let me just ask this. I was
8 going to say, you want me just to leave the file here for
9 copying? That's going to be easy enough to make.

10 MR. BOGDAN: Yeah. And we'll get it back to
11 you.

12 THE DEPONENT: Okay. That's fine.

13 Mr. Ravenel, do you want to me to separate
14 these out in any way?

15 MR. RAVENEL: No. Just stack them back here.

16 THE DEPONENT: I would note, any highlighting
17 you see would be mine.

18 BY MR. RAVENEL:

19 Q Okay. Let me back away from talking
20 specifically about the case and talk about your
21 background.

22 A Sure.

23 Q I assume you graduated from law school
24 somewhere?

25 A I did: University of South Carolina.

1 Q All right. And --

2 MR. BOGDAN: Real quick, that pad is part of
3 the file?

4 MR. RAVENEL: Right. Yeah.

5 MR. BOGDAN: I just don't want it getting
6 mixed up.

7 MR. RAVENEL: I'll do that, so. You're smart
8 to do that.

9 BY MR. RAVENEL:

10 Q And you went to undergraduate school, where?

11 A University of South Carolina.

12 Q Okay. And when did you start practicing?

13 A 1994.

14 Q And what area did you practice in?

15 A General practice, initially.

16 Q And for what period of time did you continue
17 as a general practitioner?

18 A I would say probably from 1994 until about
19 five years ago. I was in general practice with an
20 escalating focus on family court throughout the years.

21 Q Okay. And now what is your -- how would you
22 describe your practice?

23 A I would say my personal practice -- I've got
24 another lawyer that practices with me as an associate. He
25 does general litigation with a focus on family court

1 litigation. My focus is probably 90 percent
2 mediation and arbitration and 10 percent litigation, all
3 in the family court arena.

4 Q Okay. Well, for reasons totally unknown to me
5 at this present time, I am qualified as a certified family
6 court mediator and I've got to tell you, I know little
7 about it.

8 A We welcome you. No; please.

9 Q No, no. We had some people in my firm that
10 were doing that. They wanted me to become a mediator
11 qualified in that, so I went up to Chapel Hill and did
12 some stuff but -- and I have not had much work in that
13 area.

14 During the period of time that you were doing
15 family court practice as opposed to mediation with the --
16 did you represent Service personnel?

17 A Yes.

18 Q Okay. And what percentage of your practice is
19 related to Service personnel?

20 A I don't know if I can speculate that. I
21 don't --

22 Q Half?

23 A Less than --

24 Q Less than half?

25 A Less than half.

1 Q Ten percent?

2 A If I were to speculate, it would be somewhere
3 below half, and probably above five percent. But it would
4 be pure speculation.

5 Q And what branch of the Service were you
6 representing, primarily? I just -- the Navy is down here
7 and --

8 A The Naval Base for years, so Navy -- it would
9 be all branches. I mean I can't speculate how much and
10 how -- and what branch.

11 Q But you would believe that you represent
12 people in all branches of the Service, I mean the people
13 or their spouses?

14 A I would think after 20 years, I have.

15 Q Okay. Have you ever entered into an agreement
16 with one of your clients that covered the area we're
17 talking about?

18 A I'm sure I have.

19 Q And what provision did you make in your
20 agreements -- or when you could get an agreement, what did
21 you do insofar as approaching the court?

22 A Is the question at a trial level or at the
23 agreement level?

24 Q Well, start at the agreement level.

25 A At the agreement level, I don't have a

1 specific recollection of doing anything other
2 than splitting gross disposable retired pay.

3 Q Fifty percent?

4 A No; they may not have been 50/50. But simply
5 dividing the retirement pay. It's something that -- the
6 VA waiver issue has been something I've known about since
7 I started practicing law, something ingrained in us,
8 because I started practicing after 1989, and so.

9 Q So you would know, and anybody who practiced
10 in the area of family law would know, that military
11 personnel would be subjected to the VA disability issue?

12 A They should know, especially in an area like
13 ours where you -- we used to have a fair amount of
14 military retirees, for sure.

15 Q So does that make the non-military spouse
16 always subject to reduction of the division of property of
17 the couple?

18 A I think it does, as long as there is some
19 concern that the person -- or the military retiree could
20 actually qualify for disability. I mean you just don't
21 get it; you have to be disabled under those standards.

22 Q Right. And being in combat zones in the
23 military, in the Marine Corps, might subject you to issues
24 like that; is that correct?

25 MR. BOGDAN: Object to the form.

1 A It's certainly possible in any branch
2 of the Service that you could be exposed to something that
3 would be disabling in your future.

4 BY MR. RAVENEL:

5 Q Did you read Mr. Greene's deposition?

6 A I did.

7 Q And was he in areas where he was subject to
8 combat conditions? Stress?

9 A I don't recall. I would probably argue to you
10 that --

11 Q Iraq and Kuwait?

12 A I would argue that anybody in the military is
13 subjected to the stress and things that, ultimately, could
14 be disabling.

15 Q I'm talking about combat, though.

16 A Combat? Iraq and Kuwait would be places of
17 combat.

18 Q So it's reasonable to assume that that might
19 be an issue that might develop later?

20 A It's reasonable to assume.

21 Q All right. Given that, what steps could the
22 litigants take to avoid to potential of that later
23 depriving the spouse of the amount of money that she
24 received when they were -- when they divided the
25 retirement benefits?

1 A I'm --

2 Q Excuse me. When they retired the -- when they
3 divided the family benefits? How would you describe that?
4 What do you call the --

5 A The -- to avoid dividing -- or the -- are you
6 talking about the VA disability?

7 Q No, no. What I'm trying very unartfully to
8 say is, there's a name that the Family Court uses to
9 describe a division of --

10 A You're talking about the equitable
11 distribution?

12 Q Equitable distribution of the property; right.

13 A Right. I mean there -- there are two things.
14 I understood your question. There are two things at the
15 trial level that I'm aware of, that a practitioner can do:
16 Number one is to ask for a disproportionate share of the
17 assets, and number two is to ask for alimony. I don't
18 know of any other way to stop that train from going down
19 the track.

20 Q Okay. And when you say "ask," that is asking
21 the other party to agree to it, or asking the court?

22 A I'm at the trial level. I'm saying the things
23 you could ask the court to do is to grant alimony. You
24 could ask the court to grant your client a
25 disproportionate share of the assets. I'm thinking

1 forward, if you will. I'm not -- not sure the --
2 the court can do that, with regard to the
3 disproportionate share of the assets from an event that
4 has not yet occurred. It seems to be one of those
5 anomalies in the law -- that's that's got some difficult
6 circumstances in the future for the former spouse.

7 Q So you don't think you could, by definition,
8 within the divorce decree, define the assets in a way that
9 would survive the application of a reduction by virtue of
10 disability?

11 A I know a judge may not do that and be ruling
12 consistent with the law in the state of South Carolina.

13 Q What is the basis for your belief?

14 A The judge does not have the right to divide VA
15 disability benefits. And so to work that into the
16 equation I think is violative of federal law, *Mansell*, and
17 goes past the jurisdiction of the State of South Carolina.

18 Q Well, did you -- and I just can't recall
19 whether Mr. Sullivan testified about what he thought would
20 pass muster. Did you recall reading that?

21 A I did.

22 Q And you disagree with that?

23 A I disagree. I think his ideas are
24 theoretically interesting. There are excellent ways I
25 think at the legislature level, to try to change these

1 things. But from a standpoint of a practitioner
2 trying the case and asking the judge to do things, those
3 things are not supported by case law or statute in the
4 state of South Carolina.

5 Q Are they supported by case law in any other
6 jurisdictions?

7 A I don't know the answer to that. And I
8 haven't been asked to look into that because Ms. Floyd
9 only practices, as I understand, in the state of South
10 Carolina. And this is a South Carolina case, so. I have
11 not gone outside of this state.

12 Q Well, its authority might not be dispositive
13 of it. But it would be authority for the proposition that
14 Mr. Sullivan --

15 A Asserts.

16 Q Isn't that correct?

17 A Well, I would take the position, as an expert
18 asking whether or not somebody has violated the standard
19 of care, if there's not a law in this state but it's
20 different in the state of North Carolina, I would still
21 not say that -- that she's breached the standard of care
22 because she didn't ask for something North Carolina
23 supports but South Carolina does not support.

24 Q Should she have made an effort to incorporate
25 language that would have survived a change in this

1 man's -- you know, his becoming disabled?

2 MR. BOGDAN: Object to the form.

3 A Should she have asked? I don't believe she
4 should have asked, consistent with the law. She could
5 have asked. I see of no way the judge could have afforded
6 that relief. So to ask for it would seem completely in
7 vain to me, as a -- as an attorney.

8 BY MR. RAVENEL:

9 Q Okay. I'm pretty sure I understand what
10 you're saying, but let me just say it in my words so
11 I'm -- I feel comfortable about it later on. Your
12 testimony is to the effect that South Carolina law
13 applying to this factual situation -- and "this" meaning
14 the subsequent loss -- I mean subsequent disability
15 resulting in a reduction of benefits -- because of the VA
16 rule on this, there's nothing that can be done to prevent
17 that from happening?

18 A There's nothing directly to stop that from
19 happening. The only thing to do outside of that is to ask
20 for alimony or to ask for a disproportionate share of the
21 marital estate. There's nothing to stop these servicemen
22 from applying for or being granted the disability pay and
23 the former spouse, as a result of that, losing cash flow
24 each month. There's nothing under South Carolina law or
25 federal law consistent with the Mansell case for the

1 practitioner to do -- or, for that matter, for
2 Mrs. Greene to do.

3 Q But you can do it by agreement?

4 A You can do it by agreement. The court has the
5 jurisdiction to approve the agreement; yes. And then,
6 thereafter, to enforce the agreement like they did in the
7 *Price* case.

8 Q Well, if the mere act of doing that, of
9 circumventing the rule that your retired benefits will be
10 reduced by the disability that you draw, it's okay to do
11 it by agreement, but not by the law?

12 A That's --

13 Q But by the court?

14 A That's what the *Price* case says because that's
15 the specific factual scenario. Mr. Price agreed --
16 Mr. Price was receiving VA disability benefits at the
17 time, and he agreed to split up the total retirement.
18 And, in fact, in the order, that total retirement included
19 that disability benefit.

20 And Family Court is a different area of the
21 law, too, because you usually have so many balls in the
22 air. It's difficult to find out, did Mr. Price give the
23 VA disability benefits to get more time with his kids or
24 some other concessions. It's a little different than, you
25 know, a standard civil case where you may just fighting

1 over money. A lot of things are being fought
2 over in Family Court, so.

3 but that's clearly what he did in that case,
4 and the court clearly approved that agreement. And then
5 they enforced the agreement later, when he tried to get
6 out of it.

7 Q Do you know whether this issue was discussed,
8 one way or the other, the issue being --

9 A In the Greene case?

10 Q In the Greene case, before the court order was
11 issued?

12 A Since I haven't seen Cindy Floyd's deposition,
13 there's nothing in the court file that would tell me
14 anything about the settlement discussions. I know all the
15 other lawyers; I saw their names on the -- the pleadings.
16 But I haven't spoken to any of them about the settlement
17 discussions.

18 Q Is it your intention to speak to them about
19 this, before trial? Because, if so, I would like to take
20 your deposition again.

21 A I understand. It's not my intention to. I
22 don't know what I'll be directed to do and I don't know if
23 I'll receive a phone call. It's not my intention to
24 unilaterally go out there and do that.

25 Q Well, if it should happen, I would wish you

1 would advise Counsel so they can, in turn, advise
2 me about it.

3 A Absolutely.

4 Q Should Ms. Floyd have advised her client that
5 this could happen?

6 A I think she should have advised her that this
7 could happen.

8 Q Do you know whether she did or not?

9 A I do not know if she did.

10 Q Since there is a possibility that you could
11 lose up to 50 percent of the little retirement benefits
12 that you draw by virtue of disability up to 50 percent,
13 wouldn't that be a desirable thing to do: To discuss it
14 with your client so that they would know of -- even if
15 it's in a court order, it may not survive that court
16 order?

17 A I think from an information standpoint, it's
18 advisable or recommended to do. From an outcome
19 standpoint, whether I would tell a client or not tell a
20 client, wouldn't change the outcome. It -- it would
21 potentially change the surprise level, if you will.

22 Q Well, wouldn't it change the negotiating
23 approach, if you knew that there was a potential to lose
24 this and try to get the agreement that you've described in
25 the *Mansell*, the *Tirado*, and the other cases?

1 A It could potentially affect the
2 negotiations. I would say, however, since this was a
3 trial, it's difficult to see that in play because they
4 actually litigated this issue and the other issue that
5 would go hand-in-hand with the alimony issue.

6 Q They negotiated the issue of whether there
7 should be some attempt to avoid the result that we've been
8 talking about?

9 A I have no idea if they negotiated that.

10 Q Right.

11 A I simply say it hard to see it in action
12 because I don't know if Ms. Floyd told Ms. Greene -- and
13 can we, past that, I'm not sure it -- I'm not sure it
14 mattered because, ultimately, they went and tried these
15 issues. They didn't settle these issues.

16 Q Right.

17 A And so -- you know; if you told me she settled
18 for 40 percent and no alimony, I might look at you and say
19 that would be very material whether or not they discussed
20 this. The fact that they tried these issues I think makes
21 it less material because, ultimately, they clearly let the
22 judge make the decision on these. The judge is the one
23 who decided not to give her alimony and to give her 60
24 percent of the military benefits.

25 Q But do you know whether an attempt was made to

1 negotiate a settlement so that it's with the
2 fact -- with this aspect included?

3 A I have no idea.

4 Q Would that have been an appropriate thing to
5 do?

6 A It would not be inappropriate to try to get as
7 much as you can for your client, including this. I simply
8 challenge whether any reasonable practitioner would have
9 done it. I would have never advise my client, if he were
10 Mr. Greene, to agree to give something to the other side
11 if they had a zero percent chance of getting it.

12 Q Right. But if you were -- and I'm putting you
13 in the shoes of Mrs. Floyd. If you were in her shoes and
14 you've got a client who has this potential loss of money,
15 even though she is granted the money, wouldn't it be
16 advisable to tell her that so that that could be included
17 in the negotiating approach that you've used?

18 A At the settlement or the negotiation stage, I
19 agree with you: Discussing that with your client would be
20 appropriate.

21 Q And if you reduced -- for example, if you
22 reduced the amount of your demand from 60 percent to 50
23 percent in exchange for an agreement for this to survive
24 any future disability reduction, then that would be an
25 issue that was not on the table?

