

20348

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

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

Carolyn Mitchell Powell. . . . . Appellant,

v.

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

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

**RECORD ON APPEAL**  
**Volume 2 of 4**  
**Pages 465 - 924**

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1 STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS  
2 CASE NO. 09-CP-40-8705

COUNTY OF RICHLAND

3 CAROLYN MITCHELL POWELL,  
Plaintiff,

4 -VS-

Deposition of:  
H. GRADY BROWN

5 ASHLIN BLANCHARD POTTERFIELD;  
J. MICHAEL TAYLOR; TAYLOR/  
6 POTTERFIELD; GOLDEN, TAYLOR,  
POTTERFIELD AND BARRON; REID  
7 SMITH AND PRICE BIRD &  
SMITH, PA,

8 Defendants.

Given before Donna Hartley, Professional Court  
9 Reporter and Notary Public, in the office of Pendarvis  
Law Offices, PC, 500 Carteret Street, Suite A, Beaufort,  
10 South Carolina on Wednesday, November 16, 2011,  
commencing at 11:00 a.m.

11 -----  
RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA  
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14 1.800.822.8711

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Brown, J.D., H. Grady

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Discovery Deposition of

H. Grady Brown, Esquire;

Certificate of Service;

Subpoena Duces Tecum

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Brown to Thomas A.

Pendarvis, J.D. dated

September 12, 2011

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(Originals retained by

Mr. Brown)

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(Originals retained by

Mr. Brown)

## LEGEND OF THE TRANSCRIPT

dashes [---] intentional or purposeful interruption

[ph] denotes phonetically written

[sic] written as said

1 H. GRADY BROWN,  
2 having first been duly  
3 sworn, testified as  
4 follows:

5 DIRECT EXAMINATION BY MR. HILL:

6 Q. Morning, again, Mr. Brown. My name is  
7 Charlie Hill and I represent Michael Taylor and Ashlin  
8 Potterfield in the lawsuit that has been brought against  
9 them by Carolyn Powell and you have been identified to  
10 us as expert witness in this case and so we're here  
11 today with the purpose of taking your deposition.

12 I'm sure you have conducted depositions  
13 before. I don't know whether you've ever had to give  
14 one before, or not.

15 A. I don't believe I've ever been a witness in a  
16 deposition before.

17 Q. Okay.

18 A. But I've conducted many.

19 Q. And, as you know, Justice Toal has put down  
20 certain rules that we're required to follow with regard  
21 to depositions so let me go through those right quickly  
22 with you.

23 Obviously, I anticipate that we'll be here  
24 for awhile today, maybe a couple of hours. If, at any  
25 time, you want to take a break, just let me know. I'll

1 be glad to accommodate you. As you know, the only  
2 caveat of that is you're not allowed to discuss your  
3 testimony with anybody during the break.

4 And, secondly, if my questions are unclear,  
5 please ask me to restate or clarify them. I'll be happy  
6 to do so.

7 obviously, you have to ask whatever attorney  
8 is asking you the question for clarification of the  
9 question and not anybody else.

10 A. I understand.

11 Q. Okay. Very good.

12 State your whole name, please, sir.

13 A. Henry Grady Brown.

14 Q. Mr. Brown, what's your date of birth?

15 A. September 10, 1954.

16 Q. And what is your business address?

17 A. Six fifteen Prince Street, Beaufort, South  
18 Carolina.

19 Q. Okay.

20 I'm going to hand you a copy of a notice of  
21 taking your deposition today with a Subpoena attached  
22 and a list of materials attached to that and ask you if  
23 you've received that, those materials.

24 A. Yes, I have.

25 (Notice of Taking the Discovery

1 Deposition of H. Grady Brown, Esquire; Certificate of  
2 Service; Subpoena Duces Tecum marked as Defendant's  
3 Exhibit 1.)

4 Q. The last page, Mr. Brown, requests you to  
5 bring certain materials with you to the deposition and,  
6 if you would, just go down that list one by one and tell  
7 me what you have with you today in response to that  
8 notice request.

9 A. Number 1, I have some notes that I took.

10 Number 2, I have a letter that I generated as  
11 a result of reading some depositions.

12 Number 4, I received some depositions from  
13 Mr. Pendarvis that I reviewed, that I have copies of.

14 I did not bring number 5 which is an up-to-  
15 date CV because I don't have one.

16 Q. Okay.

17 A. I never, really, put one together, other than  
18 what's in my Martindale Hubbell.

19 Q. Okay.

20 A. And I can provide number 8 which is my  
21 billings and my fee agreement that I have in my file,  
22 all of which are in this building.

23 Q. Okay.

24 A. The other one's, I just don't have.

25 Q. All right.

1 I have a copy of a letter that you wrote to  
2 Mr. Pendarvis dated September 12, 2011. Would you  
3 verify that that's a copy?

4 A. Yes, sir, it is.

5 Q. Okay.

6 (Letter from H. Grady Brown to Thomas  
7 A. Pendarvis, J.D., dated September 12, 2011, marked as  
8 Defendant's Exhibit 2.)

9 Q. Now, have you produced any other written  
10 documents similar to what's been marked as exhibit 2?

11 A. No.

12 Q. Any other report?

13 A. No.

14 Q. Okay.

15 Any correspondence with Mr. Pendarvis?

16 A. There's correspondence he wrote to me,  
17 sending me a copy of the pleadings in this case and a  
18 copy, just yesterday I got, of the deposition of Mr.  
19 Reid but I have not had an opportunity yet to read his  
20 deposition.

21 And other than, I believe, sending some  
22 invoices back and forth, that's pretty much all of the  
23 correspondence back and forth.

24 Q. Okay.

25 I'd like to see what the notes that you

1 mentioned a minute ago that you have generated. Do you  
2 have those?

3 A. Sure.

4 (Deposition went off the record.)

5 A. Okay.

6 All of these yellow pages in this blue  
7 notebook are the notes that I have taken during my  
8 involvement.

9 Q. Okay.

10 A. One page is a note that's dated July 19,  
11 2011, which was a conference with Thomas about him  
12 telling me what he wanted me to do and generate.

13 The rest of them, mass bulk of it are my  
14 summaries of Mrs. Potterfield's deposition and my  
15 summaries of Mrs. Powell's deposition and then my notes  
16 accumulating my summaries that I until together to help  
17 prepare the letter which is exhibit 1.

18 Q. Okay.

19 A. Or exhibit 2, excuse me.

20 Q. Okay.

21 A. Would you like to see all of those?

22 Q. Yeah, I would, uh-huh.

23 (Deposition went off the record.)

24 (Notes generated by Mr. Brown marked as  
25 Defendant's Exhibit 3.)

1 Q. What else is in that notebook that you have?

2 A. The copy of the deposition of Mr. Smith that  
3 was just given to me yesterday, that I haven't read.

4 Q. Okay.

5 A. Correspondence between me and Mr. Pendarvis;  
6 our fee agreement; a couple of emails, I think.

7 Same thing.

8 A draft of my letter that's been introduced  
9 and my copy of the final version that's been introduced  
10 and, then, confirmation about the deposition for today.

11 Q. Okay.

12 Let me look at those, please, sir.

13 A. Sure.

14 (Deposition went off the record.)

15 Q. Are the, on yellow paper, are the drafts?

16 A. Probably not. They're probably my file  
17 copies. I'd have to see them to make sure.

18 (Deposition went off the record.)

19 Q. Okay.

20 With the exception of your W-9, I'm going to ask  
21 that all these other documents collectively be marked as  
22 exhibit 4.

23 (Correspondence marked as Defendant's  
24 Exhibit 4.)

25 MR. HILL: At the end of the day I



1 want to be able to give him his original back and have  
2 copies.

3 Q. What depositions have you actually read?

4 A. The two I've read are Mrs. Powell's and Mrs.  
5 Potterfield's.

6 Q. Okay.

7 Did you read any depositions from the  
8 underlying divorce action?

9 A. No.

10 Q. So the only thing that you have received  
11 subsequent to your report of September 12 is the  
12 deposition of Mr. Smith?

13 A. And a copy of the pleadings, the Summons,  
14 Complaint and the answer of Taylor Potterfield and the  
15 answer of Mr. Smith.

16 Q. Okay.

17 And does that complete materials that you  
18 have been furnished and reviewed?

19 A. That's correct.

20 Q. Now, since your report of September 12, 2011,  
21 have you developed any additional opinions in this case  
22 that weren't expressed in that report?

23 A. None that come to mind at this point. That  
24 generally expresses the feelings that I have at the  
25 time.

1 Q. Okay.

2 Have you changed any of the opinions or  
3 conclusions that you express in that report?

4 A. No.

5 Q. Give me a resume, since you don't have a CV,  
6 of your, let's start with high school, I guess, and just  
7 give me your resume of your educational background.

8 A. I graduated from A.C. Flora High School in  
9 Columbia in 1972; went to Clemson University, starting  
10 in '72, graduated in '76 with a degree, BS degree in  
11 finance; went to law school, received a juris doctorate  
12 degree from St. Louis University School of Law, St.  
13 Louis, and that's pretty much it.

14 Q. What year was that?

15 A. In '79.

16 Q. And when did you take the South Carolina bar?

17 A. I was admitted to the bar in November of '79  
18 so it would've been that summer of '79, I assume.

19 Q. Did you take the bar review course?

20 A. Yes.

21 Q. All right.

22 Have you had any military service?

23 A. No.

24 Q. And what did you do upon being admitted to  
25 the bar, from a professional standpoint?

1 A. I was hired here in Beaufort with the old  
2 Dowling law firm, worked with them until 1988. I  
3 believe it was around the summer of '88.

4 Left that firm and began working with Harvey  
5 and Battey here in Beaufort and stayed with them until  
6 2001 or 2002. I think it was '02, and I have been a  
7 solo practitioner ever since, here in Beaufort.

8 Q. What sort of work did you do at the Dowling  
9 law firm?

10 A. Well, when you start out as a brand new  
11 attorney you do just about everything nobody else wants  
12 to do. In those days I was doing a lot of real estate  
13 related work, whether it would be small closings or  
14 quiet title exams. I was also doing some family law  
15 work. Several people were doing that.

16 And was, really, kind of a utility man, jack-  
17 of-all trades kind of practitioner then.

18 Left as a partner in the firm and went to  
19 Harvey and Battey and worked primarily in family law  
20 there with Peter Fuge, who's currently a family court  
21 judge. He and I, basically, ran the family law section  
22 of the firm.

23 And then when I left and went out on my own  
24 I have, pretty much, exclusively, done family law.

25 Q. Do you handle any civil litigation outside of

1 family law?

2 A. Occasionally I'll do some personal injury  
3 work. I stay away from anything criminal, probate,  
4 those sort of speciality areas.

5 Q. When is the last time you tried a case in  
6 common pleas court?

7 A. Common pleas?

8 Q. Uh-huh.

9 A. Been awhile. I couldn't tell you, exactly,  
10 but it's been a number of years.

11 Q. Okay.

12 Have you tried any cases in civil court,  
13 circuit court?

14 A. Yes, yes, but it's been awhile because I've  
15 been, primarily, practicing in family court.

16 Q. Okay.

17 Give me a little bit more in depth  
18 information, I guess, about your experience in marital  
19 litigation.

20 A. In what way? I mean I'll be happy to oblige,  
21 not sure what you're looking for.

22 Q. Nature of the kinds of cases that you  
23 handled, monetary amounts involved, those kinds of  
24 things.

25 A. Well, I've been practicing 32 years so I've

1 pretty much covered the gambit of just about every kind  
2 of case. I've represented everything from local judges  
3 to local doctors to the average, what I call my mobile  
4 home divorces, the small potato cases.

5 I have, monetary value, we've got a lot of  
6 retirement communities around here, with Dataw, Brays  
7 Island, Hilton Head and some of the components of Hilton  
8 Head you end up getting people with a lot of assets. So  
9 the value of the assets, many occasions, exceed a  
10 million to four million dollars of a net marital estate.

11 I've done a lot of custody related work,  
12 dealing with children and establishing custody relations  
13 and getting involved with experts and psychological  
14 experts, et cetera, associated with that.

15 I try a lot of cases. I just finished trying  
16 one about two weeks ago. About in September and August  
17 of this year I just tried a 13-day case, up in  
18 Dorchester County, which I'm told is the longest case  
19 ever had in that neck of the woods and it was quite  
20 tortuous.

21 Q. What would you say your current caseload is  
22 with regard to marital litigation?

23 A. Percentage wise?

24 Q. Yes.

25 A. Probably upper 90s percent.

1 Q. Okay.

2 So what's the rest?

3 A. The rest would be odds and ends, helping out,  
4 maybe, a friend, or something, or having -- I've got one  
5 personal injury case right now that I'm thinking of  
6 having someone help me with because it looks like it  
7 might be a pretty good case.

8 Q. Plaintiff's personal injury?

9 A. Plaintiff's side, yeah.

10 I do some DSS kind of stuff. It's more  
11 family court related but it's not, really, straight up  
12 domestic relations. It's guardian ad litem work and  
13 things like that, that I wouldn't call straight up  
14 divorce or marital type litigation.

15 Q. Okay.

16 How many open cases do you have within the  
17 marital litigation area?

18 A. I'd be guessing but I imagine it's around 50.  
19 Ballpark.

20 Q. Are you a member of any of the professional  
21 organizations related to marital litigation?

22 A. South Carolina Bar Family Law Section.

23 And I have been a member, I'm not sure if I  
24 am now, of the ADR Section, as well.

25 Q. Are you a member of The American Academy of

1 Matrimonial Lawyers?

2 A. Nope. Never joined.

3 Q. Have you ever applied for membership?

4 A. I've looked in to it. The application  
5 process takes a long time and my busy client schedule  
6 wouldn't always me to take that time so I just haven't  
7 had the luxury of being able to do it.