1 A Since I don't -- I don't know what
2 happened in this case, I would challenge the likelihood of
3 somebody agreeing to give 50 percent plus some portion of
4 the VA disability benefits. The only surprise that I saw
5 at the trial level here is that Mrs. Greene got 60
6 percent. So I wouldn't go into this negotiation if I
7 represented Mrs. Greene, thinking I would get 60 percent.
8 That -- that seemed to be a nice proportion.

9 Q What I'm asking you is, if Mrs. Greene had
10 recognized the threat to her of a subsequent disability,
11 is it reasonable to assume that that would alter her
12 negotiating stance?

13 A Potentially. I don't know Mrs. Greene, but
14 potentially.

15 Q And since Mr. Greene I don't think could
16 predict that he was going to be disabled in the future,
17 wouldn't that negotiating technique probably be affected
18 by I'll drop 10 percent in exchange for a definition of
19 what the amount of -- what is this called again? I don't
20 know why this escapes me. I don't know. These are terms
21 I don't use very often. Whatever 50 percent is. What is
22 that? That's the --

23 A The equitable distribution?

24 Q The distribution. Equitable -- I'm sorry.
25 The equitable distribution. The property of the family;

1 that property was going to be split, arguably
2 50/50, and it ended up being 60/40?

3 A Right.

4 Q And my question would be is, if Mrs. Greene
5 was aware of the fact that she stood the potential for
6 losing as much as -- what, 50 percent?

7 A Or 25 percent. Half of a half.

8 Q Of this amount that she's awarded by virtue of
9 this disability, wouldn't that change the dynamics of the
10 negotiations and perhaps lead to a settlement?

11 MR. BOGDAN: Object to the form.

12 A Let me answer this in two parts, if I might.
13 The first part is clearly, since I don't know
14 the Greenes, it's impossible for me to speculate --

15 BY MR. RAVENEL:

16 Q Right.

17 A -- what that negotiation would have done.

18 Q Sure.

19 A I would respectfully disagree with the
20 sentiment that by simply dropping ten percent or some
21 small amount on the retirement to gain the VA benefits in
22 the future, that there would have been a settlement.

23 I could use it by way of example: In being a
24 practitioner for 20 years in this field, if Mrs. Greene's
25 lawyer came to me and said instead of asking for 60

1 percent of the retirement, we'll agree to take
2 50 percent, but you would have to include the VA
3 disability benefits if he ever is disabled in the future,
4 I would strongly advise my client to reject that offer
5 under the premise in a longer-term marriage, I would tell
6 my client he's more likely to not going to get something
7 closer to 50/50 anyhow and he's going to keep his VA
8 benefits.

9 In this case, I would have been slightly wrong
10 because Mrs. Greene got 60 percent. But this case, from a
11 practitioner standpoint, you wouldn't go in thinking
12 Mrs. Greene is going to get 60 percent. You would go in
13 thinking she's likely to get closer to the 50 percent --
14 again, from a theoretical standpoint.

15 Q What does Mr. Sullivan say would be the proper
16 approach to this?

17 A According to his deposition transcript that I
18 read, he believes that, in closing argument, Ms. Floyd
19 should have argued for an indemnification clause, for the
20 court to put that in to say if, in the future, Mr. Greene
21 receives VA disability benefits, that he'll indemnify
22 Ms. Greene to the amount she'll lose in those benefits.

23 Q And do you think that was something that was
24 possible to do?

25 A Not legally possible. I couldn't find any law

1 or case law to support that position in the state
2 of South Carolina.

3 May I use an example here, as well, please?

4 Q Yes.

5 A Anything is possible, but certain things are
6 legally prohibited. I guess it's possible someone could
7 get 100 percent of the marital assets of an estate. You
8 could always ask for that. However, you will not find one
9 case on point where someone has received 100 percent of
10 the marital assets.

11 And that's -- that's the level I see this at:
12 You could do --you could ask for anything. There's no
13 reason, legally or factually, to believe there was any
14 chance of the judge ruling that way.

15 Q And can you site me to some case law or
16 statute law on which you based what you're saying?

17 A It's actually the absence of the law. If
18 you -- if you take the Uniform Services Former Protection
19 Act or the Former Spouses Protection Act, it specifically
20 disallows the VA disability to be split up between the
21 spouses. It takes it away from the states.

22 That was challenged in *Mansell*. *Mansell* --
23 the Supreme Court in *Mansell* in 1989 said, unfortunately,
24 we have to agree: This is clear language of the statute,
25 the federal law, and, as a result, States, we're telling

1 you, you have no right to split up the VA
2 disability benefits. I see no case since 1989 where the
3 State of South Carolina has said, but you can go in the
4 back door by an indemnitive clause -- indemnity clause or
5 constructive trust or any other way of doing this.

6 Other than as I formulate, you seek alimony.
7 And if you get some alimony and, thereafter, you lose
8 some -- some VA pay, you come back. You come back in and
9 say substantial change in circumstance; give me some more
10 alimony here.

11 I think the blame, if you will -- and "blame"
12 in quotes -- would be on Judge Wylie for not giving her
13 alimony because Ms. Greene and Ms. Floyd asked for
14 alimony. They asked for it at the temporary hearing and
15 they were denied, and they asked for it at the final
16 hearing and they were denied.

17 Q Should they have appealed that ruling?

18 A I wouldn't have, simply because Mrs. Greene --
19 if the finding was correct, the -- the finding of fact
20 that I read was Mrs. Greene was making more money than
21 Mr. Greene at the time of trial, and income tends to drive
22 alimony cases. I wouldn't -- I wouldn't take somebody's
23 money to appeal that, personally. You could; sure.

24 Q Is it your belief that other jurisdictions
25 have ruled -- have not ruled what you believe the law is

1 in South Carolina?

2 A I do not know the answer to that question,
3 considering I practice in South Carolina. I've looked at
4 it federally, I've looked at it state -- this state-wide,
5 but not past these boundaries.

6 Q So language that says "court intends that the
7 wife will receive her pension share based on the full
8 military retired pay of the husband without reductions for
9 disability payments," wouldn't fly?

10 A It wouldn't fly at the trial level.

11 Q Okay. And this statement that if the husband
12 does anything that reduces the share or amount of his
13 military retired pay given here into the wife and he shall
14 promptly reimburse her for the loss; you don't think that
15 would fly?

16 A There's no case to back either of those
17 theories up, in the state of South Carolina.

18 Q Right. Given the amount of money involved --
19 potentially involved -- would it have been appropriately
20 to raise this, attempt to get this language in the court's
21 order?

22 A I don't believe so simply because military
23 divorces in the State of South Carolina take place day in
24 and day out. I mean there's just -- this isn't a -- a
25 once-in-a-lifetime thing that happened and it's worthy of

1 challenging the judge on it. It's something that
2 goes through the court system virtually every day.

3 And so to ask for something not supported by
4 any case or any statutory law, I think is in vain. Again,
5 could you do it? Sure; you could do it. There's no
6 reason for me to believe that since 1989, there's any
7 support for that.

8 Q But you're unaware of other jurisdictions, and
9 so you could argue foreign law in the absence of current
10 law that this addresses this directly; could you not?

11 A If there was foreign law to back it up, you
12 could argue persuasive authority.

13 Q And let's assume, for the sake of this
14 question, that there is foreign law out there that
15 supports that. Should Ms. Floyd have appealed this case?

16 A I do not believe that would be something she
17 should have done in keeping with the standard of care she
18 held to Ms. Greene.

19 Q What is it about the standard of care that
20 would excuse her from appealing?

21 A There is no law -- to excuse her from
22 appealing?

23 Q Uh-huh. I mean that's what we're saying.
24 She's not appealing, and --

25 A Right. To appeal the case -- my opinion is

1 you should have some good faith belief that the
2 appeal would be granted, that you would win on the appeal.
3 And I would have to say there's nothing in the state of
4 South Carolina to back up that, from a legal standpoint.
5 And you would have the *Mansell* case, you know, staring
6 right down the -- the barrel of the gun at you. It seems
7 to be a loser, to me.

8 Q Okay. So when you're practicing law, if you
9 are faced with an absence of case law specifically on
10 point and there's other jurisdictions where there is case
11 law on the same point, you don't refer to that as support
12 for an argument you're making to a South Carolina court?

13 MR. BOGDAN: Object to the form.

14 A I could; sure.

15 BY MR. RAVENEL:

16 Q No, I'm not saying you could? I'm asking do
17 you, in your practice, do that, or do you limit your cites
18 to South Carolina law?

19 A I can't think of an occasion, simply because
20 Family Court is so South Carolina case law heavy. I just
21 can't remember a time to go outside those boundaries.

22 Q And you're limiting your comments to family
23 law, not to other types of law?

24 A I am limited to family law because I practice
25 almost exclusively family law.

1 Q Well, have you had occasion in a --
2 not in a family law connection, to represent someone in an
3 appeal of a case?

4 A I have handled -- I may have handled one
5 appeal outside of a Family Court case.

6 Q Do you recall the name of that case?

7 A I do not. I remember the name of the lawyer
8 on the other side.

9 Q Who was that?

10 A George Bishop, Jr.

11 Q What was the nature of the case?

12 A I don't recall, but I believe it was either
13 contractual in nature or quasi-contractual in nature. But
14 I could be wrong about that, as well. It seems to have
15 something of that ilk to it.

16 Q But you don't remember the name of either of
17 the parties?

18 A Unfortunately, I do not. It's been some years
19 ago.

20 Q It's okay. I am not criticizing anybody for
21 forgetting things. I'm terrible about it.

22 And you're saying the *Price* case doesn't
23 really have application into the facts of this case
24 because it was an agreement, or what?

25 A That's the distinction I draw. The facts are

1 somewhat similar in that they were dealing with
2 military retirement and VA disability. They're dealing
3 with a settlement, and this case was a trial.

4 Q So you're telling me that you can agree to do
5 things that the case law -- the statute or law prohibits?

6 MR. BOGDAN: Object to the form.

7 A Specifically as to VA disability, I know that
8 to be true.

9 BY MR. RAVENEL:

10 Q All right.

11 A By the -- by the *Price* case.

12 Q Because they mentioned it or because they did
13 it?

14 A They did it.

15 Q Okay. So what is the basis for your saying
16 that absent an agreement, it couldn't have been
17 accomplished, that same approach to it the *Price* case had?

18 A Well, the *Price* case, they specifically
19 divided the VA disability money, and the *Mansell* case
20 specifically says you may not do that: It is not marital
21 property and the states don't have the right to divide it.

22 Q Was *Price* sustained?

23 A I don't know the answer to that. I assume it
24 was sustained, since it's cited.

25 Q I mean what was the result of *Price*? Is it

1 that that agreement was upheld --

2 A The --

3 Q -- despite what the Supreme Court of the
4 United States said?

5 A Price was upheld -- my recollection in Price,
6 they had already split up the VA disability money. And if
7 I recall correctly, thereafter, he tried to get more VA
8 disability and exclude the remaining VA disability and the
9 court said huh-uh, you asked us to approve it; this
10 extends down the line whether it's ten percent, 20
11 percent, 30 percent.

12 Q Okay. I think you've already answered this.
13 Have you ever opposed Ms. Floyd? I mean been on the other
14 side of a Family Court matter with Ms. Floyd?

15 A Yes.

16 Q Do you serve on any boards or committees or
17 local Bar, state Bar?

18 A State Bar. I am on the alternative dispute
19 resolution committee. I don't know the formal name of it.

20 Q Yea. I know the state -- the mediation thing.

21 A I'm just a member of the local Bar
22 Association. I don't serve on any specific boards.

23 Q Had you discussed this case with Ms. Floyd
24 prior to being retained as her expert witness?

25 A As I recall, the first contact I had was

1 through the law firm, which struck me as a
2 little surprise that I didn't hear from Ms. Floyd about
3 it.

4 Q Why was that surprising?

5 A Just as things go. It would seem like you
6 would get a phone call or something like that: Hey, I
7 don't know if you're interested, I've been sued; I'm going
8 to have some lawyers call you. I don't recall that taking
9 place. I can't remember the perfect time sequence. It
10 seems that the law firm reached out to me.

11 Q Any social relationship with Ms. Floyd?

12 A No social.

13 Q Or family?

14 A No.

15 Q Have you prepared a report?

16 A I have not.

17 Q I gather you're saying that this issue -- and
18 that means the disability issue -- would have been
19 something that, clearly, Mrs. Floyd would have been aware
20 of as a practicing family -- or family practice --

21 A Yes.

22 Q So she would have known that post-divorce
23 disability on the part of Mr. Greene would allow the
24 spouse to reduce the amount of his retirement subject to
25 the divorce decree?

1 A I'd have to speculate, but I would
2 still say yes. I know her as a practitioner, and this is
3 fairly wet-level stuff to know.

4 Q You mean you've kind of got to know that to --

5 A It's one of the things in the practice of
6 family law you -- you just know.

7 Q Particularly if you're dealing with military
8 people with any frequency?

9 A Correct.

10 Q And I'm asking you to repeat yourself, I know,
11 but I just want to make sure I understand it.

12 When the divorce decree was drafted and
13 presented to Ms. Floyd, either before or after the judge
14 signed it, she would have automatically recognized that
15 this was subject to a reduction by future disability?

16 A I believe she would.

17 Q Would you have told your client that this is
18 subject to reduction by a future disability?

19 A I would have told my client, probably during
20 the case and prior to trial from an information
21 standpoint, that this is just one of the things you need
22 to know; it's one of the anomalies of the law.

23 Q Probably --

24 A It would keep them from being surprised and
25 getting that phone call later.

1 Q Right. And wouldn't it also impact
2 the negotiating of the resolution of the case outside of
3 the court?

4 MR. BOGDAN: Object to the form.

5 A To me, it would not have, because the law is
6 clear. I don't have, as a practitioner, as I see it, any
7 real leverage of this issue to say I won't seek 60 or 70
8 percent of the Estate or 80 percent if you give me part of
9 the VA disability, so I fail to see how it would
10 materially affect the negotiations when I have no chance
11 to get it.

12 Q Right. Okay. I'm not going -- I'm going to
13 resist to go back into that again; I think we've beaten
14 that horse.

15 A Okay.

16 Q Do you know who drafted the decree?

17 A I do not.

18 Q Did you ask Mrs. Floyd?

19 A I did not.

20 Q And there was no appeal or motion for
21 reconsideration in this case; was there?

22 A I would refer back to the voluminous file.
23 I -- I -- I don't recall there to be one, but the -- you
24 know; if the file says otherwise, then I'm mistaken.

25 Q And I believe it's your contention that there

1 wouldn't be any real relief that would be
2 available; therefore, you wouldn't recommend that such a
3 motion for reconsideration or appeal take place?

4 A That's a correct statement.

5 Can I answer that question further?

6 Q Yeah.

7 A Another reason -- with the order that I read,
8 another reason I wouldn't ask to reconsider, my fear would
9 be the other side would ask the court to reconsider the
10 60/40 distribution in this case.

11 Q So as to make it 50/50 or --

12 A That would be my concern, or somewhere closer
13 to 50/50.

14 Q Did you read Mrs. Greene deposition?

15 A I did.

16 Q And Ms. Floyd's deposition?

17 A I have not seen that.

18 Q Okay.

19 MR. RAVENEL: Do you have Ms. Floyd's
20 deposition handy?

21 MR. BOGDAN: Not on me, but I can get it.

22 MR. RAVENEL: Would you go get it and -- yeah.
23 Would you mind getting it? I'd like to have him read that
24 because I want to make sure that he's had an opportunity
25 to see what she said.

1 MR. BOGDAN: The whole thing?

2 MR. RAVENEL: Yeah.

3 MR. BOGDAN: You're going to -- not right now;
4 are you?

5 MR. RAVENEL: Yeah.

6 MR. BOGDAN: You want him to read the whole
7 deposition right now?

8 MR. RAVENEL: It's not very long.

9 (At this point there is a break in the deposition,
10 during which time the deponent reads the deposition
11 transcript in question.)

12 BY MR. RAVENEL:

13 Q I'm asking Ms. Floyd about the discussions
14 that she had with Mrs. Greene about this agreement, and
15 she simply said she does not recall whether she had such a
16 discussion or not, according to page 34 -- 33, 34 of her
17 deposition. Had it not been discussed, would that have
18 been -- would that have fallen beneath the standard of
19 care?

20 A That's tough for me to answer. Let me say
21 why. It potentially would fall below the standard of
22 care, but, by the same token, wouldn't change the outcome.
23 It would be -- I believe from a standard of care
24 standpoint, you should tell your client the effect of a
25 judge's ruling or the judge's potential ruling or the law

1 in the state of South Carolina. But the fact
2 that I did not -- or Ms. Floyd would not have, here --
3 wouldn't ultimately change the damage, if you will, to --
4 to Ms. Greene. The same circumstance would have befallen
5 her, irregardless of it.

6 Q So I think, taking what you just said and what
7 you said previously, that it would have been nice and not
8 inappropriate to discuss it, but that it wouldn't have
9 altered the outcome?

10 A In this case, I would say that it would not
11 have altered the outcome because there was not a
12 settlement negotiation that ended up in a settlement.
13 They tried these issues, and so it -- it would not change
14 the outcome. It would have nice to know.

15 Q Thank you.

16 But I guess from my standpoint of advising my
17 clients, I would like them to know the potential downside,
18 and, therefore, make them perhaps more flexible in their
19 negotiating posture if they realized that they might get
20 something but end up losing it in the long run and to try
21 to take some action to avoid that?

22 A I would agree with that, from a negotiation
23 standpoint.

24 Q So it would have been useful for her to know
25 that, Mrs. Greene?

1 A It would have been -- it would have
2 been informational, and, certainly, useful.

3 Q Okay. Well, what if Mr. Greene had revealed
4 that he was not doing too well and he might apply for
5 disability; would that have altered your approach?

6 MR. BOGDAN: Object to the form.

7 A I'm not saying that he didn't feel that way.
8 The only place it would have altered my approach -- and
9 again, I -- I stick with the premise that this case was
10 tried and so the negotiations, whatever they were, ended
11 up being immaterial because they tried these issues. At a
12 trial, I would have tried to illicit that information and
13 tried to use it for purposes of disproportionate asset
14 distribution and/or alimony ordered.

15 BY MR. RAVENEL:

16 Q If you were representing Mrs. Greene?

17 A Correct.

18 Q Okay. Do you know whether any inquiry was
19 made to determine what Mr. Greene's condition was?

20 A I don't recall what the transcript says. I
21 don't recall what any discovery would have shown, and I
22 don't recall what Mrs. Greene knew about her husband, at
23 that point.

24 Q Right. My understanding is that there was no
25 deposition taken as a part of discovery; is that right?

1 A If there was, it was not included in
2 my package.

3 Q I think you've answered this, but I've written
4 it down and I'm not sure if it was specifically asked.

5 In your practice, at the time that you were
6 doing domestic work, how did you address the possibility
7 of post-divorce disability of a military spouse and the
8 impact of that on the alimony award -- I mean on the
9 division of the property?

10 A I -- I've always discussed it with clients
11 from an informational standpoint. Again, my fear factor
12 in the past of being sued is clients who get surprises
13 after a divorce decree. And from an -- it's purely from
14 an informational standpoint. In my practice, I've never
15 used it to say, "And this is the direction we need to go
16 on," on other issues. It's simply been, "I can get you
17 this much of the military retirement. If he VAs out,
18 you're going to lose that amount consistent with our
19 current federal law."

20 Q You've had an opportunity to read the
21 deposition of Mr. Sullivan. Are there any other areas
22 that -- are there any areas that you disagree with him on,
23 as far as what the law is, other than what you've
24 mentioned here?

25 A I'm sure there are.

1 Q What are those?

2 A But to go through it piece by piece, I'm not
3 sure without having the deposition in front of me. I
4 could give you the -- the generalities, to the extent he
5 says that Ms. Floyd has deviated from the standard of care
6 for a South Carolina practicing Family Court lawyer.

7 Q Right.

8 A In the *Greene* case, I disagree with that to
9 the extent he testified that, as a result of that breach
10 of care, that Mrs. Greene has been proximately caused
11 damages. I strongly disagree with that to the extent he
12 said there is South Carolina law that puts Ms. Floyd on
13 notice that she should have asked for an indemnification
14 clause or otherwise try to, quote-unquote, "protect" his
15 client. I disagree with that to the extent he says that
16 *Mansell* does not cover this case. I disagree with that
17 assessment.

18 I believe in his deposition he said there were
19 no cases in South Carolina, that he's aware of, on the
20 issue of indemnification. I would agree with that.

21 On his opinions, I think that certainly covers
22 it, from a general standpoint. I don't recall specific
23 opinions past that. I do disagree that -- I apologize;
24 there's one other. I think he said the deviation from the
25 standard of care is that, in closing argument, that

1 Ms. Floyd should have asked for an indemnification
2 clause.

3 I disagree with that on two fronts. Number
4 one, a closing argument is not evidence, and so that's
5 something that should have been elicited during the
6 testimony, if that was your position. Number two, in
7 Family Court in South Carolina, it's a pretty rare day a
8 judge wants to hear closing argument at the end of a one
9 or two or three-day trial.

10 Unlike jury trials, where you're trying to
11 bring the jury back again, I think judges have figured it
12 out by that point and so there's not a lot of closing
13 arguments. In my practice, there is very little closing
14 argument at the trial level.

15 Q But not unheard of?

16 A Not unheard of.

17 Q And if you would request it, do they deny it?

18 A They do not, in my experience.

19 Q If you request it, they don't deny it?

20 A They do not deny it.

21 Q Okay.

22 A You might get a strong push that I've heard
23 enough and I think I've got it figured out, Counsel or --

24 Q Right.

25 A You've walked that tightrope.

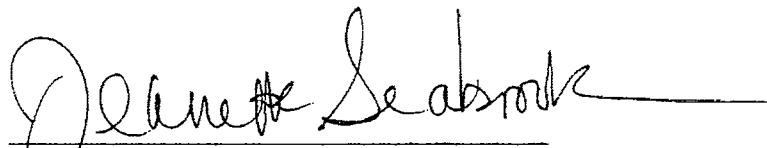
CERTIFICATE OF REPORTER

I, Jeanette Seabrook, Court Reporter and Notary Public in and for the State of South Carolina, do hereby certify that the aforementioned deposition of **TODD MANLEY** was recorded by me and transcribed through computer-aided transcription by me to the best of my ability.

I FURTHER CERTIFY that the foregoing transcript is a true and correct transcript of the testimony given by the said deponent at the time and place specified.

I FURTHER CERTIFY that I am neither attorney nor counsel for, nor related to nor employed by any of the parties to the action in which this deposition is taken, neither am I financially interested in this action.

IN WITNESS WHEREOF, I have set my hand and seal this 5th day of May, 2014.



Jeanette Seabrook
Notary Public for South Carolina
Commission Expires: 7/10/2023

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

HATTIE MAE GREENE,

Plaintiff,

vs.

CASE NO. 2012-CP-10-08372

CINDY M. FLOYD,

Defendant.

DEPOSITION OF: MARK E. SULLIVAN

DATE: December 19, 2013

TIME: 9:16 a.m.

LOCATION: Law Offices of Barnwell, Whaley,
Patterson & Helms
288 Meeting Street, Suite 200
Charleston, SC

TAKEN BY: Counsel for the Defendant

REPORTED BY: Ann P. Harris, NCRA Merit Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

Fast, Accurate & Friendly

Charleston, SC	Hilton Head, SC	Myrtle Beach, SC
(843) 722-8414	(843) 785-3263	(843) 839-3376

Columbia, SC	Greenville, SC	Charlotte, NC
(803) 731-5224	(864) 234-7030	(704) 573-3919

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFF
3 HATTIE MAE GREENE:

4 BAKER, RAVENEL & BENDER
5 BY: D. CRAVENS RAVENEL
6 3710 Landmark Drive, Suite 400
7 Columbia, SC 29204
8 (803) 799-9091
9 cravenel@brblegal.com

10 ATTORNEYS FOR THE DEFENDANT
11 CINDY M. FLOYD:

12 BARNWELL, WHALEY, PATTERSON & HELMS
13 BY: ALISSA D. FLEMING
14 288 Meeting Street, Suite 200
15 Charleston, SC 29401
16 (843) 577-7700
17 afleming@barnwell-whaley.com

18 ALSO PRESENT:

19 Cindy M. Floyd

20 (INDEX AT REAR OF TRANSCRIPT)

STIPULATION

It is stipulated by and between 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.

* * * * *

(DFT. EXH. 1, DEPOSITION NOTICE, was marked for identification.)

MARK E. SULLIVAN,
being first duly sworn, testified as follows:

EXAMINATION

BY MS. FLEMING:

Q. Mr. Sullivan, can you please state your full name for the record?

A. Mark Eugene Sullivan.

Q. And what is your current address?

A. Office or home?

Q. Both.

A. 5511 Capital Center Drive, Suite 320,
Raleigh, North Carolina, is the office address.
208 Emerywood Drive, Raleigh, North Carolina, is

1 the home address.

2 Q. And are you currently practicing law in
3 North Carolina?

4 A. Yes.

5 Q. And so you are licensed to practice law
6 in North Carolina. Are you licensed in any other
7 states?

8 A. Yes, in Ohio. I was licensed in 1971
9 in Ohio, and I was licensed in 1975 or '76 in North
10 Carolina.

11 Q. And do you practice with any specific
12 area of law?

13 A. Yes, I practice in the area of family
14 law, and I have been board certified as a
15 specialist in family law since 1989.

16 Q. And what were the requirements to
17 obtain board certification in family law? Is that
18 in North Carolina?

19 A. That's correct.

20 Q. Okay.

21 A. Recommendations by other attorneys or
22 judges, passing an examination, and continuing
23 education of at least 15 CLE hours per year in the
24 specialty field, are the three main ones that I
25 remember.

1 Q. Okay. And you have maintained that
2 board certification since 19 --

3 A. Since 1989.

4 Q. Eighty-nine, okay. And what is the
5 name of your current law practice?

6 A. Sullivan & Tanner, PA.

7 Q. Okay. And are you licensed to practice
8 law in South Carolina?

9 A. No.

10 Q. Have you ever been licensed to practice
11 law in South Carolina?

12 A. No.

13 Q. Have you ever tried to become licensed
14 to practice law in South Carolina?

15 A. No.

16 Q. Have you given testimony in South
17 Carolina?

18 A. No.

19 Q. Okay. Have you reviewed cases for any
20 attorneys other than Mr. Ravenel in South Carolina?

21 A. I probably have because I am regularly
22 contacted by attorneys who have problems in the
23 area of military divorce. Ken Lester is the one
24 that referred this matter through Mr. Ravenel. He
25 is in Columbia. He and I have consulted on cases

1 together. I have an ongoing case right with Jim
2 McLaren, also in Columbia. Mary Fran Quinlin, in
3 Beaufort, South Carolina, is a friend of mine who
4 consults with me from time to time. Attorneys in
5 Charleston as well.

6 Q. Who in Charleston?

7 A. Okay, the last name is going to be a
8 problem. First name is Diane. I can't remember
9 her last name, but she has consulted with me from
10 time to time. All of these are just attorney
11 consultations. I may have done some research in
12 them. I may have been able to give answers to
13 attorneys without the research. The ongoing one
14 with Mr. McLaren in Columbia may or may not involve
15 some research, which was the start of that military
16 divorce case.

17 Q. So when you say you receive requests
18 for consult from some of the attorneys that you
19 identified who practice in South Carolina, are
20 those attorneys contacting you with regard to
21 ongoing Family Court matters?

22 A. Yes.

23 Q. Okay. And tell me a little bit about
24 what some of those consultations involve, what type
25 of matters.

1 A. When I consult with attorneys and also
2 when I give CLEs in this area, because I have done
3 that in South Carolina as well as nationwide, what
4 they ordinarily talk about are the following
5 things: In a military divorce, the pension is the
6 most valuable asset in the entire marriage in many
7 cases. Allocating the pension, how to divide the
8 pension is the first thing that they usually talk
9 about. When we finish with that, I then talk about
10 second base, which is the survival benefit plan,
11 SBP. A survival benefit plan is an annuity which
12 pays the former spouse if the service member dies
13 before her. The third thing we talk about is
14 indemnification. If he claims disability and the
15 disability reduces her share of the pension, how
16 can we ensure that he reimburses her for that loss
17 due to his claimed disability. After we finish
18 with those, we frequently talk about related
19 issues, such as military healthcare, dividing
20 accrued leave and so on.

21 Q. When you say how to divide the pension,
22 are you looking at issues like number of years of
23 service, equity --

24 A. Yes, years of service is very common
25 in a case like this. With a reserve or guard case,

1 you would be looking at retirement points instead
2 of years of service. In a case like this, you
3 would be talking about how many months of marriage
4 during military service as the numerator of the
5 marital or coverture fraction. The denominator
6 would be total years of service, ordinarily unknown
7 at the time of trial if the individual is still
8 serving.

9 Q. Okay.

10 A. Spouse's share is presumptively
11 50 percent. All of that is multiplied by the final
12 retired pay of the individual at the time that he
13 retires.