8 Q. Okay.

9 A. I talked with John McDougall about it and Ken  
10 Lester to get an idea what's involved. But never done  
11 it.

12 Q. Is that something that you have to be  
13 nominated for or do you apply of it or how does that  
14 work?

15 A. My understanding, well, there's a lengthy  
16 application that you have to go in to a great deal of  
17 detail about what you've done. It's kind of like  
18 running for judgeship; you've got to tell them, pretty  
19 much, all of your experience and it just takes time to  
20 sit down and complete.

21 I understand you have to have a  
22 recommendation or referral from someone, which is one of  
23 the reasons I talked with Ken and with John, just to  
24 find out, because I knew they were members.

25 Q. What are the benefits to being a member of

1 that organization, if any?

2 A. Since I'm not a member I don't really know.  
3 I would imagine it would add an element of prestige, an  
4 element of uniqueness.

5 Q. Have you ever worked with Mr. Pendarvis on  
6 any cases prior to this one?

7 A. Never.

8 Q. How long have you known Mr. Pendarvis?

9 A. Well, when he came to Beaufort. Obviously, my  
10 office is just a block or so away so I knew he was here  
11 but when we first met, I'm not sure. I think we first  
12 actually met, maybe, out on one of the barrier islands.

13 MR. PENDARVIS: Otter.

14 A. One of the barrier islands out here, just in  
15 a social event. And introduced ourselves to each other.

16 Q. Has he, prior to this case, ever asked you to  
17 look at any cases or him before?

18 A. No.

19 Q. Have you had any experience as a consultant  
20 or an expert witness in marital litigation?

21 A. You mean in a malpractice type case?

22 Q. Yes.

23 A. No.

24 Q. How about in any other capacity?

25 A. Well, I've been asked for second opinions and



1 consults, informal consults by other attorneys, with  
2 respect to their cases and things but nothing in a  
3 malpractice context.

4 Q. Okay.

5 Have you served as a mediator in family  
6 court cases?

7 A. Many times.

8 Q. Give me a ballpark.

9 A. Holy.

10 I was one of the first ones trained when  
11 mediation first came out. I initiated and was the  
12 president of what we called the Sea Island Mediation  
13 Network. God, this would have been back when I was at  
14 Harvey and Battey so it would've been the mid to late  
15 '80s.

16 Before mediation was mandatory in any of the  
17 counties several of the circuits set up networks,  
18 trained mediators to have them available to other  
19 litigators so that they could come to the network and  
20 say I need a mediator for this or for that and, so, I  
21 started the local Sea Island Mediation Network, which  
22 consisted of mediators throughout, you know, the  
23 lowcountry counties down here.

24 And ran that for awhile and then passed it on  
25 to another lawyer.

1 Q. Is most of your practice in Beaufort County?

2 A. I'd say the vast majority of it is but I've  
3 been -- Like I said, I tied a case in Dorchester. I've  
4 been to a good number of counties, mostly lowcountry  
5 type counties from Allendale on down but I've had a  
6 smattering of cases throughout other counties outside of  
7 the lowcountry.

8 Q. Would you agree that the exercise of an  
9 attorney's judgement in handling a particular matter  
10 must be considered at the time the service is rendered?

11 A. I guess what you're asking me, does the  
12 attorney have to exercise judgement in the management of  
13 a case?

14 Q. Yes.

15 A. Of course he does.

16 Q. As the circumstances present to him at the  
17 time?

18 A. Yes. I would agree with that.

19 Q. Okay.

20 In other words, an attorney's handling of a  
21 case should not be judged from the viewpoint of  
22 hindsight?

23 A. Well, whether it should or shouldn't is a  
24 debatable issue. I mean in a case like this it has to  
25 be.

1 Q. What do you mean by that?

2 A. Well, it's a malpractice case; you're looking  
3 at what happened in the past.

4 Q. Okay.

5 When attorneys make reasonable judgement  
6 calls in the handling of a case, that is not a basis for  
7 a claim of malpractice, is it?

8 A. Can't answer that.

9 Q. Why not?

10 A. I'm not a judge.

11 Q. Well, you're offering expert opinions in this  
12 case.

13 A. I'm offering expert opinions as to the  
14 standard of care.

15 Q. Okay.

16 Does the standard of care allow for the  
17 exercise of reasonable judgement?

18 A. Of course it does.

19 Q. So there is not malpractice when an attorney  
20 conducts litigation based on the honest exercise of  
21 professional judgement?

22 A. Well, again, you're asking me to make a legal  
23 call, a judgmental or judge related call but I guess the  
24 only way I can answer that is it is my opinion that,  
25 although judgement plays a role, the lawyers make

1 judgements all the time. Whether you make the correct  
2 judgement or you don't consider things to make a  
3 judgement on it at all could not -- could end up  
4 violating an appropriate standard of care. It could end  
5 up being inappropriate conduct.

6 Q. Would you agree that the practice of law is  
7 not an exact science?

8 A. Yeah, I guess I could say that.

9 Q. Is it fair to say that reasonable attorneys  
10 in the same area of speciality may disagree as to how a  
11 particular case should be handled and that disagreement  
12 does not represent a deviation from the standard of  
13 care?

14 A. I'll agree with that.

15 Q. In other words, different attorneys may  
16 handle the same case in different ways?

17 A. I would agree with that.

18 Q. Do you agree that an attorney should exercise  
19 his or her independent professional judgement when  
20 they're handling a matter?

21 A. Independent of what?

22 Q. Independent of outside influences. In other  
23 words, exercising his, his or her own judgement in the  
24 case based on his or her experience, training,  
25 education.

1       A.     Well, how else can you exercise it?

2             Now, that would include the knowledge of the  
3     law, the understanding of the law, the knowledge of the  
4     facts, all of the things that would go into exercising  
5     judgement.

6       Q.     You agree that a lawyer has the discretion to  
7     make judgement calls in the handling of matters insofar  
8     as what legal theories and what strategies should be  
9     pursued?

10    A.     Yes.

11    Q.     You agree that the tactical decisions that  
12    are made during the course of litigation allow an  
13    attorney some degree of discretion?

14    A.     Yes.

15    Q.     You agree that even if a case, in hindsight,  
16    could have been handled - quote - better - end quote -  
17    it doesn't constitute a deviation from the standard of  
18    care as long as the attorney exercised reasonable  
19    judgement?

20    A.     I would agree with that.

21    Q.     Have you ever handled a case in Richland  
22    County?

23    A.     Richland County, I've had cases there but  
24    they haven't gone to trial. They've settled or resolved  
25    in some fashion.

1 Q. How many matters have you handled in Richland  
2 County? Domestic, marital litigation.

3 A. I can't be sure. It's not many because it's  
4 a little out of my geographic area and it's too cost  
5 prohibitive for me to go to Columbia and have cases.

6 I just don't recall.

7 Q. Okay.

8 How many family court judges are there in  
9 Beaufort County?

10 A. Well, in our fourteenth judicial circuit  
11 there are three.

12 Q. And that's Beaufort and Jasper?

13 A. Beaufort, Jasper, Hampton, Colleton and  
14 Allendale.

15 Q. And who are those judges?

16 A. Peter Fuge.

17 We've got a brand new one. Robert Armstrong  
18 just retired and Deborah Malphrus was elected so she's,  
19 basically, brand spanking new, and Judge Gerald Smoak  
20 from Walterboro.

21 And Judge Malphrus is from Ridgeland and  
22 Judge Fuge lives in Bluffton.

23 Q. Okay.

24 Do you know who the family court judges are  
25 in Richland County?

1 A. I know of Judge Little. Not Little, Leslie  
2 Riddle, excuse me, Riddle.

3 That's about the only one I'm aware of right  
4 now.

5 Q. Without naming any names, are there some  
6 judges in the fourteenth circuit that you would rather  
7 appear before or try cases before than others?

8 A. The political answer is no.

9 Q. How about the actual true answer?

10 A. Well, I have not been in front of Judge  
11 Malphrus yet because she's brand new. So I can't answer  
12 as to her.

13 Judge Fuge was a former law partner of mine  
14 for a number of years so I don't have a problem going in  
15 front of him. We understand where each is coming from,  
16 although there's not favoritism.

17 And Judge Smoak has been a judge forever here  
18 and I've just been in front of him a bunch. So I don't  
19 have a problem with either one of them.

20 Q. Hypothetically, if you were to try the same  
21 case before different judges would you always get the  
22 same result?

23 A. Probably not.

24 Q. Are there some judges who are more lenient  
25 with regard to something like alimony than others?

1 A. Yes.

2 Q. Child support?

3 A. Well, child support, not so much because  
4 that's set by the guidelines.

5 Q. Okay.

6 How about custody?

7 A. Yes, there are some that are more male  
8 oriented or female oriented.

9 Q. Okay.

10 What would you say is the age from the filing  
11 of a case to the conclusion of the case or the longest  
12 marital litigation in a matter that you handled?

13 A. Well, this last one, the 13-day trial was a  
14 case that started in '08, I believe, and we'll just  
15 finished it this fall. But there were six difference  
16 lawyers in that case for one of the parties, which drug  
17 things out.

18 Q. How old is the oldest case you're currently  
19 handling?

20 A. My guess would be within the 365 days.

21 Q. The oldest case?

22 A. Yeah.

23 And I may stand corrected on that but I'm not  
24 coming to mind with any that are older than that at this  
25 stage.



1 Q. How many cases have you handled that took  
2 more than three years from the filing to conclusion?

3 A. The exact number, I can't say. There are  
4 some.

5 And sometimes that would be because of,  
6 perhaps, bankruptcy getting in the way and a case being  
7 stayed. That happens, I won't say frequently but that  
8 happens more now than it has in the past.

9 I can't give you now exact number. I don't  
10 really no but it does happen.

11 Q. More than four years?

12 A. I would say the oldest, the longest one I've  
13 had was this one that I just told you about, that took  
14 the 13 days, and that was about four years. And that  
15 was because -- That one was because there was six  
16 lawyers. One of the parties kept changing lawyers,  
17 critical moments and got continuances and the case, the  
18 judges locally were conflicted because they knew one of  
19 the parties. It's a local doctor.

20 And we had to get the supreme court to move  
21 us to Dorchester County and that was almost a year of  
22 bureaucratic red tape, dealing with the supreme court,  
23 administrative judges, coordinating things. So that was  
24 kind of an unusual situation.

25 Q. And that's the longest case that you can

1 recall that you've handled?

2 A. Yes.

3 Q. Tell me a little bit about your intake  
4 procedures for a marital litigation.

5 A. Well, if someone calls, typically, I schedule  
6 a consultation. I've got an intake form that they fill  
7 out, to give me a letter background information about  
8 their circumstances and a place where they tell me what  
9 are the concerns they wish to discuss.

10 I get a copy of their driver's license so I  
11 can remember what they look like.

12 And then we set up an initial conference and  
13 I interview them and talk with them and they ask me  
14 questions; they give me facts. I provide them with some  
15 basic breakdown of what -- the black letter type law and  
16 what I perceive might be potential issues. And then  
17 they decide if they wish to hire me, or not.

18 And if they choose to hire me, I've got a  
19 standard employment contract that I have most of my  
20 clients sign, try to get all of them to sign. And I've  
21 got homework package I give to them. It's a  
22 questionnaire, a checklist of documents I ask them to  
23 gather together, some financial statement information I  
24 ask them to fill out, just sort of a broader based info  
25 questionnaire than what I have at the initial consult.

1           Once they've gotten all that together I ask  
2       them to schedule another appointment, bring it all in.  
3       We will then review it so that I make sure I understand  
4       what they are telling me, if there's any questions.

5           And we then make some decisions of where we  
6       need to go from there. Do we need additional documents?  
7       Do we want to start negotiations? Do we want to  
8       litigate first? Do we want to send letters? Or exactly  
9       what strategy we're gone get. And do we need to get  
10      additional information?

11           And it kind of works from there.

12      Q.     Do you write out any sort of time line or  
13      schedule when you're handling the cases?

14      A.     Formally, no, not really. If the case begins  
15      to be contested in some way, then, yes, I do, typically,  
16      have a breakdown or a summary sheet that I will put  
17      together on the status of the file and what's been done  
18      and what -- and kind of check off some things that we  
19      either need to do or just for planning purposes, like  
20      whose affidavit we need to get, have we done the  
21      financial declaration, have we requested a temporary  
22      hearing, have we gotten an order back from a hearing  
23      that we've had, are there any motions that need to be  
24      filed, and just kind of go through that summary sheet.

25           And every so often I'll do what I call a

1 file review with my paralegal and we'll sit down and  
2 we'll just go through the alphabet, A through Z, and  
3 take each file and sort of do an update on where we are  
4 and then a plan of what we need to do, based on where  
5 the status is.

6 Q. So that's sort of just kind of a to-do list?

7 A. Well, yeah, it's a to-do list and I've got a  
8 preprinted little summary form that I will use...  
9 Actually, I put it together to that my paralegal would  
10 have a format to go by but over the years, and she's  
11 been with me 22 years, we don't always use the form  
12 because we kind of know where we are and we just make  
13 our own personal notes of the status.

14 Q. Looked on your website and found a domestic  
15 questionnaire that's on there. Is this what you use  
16 when your clients, prospective clients come in --

17 A. Something very similar to that, yeah.

18 Q. Okay.

19 Now, the one on the website, can that be  
20 completed by somebody and sent in to you via the  
21 internet?

22 A. Yes.

23 Q. Do you receive some like that?

24 A. Occasionally. More so now than in the past.

25 Q. Yeah.

1       You ever been in a situation where you  
2       received one from one spouse and also received one from  
3       the other?