14 Q. Okay. And you mentioned that you have
15 given CLE's in South Carolina on these issues?

16 A. I have.

17 Q. What CLE's have you given, and when
18 have you given them?

19 A. I can't recall specifically. I can
20 tell you that I was invited to Columbia about six
21 or seven years ago to speak on a topic called
22 hidden assets in military -- I am sorry, hidden
23 money in military divorce cases, and I made a
24 presentation on that. It was a hot topics program
25 in which each person got up and spoke for 10 or

1 15 minutes on an issue. I have also spoken several
2 times at the regional on-site CLE programs that the
3 Army Reserve has given in Columbia and in
4 Charleston. I have 34 years of commission service,
5 most of it Army Reserve. I am a retired Army
6 Reservist. During those 34 years, I would come to
7 Columbia either to learn or to speak, because one
8 of the mandatory training programs that you have as
9 a reservist in the JAG Corps is to attend the
10 regional on-site, and since I was located in North
11 Carolina, our regional on-sites were always in
12 Columbia or Charleston. So I would sometimes speak
13 and most of the time be in the audience for those.
14 But on the times that I would speak, I would either
15 be talking about military divorce or military
16 pension division or the Service Member Civil relief
17 Act.

18 Q. Okay. And I should back up a few
19 steps. I do have a copy of your most updated CV,
20 and I would like to go ahead and mark some of the
21 documents that were produced in response to the
22 deposition notice December 17th as Defendant's
23 Exhibit 2, and I believe your most updated CV is in
24 that set of documents.

25 (DFT. EXH. 2, DOCUMENTS PRODUCED

1 PURSUANT TO NOTICE, were marked for
2 identification.)

3 A. I also have for you a disc which
4 contains the documents that we are providing
5 pursuant to the subpoena.

6 Q. Okay. And I will go ahead and what I
7 will do is on a break make a copy of the disc,
8 photocopy, and we can mark that as Defendant's
9 Exhibit 3.

10 MR. RAVENEL: If you want to mark it
11 and retain possession of it, that will be fine.

12 MS. FLEMING: I'll do that. That will
13 be fine.

14 Q. And are the documents that are on this
15 disc that is dated 12/19/13 H. M. Greene, are those
16 in addition to some of the documents that were
17 produced on the 17th, or are these different
18 documents?

19 A. They are probably in addition to that.

20 Q. Okay.

21 A. Because it's much more extensive than
22 this.

23 Q. Okay.

24 A. We made some objections, however, to
25 producing some because they were just impossible to

1 do.

2 Q. Okay. And actually I will ask you
3 about those, and if we look at the letter that
4 Mr. Ravenel sent, it does detail some of the
5 objections to the request in the deposition notice,
6 and what was produced on the 17th is Bates labeled
7 Expert Sullivan 208 through 305. So you are saying
8 that the documents on this disc could go beyond
9 305, okay.

10 MR. RAVENEL: You have received those
11 documents previously, I am sure. They are things
12 that we provided to you that he relied upon in
13 coming up with his opinions, and I am sure we
14 provided -- well, some of the things we objected to
15 were like create a list for us of all of the
16 whatever studies you have ever done, or something
17 like that. I can't remember precisely what they
18 were, but we felt like that was inappropriate to
19 ask us as part of a subpoena or a notice of
20 deposition to create lists of things, but subject
21 to those objections, I think we have produced
22 everything that has been given to Mr. Sullivan.

23 A. Also in the disc you will find an
24 entire file that is made up of all of the e-mails
25 back and forth between Cravens and myself. We

1 created a single file for that, and you have
2 everything there.

3 Q. Okay.

4 A. I also brought a copy of my book. I
5 can't let you have it unless you pay for it, but I
6 have brought that because you asked for things that
7 I have written. I also brought this for you, which
8 is a recent writing that I will give for you to
9 keep concerning disability payments.

10 Q. Okay. And this is entitled Journal of
11 American Academy of Matrimonial Lawyers, dividing
12 military retired pay, disability payments, and the
13 puzzle of the parachute pension. And within this
14 publication that you just provided to me, is there
15 anything in this publication that is specifically
16 on point and has a bearing on your opinions in this
17 case?

18 A. Yes.

19 Q. Okay.

20 A. The article itself is very relevant
21 because it talks about the problem that exists when
22 a service member or retiree claims disability
23 payments, and that reduces the share of the pension
24 which is divided with the former spouse.

25 Q. Okay. And the book that you brought

1 that is entitled the Military Divorce Handbook,
2 what edition is that?

3 A. That's the second edition, 2011.

4 Q. Okay, 2011. And are there any sections
5 in this handbook that you believe are relevant to
6 the issues in this case?

7 A. Yes, Chapter 8.

8 Q. Chapter 8?

9 A. Is about property division and pension
10 division.

11 Q. Okay.

12 A. It is over a hundred pages, not
13 including the disc in the back, and it contains
14 information about a problem that arises when a
15 retiree claims disability payments and that reduces
16 the share of the pension.

17 Q. Okay.

18 A. Also in there is an appendix, and I
19 brought a copy of some of the things that we have
20 already provided to you.

21 Q. Okay.

22 A. This appendix, 8 RR, is a selected list
23 of VA waiver cases summarizing what each one says,
24 going back to Owen versus Owen, a 1992 Virginia
25 Court of Appeals case, and carrying forward for

1 several more pages. Each one of these talks about
2 the same issue that we are here on today, which is
3 a claim of disability payments and the reduction of
4 the pension share for the former spouse because of
5 the disability election. And so this is the
6 specific research that I did for the 2011 book that
7 is relevant to the issues that we are here on
8 today.

9 Q. Okay.

10 A. And that is in your materials.

11 Q. And in this appendix regarding review
12 of cases, are there any cases from South Carolina?

13 A. I don't know. I can tell you that
14 there should be, if I wanted to do it thoroughly,
15 because I would have included -- well, I have Price
16 versus Price right there. The Price case from 1996
17 South Carolina Court of Appeals is listed.

18 Q. Okay. Do you mind if I go ahead and
19 mark this?

20 A. That is my copy of it.

21 Q. Okay.

22 A. But yours is on the disc, and it says
23 the same things. For example, on the first page of
24 that packet, you will see in the disc a folder that
25 is called subpoena.

1 Q. Okay.

2 A. And in the subpoena, then you will find
3 each of the folders for each of the numbers that
4 you propounded to us, and you will find the same
5 answer that I have given for each one. You are
6 looking at the resume, which is item number 1 on
7 your subpoena.

8 Q. Okay, great.

9 A. But you can certainly take a look at
10 that while you are doing this, and we can share it
11 while we are going through the deposition.

12 Q. Sure. And just to clarify, could you
13 go back for the record and just tell us your
14 educational background?

15 A. Yes, Kenyon College, graduated in 1968;
16 University of Virginia Law School, I was graduated
17 in 1971.

18 Q. Okay. And then you mentioned that you
19 have served as a JAG officer in the reserves?

20 A. Yes, I have 34 years of commissioned
21 service. I was originally commissioned June 2nd,
22 1968, through college ROTC, and I served until
23 2002, when I obtained maximum seniority, and they
24 had to let me go kicking and screaming.

25 Q. Okay. It looks like from 1972 through

1 1976, you were a military attorney with the U.S.
2 Army at Fort Bragg?

3 A. Yes.

4 Q. Okay. And then following that, from
5 August 1976 through January of 1978, you were an
6 environmental attorney with the National
7 Association of Attorney Generals?

8 A. Correct.

9 Q. Okay. And where did you work in that
10 capacity?

11 A. In Raleigh.

12 Q. In Raleigh, okay. And then from 1978
13 to the present, you have been in private practice
14 in family law?

15 A. Correct.

16 Q. What percentage of your practice
17 involves military, divorces involving military?

18 A. Probably 75 percent.

19 Q. Okay.

20 A. And by that I mean I'm not trying those
21 75 percent or handling them in North Carolina. I'm
22 consulting with people like Dawes and yourself and
23 Cravens, who call me up and say, "I need some help
24 on this. I want to hire you to be my co-counsel or
25 my consultant," or like Jim McLaren, for example.

1 And so I wind up assisting on those cases as a
2 consultant for attorneys in other states or in
3 North Carolina.

4 Q. And when you actually look at your
5 active practice of law versus your consulting
6 practice, what percentage of your practice, of that
7 75 percent of your practice that involves military
8 divorce, what percentage within that 75 percent
9 consists of consulting work versus actual client --
10 when I say client, I mean service member or the
11 nonservice member spouse where you represent
12 another party in a divorce action?

13 A. The 75 percent that I cited to you is
14 virtually all on a consulting basis.

15 Q. Okay. And do you actively represent
16 parties in divorce actions?

17 A. Yes.

18 Q. Okay. And what percentage of your
19 practice?

20 A. Twenty-five percent.

21 Q. Twenty-five percent, okay. And how
22 long has the division of your practice been
23 approximately 25 percent involved in active
24 practice of representing parties in divorce actions
25 versus the 75 percent which is allocated toward

1 consulting with other attorneys regarding issues
2 related to military divorce?

3 A. It hasn't been a stable 75 percent over
4 time. It has grown up to 75 percent. It became
5 larger with the first edition of my book in 2006.
6 It has grown since then, but I haven't kept track
7 of when it reached the 50 percent mark or when it
8 reached the 33 percent mark. I just know that an
9 educated guess now would be about three-quarters of
10 my cases are involved in consulting work for other
11 attorneys.

12 Q. Okay. Now, the 25 percent where you
13 actually represent service member and nonservice
14 member spouse in an active divorce?

15 A. No, the 25 percent is supposed to be
16 other domestic matters.

17 Q. Okay.

18 A. Those would be alimony and child
19 support and custody. I had a guardianship case
20 two weeks ago, and most of those have no military
21 overtones, although some do, but most of them are
22 just ordinary domestic cases that any practitioner
23 would be handling.

24 Q. Okay. If you allow me to finish asking
25 my questions before you talk so that the court

1 reporter can take down testimony, that will be very
2 helpful.

3 When you say of the 25 percent of the
4 cases where you are actively representing a party
5 in a domestic matter, you said most of those cases
6 have no military overtones to them. What
7 percentage of that 25 percent do you think actually
8 involves some type of military issue?

9 A. Probably 10 to 25 percent.

10 Q. Okay. Ten to 25 percent of that 25
11 percent of your total practice?

12 A. Yes.

13 Q. Okay. And for your consulting work, do
14 you advertise that service?

15 A. No.

16 Q. No, okay.

17 A. Not in the traditional sense of
18 advertising. The word gets around. I have written
19 a great number of things. Perhaps by CLEs or
20 knowing people, it is advertised, but if you are
21 asking about paid advertising, no.

22 Q. Okay. And what do you charge per hour
23 for your consulting services?

24 A. \$425 flat fee for the first hour, 375
25 an hour prorated after that for office work, and

1 \$400 an hour for court work.

2 Q. And how much do you charge -- are your
3 rates different when you are actually representing
4 parties in domestic matters?

5 A. No.

6 Q. No? So you charge the same rates that
7 you just described for your consulting work for
8 your other representation of parties in domestic
9 cases?

10 A. Yes.

11 Q. Okay. Now, when you talked about your
12 consulting work, you mentioned that oftentimes you
13 are contacted or referred by one attorney to
14 another on an issue. Have you ever testified as an
15 expert in a legal malpractice case before, before
16 this case?

17 A. No.

18 Q. No, okay. Have you ever been consulted
19 in a legal malpractice case against an attorney?

20 A. I don't remember that I have.

21 Q. Have you ever testified on behalf of an
22 attorney on a legal malpractice case?

23 A. No, I haven't.

24 Q. Have you ever been asked to review a
25 legal malpractice case on behalf of a defendant

1 attorney?

2 A. Yes, I have. There was a case -- I
3 don't remember the name of it, probably 15 or
4 20 years ago -- no, I do remember the last name,
5 Popkin, P-O-P-K-I-N, in which I was defending the
6 attorney involved in a military divorce matter who
7 had overlooked something. I don't remember
8 anything beyond that because it was so long ago,
9 but I do remember that the name of the case was
10 Popkin. Stuart Popkin I believe is the
11 individual's name, S-T-U-A-R-T, and I believe that
12 it was an issue involving his failure to pay
13 attention to something. I was trying to help him
14 explain that it was not negligence.

15 Q. Okay. And do you know where that case
16 was, what state?

17 A. It was in Raleigh, yes.

18 Q. And do you remember the name of the
19 attorney you worked with in defending that?

20 A. I don't remember whether it was an
21 attorney that I worked with or whether I was
22 defending Mr. Popkin myself.

23 Q. Okay. Now, in the group of documents
24 that you have produced that we have marked an
25 exhibit -- I will give you your copy back here --

1 the document that is basically labeled Expert
2 Sullivan 222 through 226, does that represent your
3 most up-to-date curriculum vitae or resume?

4 A. Probably not, because on Monday or
5 Tuesday of this week our office prepared a current
6 copy of my resume and put it on the disc that you
7 have.

8 Q. Okay.

9 A. It gets updated every month because I
10 have some other article published. The only
11 difference would be that there might be something
12 on page 12 here for December of 2013, whereas 12 on
13 this copy shows something from November of '13, but
14 other than that, it's the same.

15 Q. Okay. And other than that, does this
16 copy of your CV through November of 2013 contain
17 all of your publications and courses and CLE
18 presentations that you have given throughout the
19 duration of your career?

20 A. Yes.

21 Q. Okay. And other than the publications
22 that you have referenced today that you have
23 brought with you or referred to, are there any
24 other publications listed on your CV that you
25 believe are relevant to the issues in this case?

1 A. Would you state the question again?

2 Q. Sure. Other than the two publications
3 that you have cited specifically for us today,
4 which was the article from the Journal of American
5 Academy of Matrimonial Lawyers, and then the second
6 edition of your Military Divorce Handbook, are
7 there any other publications listed on your CV that
8 are relevant to the issues that are involved in
9 this case?

10 A. Well, yes, probably a third to a half
11 of the materials that are in the CV have to do with
12 dividing military pensions.

13 Q. Okay.

14 A. And many of those have in them the
15 three points that I mentioned earlier about
16 dividing the pension, SBP, and indemnification. So
17 I would say a good number of the articles that I
18 have listed in the CV contain information that is
19 relevant to this case.

20 Q. Okay. And the two publications that
21 you brought with you today, did you bring those
22 with you because those are the most recent
23 publications that you have done on the subject, or
24 was there something about those that stood out to
25 you?