4       A.     Not online, no.

5       Q.     Okay.

6       You have a conflict system set up?

7       A.     My paralegal does.

8       Q.     Did you originate this questionnaire or did  
9       it come from some other source?

10      A.     That was originated, primarily, the guts of  
11     it, I guess, when I was at Harvey and Battey.  Pete Fuge  
12     and I, sort of, put it together and over the years I  
13     modified it and it probably needs to be modified again  
14     but it's not the exact, same version that we started  
15     with.

16      Q.     Okay.

17      You mentioned something about some black  
18     letter law.  Do you, you know, give your clients, when  
19     they sign on, any kind of summary of the applicable law  
20     in this area?

21      A.     I put together a, I call it a booklet of  
22     probably 30 pages, or so, just kind of a summary of  
23     South Carolina domestic relations law.  And I provide  
24     that to many prospective clients so that they can leave  
25     and have some information.

1           And most of them are emotional and they tend  
2 to forget what you tell them at the consult. They've  
3 forgotten once they walked out the door.

4       Q.    Again, is that something that you originated  
5 from scratch or is it, kind of --

6       A.    No, not from scratch. I used, as a guide, a  
7 lawyer in Tennessee named Larry, forgotten his last  
8 name, but he put together a --

9                   MS. POTTERFIELD: Rice.

10      A.    There you go. Larry Rice.

11           He put together a seminar. He travels around  
12 the country talking about files and forms and family  
13 law, organization, and what not.

14           And I took that as, sort of, a starting place  
15 and adjusted it.

16      Q.    I'm sure that you don't have a copy of that  
17 with you today but could you provide that to Mr.  
18 Pendarvis --

19      A.    Sure.

20      Q.    -- and provide it to me?

21      A.    Sure.

22                   MR. PENDARVIS:       This is the book?

23                   MR. HILL:            The booklet.

24      Q.    Do you discuss with your potential clients,  
25 your new clients, the consequences of adultery with

1 regard to marital litigation?

2 A. If it appears it's going to be an issue,  
3 based on what I'm told by my client.

4 Q. Okay.

5 Tell me what you tell them.

6 A. Well, I tell them that adultery creates  
7 grounds for divorce, that you can get a divorce, at the  
8 earliest, within 90 days with a fault based divorce;  
9 adultery has an impact on the issues of alimony, the  
10 issue of equitable division, custody - if that's an  
11 issue - and attorney fees; it's a factor that can be  
12 considered on each of those issues.

13 And then we go through each of the issues and  
14 talk about how it's a factor.

15 Q. At what point in the intake process do you  
16 have this discussion?

17 A. It kind of depends. Sometimes it comes up at  
18 the initial consult, if the adultery issue is brought to  
19 my attention by either party.

20 What I typically say to people when I meet  
21 them for the first time, my standard speech is the  
22 minute you walked in -- Tell the client, the minute you  
23 walked into the door there has been created, between you  
24 and I, an attorney/client relationship; that's a  
25 confidential relationship which means that I cannot

1 disclose any information you give me here today, whether  
2 you hire me or not to undertake any representation of  
3 you formally; I tell you that so that you can know that  
4 you can be honest and forthright with me in our  
5 discussions today, so that if there's any skeletons in  
6 your closet that we have to discuss or go in to, you  
7 know that I cannot disclose that to anyone and I need it  
8 because I need that information to counsel and advise  
9 you.

10 And that's one of the speeches that I go  
11 through in consult.

12 Q. Even if adultery is not disclosed as an  
13 initial concern, do you give you prospective clients any  
14 advice or counseling with regard to the consequences of  
15 those issues?

16 A. Typically, when go through the factors of  
17 each of the issues, if equitable division is an issue in  
18 the case and let's say alimony is not, then I'm talking  
19 about the factors of misconduct, how it comes in to play  
20 as to equitable division.

21 And, usually, it comes up most of the time on  
22 the attorney fee point that I raise. You know, if  
23 somebody's committed adultery, then it could have an  
24 impact on a court awarding attorney fees.

25 Q. Do you have a client sign anything that



1 acknowledges the kinds of advice and discussions that  
2 you had with them?

3 A. I had a form that I used for awhile but I  
4 haven't been using it lately. It's in my forms but the  
5 direct answer is not in awhile.

6 Q. What did the form cover?

7 A. It was about a page and a half form, had  
8 various paragraphs in it that would have the client  
9 acknowledge I told them things about watching out for  
10 somebody that might be intercepting, not intercepting  
11 but recording telephone conversations.

12 I think it even has a provision in there  
13 about be careful about who you see and date and your  
14 relationship with other people.

15 It just kind of was one of those kind of  
16 forms that had some dos and don'ts on it.

17 Q. Why did you decide not to use it anymore?

18 A. Probably, real world, I ran out of the copy  
19 and just never refilled my little folder with it again.  
20 Just never got around to it.

21 Q. Does the 30-page document, the booklet that  
22 you described, that you're going to give to Mr. Pendarvis  
23 for me, does the client sign off on that and --

24 A. No. I just provide it as a courtesy.

25 Q. Do you discuss with your clients, when you're

1 discussing the adultery, topic of the -- whether there's  
2 any distinction between heterosexual and homosexual  
3 activity?

4 A. Occasionally, yeah, because I was involved in  
5 a few cases, in my past, that involved homosexual  
6 relationships and, particularly, in the custody area.  
7 And, so, yeah, that comes up occasionally but it's not  
8 all the time. Usually it's a heterosexual situation and  
9 I'm asking, do you have a boyfriend, do you have a  
10 girlfriend, something along those lines.

11 Q. Do you agree that the consequences from  
12 homosexual activity are the same as from heterosexual  
13 activity?

14 A. As far as alimony's concerned, yes.

15 Q. How would you compare the Powell versus  
16 Powell marital litigation to other cases that you have  
17 handled in terms of complexity, in terms of relationship  
18 or animosity between the parties, in terms of the  
19 financial amount of the marital estate?

20 MR. PENDARVIS: Object to the form.

21 Answer, if you can.

22 A. Complexity, again, all I've done is read the  
23 worse depositions so I don't know all of the details of  
24 the marital estate. I have some knowledge, based upon,  
25 essentially, that one summary sheet, apparently, Mr.

1 Powell made and put in a safe or a box that Mrs. Powell  
2 discovered. That is the only knowledge that I have of  
3 any extent of the marital estate.

4 And then I did look at, briefly, the small  
5 that Mr. Smith did.

6 Based solely on those and nothing else, it  
7 would appear that the estate is a little more  
8 complicated than the average matter. You have several  
9 businesses. You have several parcels of real estate.  
10 And, so, that tends to complicate things, particularly  
11 when you have small, closely held type businesses.

12 In terms of animosity, every case had  
13 animosity to some degree, some more than others. In  
14 this case it appeared that, at least from what Mrs.  
15 Powell was saying, in her deposition, that she was very  
16 distrustful of her husband based upon a prior separation  
17 or prior marital dispute they had a few years earlier  
18 and just felt as though he was going to be a foot-  
19 dragger and non-cooperative kind of person.

20 Q. There was some discussion about the  
21 employment of a forensic accountant in that case. Have  
22 you ever used a forensic accountant?

23 A. Yes.

24 Q. How many times?

25 A. Well, I can't tell you precisely. A lot of

1 times it depends -- Well, if you want numbers, I would  
2 say 20, 30 times, perhaps.

3 It's, really, kind of, dependent upon  
4 financial circumstances of the parties, the complexity  
5 of the case and actual need to hire an expert.

6 Q. Have you ever employed somebody such as Reid  
7 Smith who is not an accountant but is an attorney with  
8 some background in finance?

9 A. Typically not, no. Typically, I'm getting  
10 either a CPA or a lawyer slash CPA.

11 Or perhaps a business valuation expert that  
12 may not, necessarily, be a CPA. Like your professor, or  
13 something like that.

14 Q. Maybe you alluded to this but what would be  
15 the factors that would cause you to want to bring in  
16 somebody with financial expertise, in the case?

17 A. The complexity of the case, the content of  
18 the marital estate and what would need to be done to,  
19 number 1, identify what the marital assets are, and,  
20 number 2, to value them.

21 Things such as businesses are gonna require  
22 professionals or experts to value.

23 And there may be a need to have a forensic  
24 accountant review everything from tax returns to check  
25 accounts, credit card accounts, anything possible to

1 determine the extent of various assets and if all are  
2 accounted for. Are any hidden, or something along those  
3 lines.

4 Q. You mentioned that you were aware that Mrs.  
5 Powell has retrieved some documents from Mr. Powell's  
6 safe and provided to her attorneys. Did you look at  
7 those materials?

8 A. Briefly. I didn't study or analyze them.

9 Q. All right.

10 A. Because that wasn't the scope of what I was  
11 asked to do.

12 Q. Okay.

13 Of what value would that kind of information  
14 be?

15 A. Could be very valuable because it's a -- What  
16 I recall, it was a statement of the opposing party, in  
17 his handwriting, of what he felt the assets were and  
18 some valuations and some information dealing with those.  
19 So that's usually a pretty good thing to have. It's  
20 kind of like having a bank loan application. You tend  
21 to puff it up a little bit to look good to the bank. If  
22 he's doing it on his own he's probably puffing it up  
23 some. So it can be very helpful.

24 Q. What was your understanding of Conrad  
25 Powell's employment status during the marital

1 litigation?

2 A. It appeared, from the depositions that I  
3 read, that he wasn't formally employed but that there  
4 were some businesses, like a gallery and antique place  
5 and something, I can't remember the exact name of it  
6 without looking at my notes but some sort of entities  
7 that he had some partners in and that were operating in  
8 some fashion. I don't know that he was a traditional W-  
9 2 employee. I think he was a businessman. Let me put  
10 it that way.

11 Q. As far as you know, he did not have a  
12 salaried job?

13 A. Not that I could've seen in the depositions  
14 that I read.

15 Q. Okay.

16 What kind of issues or obstacles or problems  
17 does a party in that kind of situation present in a  
18 marital litigation?

19 A. Well, income verification or actual earning  
20 ability becomes -- might be a hot issue. Unemployment,  
21 voluntary unemployment, intentional unemployment becomes  
22 an issue. Those would be the two big ones that come to  
23 mind.

24 If you're looking at it strictly from an  
25 income standpoint, that's what you're asking me.

1 Q. What did you understand that Mr. and Mrs.  
2 Powell's standard of care of income or sources of income  
3 were in time immediately leading up to their separation?

4 A. Can't say that that was real clear in the  
5 depositions. I think she was working in Chic Antiques  
6 or in an art gallery or something like that. What she  
7 was earning, I don't know. I don't know that that ever  
8 came up.

9 Q. Do you know whether she was earning anything?

10 A. Got the impression that she was earning a  
11 minimal amount, yeah.

12 Q. Okay.

13 So what were they living on, to your  
14 understanding?

15 A. I'm not sure.

16 I think there was some testimony I read where  
17 he had sold a business, something wheels, something with  
18 the name of wheels to it, in a previous year and,  
19 apparently, made a substantial amount of money and was  
20 using those proceeds to live off of, somewhat.

21 Q. Okay.

22 Now, during the time that these parties were  
23 separated, what is your understanding of what kind of  
24 support Mr. Powell was providing to Mrs. Powell?

25 A. There was a voluntary arrangement in which, I

1 believe, he was giving her 5,000, or thereabouts, a  
2 month. For a number of months before there was any  
3 court order to kick in.

4 Q. Okay.

5 And you understood that to be voluntary on  
6 his part?

7 A. Well, it was --- Yeah... I mean there was no  
8 court order, if that's what you mean.

9 Q. You're aware that in January of 2005, during  
10 Ms. Potterfield's handling of the case, that Mr. Powell  
11 advanced \$400,000 to Mrs. Powell as an advance on  
12 equitable property distribution?

13 A. I'm aware of that.

14 Q. Okay.

15 Have you ever been able to get that from  
16 opposing party in a voluntary situation during a marital  
17 litigation?

18 A. An advance on equitable distribution is  
19 relatively common. Four hundred thousand dollars,  
20 depends upon the size of the marital estate and what's  
21 necessary, what's the reason for the need of the  
22 advance.

23 I've had varying sizes of advances. It just  
24 depends.

25 Q. You ever had one that big?



1 A. Not that big, no.

2 Q. Would you say that that was a substantial  
3 accomplishment in the handling of this litigation?

4 A. To get an advance in equitable division that  
5 size?

6 Q. Uh-huh.

7 A. My understanding was the purpose, in this  
8 case, of the equitable division was to give her funds  
9 with which she could buy housing or some place to live  
10 and that she was looking, from what I recall, at housing  
11 in the neighborhood of \$400,000, 3 50, 400,000, and that  
12 that was the number that she needed to acquire housing.  
13 So from the sense of the amount of it, you have to  
14 connect it to the purpose. Is the way I understood it  
15 was happening.

16 Q. What is the likelihood of a court awarding  
17 that kind of money at a temporary hearing?

18 A. Well, every case is different. So asking  
19 what the likelihood is, is totally fact dependent. I  
20 can't answer that, in other words.

21 Q. Have you ever seen a court award that kind of  
22 money as an advance on equitable distribution?

23 A. Have I ever seen it?

24 Q. Has it ever been done in any of your cases?

25 A. Not in any of my cases, no.

1 I have heard of some attorney fee awards in  
2 excess of that, though.

3 Q. If the purpose of the advance on equitable  
4 distribution, \$400,000, was for Mrs. Powell to obtain  
5 housing, do you know what she did with the money?

6 A. No.

7 Q. Have you ever seen any breakdown of how she  
8 spent it?

9 A. No.

10 Q. Did you look at any of the correspondence  
11 from Mr. Powell's attorney Marne Sherman during the  
12 course of that litigation?

13 A. If it was attached as an exhibit to either of  
14 those depositions I saw it.

15 Q. Okay.

16 Do you have any understanding as to whether  
17 or not Carolyn Powell's conduct or misconduct during the  
18 course of the litigation was an issue?

19 A. My understanding, there were. There was an  
20 issue about that, yes.

21 Q. What particular facts do you recall?

22 A. What I recall is that there was an issue  
23 about changing the amount on some checks from, I think,  
24 Washington Mutual, and then there was an issue of her  
25 intercepting some checks from escrow accounts, I

1 believe, from the house sale closing, something to that  
2 effect. There was a misappropriation of funds issue.

3 Q. Do you recall some instances where she  
4 changed the amounts on some checks that her husband had  
5 written?

6 A. Yes.  
7 That was the allegation.

8 Q. Okay.  
9 And she acknowledged that, did she not?

10 A. I think she did and said that she had  
11 permission, or something to that effect.

12 Q. Do you recall her taking some counter checks  
13 from the business of Chic Antiques and obtaining some  
14 funds in that, in that manner?

15 A. Yes, I do.

16 Q. Do you recall some issues about her vacating  
17 the premises of the gallery that she was operating?

18 A. Issues about it?

19 Q. Uh-huh.

20 A. I remember that there was concern that he was  
21 moving out because that was a possible term of a  
22 proposed settlement proposal, that she would get the  
23 400,000 if she moved out.

24 Q. Then do you recall there being some  
25 controversy or some dispute about that?

1 A. In the sense that she moved out and the  
2 400,00 wasn't forthcoming in a timely fashion.

3 Q. Do you recall her resisting having to move  
4 out?

5 A. I recall there being a dispute as to where  
6 she was going to move to and where she wanted to live.

7 Q. Do you recall there being an issue of her  
8 moving the children outside of the county without  
9 notifying Mr. Powell?

10 A. I recall there was an issue about, I think  
11 she wanted to live in Aiken and they were living in  
12 Columbia at the time and there was some, I believe Mr.  
13 Powell expressed displeasure at the children moving  
14 outside of Columbia.

15 Q. At one time do you recall that she actually  
16 moved the children, herself and the children out of  
17 state?

18 A. I think they moved to Augusta or North  
19 Augusta for a period, yes, if I recall.

20 Q. Without notifying Mr. Powell?

21 A. That, I'm not sure of.

22 Q. All right.

23 Do you recall some issues about some of the  
24 property and inventory that were in the gallery that she  
25 apparently put into -- took possession of?

1 A. Some artwork, if I recall.

2 Q. Do you recall some, her decision to buy a  
3 stable or a barn in Aiken?

4 A. Vaguely remember something about that in a  
5 deposition. I think, I recall she had some horses at  
6 one point.

7 Q. Do you recall a dispute between Mrs. Powell  
8 and her husband about the children going to private  
9 stucco?

10 A. Yes.

11 Q. How do those kinds of things that we have  
12 gone through with regard to her actions, how do they  
13 impact things like settlements negotiations?

14 A. Well, everything impacts settlement  
15 negotiations. Every case is different, force driven.  
16 Misconduct, in general, now ever it takes its form or  
17 shape, is relevant to various issues, as we discussed  
18 earlier.

19 Q. If one party perceives another party to be  
20 guilty of some form or fashion of misconduct, does that  
21 make the resolution of the matter more difficult?

22 A. If it's -- Depending on the extent of the  
23 misconduct, the nature of the misconduct, the relevancy  
24 of it to that particular issue may have a different  
25 weight. And the verification of it.

1 Q. Well, in these kinds of situations perception  
2 can sometime become reality, can it not?

3 A. Often times.

4 Q. You alluded, when we first started, as to  
5 what Mr. Pendarvis wanted you to do in this case. Give  
6 me your interpretation of what your assignment or what  
7 your task.

8 A. Well, I believe I stated it in my letter, if  
9 I can look at that.

10 Q. Sure.

11 A. I was to review those two depositions with a  
12 view towards rendering opinions as to whether or not the  
13 legal services provided by Taylor Potterfield feel below  
14 what I deemed to be a appropriate standard of care.

15 And I think I expressly stated that my review  
16 of those was limited to a determination of whether or  
17 not Taylor Potterfield law firm failed to take action or  
18 took inappropriate action with respect to the  
19 representation of Mrs. Powell and it was not intended in  
20 any way to determine the nature or the extent of any  
21 damages Mrs. Powell may have incurred as a result of  
22 that representation.

23 Q. And you were quoting from the second  
24 paragraph of your letter of September 12?

25 A. Correct. First and second.

1 Q. Okay.

2 And do those two paragraphs, does that  
3 information remain accurate as of today?

4 A. Yes.

5 Q. Okay.

6 I have your letter, obviously, but can you  
7 summarize for me the opinions you have with regard to  
8 any deviations from the standard of care?

9 A. Well, they are outlined in the letter but in  
10 a general fashion, the big concern is delay and  
11 implications that arise from the delay and potential  
12 prejudice that can occur from it. The lack of taking  
13 certain actions that could've been beneficial to the  
14 client.

15 And those, probably, are two general, big-  
16 ticket categories.

17 Q. Okay. All right.

18 Well, one of the actions that you, or lack of  
19 action, I guess, that you discuss in your letter are lis  
20 pendens. Tell me what, what are the advantages and  
21 disadvantages of a lis pendens in this kind of  
22 litigation?

23 A. Well, this kind of litigation, what happened  
24 is, is apparently several parcels of real estate were  
25 sold by Mr. Powell after representation of Mrs. Powell

1 had begun.

2 A lis pendens is, as I'm sure you know, is a  
3 reporting at the courthouse which notifies prospective  
4 purchasers that this is pending litigation which effects  
5 the title to that property and creates an encumbrances,  
6 essentially, that would put a hold on any transaction  
7 relating to that property. So it would, effectively,  
8 prevent the property from being sold without the  
9 knowledge of a non-titled party, such as a spouse that's  
10 not on the title.

11 Q. Under what circumstances would you -- Well,  
12 let me rephrase that. Under what circumstances does the  
13 standard of care require that a lis pendens be filed?

14 A. Well, if there is a knowledge that the party  
15 who is titled is going to be or has a track record of  
16 making statements that, for example, I'm not gonna let  
17 you get anything, or has a track record of doing things  
18 surreptitiously or was a control person and the spouse  
19 you represent is a subservient person. There may be  
20 many justifications for it.

21 The key is to preserve assets so that they  
22 can't just be dissipated and disappear. And if you have  
23 reason to suspect that that may happen, based upon the  
24 circumstances in the case, that's a justification for  
25 putting a lis pendens against the property.



1           And in this case he had actually sold some  
2 property and there was no agreement, no understanding of  
3 what was going to happen to the proceeds and no apparent  
4 discussion in advance as the reason or need to have to  
5 sell the property and no control over what happened to  
6 the proceeds.

7       Q.     Do you typically file a lis pendens in a  
8 marital litigation?

9       A.     Again, it's fact dependent. If I feel I need  
10 to I would. I have done it.

11       Q.     Do you do it in every case?

12       A.     Not necessarily.

13       Q.     Do you make a judgement in every case as to  
14 whether it needs to be done?

15       A.     Yes.

16       Q.     What percentage of cases would you say you  
17 file lis pendens?

18       A.     A smaller percentage, small percentage.  
19 Because it may not be necessary in every case.

20       Q.     Ten percent of your cases?

21       A.     Probably not even that much but the reason I  
22 would say that is because, typically, we'll going for a  
23 temporary hearing, fairly promptly, and you're gonna get  
24 a restraining order at the temporary hearing regarding  
25 disposing and addressing the assets, preserving of

1 assets.

2 Q. What are the disadvantages of filing a lis  
3 pendens?

4 A. Well, stops any prospective sale and there  
5 may be a need for proceeds for the sale, for one reason  
6 or another, to finance the litigation or to pay debts or  
7 something along those lines.

8 But, of course, you can, by agreement, agree  
9 to vacate it, for certain purposes.

10 And I've done that before.

11 Or remove the particular asset from it and  
12 leave the rest subject to it.

13 Q. Is it your contention that the standard of  
14 care required Taylor Potterfield to file lis pendens in  
15 this case?

16 A. I think that would have been an appropriate  
17 thing to do, in conjunction with requesting a temporary  
18 hearing and getting restraining orders.

19 Q. Well, it was an appropriate thing to do, I  
20 mean is it a deviation from the standard of care that  
21 they did not file any lis pendens?

22 A. In my opinion, under these circumstances,  
23 yes.

24 Q. I guess to what properties is it your opinion  
25 that a lis pendens should've been filed?

1 A. Certainly the ones they knew about. From  
2 that statement that was taken from the safe.

3 Certainly the one to Edisto or Pawley's, one  
4 of the islands, the beach house, which had yet to be  
5 sold at the time of the commencement of litigation.

6 I think the Kenilworth property was sold  
7 subsequent to the litigation and then there was another  
8 one that was sold subsequent to the litigation. Total  
9 of three pieces.

10 Somewhere in there one should've been filed  
11 to stop the remaining ones from being sold.

12 Q. On page 2 of your report you identify the  
13 Kenilworth residence, the Pawley's Island property and  
14 the Student Loan Building. Are those the three that  
15 you're talking about?

16 A. That's correct.

17 Q. Okay.

18 Any others that you contend a lis pendens  
19 should've been filed against?

20 A. Well, any others that they knew about. Those  
21 were just the ones that I was documenting that I knew,  
22 from what I read, had been sold during the  
23 representation.

24 Q. Have you analyzed what happened to those  
25 properties in this case?

1 A. No.

2 Q. Do you know what amounts they sold for?

3 A. I believe the Pawley's Island house, as I  
4 said, sold for a million seven. The other one's, I  
5 don't know. If they were in the depositions, I did not  
6 write them down, unless they're in my notes somewhere.  
7 I don't recall off the top of my head.

8 Q. Okay.

9 Do you know who these properties, in whose  
10 name they were titled?

11 A. It's my understanding they were titled in Mr.  
12 Powell's name.

13 Q. Do you know whether or not that's true of the  
14 Student Loan Building?

15 A. No, I don't know that.

16 Q. Okay.

17 Assume for the purposes of my question that  
18 the Student Loan Building was owned by a business entity  
19 of which Mr. Powell was part owner. Could a lis pendens  
20 have been filed in that circumstance?

21 A. I think so.

22 Q. And does that pose some, some issues and some  
23 problems, when you file a lis pendens where the marital  
24 party is not a name owner and is simply a part owner of  
25 a business?

1 A. I could see how arguments could be made. I  
2 don't think they would be successful arguments, in my  
3 opinion, because the marital litigation would affect,  
4 could affect the title to that property in terms of the  
5 spouse that is the partner having to either sell his  
6 interest in that property or his wife having a marital  
7 interest in his interest the ownership, the corporation  
8 owns it. So I think you can make a connection that a  
9 lis pendens is reasonable.

10 Q. But it would affect other --

11 A. Yes, it would.

12 Q. -- owners that have no interest in the  
13 marital litigation?

14 A. That's true.

15 Q. And they might not be real happy about a lis  
16 pendens being placed on the property?

17 A. I'm sure they wouldn't.

18 Q. So that could pose some issues, in and of  
19 itself?

20 A. It could.

21 Q. Have you ever had that kind of situation  
22 arise?

23 A. Yes.

24 Q. And how did that get worked out?

25 A. Typically, got to the temporary hearing and

1 ended up getting a restraining order that prohibited the  
2 partner, the spouse partner from disposing of any  
3 interest or doing anything. Because he was, in that  
4 case, was threatening to sell or dispose of his interest  
5 in that partnership, which is a building on Hilton Head.

6 Q. So the purpose of a lis pendens, then, is to,  
7 as I understand it, in this context, would be to protect  
8 the asset and to enable the party from, or to know when  
9 the asset was going to be disposed of and what happens  
10 to the proceeds?

11 A. Correct.

12 Q. A lis pendens could, then, prevent a sale  
13 that might be beneficial?

14 A. Well, it could but you can, by agreement,  
15 release that property from the lis pendens and have an  
16 agreement or court order that allows that piece of  
17 property to be dealt with separate from other pieces, if  
18 it's beneficial to sell it.

19 Q. Okay.

20 Do you have to get court approval to release  
21 the property from lis pendens?

22 A. No. You can voluntarily do that. You can  
23 sign a, I think I call them a vacation of lis pendens or  
24 vacating a lis pendens as to certain pieces.

25 And it can be done voluntarily but it can

1 also be forced by court order.

2 Q. Let's take the Kenilworth residence property,  
3 for example. Do you know what the net proceeds were  
4 from the sale of that parcel?

5 A. Not off the top of my head, no.

6 Q. Okay.

7 And do you know what happened to those  
8 proceeds?

9 A. No, I don't. That was one of the concerns.

10 From the depositions I read, it was not  
11 clear, by counsel at the time for Mrs. Powell, what  
12 happened to them. That was one of the issues.

13 Q. Do you know what analysis Mr. Smith made of  
14 that transaction when he came onboard?

15 A. Not in detail. I just know he looked in to  
16 the assets.

17 Q. Do you know whether the proceeds of that  
18 transaction were dissipated or hidden by Mr. Powell in  
19 any means --

20 A. No.

21 Q. Do you know whether or not Mrs. Powell  
22 objected to that property being sold?

23 A. I think, if that's the one I'm thinking of,  
24 without looking at my notes, that was the one that was  
25 sold while she was out of the country and she had no

1 knowledge of it to be able to object to it.