1 A. I actually brought three publications.
2 We have talked about the article in the Journal of
3 the American Academy of Matrimonial Lawyers, which
4 I brought because it is relevant to the topic of
5 disability payments and reduced pension share. I
6 brought the most recent copy because you asked for
7 it.

8 Q. Okay.

9 A. And I also brought another book that
10 predated my book, and that is what I am handing you
11 now, a book by Marshal Willick, called Military
12 Retirement Benefits in Divorce. I seem to recall
13 it was published around 1997, and that was a
14 predecessor to the first edition of my book.

15 Q. Okay. When you say it was a
16 predecessor to the first edition of your book, did
17 you assist in authoring this book by Mr. Willick?

18 A. No.

19 Q. Do you know Mr. Willick?

20 A. Yes.

21 Q. Okay. And how do you know him?

22 A. He and I go back to 20 years with
23 American Bar Association Family Law Section.

24 Q. Are there any sections in this book in
25 Military Retirement Benefits and Divorce that you

1 have relied upon in forming your opinions regarding
2 this case?

3 A. Yes, page 189.

4 Q. Okay. And on that page it discusses
5 what issue?

6 A. Page 189, in the section before that,
7 starting at 185, talks about disability payments
8 and reduced pension share, and it says on page 19
9 the following: "The bottom line to these cases is
10 that it is incumbent upon the lawyers, particularly
11 the lawyer for the spouse, to anticipate post-
12 divorce status changes and bill that anticipation
13 into the decree." Now, that stood out to me when I
14 read this yesterday in preparation for today's
15 presentation, and I thought that I would bring this
16 because pages 185 to 189 deal with the issue that
17 we are talking about right now, namely post-
18 divorce, disability application by the member, and
19 how the attorney needs to anticipate that in
20 drafting or advising about the decree that the
21 judge issues.

22 Q. Okay. And I would like to reserve the
23 right to make a copy of the front page, as well as
24 the index, and pages 185 through 189.

25 MR. RAVENEL: Just go ahead and give it

1 to her and tell her to make a copy.

2 MS. FLEMING: Okay, that will be fine.

3 I am assuming the copies aren't on the disc.

4 THE WITNESS: No, they are not.

5 MS. FLEMING: Okay.

6 BY MS. FLEMING:

7 Q. Now, Mr. Sullivan, how did you first
8 come about getting involved in this case?

9 A. I got a communication from Mr. Ravenel.
10 He indicated that he had been referred to me by Ken
11 Lester, and he wanted some help concerning a
12 military pension division case.

13 Q. Okay. And what information were you
14 first told about this case by Mr. Ravenel?

15 A. I don't remember what I was told. I
16 know that it is on the disc that you have. It is
17 an e-mail in which he describes that Ken Lester
18 referred the case, and it's a matter of reduced
19 pension payments to Hattie Greene, and in that
20 communication or subsequent communications,
21 Mr. Ravenel said that he wanted to engage my
22 services to consult or be an expert witness in
23 regard to what should have been done in this case
24 to avoid that problem.

25 Q. Okay.

1 A. Or to cure the problem if it's possible
2 to cure it.

3 Q. And did you make any recommendations to
4 him at that time about potentially curing the
5 problem?

6 A. I didn't because at that time I did not
7 have the record of trial.

8 (The defendant, Cindy Floyd, entered
9 the conference room at this time.)

10 Q. I am sorry, you were saying that when
11 you were first contacted by Mr. Ravenel, he asked
12 you about potentially serving as an expert witness
13 or possibly offering ways to cure the reduction in
14 payments to Hattie Greene?

15 A. Yes.

16 Q. You didn't make any recommendations
17 regarding curing the problem at that time because
18 you didn't have a transcript from the underlying
19 hearing?

20 A. That's right. At the beginning of
21 this, and what I am talking about here is the first
22 couple of months of our communications, I knew of
23 the rule for show cause or the rules of show cause
24 Hattie Greene had prepared and filed, and I knew
25 that the judge had denied her request for relief,

1 but I did not have the record of trial, and so I
2 asked Cravens to obtain that so I could find out
3 what went wrong.

4 Q. Okay. And once you reviewed that
5 record of trial, did you make any recommendations
6 about how Ms. Greene could go about potentially
7 curing the problem that she encountered with regard
8 to the reduction in the portion of military
9 retirement pay that she was receiving?

10 A. No, I didn't, because I felt that the
11 judge had already made a ruling, the ruling was
12 clear, and the ruling was 11 years ago. In my neck
13 of the woods you can't come back to the judge
14 11 years later and ask the judge to insert some
15 additional language in a court order, and I
16 suspected it may be similar to that in South
17 Carolina.

18 Q. Okay.

19 A. I pointed out to Cravens the problem
20 that I saw with the presentation made to the judge,
21 and that is contained in my affidavit to Cravens,
22 which is in your materials, and also in the
23 appendix, which is a separate document that I
24 created at a different time. When I reviewed the
25 trial transcript, I took those notes and created a

1 one- or two-page appendix on what happened in the
2 trial, and that's what I pointed out to Cravens
3 when he asked me to prepare an affidavit in support
4 of his case here.

5 Q. Okay. And when you say that once you
6 reviewed the transcript, you didn't really make any
7 recommendations for further relief by Hattie Greene
8 because the ruling had been made over 11 years ago
9 in North Carolina, and you generally can't go back
10 to an order that is 11 years old, have you
11 discussed that issue with any attorneys practicing
12 in South Carolina, whether there is opportunity to
13 revisit a prior court order, to request additional
14 language or a change in language?

15 A. No, I haven't.

16 Q. Okay. And do you have any
17 understanding of whether there is a possibility of
18 even pursuing that type of action in South
19 Carolina?

20 A. No, I don't.

21 Q. Would that be important for you to know
22 in rendering opinions in this case?

23 A. I don't know how to answer that because
24 my opinions in this case have to do with whether
25 there was negligence at the time of the trial or

1 the time of the preparation of the decree, or
2 whether that caused damages, whether the conduct of
3 the defendant was directly related to those
4 damages, and whether there was a duty to protect
5 the client. I think that the issue that you are
6 asking about is relevant to what a defense attorney
7 would do, which is called claims repair, and that
8 is before the case gets too far down the road to
9 make an application to the Court to add wording,
10 which would make it clear that the ex-husband is
11 obligated to pay a share of the gross retired pay
12 to the former spouse, and that if he does anything
13 to reduce her 60 percent share, then he will
14 reimburse her, but it's not the same thing as my
15 testifying about whether there was negligence.

16 Q. Okay. So you haven't offered any
17 opinions regarding any curative measures that could
18 be taken with regard to that order from a
19 retrospective standpoint?

20 A. Correct.

21 Q. Do you intend to offer any opinions on
22 that issue at the time of trial?

23 A. No, it is not my present intention to
24 do that.

25 Q. Okay. Before we start talking about

1 your opinions in more detail, what materials have
2 you reviewed regarding this case?

3 A. All of the correspondence that Cravens
4 sent to me.

5 Q. Okay.

6 A. The Tirado and Price cases, the trial
7 transcript, the depositions of Joseph Greene and
8 Hattie Greene, a portion of Roy Stuckey's
9 manuscript on military pension division in South
10 Carolina, and also the court documents which
11 Mr. Ravenel provided to me.

12 Q. And when you say court documents, are
13 you referring to the court documents from the
14 underlying Family Court matter?

15 A. Yes.

16 Q. And in the process of reviewing those
17 materials, was there anything that you felt that
18 didn't have or that you needed in order to finalize
19 your opinions regarding the case?

20 A. Are you asking is there anything now
21 that I am missing, or are you asking whether early
22 on I asked Cravens to provide me additional
23 material that I didn't yet have?

24 Q. Both issues actually.

25 A. The one that stands out to me is the

1 issue of the trial transcript. I told him early on
2 that I had to see what happened in the trial
3 transcript to be able to give a better idea whether
4 I felt that the conduct of the defendant was
5 negligent, and so he provided that to me, and as a
6 result of that, in reviewing the arguments that
7 were made, I was able to make a conclusion on
8 negligence. I do not feel now that I am missing
9 anything that is necessary to render an opinion.

10 Q. Okay. And you mentioned the transcript
11 of a publication by Roy Stuckey in South Carolina.
12 Was that a document that you requested, or was that
13 something that Mr. Ravenel provided to you?

14 A. He provided it to me.

15 Q. Okay. And did you review that
16 manuscript?

17 A. Yes.

18 Q. And was there anything in that
19 manuscript that you relied upon in formulating your
20 opinions related to this case?

21 A. Yes, I relied on the pages about
22 military retirement benefits.

23 Q. Okay.

24 A. And I am going to identify that for
25 convenience.

1 Q. Okay.

2 A. If that's all right with you.

3 Q. And just to clarify, that publication
4 is called -- can you identify that publication for
5 the record?

6 A. Marital Litigation in South Carolina,
7 Substantive Law, Third Edition by Professor Roy T.
8 Stuckey. The particular pages that were relevant
9 to this case are pages 289 to 292.

10 Q. If you can say that again, 2 --

11 A. 289 to 292.

12 Q. Okay, 289 to 292?

13 A. Yes.

14 Q. Okay. And was there information within
15 those pages that you specifically relied upon in
16 formulating your opinions regarding this case?

17 A. Yes, those pages.

18 Q. Okay. And what specifically within
19 those pages did you rely upon?

20 A. Well, I relied on all of those pages,
21 but of the most relevant portion of that, I would
22 say I relied on page 292. I did not rely on
23 specific wording in that page, rather I relied on
24 the fact that the Price case and the Tirado case
25 are both mentioned there and both deal with the

1 issue that we are talking about today.

2 Q. Okay.

3 A. And that is the post-divorce election
4 of disability benefits which causes a reduction in
5 the share of the former spouse of the military
6 pension.

7 Q. Okay. And what is your understanding
8 of what Price -- you mentioned Price and Tirado
9 several times. I am just curious about what your
10 understanding of those cases is, and you referenced
11 the fact that they both have to do with the post-
12 divorce election of disability retirement.

13 A. Yes. The Price case came about first.

14 Q. Okay.

15 A. That was in 1996. The Price case dealt
16 with a division of military retired pay that was
17 premised upon the gross retired pay of the service
18 member, and that's one of two things that must be
19 considered by an attorney who practices in this
20 area in arguing to the Court or in drafting the
21 order for the Court, dividing the gross retired
22 pay. The second was not mentioned in Price
23 specifically, and that is requiring an
24 indemnification clause in the order as well, but
25 the Price case flags the issue that you may divide

1 gross retired pay, and if you do, then the
2 ex-husband can be later required to reimburse the
3 former spouse for any reduction of her share of the
4 pension due to disability elections by the
5 ex-husband.

6 Q. Okay. And just to clarify, did Price
7 involve an indemnification clause?

8 A. I don't think it did. I think it had
9 to do with the gross retired pay, and the way I
10 would explain that is this: This is called the
11 belt and suspenders approach. If you want to do it
12 right, the best way to do it is to divide gross
13 retired pay and to require indemnification if there
14 is any later reduction in the former spouse's share
15 due to disability elections. Those are the two
16 components that I would say are important for the
17 attorney that does this. The Price case dealt with
18 the first of those. The pension was divided on a
19 gross pension basis, and therefore later on the
20 Court required indemnification because the
21 ex-husband took a disability election, which
22 reduced the former spouse's share.

23 Q. Okay. Now, when you use the term
24 "gross retired pay," what does that term mean?

25 A. Gross retired pay means the full

1 military pension that is given to an individual
2 after his longevity service in the military. It is
3 before any deductions.

4 Q. Okay. And explain why the use of the
5 term "gross retired pay" -- that amount has to do
6 with the full military presentation prior to any
7 deductions. So are you saying that if you use the
8 term "gross retired military retirement pay," that
9 any later conversion to disability would not cause
10 a reduction in the amount to the former spouse?

11 A. Let me explain that. First of all, it
12 is not a conversion to disability. The actual
13 issue is the election of disability payments, and
14 under current law, if the disability rating from
15 the Department of Veterans Affairs is less than
16 50 percent, then that election of disability
17 payments requires a waiver on a dollar-for-dollar
18 basis of any military retired pay.

19 There are two important terms the
20 practitioner must know in order to do business in
21 this area, gross retired pay and disposable retired
22 pay. As I have mentioned, gross retired pay is
23 full retired pay without any deductions.
24 Disposable retired pay is defined in 10 U.S. Code,
25 1408(a)(4), which is the definitional section of

1 the Uniform Services Former Spouse's Protection
2 Act. Disposable retired pay is gross retired pay
3 less five statutory deductions, five statutory
4 items that come out of gross retired pay before you
5 arrive at disposable retired pay or DRP.

6 Disposable retired pay is what is divided at the
7 Retired Pay Center, which is DFAS, Defense Finance
8 and Accounting Service, in Cleveland, Ohio. And
9 one of those deductions from gross retired pay to
10 arrive at disposal retired pay is any VA waiver.

11 Q. Okay. And before we go down that road
12 any further, I wanted to ask you, when you first
13 reviewed the trial transcript and some of the other
14 documents in forming your opinions related to the
15 case, did you have the benefit of speaking with
16 Hattie Greene or Joseph Greene?

17 A. I have never spoken with Joseph Greene.
18 I don't think I have spoken with Hattie. I believe
19 all of my contacts have been through Cravens and
20 the written materials.

21 Q. Did you have the deposition transcripts
22 of either Joseph or Hattie Greene at the time that
23 you prepared your affidavit that was filed in
24 support of the complaint?

25 A. No.

1 Q. Okay. Did you ever ask to speak with
2 Hattie Greene or Joseph Greene?

3 A. No.

4 Q. So prior to completing the affidavit
5 that was filed in support of your complaint, I
6 think it was in October of 2012, what materials had
7 you reviewed or relied upon in formulating your
8 opinions regarding the case?

9 A. First and foremost, the trial
10 transcript. In addition to that, the court order
11 dividing military retired pay, or orders, as well
12 as the rule for show cause applications and
13 decisions that Hattie Greene had filed, and other
14 court papers that Mr. Ravenel provided to me as
15 well as the correspondence that he gave me,
16 information that he gave me about the case. All of
17 those things produced on the disc for you are
18 things that I relied on for the affidavit that I
19 prepared.

20 Q. Okay. And when did you have the
21 opportunity to review the depositions of Hattie and
22 Joseph Greene?

23 A. In the last week.

24 Q. Did any of the testimony offered by
25 Joseph or Hattie Greene change your opinions in any

1 way?