2 Q. Do you have understanding that, that to some  
3 extent these people were buying and selling real estate  
4 during the time they were married and that was part of  
5 their, the means by which they supported themselves?

6 A. Well, the only answer I have for that is that  
7 in Mrs. Powell's deposition, I believe you may have  
8 questioned her along those lines but to know whether  
9 that's true or not, I don't know.

10 Q. Well, with regard to the proceeds of the  
11 Kenilworth property, you don't have any information that  
12 Mr. Powell disposed of those proceeds in some  
13 inappropriate fashion, whether or not they were still  
14 apart of the marital estate at the time a settlement was  
15 ultimately arrived at?

16 A. I, really, have no personal knowledge. That  
17 was not, sort of, within the scope of what I was looking  
18 at. So I didn't get in to what they got, what happened  
19 to it.

20 Q. All right.

21 A. And I just knew that at the point of the  
22 deposition the testimony was there was some question as  
23 to whether Ms. Potterfield was aware of what happened to  
24 those proceeds from the time of the sale for a number of  
25 months thereafter.



1 Q. But if, in fact, nothing untoward was done to  
2 those proceeds, then it would not have had any effect on  
3 the bottom line as to whether or not a lis pendens had  
4 been filed against it?

5 A. Maybe, maybe not. I mean, kind of, because  
6 the whole package has to be considered. Whether or not  
7 she would been entitled to any of that, or not, I don't  
8 know. I mean I can't answer that question, let me put  
9 it that way.

10 Q. And is the same true of the other two  
11 properties that you mentioned?

12 A. Yeah. I mean I don't know whether there  
13 would be any -- whether there was actual harm or  
14 prejudice. I just don't know that question.

15 Q. Now, you also mentioned a temporary hearing.  
16 so let's talk about that a little bit. Under what  
17 circumstances should a temporary hearing be requested in  
18 marital litigation?

19 A. If the client has issues that need,  
20 relatively, immediate attention. That affords an  
21 opportunity to get in front of a court and seek that  
22 relief on a temporary basis.

23 It also requires the filing of a financial  
24 declaration, which would be an under oath summary of,  
25 not only income and expenses, but also of assets.

1           It creates a starting place.

2           Q.    What are the judgement calls that need to be  
3           made to determine whether or not a temporary hearing was  
4           appropriate?

5           A.    Depending on the issues in the case, if there  
6           were children involved and there was some question of  
7           where the children are gonna live, which parent, because  
8           they are now separated and not living together,  
9           generally is the case, and you have to have some  
10          authority to deal with the children related issues, the  
11          establishment of a visitation schedule or access  
12          arrangements for the non-custodial parent so that the  
13          parties can plan, addressing child support and  
14          establishing an appropriate amount and method of payment  
15          for that, dealing with personal support issues, if  
16          someone needed some financial, or a spouse needed  
17          financial assistance beyond child support what would be  
18          a fair and reasonable way to assist, so that there are  
19          some ground rules set up while the case is progressing  
20          to deal with those issues, as well as, possession of  
21          real estate, like a house, who's gonna stay in the house  
22          and who's not, who's paying certain bills and who is  
23          not, while the case progresses.

24                It's also a helpful tool to, if the parties  
25          are on unequal fields, to get some temporary attorney

1 fees, to help finance the litigation, whether it be  
2 experts or attorney fees, funds that are needed, and  
3 things along those lines, generally, just to, I tell my  
4 clients, just kind of to set up some ground rules that  
5 you guys are gonna be living under while this case  
6 progresses. And to deal with issues that need immediate  
7 attention.

8 Q. Do you move for a temporary restraining order  
9 -- I'm sorry, a temporary hearing in every case?

10 A. Not necessarily every case. But in a vast  
11 number of them.

12 Q. Under what circumstances would you not  
13 request a temporary hearing?

14 A. Parties already have an agreement and it was  
15 just a question of getting the agreement adopted.  
16 There're, really, no assets; the mobile home divorce  
17 that I was talking about earlier. There're, really, no  
18 assets and it's a small situation. They haven't been  
19 married long and there's no alimony, don't have any  
20 children.

21 Depends on the circumstances but there would  
22 be circumstances that may not justify the need or the  
23 expense of going to a temporary hearing. You just go  
24 straight to a final hearing to get it done quicker.

25 And cheaper.

1 Q. So expense is one concern?

2 A. Could be. Yeah. It's a concern in  
3 everything.

4 Q. And if the parties have been able to work  
5 among themselves such things as custody and visitation  
6 and child support and who pays the bills and that sort  
7 of thing, then that wouldn't obviate the need for a  
8 temporary hearing?

9 A. No.

10 Q. Not?

11 A. Because a temporary hearing you end up with  
12 an enforceable court order. And that provides  
13 protection that you don't have with a, what I call, a  
14 handshake and a kiss agreement.

15 Q. Well, when you go into a court for a  
16 temporary hearing there's certainly a chance that a  
17 judge may make a ruling that would not be advantageous  
18 to your client.

19 A. Of course, there is.

20 Q. And, so, if the parties are able to establish  
21 these ground rules that you have mentioned on a  
22 voluntary basis, isn't it better to allow them to live  
23 under ground rules that they can agree to as opposed to  
24 risking what will happen in a temporary hearing?

25 A. Well, that's a strategic decision but,

1 overall, I would say even if you've got your own  
2 agreement you want to convert it in to a court order so  
3 that it has the element of enforceability. It protects  
4 someone from just saying, well, I'm not gone pay that  
5 anymore, screw you.

6 And it also requires a financial declaration  
7 to be filed, which is under oath, a sworn statement from  
8 the opposing party. It gives you a place to start to  
9 verify and analyze assets and income and other factors.

10 Q. Would it be a concern with regard to whether  
11 to request a temporary hearing if you thought the facts  
12 would come out that could expose your client to criminal  
13 liability?

14 A. Sure, it would be a concern.

15 Q. And that's something that you should take in  
16 to consideration in whether to request a temporary  
17 hearing?

18 A. I think it would be one of the things you  
19 would consider. Any negative involving your client  
20 can't be ignored.

21 Q. And things like forging signatures on checks  
22 or changing amounts on checks would be negative kinds of  
23 things that could impact how a temporary hearing could  
24 come out?

25 A. Could, could be, yeah.

1 Q. And that would be something that would be  
2 appropriate for the attorney to take in to  
3 consideration?

4 A. Any negative implication, I think, you cannot  
5 ignore. Now, you have to investigate it to determine  
6 the validity of it or have a clear understanding of what  
7 happened and an explanation for it so that you an access  
8 the weight that would be given to it. If it misconduct  
9 or is it not? Is it truthful or is it not? I mean is  
10 it just somebody claiming it and they can't -- There's  
11 on evidence of it.

12 You just have to consider on a case by case  
13 basis.

14 Q. And these are things in which experienced  
15 marital attorneys should evaluate and should make  
16 decisions based on that information?

17 A. Certainly should evaluate it, yes.

18 Q. Do you contend that the standard of care  
19 required Taylor Potterfield to have a temporary hearing  
20 in this case?

21 A. Yes, I do.

22 Q. When?

23 A. As soon as possible.

24 Q. Well, as soon as possible after the pleadings  
25 had bee filed?

1 A. Typically, you ask for a temporary hearing  
2 simultaneously with your initial suit papers or Summons  
3 and Complaint but these took, in this case, a long time,  
4 a number of months before that occurred.

5 I think the filing of the suit, in my  
6 opinion, and the requesting of the temporary hearing  
7 should have happened much earlier than the filing of the  
8 suit actually occurred.

9 Q. Well, in this case what do you think the  
10 temporary hearing would have accomplished?

11 A. It would have provided information from Mr.  
12 Powell that I think was critical to have to know to be  
13 able to engage in any settlement or start any  
14 investigation. That would include his claim, under  
15 oath, that his earnings and his sources of earnings, his  
16 expenses, whether they were marital or not, and,  
17 probably most importantly, his listing of assets.

18 Q. Well, Mrs. Powell already had a listing of  
19 assets from the paperwork she took from his safe, did  
20 she not?

21 A. It's not under oath and how does anybody know  
22 that that's accurate?

23 Q. Well, have you seen any information develop  
24 in this case that indicated that that statement was  
25 inaccurate?

1 A. No. I mean I wasn't asked to do that.  
2 That's what I'm trying to say, that it may be accurate,  
3 as far as I know. I just don't know if it was.

4 It certainly is suspicious because it's what  
5 he chose to write down. Was he thorough? Was he  
6 complete? Was this even a setup? I mean there's lots  
7 of things that could call in to question the veracity of  
8 what's on that.

9 Q. She certainly knew that the house she was  
10 living in was a potential marital asset?

11 A. I would assume so.

12 Q. As well as the house that he was living in?

13 A. I would assume so. I don't know for a fact.

14 Q. So that wouldn't be a surprise?

15 A. I can't answer that.

16 Q. She was aware of the Pawley's Island beach  
17 house, was she not?

18 A. I understand that she was.

19 Q. That she, she used it from time to time to go  
20 and stay there?

21 A. That, I don't know.

22 Q. And her husband wasn't very happy about it  
23 when she didn't notify him and he got done out of some  
24 rent, was he?

25 A. I don't know anything about that.



1 Q. Do you have any information that the sales of  
2 any of those three parcels that we've talked about were  
3 not for fair market value?

4 A. No.

5 Q. That they were not arms-length transactions?

6 A. No.

7 Q. Do you contend that they would've brought any  
8 more money if they'd been sold sooner or later?

9 A. No knowledge of that.

10 Q. Do you have any information that the proceeds  
11 from those sales was diverted to third parties?

12 A. The only information I have is the deposition  
13 suggested there was some question about what did happen  
14 to the proceeds, where were they and how they were used.  
15 So, no.

16 All I know is what those two depositions said  
17 and I believe Mrs. Potterfield said that, and I think  
18 there was a letter or a note or something where she  
19 indicated where are the proceeds after the sale; I  
20 believe, of Kenilworth and there was some discussion  
21 with Mrs. Sherman and Mrs. Potterfield about pointing  
22 the proceeds of the Pawley's property into an escrow  
23 account but that never, apparently, happened, from what  
24 I could read.

25 Q. Do you know whether or not they were put into

1 accounts that were preserved?

2 A. No, I don't.

3 Q. So I gather that from what you have read,  
4 there were questions raised but you don't know what the  
5 answers to those questions were?

6 A. No. What I'm trying to say is that it would  
7 be appropriate for an attorney representing a non-titled  
8 spouse to take action to preserve any assets that you're  
9 aware of and to get court orders protecting any other  
10 assets. That's, basically, what I'm trying to say.

11 Whether or not there was prejudice in what  
12 action was taken by Taylor Potterfield, I can't render  
13 an opinion on. I did not evaluate that.

14 I think a forensic accountant would have to  
15 do that.

16 Q. Have you talked with any forensic accountant  
17 that's been retained in this case?

18 A. No.

19 Q. Have you looked at any of the discovery  
20 responses in this case?

21 A. No.

22 Q. Do you know whether or not Mr. Smith  
23 determined whether there was any indication of any  
24 effort to hide or divert assets?

25 A. All I know is what appeared in Mrs. Powell

1 deposition where she expressed concern that he did not  
2 do a thorough job and there were, I think her words were  
3 there were holes in his report.

4 Q. Do you have an opinion in that regard?

5 A. No. I have not evaluated that.

6 Q. You haven't evaluated the work that Mr. Smith  
7 did?

8 A. No.

9 Q. Do you contend that the -- that there was any  
10 lack of communication between Taylor Potterfield and  
11 Mrs. Powell that arose to the level of a deviation from  
12 the standard of care?

13 A. I cannot answer that one positively or  
14 negatively. All I can say is, is that there appeared  
15 from the deposition to be some concern that Mrs. Powell  
16 expressed about having phone calls returned in a timely  
17 fashion and, apparently, there were communication in  
18 writing between them, that I've seen as exhibits. So I  
19 don't know whether that was -- I can't answer whether  
20 that violated a standard of care.

21 Q. Certainly not unusual in marital litigation  
22 for parties to be anxious and concerned and have issues  
23 with regard to whether or not phone calls were  
24 returned --

25 A. Absolutely not.

1 Q. Does the standard of care, in your opinion,  
2 require any particular number fact face-to-face meetings  
3 with a client, as opposed to communications by mail or  
4 facsimile or telephone or other fashion?

5 A. Not any specific number, no. I think it  
6 depends on what's involved.

7 Face-to-face meetings typically tend to be  
8 lengthy and expensive. So, as a practitioner, I try to  
9 avoid them as much as I can.

10 Q. You said earlier that your concerns in the  
11 case were, basically, twofold, the delays and the lack  
12 of taking actions. Have we, basically, talked about the  
13 lack of taking action allegations?

14 A. Well, partially. The lack of getting a  
15 financial declaration, I believe I've discussed. Lack  
16 of discovery, I believe I've discussed.

17 If I can refer to my letter I can be more  
18 specific

19 Q. Sure.

20 A. Lack of more timely filing and requesting a  
21 temporary hearing and I think, even though the pleadings  
22 that were actually filed in early '05 did not have a  
23 request for equitable division on behalf of Mrs. Powell.  
24 It was only the counterclaim of Mr. Powell that sought  
25 equitable division.

1       Let's see.

2       One of my principal concerns was the lack of  
3       any ability to control or manage what might end up in  
4       the marital estate, particularly, real estate, by  
5       failure to take any action to protect that, whether it  
6       be lis pendens, filing an action to establish an actual  
7       date of valuation and an entitlement to marital assets  
8       under the law, or getting a restraining order or  
9       something, or even a court order that would allow the  
10      sale of the property so that you can review the purpose  
11      for the need for the disposition of the asset and have  
12      some control over what's happening to the proceeds of it  
13      and be involved in the process, as opposed to being a  
14      bystander.

15      Also, without having adequate verification of  
16      all of the facts and circumstances, including the assets  
17      and the financial pictures of both parties, I think it  
18      would be inappropriate to start negotiating permanent  
19      settlement terms.

20      Failing to obtain a forensic person to assist  
21      with the identification, valuation of assets or  
22      determining if certain assets are unaccounted for would  
23      have been helpful and, perhaps, prejudicial to Mrs.  
24      Powell.

25      Lack of obtaining a financial declaration of

1 Mrs. Powell herself until late in the game made it  
2 difficult to determine what her true financial needs  
3 would be from an expense point of view because I don't  
4 know that there, or, at least, I didn't see anything  
5 that would establish what her ongoing expenses or  
6 projected expenses were gonna be and so from standpoint  
7 of personal support how would you evaluate what her  
8 needs were, without having something from her in that  
9 respect?

10 Looking in to the earnings ability as opposed  
11 to just the actual earnings of someone. Are they  
12 underemployed? Are they capable of earning some level  
13 of income that would be relevant to the support issues?  
14 Does not appear to me, from what I read to have been  
15 investigated and, perhaps, that could have been by  
16 either discovery or financial declaration or forensic  
17 expert.

18 It was also a failure to address Mr. Powell's  
19 alleged adulterous conduct and the implications that it  
20 may have had on any claims Mrs. Powell could make. In  
21 other words, the Complaint that was actually filed on  
22 behalf of Mrs. Powell sought a Decree of Separate  
23 Support and Maintenance and did not address any  
24 misconduct on the part of Mr. Powell, which I understand  
25 may have existed.

1           There was some question regarding the  
2       discussion of the effect of any adultery on the part of  
3       Mrs. Powell after separation and what effect that would  
4       have, whether it be homosexual or heterosexual.

5           And the effect of the timing, the delay, that  
6       it may have had on the alleged adulterous conduct of  
7       Mrs. Powell. in other words, if the matter had been  
8       resolved earlier than it was, her adultery may have  
9       occurred at a time where it wasn't relevant to the  
10      settlement but by delaying made it so that it could've  
11      become relevant and put her at risk.

12          It's also my opinion that Mrs. Powell, on  
13      several occasions, from what I have read, in writing,  
14      made it known of her emotional condition as a result of  
15      the time that this case was taking and requested, on  
16      several occasions, that she was desperate or needed the  
17      case to be put on a front burner or moved on, or  
18      whatever, and there's some question as to whether her  
19      requests and her, in consideration her emotional well  
20      being was factored in to any decisions made on her  
21      behalf and whether that could've caused prejudice to  
22      her.

23          In general, I think, overall, my, my feeling  
24      is, is that there was not a proactive approach taken in  
25      this case and that this case, for the reasons I've

1 outlined, including the emotional condition of Mrs.  
2 Powell, called for a letter more proactive action than  
3 what this case got and, as a result, there could've been  
4 prejudice or damages that Mrs. Powell could've incurred.

5 I hope that answered your question. I know  
6 it was kind of --

7 Q. Let me go back through some of those, more  
8 specifically.

9 There's a family court rule about filing a  
10 financial declaration, is there not?

11 A. That's correct.

12 Q. Forty-five days?

13 A. That's correct, yes, or at the temporary  
14 hearing, whichever occurs first.

15 Q. All right.

16 That 45-day rule is not typically observed,  
17 is it?

18 A. There are occasions where it's not observed,  
19 I would agree.

20 Q. And there's not any prejudice that results  
21 to, if it's not done, typically done in 45 days?

22 A. I can't say that that wouldn't necessarily,  
23 in all cases, avoid any prejudice by not filing it.

24 Q. Do you always file your in 45 days?

25 A. Not always.



1           There's lots of reasons. You may have an  
2       agreement not to do that, with the other side, and there  
3       may be the temporary hearing is on the forty-eighth day,  
4       or something like that. I mean there may be  
5       justifications.

6       Q.     The Court doesn't sanction you on the forty-  
7       sixth day if you haven't filed --

8       A.     No.

9           They will if you come in to temporary hearing  
10      without one.

11      Q.     All right.

12           And that's, really, the time that you have to  
13      have one, is at the temporary hearing?

14      A.     Reason, The Court wants it by then. Now,  
15      whether the counsel needs it is a different question.

16      Q.     And, certainly, if you have information  
17      regarding the other party's financial assets, that would  
18      be a reason not to require the other party, or even your  
19      own party from filing a financial declaration?

20      A.     Well, I guess it could, depending upon a lot  
21      of other circumstances.

22      Q.     And a financial declaration is a two-way  
23      street, is it not?

24      A.     In what sense?

25      Q.     Well, if you require the other party to file

1 one it's likely that the other party will require you to  
2 file one?

3 A. Yeah. I would agree with that.

4 Q. Okay.

5 And there may be reasons that you wouldn't  
6 want to file a financial declaration until you have to?

7 A. There may be.

8 Q. Okay.

9 And the same thing is true with regard to  
10 discovery. Discovery is expensive, is it not?

11 A. Usually, it is.

12 Q. And if you ask for discovery from the  
13 opposing party it's likely that that request will be  
14 reciprocated?

15 A. Pretty much verbatim.

16 Q. And so there may be things that you don't  
17 want to have to disclose in discovery. That may be a  
18 reason that you don't assist upon discovery from the  
19 other side?

20 A. Certainly could be a factor, yes.

21 Q. Now, with regard to the pleadings, as you  
22 mentioned, Mr. Powell's answers to the Complaint  
23 requested equitable distribution?

24 A. Yes.

25 Q. And Miss Potterfield responded to that with a

1 reply?

2 A. To my understanding, yes. I haven't seen the  
3 reply but I understand that happened.

4 Q. So the issue of equitable distribution was on  
5 the table, was it not?

6 A. It was, yes.

7 Q. And so there was no prejudice that resulted  
8 from that not being in the initial Complaint?

9 A. I can't answer whether there was prejudice.  
10 I just know it wasn't requested for Mrs. Powell.

11 (Deposition went off the record.)

12 Q. Mr. Brown, one of the things that you  
13 mentioned earlier was the lack of identification of  
14 assets. Do you know what role Reid Smith played in that  
15 regard?

16 A. I understand he was hired to do a summary of  
17 assets. That's about all I know.

18 Q. He wrote one report, I think in May of 2006.  
19 Did you take a look at that?

20 A. I'm aware of its existence. I did not  
21 evaluate or analyze it.

22 Q. Okay.

23 A. It just wasn't relevant to what I was asked  
24 to do.

25 Q. All right.

1 Well, I mean one of your criticisms here is  
2 that you say that these -- that Taylor Potterfield did  
3 not identify the assets. I mean did not they identify  
4 them through the hiring of Reid Smith and the work that  
5 he did?

6 A. Several years after representation began,  
7 yes. That's part of delay problem I mentioned earlier.

8 Q. But you have no basis to say that Mr. Smith  
9 did not adequately identify the assets when he became  
10 involved?

11 A. I can't say that he did or didn't.

12 Q. And you mentioned the lack of control over  
13 the assets as being a concern but, again, you have no  
14 basis to say that there was any inappropriate  
15 disposition of assets because of any lack of control.

16 A. Well, an inappropriate disposition would have  
17 been, for example, the sale of the Pawley's property  
18 during the course of the litigation, after the sale of  
19 Kenilworth, which was done, from what I read, while Mrs.  
20 Powell was out of the country, would raise some red  
21 flags that you need to do something to protect the  
22 assets.

23 Q. What if these parties, both Mr. and Ms.  
24 Powell, needed the disposition of those properties to  
25 have assets for Mr. Powell to live on, for Mr. Powell to

1 provide support to Mrs. Powell?

2 A. Then the better course, the proper thing to  
3 do, in my opinion, was to go to a court, have a  
4 temporary hearing, have that verified and established  
5 with under oath testimony or documents to verify it and  
6 then have some rules set up on how you're gonna deal  
7 with it, other than just then just willy-nilly letting  
8 it happen and then trying to figure out what you're  
9 gonna do about it after the fact.

10 That's the control and that's what I'm  
11 talking about, is you can have those rules put in to  
12 play and determine is it, truly, necessary to set on  
13 this property and why and what are we going to do with  
14 the proceeds and how are we gonna use them in a  
15 controlled fashion.

16 Q. Well, control is a two-edge sword. I mean  
17 control may be one thing from a standpoint of  
18 verification, and that sort of thing. On the other  
19 hand, it can be restrictive and it can hamstring things  
20 that need to be done.

21 A. And perhaps that may be what's necessary in  
22 some cases. For example, again, based on what I've  
23 read, Mrs. Powell had no control. Mrs. Powell had all  
24 the control. And the question is was it appropriate not  
25 to prevent that from happening. And could prejudice

1 result as a result of that omission? Yes, it could.

2 Q. Whether or not it did is another question.

3 A. That's true.

4 Q. To which you cannot answer?

5 A. Which I cannot answer.

6 Q. Do you know whether or not Taylor Potterfield  
7 requested that Ms. Powell provide information to file a  
8 financial statement?

9 A. At some point, I think in '05, if my memory  
10 serves me correctly, without my notes. Some point there  
11 was a temporary hearing that was scheduled by Mrs.  
12 Sherman. I think it got continued one or twice and I  
13 think in preparation for that a financial declaration  
14 was sent to Mrs. Powell, if my memory serves me  
15 correctly.

16 Q. And do you recall that there was some delay  
17 on Ms. Powell's part in providing that information?

18 A. That, I'm not sure of. Without looking at my  
19 notes.

20 Q. Do you recall what Mr. Powell's age was  
21 during this period of time?

22 A. I don't know that I ever saw anything that  
23 had his age on it.

24 Q. Okay.

25 Do you know anything about his health

1 condition?

2 A. No. I don't know that that ever came up in  
3 what I read, either.

4 Q. Did you ever look at any of his tax returns?

5 A. No.

6 Q. Now, you mentioned the alleged adulterous  
7 conduct of Mr. Powell. Remind me of what the  
8 significance of that was to you.

9 A. Well, a divorce was not sought against him  
10 for that, fault based divorce, and I did not see  
11 anywhere that I read that that was in any way a factor  
12 in terms of the negotiations that were going on with Mr.  
13 Powell's attorney.

14 Q. Do you understand that Mr. Powell contested  
15 that he had been engaging in any adulterous conduct?

16 A. Only way I understand that is through your  
17 questioning of Mrs. Powell about his deposition.

18 Q. Okay.

19 Assume for the purposes of our discussion  
20 that he denied having any adulterous relationship. How  
21 does that play out to them in the course of marital  
22 litigations? What if these pleadings had been based on  
23 adultery and he says didn't happen? Then how does that  
24 resolve?

25 A. Well, what should happen is prior to the

1 filing of the pleadings some form of investigation  
2 should be done or inquiry in to what are the underlying  
3 facts and circumstances that the client claims that  
4 that's occurring.

5 And perhaps private investigators or others  
6 would be brought in or other evidence would be sought to  
7 establish, at least, a prima facie showing of that for  
8 purposes of a temporary hearing.

9 Q. Okay.

10 And assume that the husband would come into a  
11 temporary hearing and deny that any adulterous situation  
12 occurred. Then that becomes an issue of fact that the  
13 family court judge had to decide?

14 A. Yes.

15 At a temporary hearing, as I understand South  
16 Carolina law, if you make a prima facie showing the  
17 court can rule, based upon th prima facie showing.

18 Now, it may be that at the permanent hearing  
19 that adulterous was not established and there are  
20 consequences to that, as well.

21 Q. Well, does the husband get a chance to  
22 contest adultery at a temporary hearing?

23 A. Sure, if it's pled and it's an issue.

24 Q. Okay.

25 So then it becomes an issue of credibility of



1 the wife versus the husband on that issue?

2 A. And the evidence, not just the two parties  
3 involved, not a he-said-she-should but it makes much  
4 better lawyering to have corroboration in some way.

5 Q. Of course, if one spouse accuses the other of  
6 adultery, that sort of, I guess, chills the negotiation  
7 process, does it not?

8 A. Well, I guess it could. I don't think it's  
9 always the case.

10 Q. Well, I mean if you come out of the locks  
11 with an adultery count in your Complaint, that's going  
12 to make it difficult to have negotiations with your  
13 spouse regarding such things as child custody and  
14 visitation and support and those sorts of things.

15 A. Depends on whether it's true or not. I mean  
16 I always tell my clients, it's the old Bill Clinton  
17 defense that I like to tell them about. The punishment  
18 for the coverup's typically worse than the punishment  
19 for the crime itself; go ahead and 'fess up; if you've  
20 made a mistake and we reasonably, reasonably believe it  
21 can be proved, take your medicine and move on.

22 So it may or may not be a contributing or a  
23 chilling factor.

24 Q. If the goal of your client is to obtain a  
25 reasonable division of the marital assets, reasonable

1 child support, reasonable stipulations regarding custody  
2 and visitation, wouldn't it be better to forego a claim  
3 of adultery and try to plead a no-fault ground and  
4 negotiate those matters?

5 A. No. In fact, it may be strategically better  
6 to have The Court not like the opposing party because of  
7 the adultery they've committed. It may enhance your  
8 case.