2 A. No.

3 Q. Okay. And what are your opinions
4 regarding this case?

5 A. There was a duty to protect the client.
6 The defendant failed to carry out that duty. Among
7 the problems that led to the failure to comply with
8 that duty was the closing argument of the
9 defendant, which focused on a girlfriend issue
10 instead of on the indemnification issue. The time
11 for making an argument about reimbursement or
12 indemnification is at closing argument. That was
13 not done. The order of the court contained no
14 language about gross retired pay, and it should
15 have been done pursuant to the Price case. It
16 contained no language about indemnification, which
17 should have been in there as well. As a result,
18 Hattie Greene suffered damages to the extent of
19 the reduced pension share that she receives every
20 month. She is getting 60 percent of a lower amount
21 than 60 percent of the gross retired pay of Mr.
22 Greene, and failure of the order to contain both of
23 those terms, gross retired pay and indemnification,
24 then led subsequent judges to rule against her in
25 her rule for show cause applications because they

1 had no guidance from the initial judge on the
2 Court's intention that Mr. Greene should not be
3 able to reduce his retired pay by electing
4 disability payments and thereby reduce Hattie
5 Greene's share of his pension.

6 Q. And do you know anything about
7 Ms. Floyd's experience with military divorce and
8 the division of military pensions?

9 A. No.

10 Q. Have you asked anyone to provide you
11 information about her experience level in handling
12 this particular matter?

13 A. No, I haven't.

14 Q. We talked a little bit about Price and
15 Tirado. Did Tirado involve an indemnification
16 clause?

17 A. No, it did not. The Tirado case
18 involved the situation where the individual was
19 already receiving a 10 percent disability rating at
20 the time the settlement was executed, and it
21 referred only to military retirement in distinction
22 to the Price case, which specifically mentioned
23 gross retired pay.

24 Q. Are you doing okay?

25 A. Yes.

1 Q. Okay. If you would like to take a
2 break at any point, just let me know.

3 A. Sure.

4 Q. We have been going a little over an
5 hour.

6 You mentioned with regard to your
7 opinions that Cindy Floyd had a duty to protect the
8 client, and among those issues was the failure to
9 request -- in closing argument to request an
10 indemnification clause. What facts existed at the
11 time that should have caused Ms. Floyd to request
12 an indemnification clause?

13 A. Any number of things.

14 Q. Okay.

15 A. Let's start out with South Carolina
16 case law. An attorney has a duty to be familiar
17 with case law involving a subject matter of the
18 case that she is handling. That includes knowledge
19 of the issues raised in the Price and Tirado cases.
20 Reading those cases, being aware of the issue that
21 came up in those cases would lead an attorney to
22 say that she needed to ensure that there was an
23 indemnification clause in the court order and that
24 the court order refers specifically to gross
25 retired pay. In addition to that, CLE materials,

1 such as that of Professor Stuckey, would be another
2 source of alerting the attorney to the problem.
3 Another would be the existing nationwide treatise
4 at the time, which is Marshal Willick's book on
5 military retirement benefits. This was published
6 in 1997. The divorce in this case was 2002. This
7 was the book on the street at that time, which was
8 available for an attorney who did not know enough
9 about the issue and needed help to ascertain the
10 best way of defending and protecting her client.
11 All of these books and cases would have alerted an
12 attorney that there is a problem here that needed
13 to be addressed by arguing for gross retired pay
14 and indemnification, and to the extent that an
15 attorney can, in South Carolina, or in this
16 particular case, asking the Court in a draft of the
17 court order to insert that. I do not know if Cindy
18 Floyd took that step and whether it was accepted or
19 rejected. That is beyond my knowledge. I am
20 simply saying that the best approach on something
21 like this would be to argue specifically for it, to
22 let the judge know that this is a problem, and then
23 in case the judge didn't get the message, also to
24 take a look at the order which the judge prepares
25 or counsel prepares, and try to insert both of

1 those provisions in there, gross retired pay and
2 indemnification, or at least one of them.

3 Q. Okay. What was your understanding of
4 Mr. Greene's health at the time of the hearing in
5 2002?

6 A. I believe that at the time, he was
7 suffering from hearing loss and was having
8 nightmares due to posttraumatic stress disorder.

9 Q. And where did you obtain that
10 information?

11 A. From the deposition of Hattie Greene
12 and Joseph Greene.

13 Q. Okay.

14 A. I prepared notes concerning my review
15 of those, and the notes are in your materials also.
16 Those are typed notes that I took in the last week
17 when I reviewed those, and that is in your
18 materials there.

19 Q. You are talking about on the CD that
20 you produced today?

21 A. Yes.

22 Q. For the first time?

23 A. That's right, and I produced the page
24 references in them. For example, if you see
25 58:1-3, that means it is on page 58 of the

1 deposition, lines 1-3.

2 Q. What facts of this case should have put
3 Cindy Floyd on notice that the election of
4 disability was going to be an issue?

5 A. There were no facts. From those two
6 depositions, I cannot find anything that would have
7 told Cindy Floyd this guy is suffering from X or Y.

8 Q. Okay.

9 A. I looked, and I can't find it. So the
10 answer is, it was not facts that should have put
11 her on notice; it was the law that should have put
12 her on notice.

13 Q. And Mr. Greene, what is your
14 understanding of when Mr. Greene had actually
15 obtained a disability rating?

16 A. 2010, 2011 is what he testified was the
17 time frame for his obtaining disability ratings.

18 Q. Okay. Now, I think we talked about
19 Price somewhat and Tirado. Are there any cases, to
20 your knowledge, in South Carolina that deal with an
21 indemnification clause?

22 A. I can't think of any right now. I am
23 sure I could do some research to find that out, but
24 I don't recall any right now.

25 Q. Have you done any research regarding

1 the case law in South Carolina pertaining to
2 indemnification clauses?

3 A. I probably did a year ago when I was
4 working up the affidavit. I don't remember
5 specifically what research I did. I know that I
6 came across these two cases. There are probably
7 some other cases in South Carolina that I went
8 through as well, but I don't remember their names.

9 Q. Okay. Do you have any understanding of
10 whether indemnification clauses are routinely
11 adopted in court orders in South Carolina?

12 A. I don't have any understanding one way
13 or the other.

14 Q. Actually I think I would like to take a
15 quick break.

16 A. Sure.

17 (A recess transpired.)

18 BY MS. FLEMING:

19 Q. Mr. Sullivan, just for clarification,
20 we were talking about the hearing transcript from
21 the underlying Family Court case, and you mentioned
22 that Cindy Floyd should have made certain arguments
23 at closing. Do you recall that testimony?

24 A. Yes.

25 Q. And just for the record, you referenced

1 the defendant in that case making arguments to the
2 Court. When you referenced that, were you
3 referring to Cindy Floyd making arguments to the
4 Court?

5 A. Thank you for asking that. When I
6 speak of the defendant, I am speaking of the
7 defendant in this case, Ms. Floyd. I was not
8 referring to Joseph Greene or Hattie Greene in that
9 case. And if I do, I will be referring to them by
10 name rather than by party, to keep it simple.

11 Q. Great. Thank you so much. I just
12 wanted to make sure the record was clear on that
13 issue.

14 Now, you mentioned that at closing
15 argument Cindy Floyd requested the indemnification
16 clause, and that the order states refer to gross
17 retired pay rather than the disposable retired pay;
18 is that correct?

19 A. Yes.

20 Q. Okay. Now, have you reviewed
21 Mr. Greene's financial declaration that he filed
22 with the Family Court in support of that separation
23 of marital assets?

24 A. I did, but it was over a year ago.

25 Q. Okay.

1 A. I seem to remember that I put something
2 about that in the summary I attached to the
3 affidavit I prepared, and I seem to recall
4 something about the financial declaration showing a
5 monetary amount, which would be his retired pay.

6 Q. And we can look at that if that would
7 be helpful.

8 A. Sure.

9 Q. And I think you had referred in your
10 affidavit to the potential that Mr. Greene had
11 declared a certain portion or amount of his pay as
12 disability?

13 A. I remember seeing in the affidavit
14 something about that was probably his VA
15 disability, and that would not be a correct
16 statement in light of the affidavits that I just
17 finished reading because I remember that Mr. Greene
18 said that it was 2010 or 2011 where he applied for
19 VA disability compensation.

20 Q. Okay.

21 A. So if I could correct that statement,
22 there wouldn't have been any financial deduction on
23 the original declaration showing VA disability
24 waiver because this would have been done in 2002.

25 Q. Okay.

1 A. And that was eight or nine years before
2 he got his disability rating and received
3 disability compensation from the VA.

4 Q. Okay. I would like to go ahead and
5 mark the financial declaration of Joseph Greene as
6 Exhibit 5.

7 (DFT. EXH. 5, MILITARY RETIREMENT
8 BENEFITS, was marked for identification.)

9 Q. So as we were talking earlier, you
10 mentioned that Mr. Greene's disability rating came
11 several years after the hearing regarding the
12 separation of marital property?

13 A. Yes.

14 Q. Okay. And you were saying that there
15 were no facts that should have put Cindy Floyd on
16 notice but that the law in South Carolina should
17 have put her on notice to request indemnification?

18 A. Let me clarify that.

19 Q. Okay.

20 A. The facts that could have put Cindy
21 Floyd on notice was the fact that Mr. Greene served
22 20 years in the Marine Corps.

23 Q. Okay.

24 A. The Marine Corps, of all of the
25 branches of service, is the hardest service on

1 putting stress and strain and pain on the body.
2 Every marine goes through the same basic combat
3 training. Every marine, whether cook or lawyer,
4 has to be able to pick up a rifle and fight.
5 That's not true in the Air Force or even in the
6 Army JAG Corps, but in the Marines, you are
7 expected to be a fighter as well as a truck driver,
8 and my experience tells me that the Marine Corps is
9 the one branch of the service where you get a large
10 number of people who have VA disability
11 compensation claims. Now, I cannot tell you
12 whether that should have alerted Cindy Floyd or
13 not. I know that that is a fact that I would take
14 into account, but I have to explain that I do this
15 for a living, military divorce work. I can't tell
16 you whether that fact in of itself should have been
17 enough to tell Cindy Floyd there might in the
18 future be a potential claim for disability
19 compensation from the Department of Veterans
20 Affairs, but that is one fact that stands out.

21 Q. Okay. And that would be just serving
22 in the Marine Corps for 20 years, that fact?

23 A. Yes.

24 Q. And are you familiar with Mr. Greene's
25 position while he was in the Marine Corps?

1 A. I seem to recall the affidavit saying
2 something about trucks, whether he was the chief of
3 the truck section or something like that. I
4 believe he was in charge of transportation and
5 trucks, and I also recall him saying that he was in
6 Afghanistan and served at Mogadishu.

7 Q. Do you know what he did in Afghanistan
8 and Mogadishu?

9 A. No.

10 Q. Can you say to a reasonable degree of
11 certainty most probably that individuals who serve
12 in the U.S. Marines are more likely to suffer some
13 type of injury that subsequently leads them to
14 obtaining a disability rating?

15 A. I believe that's a correct statement.

16 Q. And what do you base that statement on?

17 A. On my experience over 30 years doing
18 military divorce cases.

19 Q. Okay. Are there any publications that
20 support that opinion?

21 A. No.

22 Q. And in the cases that you have handled,
23 what percentage of those military cases have
24 involved individuals who served in the U.S. Marines
25 versus other branches of the U.S. military?

1 A. I don't know, and to be clear, I don't
2 think it is fair for me to say that Cindy Floyd
3 ought to have pulled out a crystal ball and known
4 in advance that this was going to happen. From the
5 facts that she was given, I'm not saying that her
6 knowledge of his prior service in the Marine Corps
7 should have triggered some heightened degree of
8 awareness. I know that, but I wouldn't think it
9 fair to accuse another attorney of not being aware
10 of the heightened potential of disability claim
11 because of Marine Corps service as opposed to Army
12 or Coast Guard service. As I've said earlier, it
13 is not a factual trigger that we are talking about,
14 it's the law and the potential for this occurring
15 as illustrated in the Price and Tirado cases that I
16 am concerned with.

17 Q. Now, when you talk about the law, you
18 mentioned the Price and Tirado cases, which are two
19 South Carolina cases, and you have also mentioned
20 an existing treatise, which was the Willick book,
21 as well as CLEs, and you have already told us that
22 you did review Roy Stuckey's publication in the
23 South Carolina -- I have forgotten the name of the
24 book exactly, The Marital Litigation in South
25 Carolina. Does Mr. Stuckey in that publication

1 talk about VA disability pay?

2 A. Yes, he does.

3 Q. Okay. And does he mention or discuss
4 indemnification clauses or reimbursement clauses in
5 his publication?

6 A. I don't see any mention of it on pages
7 291 and 292, which are the two pages that refer to
8 the VA disability compensation.

9 Q. Okay. And do you know when this third
10 edition was published?

11 A. No.

12 Q. Now, we talked a little bit about Price
13 and Tirado. What is your understanding with regard
14 to whether Price and Tirado involved a prior
15 disability rating prior to the parties actually
16 reaching an agreement regarding property
17 distribution?

18 A. My understanding is that there was a
19 prior 10 percent disability rating in the Tirado
20 case at the time that the settlement was reached.

21 Q. All right.

22 A. And that there was not in the Price
23 case.

24 Q. Now, did Tirado or Price, did they
25 involve -- did the parties in those cases reach

1 agreements that became part of a court order?

2 A. I believe that's the case.

3 Q. Okay. Do you have any understanding
4 regarding in this case whether Hattie and Joseph
5 Greene had reached a similar type of agreement
6 prior to there becoming a court order?

7 A. It is my understanding that they
8 reached an agreement about life insurance and the
9 survivor benefit plan, but they did not reach an
10 agreement concerning division of the military
11 retired pay, which necessitated the trial in this
12 case.

13 Q. Okay. Does the Family Court have
14 jurisdiction to divide disability pay?

15 A. No, it does not.

16 Q. Is there any authority in South
17 Carolina that supports your opinion for the
18 inclusion of an indemnification clause in a final
19 order of property division?

20 A. Could you restate the question? I'm
21 not sure I understand what you are asking.

22 Q. Sure. Is there any case law that you
23 are aware of in South Carolina that addresses the
24 issue of the inclusion of an indemnification clause
25 in a final order of division of property, marital

1 property?

2 A. I can't tell you the name of any case.
3 I'm not going to say that there isn't, but I have
4 not done research on that.

5 Q. Okay. We talked a little bit about the
6 parties reaching an agreement that is eventually
7 rolled into or incorporated into a court order.
8 What effect does an agreement reached by the
9 parties have on becoming adopted into or being a
10 part of a court order?

11 A. I am not sure I can answer that because
12 I am not licensed in South Carolina. I know the
13 general results, and I know the results in North
14 Carolina, but I can't tell you the effect of an
15 agreement reached by the parties then being
16 incorporated into a court order in South Carolina
17 because that is a matter of South Carolina law.