9 Q. Okay.

10 Well, what if your party has been guilty of  
11 such things as forgery and misappropriation of assets  
12 and conduct that could result in criminal consequences?

13 A. Like I said earlier, all the negative factors  
14 would have to be considered. Certainly, they are  
15 relevant.

16 Q. And they're relevant with regard to your  
17 client's credibility, are they not?

18 A. Yes. I would say so.

19 Q. Do not the client's wishes and desires as to  
20 how litigation is to be handled, isn't that an important  
21 thing for the attorney to take in to consideration?

22 A. Yes, it is, but, in my opinion, it is not the  
23 lawyer's job to just parrot what ever the attorney, I  
24 mean what ever the client says. The whole point of  
25 having a lawyer is to give counsel and to recommend and

1 to assist. Otherwise, you really wouldn't need a  
2 lawyer, would you?

3 Q. Well, certainly, the lawyer's obliged to  
4 listen to his client and take her wants, desires, goals  
5 in to account?

6 A. Absolutely, and, ultimately, it's the  
7 client's decision which direction to go, as long as that  
8 is an informed decision.

9 Q. And the client has ultimate decision with  
10 regard to settlement opportunities, do they not?

11 A. Of course. Lawyer can't decide for the  
12 client.

13 Q. Do you see any evidence in this case that  
14 Taylor Potterfield did other try to counsel with Ms.  
15 Powell?

16 A. Counsel with her in what sense?

17 Q. With regard to things like disposition of  
18 property, where she was going to live, support issues,  
19 custody equitable distribution.

20 A. From what I can tell, there were discussions  
21 about those things, yes.

22 Q. Have you looked at the final agreement that  
23 Mr. and Mrs. Powell entered in to?

24 A. No.

25 Q. You have not?

1 A. No.

2 Q. That was an exhibit to her deposition.

3 A. I didn't evaluate it and I'm aware of it but  
4 I did not study it to any degree.

5 Q. Why not?

6 A. Because my scope of employment was to  
7 determine if there were omissions that could've had  
8 prejudicial effect, not did it have prejudicial effect.

9 Q. In the Complete Property, Support and Custody  
10 Agreement, which is exhibit 20 to Mrs. Powell's  
11 deposition, you want a copy of it?

12 A. I've got it.

13 Q. Is this the kind of document that you would  
14 prepare in your practice?

15 A. Yes.

16 Q. And before you would have a client execute  
17 this document you would review the terms of it with  
18 them?

19 A. Yes.

20 Q. And what would you explain to the client  
21 about the consequences of entering in to an agreement  
22 such as this?

23 A. About the consequences of entering in to it?

24 Q. Yes.

25 A. Well, there is res judicata effects that come

1 in to play, particularly as to asset division. There  
2 are modification implications that come in to play,  
3 particularly as to alimony, child support, custody,  
4 visitation.

5 There're tax implications. There's various  
6 different implications that would come in to play.

7 Q. Look on page 3 of that agreement. The third  
8 whereas paragraph says both parties acknowledge that  
9 each is familiar with the financial ability, income,  
10 expenses, assets and liabilities of the other.

11 Would you go over a provision like that with  
12 your client?

13 A. Yes.

14 The Court's gonna, actually, ask you the same  
15 thing, in court.

16 Q. Exactly.

17 And so you would expect that if a client  
18 signs off on this agreement that he or she is agreeing  
19 to the accuracy of that statement?

20 A. Yes, but as I understand it, the way it is  
21 treated is that you're familiar, the client if familiar  
22 with these things as that client understands them to be.

23 And it may be that there is a  
24 misrepresentation but that's what the client understands  
25 it to be. Those financial circumstances.

1 Q. I'm not following you. Does the client get a  
2 take-em-back on this?

3 A. No. No. Unless it was, say, a fraud of some  
4 sort.

5 But what you're saying is I'm agreeing to  
6 settle this case today based on the circumstances that I  
7 understand them to be at this time.

8 Q. So can you come back the next day and say,  
9 you know, I didn't understand the circumstances?

10 A. Two unrelated things. You're just telling  
11 the judge I'm agreeing to this based upon the  
12 circumstances as I understand them to be today. You may  
13 say I don't like it, I'm not happy with it. Unless you  
14 say it's unfair the court's gone, probably, still adopt  
15 it but you can say I'm not happy with it but based on  
16 the circumstances I understand them to be, I'm willing  
17 to accept it.

18 Q. Okay.

19 And what's the res judicata effect that you  
20 mentioned?

21 A. Can't come back on property division. You're  
22 stuck with the property division. You get one bit at  
23 the apple there.

24 Q. That same sentence goes on to say he  
25 recognizes and acknowledges that they're not entering in

1 to this agreement as a result of threat, duress or undue  
2 influence.

3 Would you go over that with your client?

4 A. Of course.

5 Q. And would you expect them to -- that that  
6 would be a true statement when they sign this document?

7 A. Yes.

8 Q. So would you expect them to come back at some  
9 later time and say, by the way, I was under duress or  
10 undue influence and, therefore, this document is not  
11 binding on me?

12 A. No. I think everybody that goes into court,  
13 even with a settlement, has a certain degree of duress  
14 that they're under because they're not familiar with the  
15 system or they don't understand everything. What I  
16 think this is talking about is unusual duress. Someone  
17 has put you under duress in an inappropriate way.

18 But I don't think you get -- And,  
19 nonetheless, unless it was fraud of some sort, I don't  
20 think you get to come back and have a do-over, as you  
21 say.

22 Q. And that paragraph goes on to say that each  
23 party has freely, actively and fully taken part in  
24 negotiation hereof over a reasonable period of time and  
25 acknowledges and considers the terms and conditions to

1 be fair, just and equitable.

2 Is that something that the party gets to come  
3 back later and deny?

4 A. No.

5 Q. Look at page 17. Paragraph number 11, Roman  
6 numeral VI, Fairness of Agreement. Take a second to  
7 look at that.

8 A. Okay.

9 Q. Is this a provision that you would typically  
10 put in to a settlement agreement of this kind?

11 A. It'd probably be partially incorporated in to  
12 the one we read earlier.

13 Q. Okay.

14 This paragraph says each party acknowledges  
15 the agreement is fair and reasonable; each has had  
16 adequate -- each has adequate knowledge of the other's  
17 financial situation; they've exchanged sworn financial  
18 declarations; each party enters in to the agreement  
19 freely and voluntarily. It reiterates that it's not the  
20 result of any duress; undue influence and is executed  
21 after deliberated, consideration, consultation with the  
22 parties' respective attorneys.

23 Would you gr that the party, then, is bound  
24 by this, by this language in this agreement?

25 A. Yes, in a sense that they agreed to it,



1 they're bound by it.

2 Q. Well, do you see the signatures of the  
3 parties on page 21?

4 A. I see signatures. I'm not familiar with  
5 them.

6 Q. Okay.

7 Now, you wouldn't deny that's Mr. and Ms.  
8 Powell's signatures?

9 A. I have no reason to admit to deny it. I've  
10 never seen either of their signatures.

11 Q. Of course, Mrs. Powell, at this time, was  
12 being represented by a different attorney, Mr. Foster,  
13 but you would have expected that Mr. Foster went through  
14 this agreement with her, paragraph by paragraph, and  
15 explained it to her?

16 A. I would hope so.

17 Q. You would certainly do that with your client  
18 under --

19 A. Correct.

20 Q. -- similar circumstances?

21 A. Correct.

22 Q. That would be standard of care?

23 A. It's what I would do, yes.

24 Q. Thank you. That's all I want to do with  
25 that.

1           Do you have any opinion that Mrs. Powell  
2       could have gotten any better settlement than she got in  
3       this case but for the alleged malpractice of Taylor  
4       Potterfield?

5       A.    No, I do not have an opinion on that.

6       Q.    Now, as you mentioned, the court would have a  
7       hearing to approve the settlement agreement if that was  
8       going to because an enforceable order of the court?

9       A.    Correct.

10      Q.    And have you looked at the transcript of that  
11      hearing?

12      A.    No.

13      Q.    But you would expect the judge to ask similar  
14      questions as was contained in this agreement with regard  
15      to the parties' understanding of the agreement and to  
16      their satisfaction of the disclosures of financial  
17      terms?

18      A.    Court's required to do that, yes.

19      Q.    Okay.

20           What is the court required to do?

21      A.    I believe it's either a family court rule or  
22      a statute that says they're required -- or a case that  
23      says they're required to determine that it was freely  
24      and voluntarily entered in to and that it's fair and  
25      equitable.

1 Q. Okay.

2 A. Several cases say that.

3 Q. Okay.

4 You said you did some criminal work once upon  
5 a time?

6 A. A little bit a very long time ago. Don't  
7 want to ever do it again.

8 Q. Did you ever have a client that entered a  
9 guilty plea?

10 A. Yes.

11 Q. It struck me when I read the transcript of  
12 the family court hearing that it had very many  
13 similarities to the way the judge would conduct a guilty  
14 plea inquiry.

15 A. I wouldn't know.

16 (Deposition went off the record.)

17 Q. What is your understanding of when Michael  
18 Taylor became involved in this case?

19 A. I believe it was early 2005, somewhere in  
20 that ballpark.

21 Q. Okay.

22 Do you have any opinions as to any deviations  
23 from the standard of care on the part of Michael Taylor  
24 individually?

25 A. No. That was not addressed in any of the

1 depositions that I read.

2 Q. So you're not here to express any opinion  
3 that Michael Taylor deviated from the standard of care?

4 A. Correct.

5 Q. You saw in Carolyn's deposition that I asked  
6 her some questions about settlement proposals that were  
7 made from time to time, settlement negotiations?

8 A. Yes.

9 Q. Specifically, the proposal that Ms. Sherman  
10 made on January 5 and I asked Mrs. Powell about that and  
11 she said it was totally not acceptable to me.

12 A. I remember comments to that effect. I don't  
13 remember the date.

14 Q. Okay.

15 There was another one that Ms. Sherman later  
16 the same month and Ms. Powell said there's nothing in  
17 that that I agree to?

18 A. I remember comments to that effect.

19 Q. I asked her about one Ms. Sherman made  
20 February in 2005 and she responded to me, does it look  
21 like the offer I put on the table?

22 A. I remember that one, too.

23 Q. There was a proposal Ms. Sherman made in  
24 March of 2005 and Ms. Powell response to that was to  
25 categorize it was garbage. You recall that one?

1 A. I don't remember that one.

2 Q. Another time I asked her about her settlement  
3 demand of \$2 million and she said she never wavered from  
4 that position. Do you recall that?

5 A. I remember talking about two million. I  
6 don't recall her response, off the top of my head.

7 Q. Okay.

8 Now, did it appear from those discussions  
9 that Mrs. Powell was amenable to any of the settlement  
10 proposals that were being proposed on behalf of Mrs.  
11 Powell?

12 A. No, it did not.

13 Q. So my question is, based on those discussions  
14 and exchanges and her position, what is the basis for  
15 your opinion that a settlement of this case could have  
16 been reached early on?

17 A. The basis is that other things would've had  
18 to have been done to be put in a position to evaluate a  
19 appropriate settlement that didn't happen because of  
20 delay.

21 Q. I don't follow you.

22 A. All right.

23 You can't, really, negotiate a settlement, or  
24 you shouldn't, at least, without having enough  
25 information to evaluate what proposal you're gonna make,

1 in terms of its fairness or appropriateness, or any  
2 proposals made by the opposing party.

3 It appeared to me, from what I read, that  
4 with lack of discovery, lack of financial declaration,  
5 and with lack of filing suit and getting any information  
6 regarding assets or other relevant factors, that, number  
7 1, you shouldn't be negotiating for a permanent  
8 resolution without having that information and, number  
9 2, that if you don't have that information you should be  
10 actively trying to get it, promptly.

11 And, from what I read, it appears that that  
12 didn't happen.

13 Q. Well, we'll go over this but Taylor  
14 Potterfield did have financial information.

15 A. They had a handwritten document of Mr. Powell  
16 that had some statements on it. Was that thorough? Was  
17 that complete? Was it accurate?

18 It's not under oath.

19 Is there other information you need; other  
20 than what's on there?

21 All of those questions are, they're important  
22 to have properly answered.

23 Are you just gonna accept it at face value  
24 and assume that he may not be puffing or he may not be  
25 telling you about something he doesn't want you to know

1 about?

2 That's the whole point of being a lawyer, is  
3 discovering what the other side's case is all about.

4 Q. Do you know whether or not Mrs. Powell  
5 desired her attorneys to engage in discovery?

6 A. I understand she did not prefer to have to do  
7 all of those things.

8 What I was saying earlier is sometimes it  
9 becomes the role of the attorney to tell the client  
10 certain things need to be done; whether you want them  
11 done or not, I need to do certain things to do my job  
12 properly. And then if the client says don't do it,  
13 okay.

14 If they don't want to take a deposition, for  
15 example, because they don't want the expense, or they  
16 don't want to hire an expert, that's certainly their  
17 call but it has to be an informed call based upon a  
18 lawyer saying I suggest we do so and so and so and so,  
19 and not just, merely, acquiescing in what ever the  
20 client says and just puppeting it.

21 Q. What is there, if anything, in this materials  
22 that you reviewed that indicates that Taylor Potterfield  
23 merely acquiesced in what Ms. Powell wanted to do?

24 A. They didn't do discovery. They didn't --  
25 Well, I think at various points she said to file suit

1 but they never got around to doing it, for a long time.

2 They, really, did other investigating. They  
3 didn't preserve assets.

4 Now, I don't know whether there was any  
5 prejudice as a result but assets certainly disappeared,  
6 or at least changed form.