18 Q. Okay. Would you tell us how it works
19 in North Carolina?

20 A. In North Carolina, an agreement of the
21 parties incorporated into a separation -- excuse
22 me, into a court order becomes a part of the court
23 order, it is enforceable in all respects as any
24 other court order that would have been the result
25 of a trial, and if modifiable at all, it can only

1 be based on substantial change of circumstances
2 since the time of the injury in the order.

3 Q. Okay. Do you have any understanding in
4 Family Court in South Carolina in 2002 how a judge
5 would typically issue an order?

6 A. No.

7 Q. Okay. Now, we talked about in closing
8 argument that Cindy Floyd should have asked or
9 argued for inclusion of the indemnification clause
10 and that the order referred to gross retired pay
11 rather than disposable pay. Could you tell us the
12 difference between the gross retired pay -- you
13 already have -- and the disposable retired pay, and
14 how inclusion of a language regarding gross retired
15 pay would have changed the outcome in this case?

16 A. Yes. The gross retired pay in this
17 case is what should have been requested to be
18 divided in court, and that would mean that
19 regardless of subsequent deductions from that gross
20 retired pay, Mr. Greene would have been obligated
21 to pay 60 percent of the gross retired pay to
22 Hattie, and even if the Defense Finance and
23 Accounting Service deducted amounts from that for
24 the VA waiver, he would still independently have
25 the obligation to directly pay to Hattie the

1 difference.

2 Q. Okay. And what authority in South
3 Carolina supports that position, or that opinion?

4 A. Price versus Price, and to a lesser
5 extent Tirado versus Tirado. There may be other
6 cases as well. Again, I am not speaking as a
7 research expert on it, but I know those two cases
8 make it clear that gross is what needs to be
9 requested.

10 Q. Can the division of property be changed
11 or altered in South Carolina after it is
12 incorporated into a final order?

13 A. I don't know the answer to that. It
14 would be a South Carolina law question.

15 Q. Okay. Based on your understanding of
16 the length of Hattie and Joseph Greene's marriage
17 and the statutory law, what portion or what share
18 of Joseph Greene's military retirement benefits was
19 Hattie Greene actually entitled to?

20 A. While that is a question of South
21 Carolina law, I think that what you are looking for
22 is how long were they married during military
23 service, which I believe was 17 years. He was in
24 for 20 years. So at least in North Carolina, the
25 answer would be 17/20ths is the marital share of

1 the pension, and the spouse is presumptively
2 entitled to a 50 percent portion of that marital
3 share.

4 Q. Okay. And how much was Hattie Greene
5 awarded by the Family Court in 2002?

6 A. Sixty percent.

7 Q. So that would be more than what she was
8 statutorily entitled to based on her years of
9 marriage?

10 A. You are asking me to assume knowledge
11 of South Carolina law, which I can't tell you. I
12 can say generally you are probably correct in terms
13 of the law, but I can't speak to South Carolina's
14 equitable apportionment of retirement benefits or
15 the rules for equitable distribution in South
16 Carolina.

17 Q. Have you seen in your experience awards
18 of greater than 50 percent of the marital --

19 A. Yes.

20 Q. Is that fairly common?

21 A. No.

22 Q. Okay. And what factors in your
23 experience often lead to an award of more than
24 50 percent of the military pension?

25 A. Sometimes an issue of unfaithfulness is

1 the reason. Sometimes economic disparity is a
2 reason. Those are the two that come to mind in the
3 nationwide cases that I keep track of involving an
4 award of greater than 50 percent.

5 Q. Okay. Now, is it your opinion to a
6 reasonable degree of certainty most probably that
7 had Cindy Floyd made an argument for the inclusion
8 of an indemnification clause, that the judge would
9 have incorporated that clause into the final order?

10 A. I can't say that. I don't know what
11 the judge would have done.

12 Q. Okay. And likewise, is it your opinion
13 to a reasonable degree of certainty most probably
14 that had Cindy Floyd argued for the division of the
15 gross military retired pay rather than the
16 disposable retired pay, that the judge would have
17 incorporated that specific term into the order?

18 A. Again, I don't know what the judge
19 would have done.

20 Q. Okay. And I think in your affidavit
21 you mentioned that had she made those arguments and
22 the judge denied the inclusion of an
23 indemnification clause or the terminology of gross
24 retired pay, that the remedy would have been an
25 appeal?

1 A. No, I didn't say that.

2 Q. Okay.

3 A. I said that she would have consulted
4 with her attorney -- with her client about an
5 appeal.

6 Q. Okay. So I am sorry, could you say
7 your full opinion, just clarify your full opinion
8 on that, the issue regarding an appeal?

9 A. That if the judge refused to allow an
10 indemnification clause and/or the disability --
11 excuse me, and/or the division of gross retired
12 pay, then she would have a duty to consult with the
13 client about whether to take an appeal of the
14 refusal of the Court to grant that. That in itself
15 would be an issue of South Carolina law, which I am
16 not allowed to give opinions on, to see whether or
17 not the Court of Appeals then could take up the
18 issue of a refused request for division of gross
19 retired pay or indemnification clause.

20 Q. Okay. And so just to clarify, what
21 percentage of orders in Family Court in South
22 Carolina regarding the division of property
23 actually are successfully appealed?

24 A. I don't know the answer to that.

25 Q. Okay. So had the judge refused to

1 allow for the inclusion of an indemnification
2 clause and Hattie Greene had the opportunity to
3 consult with Cindy Floyd about the potential for an
4 appeal, can you say to a reasonable degree of
5 certainty most probably whether that denial of the
6 inclusion of an indemnification clause would have
7 been successfully appealed?

8 A. I don't know.

9 Q. Okay. And so I am sorry, you can't say
10 to a reasonable degree of certainly most probably
11 whether that appeal would have been successful?

12 A. That's correct.

13 Q. Likewise, if the judge had refused to
14 incorporate the language regarding the gross
15 retired pay rather than disposable pay into the
16 final order and Hattie had the opportunity to
17 discuss with Cindy Floyd the possibility of an
18 appeal, can you say to a reasonable degree of
19 certainty most probably whether that issue would
20 have been successfully appealed?

21 A. I cannot.

22 Q. Okay. Now, I think in your affidavit
23 you also talked about other opportunities that
24 Cindy Floyd -- or that would have arisen that may
25 have given Cindy Floyd the opportunity to present

1 or try to incorporate the indemnification clause or
2 the gross retired pay language into the final
3 order. Do you recall those opinions?

4 A. I don't understand the question.

5 Q. Sure. I think you said in addition to
6 the closing argument, that when the order was being
7 drafted, she could have inserted language for the
8 judge's consideration?

9 A. Yes. What I meant to say is that if
10 she had been given the opportunity to review the
11 order, whether prepared by the judge or opposing
12 counsel, or if she had been given the opportunity
13 to draft the order, as is common in North Carolina
14 for the prevailing party, she would have had
15 another opportunity to insist upon one of those two
16 approaches in the preparation of the order to be
17 signed by the judge.

18 Q. Okay. And had she been given the
19 opportunity to review the order and request -- had
20 she requested the inclusion of the language
21 concerning the indemnification clause, can you say
22 to a reasonable degree of certainty most probably
23 whether the judge would have incorporated the
24 terminology for the inclusion of the
25 indemnification clause into that order?

1 A. No.

2 Q. Okay. And likewise, had she tried to
3 propose or insert language concerning the gross
4 retired pay rather than the disposable retired pay
5 into that order, can you say to a reasonable degree
6 of certainty most probably whether the judge would
7 have included that language in the order?

8 A. No.

9 Q. Do you have any understanding of what
10 information Hattie Greene discussed with Cindy
11 Floyd regarding the division of Joseph Greene's
12 military pension benefits?

13 A. No.

14 Q. Okay. Would it be important for you in
15 forming your opinions to have an understanding of
16 what Hattie Greene's concerns were regarding the
17 military pension benefits?

18 A. It would be important for me to know if
19 Hattie Greene brought up something concerning
20 disability claims.

21 Q. Okay.

22 A. But it is so unlikely that a client is
23 going to know about this, which is uniquely the
24 province of a lawyer instead of a client, that I
25 recognized exactly what Hattie was saying in her

1 affidavit when she said, "I left that to Ms.
2 Floyd."

3 Q. And you are saying in her deposition
4 transcript?

5 A. I am sorry, yes, you are right, in the
6 deposition transcript that I read of Hattie Greene,
7 she said she left that to the attorney, Ms. Floyd.

8 Q. Okay. Other than the opinions that you
9 have shared with us today, do you have any other
10 opinions that support your testimony in this case?

11 A. Not that I can think of.

12 Q. Okay. Do you intend to testify
13 regarding the damages suffered by Hattie Greene?

14 A. No.

15 Q. Okay. And I would like to just go
16 through some documents that have been produced
17 prior to today and clarify a few issues with you.
18 I think that you provided us with an affidavit in
19 support of the plaintiff's complaint in this case,
20 and can you identify that document for the record,
21 please?

22 A. Yes, this is a nine-page document with
23 the initial caption "Hattie Greene Case: Affidavit
24 of Mark E. Sullivan," and I submitted this to Mr.
25 Ravenel in the support of the claim for negligence

1 in this case.

2 Q. Okay. And is this document that is
3 entitled "Hattie Greene Case: Affidavit of Mark
4 Sullivan," is this the final affidavit that you
5 completed with regard to your opinions in support
6 of the plaintiff's complaint?

7 A. Yes.

8 Q. Okay. I would like to go ahead and
9 mark the affidavit for the record as Defendant's
10 Exhibit 7, please.

11 (DFT. EXH. 7, AFFIDAVIT OF MARK E.
12 SULLIVAN, was marked for identification.)

13 Q. Okay. Now, I think that we were
14 provided with maybe a prior copy of an affidavit or
15 a prior affidavit, if I can find it. Would you
16 mind identifying that document for the record,
17 please?

18 A. This is a ten-page document that is
19 captioned "Affidavit of Mark E. Sullivan," and it
20 was executed on September 4, 2012, and I signed it
21 in front of a notary, and it concerns this case.

22 Q. Okay. And was this a draft of your
23 affidavit or a prior version of your final
24 affidavit that became part of the complaint?

25 A. Yes.

1 Q. Okay. And in this affidavit dated
2 September 4th of 2012, on page 5 there is a section
3 entitled "First Problem in Indemnification," and I
4 believe we discussed that issue today, have we not?

5 A. Yes.

6 Q. Okay. And the second problem you
7 mentioned is the survivor benefit plan. That
8 begins on page 8 of the affidavit?

9 A. Yes.

10 Q. Do you have any opinions regarding the
11 survivor benefit plan, whether that was something
12 that should have been addressed by Cindy Floyd?

13 A. I think, if my recollection is correct,
14 that this case involved an agreement to provide
15 life insurance instead of the survivor benefit
16 plan, and so while I initially opined regarding
17 SBP, I withdrew that in the final affidavit because
18 it must have appeared to me that the parties had
19 agreed to an alternative death benefit, namely life
20 insurance instead of SBP.

21 Q. Okay. And so your opinions do not
22 include anything about the survivor benefit plan?

23 A. Correct.

24 Q. I would like to go ahead and mark the
25 September 4th, 2012, affidavit as Defendant's

1 Exhibit 8, please.

2 (DFT. EXH. 8, 9/4/12 AFFIDAVIT, was
3 marked for identification.)

4 Q. You have been provided with a document
5 that is entitled "Transmittal Memo." Is this a
6 memorandum that you drafted?

7 A. Yes.

8 Q. Okay. And what was the purpose of this
9 memorandum?

10 A. To give Mr. Ravenel an overview of my
11 analysis of the trial transcript, in this case the
12 facts which I found from the trial transcript and
13 the issue of the indemnification and argument for
14 indemnification.

15 Q. Okay. And did you request any
16 information following your review of the trial
17 transcript?

18 A. Not to my recollection.

19 Q. Okay. We can go ahead and mark that
20 document as Defendant's Exhibit 9?

21 (DFT. EXH. 9, 9/24/12 TRANSMITTAL MEMO,
22 was marked for identification.)

23 Q. We will go ahead and the a quick break.
24 I might be almost finished. Take a few minutes.

25 (A recess transpired.)

1 (DFT. EXH. 6, MR. GREENE'S FINANCIAL
2 DECLARATION, was marked for identification.)

3 BY MS. FLEMING:

4 Q. Mr. Sullivan, in the order of separate
5 support and maintenance that was entered following
6 the May 14th, 2002, hearing, what was the language
7 that was used in that order regarding the military
8 pension division? Do you recall?

9 A. I don't remember.

10 Q. Okay. I would like to go ahead and
11 show you a copy of that order. And I think if you
12 look at the bottom Bates labeled Expert Sullivan
13 024.

14 A. Yes, I have that open.

15 Q. Okay. Now, the order refers to
16 military retirement. It says, "I find it is
17 appropriate to award 60 percent of the defendant's
18 military retirement to the plaintiff." How is that
19 terminology different, or is it different than the
20 term "gross retirement pay"?

21 A. Well, it is different because it
22 doesn't have the word "gross" in it.

23 Q. Okay. How do you interpret military
24 retirement? What do you interpret that to mean?

25 A. It can have several meanings.

1 Q. Okay.

2 A. It was interpreted in the Tirado case
3 because the unique circumstances in that case to
4 mean the net after VA disability waiver. I can see
5 in other cases it might have a different meaning.
6 I don't know what the judge intended here other
7 than he said -- he or she said 60 percent of the
8 defendant's military retirement, because the judge
9 did not address the issue of what would happen if
10 there were a subsequent reduction in the retired
11 pay to a claim of disability.

12 Q. Okay. So is it a fair statement to say
13 that that term "military retirement" can be
14 interpreted in several different ways?

15 A. Yes.

16 Q. One being the way that it was
17 interpreted in Tirado?

18 A. Yes.

19 Q. Okay. Now, there was also a subsequent
20 order, called "A Supplemental Order of Division of
21 Military Retired Pay." What is the purpose of that
22 type of order? And I will give you a copy to look
23 at.

24 Let's mark the Order of Separate
25 Support and Maintenance as Defendant's Exhibit 10,

1 please.

2 (DFT. EXH. 10, ORDER OF SEPARATE
3 SUPPORT AND MAINTENANCE, was marked for
4 identification.)

5 Q. What is the purpose of the Supplemental
6 Order of Division of Military Retired Pay?

7 A. Ordinarily a supplemental order is
8 necessitated by the need to present to the Military
9 Retired Pay Center, in this case Defense Finance
10 and Accounting Service, an order that specifically
11 complies with the required language for division of
12 military retired pay, and that, I imagine, is the
13 reason for this Supplemental Order, Division of
14 Military Retired Pay, which has just been handed to
15 me.

16 Q. Okay. And this order, just to clarify,
17 is an order that is provided directly to DFAS?

18 A. Well, I don't know whether this one
19 was, but that is ordinarily the reason.

20 Q. Okay. That is what I am asking you,
21 ordinarily is the reason for the Supplemental
22 Order, Division of Military Retired Pay, to be
23 provided directly to DFAS so that DFAS can make the
24 payments to the service member's spouse as well as
25 the nonservice member's spouse?

1 A. That's correct.

2 Q. Does DSS make any payments other than
3 disposable retired pay?

4 A. Let me go back for a minute. You said
5 in your last question to make the make payments to
6 the service member's spouse as well as the
7 nonservice member's spouse. The purpose of a
8 supplemental order like this would be only for the
9 nonservice member's spouse, the person we call the
10 former spouse.

11 Q. Sure.

12 A. They are already making the payments to
13 the retiree service member spouse, so this is only
14 to cut a portion of that retired pay out and give
15 it to the former spouse.

16 Q. Okay.

17 A. I am sorry, you asked for a follow-up
18 question based on that.

19 Q. Thank you for clarifying that. With
20 regard to the retired pay that is paid by DFAS to
21 the former spouse, does DFAS only pay the
22 disposable amount?

23 A. Yes, that's correct, they are required
24 by the Uniform Services Former Spouse Protection
25 Act to divide only disposable retired pay.

1 MS. FLEMING: Okay. I don't think I
2 have any further questions. Thank you very much
3 for your time.

4 Let's go ahead and mark this
5 supplemental order as Defendant's Exhibit 11.

6 (DFT. EXH. 11, SUPPLEMENTAL ORDER, was
7 marked for identification.)

8 MS. FLEMING: I will get those other
9 two copies so that we can mark them as 3 and 4. I
10 don't think I have any further questions. Thank
11 you very much for your time, and I hope that you
12 have a safe trip back to Raleigh.

13 THE WITNESS: Thank you.

14 EXAMINATION

15 BY MR. RAVENEL:

16 Q. Mr. Sullivan, to your knowledge was
17 there any discovery done in the form of depositions
18 of Mr. Greene in this case?

19 A. You mean in this malpractice case or in
20 the underlying domestic case?

21 Q. In the underlying domestic case.

22 A. I don't know of any.

23 Q. Do you know whether there were any
24 written interrogatories sent by counsel for Hattie
25 Mae Greene in the Hattie Mae Greene versus Joseph

1 Greene matter?

2 A. I don't know of any.

3 Q. Do you know of any inquiry with the
4 military, the United States Marine Corps, by
5 counsel for the Hattie Mae Greene in the Greene
6 versus Greene case related to the areas of service
7 and the combat situations to which he had been
8 exposed?

9 A. I don't know of any.

10 Q. Do you know, based upon information
11 that you currently have, whether or not Mr. Greene
12 did serve in combat areas?

13 A. Yes, I do.

14 Q. Do you know whether or not Mr. Greene
15 was suffering from what he related to as combat-
16 connected physical and mental problems during the
17 marriage?

18 A. I believe that he was, based on the
19 affidavits of Mr. Greene.

20 Q. The affidavit or the deposition?

21 A. I am sorry, the deposition of Mr.
22 Greene and Hattie Greene. I believe that he said
23 that he had loss of hearing and nightmares due to
24 subsequently diagnosed posttraumatic stress
25 disorder during the marriage.

1 Q. How would the fact that Mr. Greene
2 served in combat areas have affected a lawyer
3 representing his wife in a termination of the
4 marriage and division of the retirement?

5 MS. FLEMING: Objection to the form.

6 A. If I may answer.

7 Q. Yes, please.

8 A. It would probably have alerted the
9 lawyer that there was an issue that involved
10 service-connected disability. By service
11 connected, I mean occurring during military service
12 without one's own misconduct. Any service-
13 connected disability that occurs during military
14 career is potentially compensable by the Department
15 of Veterans Affairs, the VA disability compensation
16 pursuant to Title 38 of the United States Code.
17 Combat service would have alerted an attorney that
18 there may be disability claim in the future.

19 Q. What would be the reason for a person
20 in the position of Joseph Greene to resist a
21 provision in the separation agreement or in the
22 order that would allow -- that would anticipate and
23 deal with the prospect that he, Mr. Greene, may
24 develop disabling conditions after the divorce?

25 A. I'm not sure if I can answer the

1 question because it asks me to tell what Mr. Greene
2 would have said if something had happened. I don't
3 know.

4 Q. No, my question is really directed to
5 this. Just from being a lawyer, what would be the
6 reaction of you as a lawyer if you had proposed
7 that and it had been resisted by Mr. Greene? He
8 doesn't want to put something in there.

9 A. I would have explained to opposing
10 counsel that your client, if he ever develops a
11 disability and gets paid for it, is going to
12 actually have more money by getting the disability
13 than by not getting the disability because he is
14 getting the equivalent amount tax-free of those
15 dollars by waiving taxable dollars. So he ought to
16 be able to reimburse my client because he is
17 getting more money rather than less by electing a
18 VA disability claim.

19 Q. Well, in my hypothetical, would the
20 resistance of Mr. Greene cause you concern
21 regarding whether or not he in fact might have a
22 disability?

23 A. Yes, it would. It would possibly tell
24 me that there is some latent problem there that we
25 ought to pay attention to.

1 Q. Well, do you know whether or not the
2 lawyer representing Hattie Mae Greene obtained his
3 medical records in order to confirm whether or not
4 he was -- had issues that he reported to the United
5 States Marine Corps during his active service?

6 A. No, I don't.

7 Q. I may have already asked you this, but
8 do you know whether Joseph Greene's deposition was
9 taken in this case? Not this case but the Joseph
10 Greene versus Hattie May Greene case.

11 A. I don't believe it was. I was never
12 shown a copy of the deposition or any discovery in
13 the underlying domestic case.

14 MR. RAVENEL: Thank you. That's all I
15 have.

16 MS. FLEMING: I do have a few
17 additional questions.

18 EXAMINATION

19 BY MS. FLEMING:

20 Q. Mr. Sullivan, in your practice have you
21 ever requested information or medical records from
22 the VA or the U.S. military on any opposing party?

23 A. I am sure I have, but I can't think of
24 any specific cases in which I have done it.

25 Q. Is that something that you routinely do

1 when representing military couples?

2 A. No, I don't.

3 Q. Okay. You've reviewed the deposition
4 of Joseph Greene from this case. Did Mr. Greene
5 ever discuss any of his health issues with his
6 former wife, Hattie Greene?

7 A. I am sure that the deposition speaks
8 for itself, but my recollection of the deposition
9 is that he did not, although I know he also talked
10 about nightmares, and the issue of whether he
11 discussed that would be only half of the issue.
12 The other issue would be the nightmares themselves.

13 Q. Do you know whether they lived together
14 the entire time that he was in the military or
15 thereafter prior to the divorce?

16 A. I think we already established that
17 there was 17 years of marriage during the military,
18 and then there were about three or four years after
19 the retirement in '98 they would have been living
20 together. The divorce in this case was 2002.

21 Q. Okay. So you are relying on the
22 testimony and the transcripts to arrive at the
23 conclusion that they lived at the same residence
24 throughout that time?

25 A. No, I don't have any information on

1 that because I don't know the grounds for divorce
2 in South Carolina. In North Carolina, you have to
3 have a year's separation as the grounds. I would
4 assume that when the trial occurred in this case,
5 they were not living together, but I don't have any
6 information on how long they had been separated
7 between his retirement in '98 and the divorce trial
8 in 2002.

9 Q. Okay. Or whether during the times that
10 Mr. Greene was actually in the military, whether
11 Hattie Greene lived with him during that time? Do
12 you know that?

13 A. No, I don't have specific information
14 on that either.

15 Q. Okay. Now, you were asked some
16 questions about service in combat areas. Do you
17 hold the opinion to a reasonable degree of
18 certainty most probably that service in a combat
19 area makes it more likely than not that a service
20 member will make a disability claim in the future?

21 A. I believe to a reasonable degree of
22 certainty that service in a combat area will most
23 likely result in a disability for that service
24 member, more likely than not, but I cannot say
25 whether the next step would be followed, and that

1 is whether the individual would make a claim for
2 disability compensation.

3 I have at least one case where my
4 client says, "I know my husband has these
5 disabilities, but he hasn't applied for anything."
6 And I keep telling her, "But he is going to, but he
7 is going to." And she says, "It has been
8 eight years, and he hasn't."

9 So I can't take the second step that
10 you suggested in your question and answer as to
11 whether he would apply. I do believe to a
12 reasonable degree of certainty a service in a
13 combat area will be more likely to produce service-
14 connected disabilities, which would also result in
15 combat-related disabilities, which is an entirely
16 different form of compensation.

17 Q. Okay. Now, whether or not someone
18 would eventually suffer a combat disability as a
19 result of service in the combat area, would it
20 depend on that individual service member's role and
21 responsibility within that combat area?

22 A. To some extent, it does, and to some
23 extent it is irrespective of whether they drive a
24 truck or they hold a rifle and shoot against the
25 enemy.

1 Q. Okay. And how do you arrive at that
2 conclusion that to some extent service in a combat
3 zone would more likely than not lead to disability?

4 A. Just to give you some examples, you
5 could as easily get wounded driving in a truck as
6 being in a frontline shooting against somebody.
7 You could as easily, in fact more easily, be
8 injured by an IED, an improvised explosive device,
9 driving a truck as opposed to walking along the
10 road. Each of those are examples of how the
11 combat-related aspect of an injury could occur to a
12 person who was driving a truck as opposed to being
13 an infantryman in a frontline.

14 Q. Is there any way to determine the
15 probability in which a service member serving in a
16 combat area would be likely to suffer from some
17 type of disability?

18 A. Not to my knowledge.

19 MS. FLEMING: I think that that's all I
20 have. Thank you very much.

21 EXAMINATION

22 BY MR. RAVENEL:

23 Q. What is the responsibility of the
24 lawyer representing the client in a domestic action
25 to try to anticipate things that may or may not

1 happen that would have a negative impact on their
2 client?

3 A. The lawyer has a duty to reasonably
4 inquire into things that will happen in the future
5 that could have an impact on the client in a
6 divorce case that involves in this particular
7 situation military pension division. The most
8 obvious one is the death of the service member, the
9 death of the other side, which in many cases leads
10 the attorney to inquire about a survivor annuity
11 called the survivor benefit plan, which we have
12 already talked about and was taken care of with an
13 agreement. But the second change issue that an
14 attorney needs to anticipate is the issue of a
15 future disability being diagnosed and then claimed
16 upon at the Department of Veterans Affairs, and its
17 impact upon the pension. Both of those are
18 reasonably foreseeable issues that should be
19 addressed by the attorney doing a pension division
20 case.

21 Q. Should those have been addressed in
22 this case involving Mr. Greene?

23 A. The first one, SBP, I don't know that
24 it should have been addressed because it seems to
25 me that the documents that I was presented showed

1 an agreement regarding life insurance. If that had
2 not occurred, I would say that should have been
3 requested of the Court at the trial as well.
4 Certainly the second of those should have been
5 addressed with the Court, and that is the potential
6 for a reduction in the pension because of
7 disability waiver.

8 Q. And the first one, as you say, was
9 dealt with by an agreement, was it not?

10 A. Yes.

11 MR. RAVENEL: All right. That's all I
12 have. Thank you.

13 MS. FLEMING: No further questions.

14 (DFT. EXH. 3, PHOTOCOPY OF DISC;
15 DFT. EXH. 4, PHOTOCOPY OF JOURNAL OF AMERICAN
16 ACADEMY OF MATRIMONIAL LAWYERS, were marked for
17 identification.)

18 (The witness, after having been advised
19 of his right to read and sign this transcript, does
20 not waive that right.)

21 (The deposition was concluded at
22 11:57.)

23

24

25

SIGNATURE OF DEPONENT

DEPONENT: MARK E. SULLIVAN
DEPOSITION DATE: DECEMBER 19, 2013
REPORTER: ANN P. HARRIS
CASE CAPTION: HATTIE MAE GREENE vs. CINDY M. FLOYD

(Please return both Signature of Deponent pages)

I, the undersigned, MARK E. SULLIVAN, 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)

DEPOSITION DATE: DECEMBER 19, 2013

REPORTER: ANN P. HARRIS

CASE CAPTION: HATTIE MAE GREENE vs. CINDY M. FLOYD

PAGE	LINE	CHANGE	REASON

MARK E. SULLIVAN	Date

I, Ann P. Harris, 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 page within the thirty (30) days allowed pursuant to the Rules of Civil Procedure, the original transcript may be filed with the court.

Ann P. Harris, RMR
My Commission expires
June 23, 2018

1 CERTIFICATE OF REPORTER

2
3 I, Ann P. Harris, Certified Merit
4 Reporter and Notary Public for the State of South
5 Carolina at Large, do hereby certify that the
6 foregoing transcript is a true, accurate, and
7 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 30th day of December
13 2013 at Charleston, Charleston County, South
14 Carolina.

15
16
17
18
19
20
21
22
23
24

Ann P. Harris, RMR
My Commission expires
June 23, 2018
25

I N D E X

	Page/Line
STIPULATION.....	3/1
WITNESS/EXAMINATION	
MARK E. SULLIVAN	
BY MS. FLEMING.....	3/16
BY MR. RAVENEL.....	71/15
BY MS. FLEMING.....	75/19
BY MR. RAVENEL.....	79/22
SIGNATURE OF DEPONENT PAGES.....	82 & 83
COURT REPORTER'S CERTIFICATE.....	84

E X H I B I T S

	Page/Line
DFT. EXH. 1, Deposition Notice.....	3/11
DFT. EXH. 2, Documents Produced.....	9/25
DFT. EXH. 3, Photocopy of Disc.....	81/14
DFT. EXH. 4, Photocopy of Journal.....	81/15
DFT. EXH. 5, Military Retirement Benefits	48/7
DFT. EXH. 6, Financial Declaration.....	67/1
DFT. EXH. 7, Mr. Sullivan's Affidavit...	64/9
DFT. EXH. 8, 9/4/12 Affidavit.....	66/2
DFT. EXH. 9, 9/24/12 Transmittal Memo...	66/21
DFT. EXH. 10, Order of Separate Support.	69/2
DFT. EXH. 11, Supplemental Order.....	71/6