7 And, you know, those are the things that  
8 should have been done.

9 Q. Do you know whether or not progress was being  
10 made on the case by Taylor Potterfield outside of formal  
11 discovery?

12 A. Progress towards a settlement you mean?

13 Q. Toward a resolution.

14 A. I understand that there were negotiations  
15 that were being made between Mrs. Sherman and Mrs.  
16 Potterfield. Some of them were exhibits.

17 My concern, though, is from the standard of  
18 care is how can you engage in permanent negotiations  
19 without having all the relevant information?

20 Q. Do you know that formal discovery was done in  
21 this case --

22 A. Ultimately, yeah, in '06 or '7, somewhere in  
23 there.

24 Q. Okay.

25 You have any problem with that?



1 A. Don't know any more about it, other than  
2 that.

3 Q. Is it your contention that the deviations  
4 from the standard of care in this case occurred on Ms.  
5 Potterfield's watch?

6 A. Yes.

7 Q. And not on Mr. Taylor's watch?

8 A. Can't say that.

9 Q. You have no opinion?

10 A. I can't. I never read his deposition, if it  
11 was taken. All I've seen is Mrs. Potterfield's  
12 deposition and Mrs. Powell's and Mrs. Powell's, I think  
13 it was barely addressed, any involvement of Mr. Taylor.

14 Q. Do you recall it being a concern of Ms.  
15 Potterfield that if the matter had gone to the court on  
16 a temporary hearing that there was a substantial risk  
17 that the judge would order something less than what Mr.  
18 Powell had agreed on voluntary basis?

19 A. I recall that in her testimony, yes.

20 Q. Is that an appropriate and legitimate  
21 concern?

22 A. Yes, it is.

23 Q. A valid thing that Ms. Potterfield should've  
24 taken in to account?

25 A. I think that it should've been taken in to

1 account.

2 Q. And, ultimately, she has to exercise her  
3 discretion as to which is the better interest of my  
4 client, to continue with the voluntary things that Mr.  
5 Powell's willing to do or to go to court and see what we  
6 can get out of the judge?

7 A. Yes, if you have the sufficient information  
8 to make that judgement on.

9 Q. Did you take a look at what Judge Riley  
10 Jacobs ordered when the matter went before him on a  
11 hearing in March of 2007?

12 A. I don't think I've ever seen that, no.

13 Q. Now, you were aware that there was a hearing  
14 under Mr. Foster's representation?

15 A. I'm aware there was a final hearing where  
16 they adopted the agreement that we just talked about.  
17 There may have been a temporary hearing. I know one was  
18 scheduled in 2006 or '7 but I don't know any more about  
19 it.

20 Q. You don't know what the result of that was?

21 A. No.

22 Not that I can recall. Maybe if I checked my  
23 notes, I may have something in there about it.

24 Q. Do you have any recollection that the result  
25 of that temporary hearing, which I will represent to you

1 was on March 14, 2007, was an order that gave Ms. Powell  
2 less child support than she had been receiving  
3 voluntarily?

4 A. I do recall that, yes.

5 And no alimony.

6 Q. Does the outcome of that hearing support the  
7 contention that Ms. Powell was better off by not  
8 demanding a hearing?

9 A. I don't know that you can conclusively say  
10 that because I wasn't there to know what the  
11 circumstances were at the temporary hearing. So I can't  
12 render an opinion on that.

13 Q. But that's, certainly, a legitimate concern  
14 that, you know, we've got this voluntary arrangement  
15 going on and this amount of money. I think he's  
16 referred to \$5,000 a month as being paid. If we go to  
17 court the judge might decide to do something less than  
18 that.

19 A. I'm not disagreeing with you. I understand  
20 that that's a potential possibility.

21 Q. And that's an appropriate concern?

22 A. Certainly, it's something you have to  
23 consider.

24 Q. Is it your understanding of the law of legal  
25 malpractice that there is no recovery for emotional

1 damages, emotional distress?

2 A. I have no idea.

3 Q. Well, the reason that I asked the question is  
4 you've referred to Mrs. Powell's emotional condition,  
5 that she expressed concern from time to time about her  
6 worry or anxiety, that sort of thing. Do you know  
7 whether that's a compensable element of damage?

8 A. No, and I don't think I was referring to it  
9 in that sense.

10 Q. Okay.

11 Tell me the sense that you were referring to.

12 A. Well, what I was trying to say, I think, is,  
13 is that she was, Mrs. Powell, that is, was saying that  
14 she was having these emotional problems as a result of  
15 the delay and that factor had to be considered in the  
16 manner in which you would counsel her, advise her how to  
17 proceed.

18 Q. Okay.

19 But whether that is --- In you personal injury  
20 litigation you talk about such things as pain and  
21 suffering.

22 A. Right.

23 Q. Which has an economic or a dollar value when  
24 you go to a jury.

25 A. Right.

1 Q. Is it your contention that emotional distress  
2 in a family court, in a marital litigation has a dollar  
value that can be awarded --

3 A. Not the marital situation. It is, obviously,  
4 a factor and servicing a client that is high  
maintenance, because of emotion, requires a little bit  
different treatment as a lawyer. In many respects.

5 (Deposition went off the record.)

6 Q. Mr. Brown, have we discussed all the opinions  
7 that you have arrived at in this case?

8 A. I believe so. If not, they're all referenced  
9 in letter.

10 Q. Okay.

11 If you review any other materials between now  
12 and time of trial on which you will base any opinions  
13 and if you prepare any other reports or letters or  
14 summaries or documents, if you develop any opinions we  
15 haven't discussed today, then, my position is you're  
16 obliged to notify Mr. Pendarvis of that fact so that I  
17 can come back and talk to you again, is that --

18 A. No problem.

19 Q. Is that agreed?

20 A. That's agreed.

21 MR. PENDARVIS: And it's agreed with  
22 me.

23 MR. HILL: I don't have anything  
24 else.

25 (Whereupon, the deposition concluded at 1:55 p.m.)

1 STATE OF SOUTH CAROLINA

2 COUNTY OF RICHLAND

3 CERTIFICATE

4 I, Donna Hartley, a Professional Court  
5 Reporter and Notary Public, certify that I did have H.  
6 Grady Brown appear before me on at 11:00 a.m., on the  
7 sixteenth day of November, 2011, in the office of  
8 Pendarvis Law Offices, PC, 500 Carteret Street,  
9 Beaufort, South Carolina; that the witness was duly  
10 sworn to tell the truth, the whole truth, and nothing  
11 but the truth; that the foregoing pages constitute a  
12 true and accurate transcript of the testimony given at  
13 that time and place.

14 I further certify that I am not of counsel  
15 or kin to any of the parties to this cause of action,  
16 nor am I interested in any matter of its outcome.

17 IN WITNESS WHEREOF, I have hereunto set my  
18 hand and seal this seventeenth day of November, 2011.

19 Donna Hartley

20 Notary Public For South Carolina

21 My commission expires April 23, 2017  
22  
23  
24  
25

Brown, J.D., H. Grady

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[& - adequately]

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[generate - husband]

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STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
 COUNTY OF RICHLAND ) Case No. 09-CP-40-8705

CAROLYN MITCHELL POWELL, )

Plaintiff, )

-vs-

) DEPOSITION OF:

) C. CANTZON FOSTER, II

ASHLIN BLANCHARD POTTERFIELD; )

J. MICHAEL TAYLOR; TAYLOR/ )

POTTERFIELD; GOLDEN, TAYLOR, )

POTTERFIELD, AND BARRON; )

REID SMITH; AND PRICE, BIRD, )

AND SMITH, P.A.; )

Defendants.))

Given before Meghan Schultz, Court Reporter and  
 Notary Public, at the law offices of Turner, Padgett,  
 Graham & Laney, P.A., 1901 Main Street, 15th Floor,  
 Columbia, South Carolina, on Thursday, January 26, 2012,  
 commencing at 10:11 a.m.

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16 Ashlin Potterfield  
17 J. Michael Taylor

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1           It was stipulated by and between  
2           counsel for the parties that this  
3           deposition is taken pursuant to notice and  
4           that all questions as to notice are  
5           waived; that all objections, save as to  
6           the form of the question, are reserved  
7           until the time of trial; that the  
8           deposition is taken pursuant to the South  
9           Carolina Rules of Civil Procedure, for the  
10          purposes allowed therein; and that the  
11          deponent was explained his right to read  
12          and sign the deposition and waived that  
13          right.

14               C. CANTZON FOSTER, II, being duly  
15          sworn, testified as follows:)

16               DIRECT EXAMINATION

17          BY MR. HILL:

18               Q.    State your full name, please.

19               A.    Charles Cantzon Foster.

20               Q.    Mr. Foster, where do you reside?

21               A.    Where do I reside? [REDACTED]

22               Lexington, South Carolina.

23               Q.    And your office address is?

24               A.    3100 Devine Street.

25               Q.    Okay. As you know, I'm sure you've taken many

Foster, Cantzon



1 depositions in your career, but the rules  
2 require me to give you a couple of things at  
3 the outset. I understand that you have a  
4 scheduling issue this afternoon, and we'll try  
5 to move as expeditiously as we can through  
6 this --

7 A. Okay. Thank you.

8 Q. -- but if we're running into a time situation,  
9 into a crunch, you let us know and we'll do  
10 what we need to do. Obviously, if you need to  
11 take a break at any time during the deposition,  
12 just let us know and we'll be glad to  
13 accommodate you. The only caveat of that, of  
14 course, is you're not allowed to discuss your  
15 testimony with anyone during the break.

16 A. Sure.

17 Q. And if you don't understand my question or Mr.  
18 Pendarvis' question, then you need to ask the  
19 questioner for an explanation of the question;  
20 is that understood?

21 A. Yes, sir.

22 Q. Okay. What have you brought with you today?

23 A. I brought -- by the subpoena I was asked to  
24 bring my original file. I do not have the  
25 original file. I gave that to -- and may I

1 ask, are we calling Carolyn, Ms. Mitchell or  
2 Ms. Powell?

3 MS. POWELL: Ms. Powell is fine.

4 A. Ms. Powell. I gave the original file to Ms.  
5 Powell some time ago and scanned what I thought  
6 I needed, so I brought all the scanned copies  
7 that I have in my file. It was my recollection  
8 that the discovery portion of the file, I did  
9 not keep. I gave that to Ms. Powell and -- but  
10 I did -- a printout of the, you know, my  
11 computer generated discovery file as well. So,  
12 what I have is digitized and I reproduced it  
13 and brought it here. And I do have a copy of  
14 my matter history report really just to help  
15 refresh my recollection as to when things  
16 happened.

17 Q. What is a matter history report?

18 A. It's just kind of my billing, billing entries.

19 Q. That sort of leads into the next question.

20 What have you done, if anything, to prepare for  
21 the deposition today?

22 A. Nothing.

23 Q. Okay. Do you recall furnishing a copy of your  
24 file to Ms. Powell's attorneys, original  
25 attorneys, when they first brought this action

1                   against Ms. Potterfield and Mr. Taylor?

2           A.     Who were the attorneys? Mr. Pendarvis?

3           Q.     No, prior to Mr. Pendarvis.

4                   MR. HILL: Help me.

5                   MS. WILLIAMS: Eric Bland?

6                   MR. HILL: No, no.

7                   MS. WILLIAMS: Oh, Susan Campbell.

8                   Wasn't that it?

9                   MR. HILL: Right.

10          Q.     Susan Campbell.

11          A.     I do not. Though I may have, my recollection

12                is, is that I made the file available for Ms.

13                Powell to pick up.

14          Q.     Okay.

15          A.     And upon her request, I just made the file and

16                scanned what I needed to.

17          Q.     All right. Have you talked to anyone about

18                this case?

19          A.     No, sir. Other than I would say that I had

20                had, a long time ago, one brief conversation

21                with Eric Bland. Other than that, I haven't

22                talked to anybody about the case.

23          Q.     Okay. And what was the context of the

24                conversation with Mr. Bland?

25          A.     I don't want to guess. I think he was -- told

1 me that he was presented this file. And what I  
2 can't remember is whether or not he sent  
3 somebody over to pick the file up or Ms. Powell  
4 took the file over to his office. I don't  
5 recall that. But I knew that she was  
6 interested in having an attorney look at the  
7 file and pick the file up. Somebody picked it  
8 up and took it over there. And he just briefly  
9 asked me questions about the case and, you  
10 know, I answered any questions he had.

11 Q. Okay. Do you have any more specific  
12 recollection of that conversation?

13 A. No, sir.

14 Q. Okay.

15 A. And I believe that was several years ago.

16 Q. Okay. If you're like me, when you close a file  
17 you pretty well forget about the file once it's  
18 ended. So, what I'm going to do today, if it's  
19 all right with you, is go through portions of  
20 your file, documents from your file that we  
21 have selected.

22 A. Okay.

23 Q. I'm going to try to do that in chronological  
24 order and I'll give you the document, you know,  
25 give you a minute to look at it. But

1            hopefully, that will help refresh your  
2            recollection as we go through the matter, and  
3            we can ask you some specific things about that.

4            A.    Wow. Your file is bigger than mine.

5                            (Whereupon, Defendant's Exhibit No. 1  
6                            was marked for identification.)

7            Q.    Okay. I'm going to hand you what I've marked  
8                   as Exhibit 1, which is a letter to Michael  
9                   Taylor from you dated January 19, 2007, which  
10                  says that Carolyn Powell has retained your firm  
11                  to represent her in the matter of Carolyn  
12                  Powell versus Conrad Powell. And that's dated  
13                  January 19. Do you recall how much prior to  
14                  that letter you had your initial meeting with  
15                  Ms. Powell?

16           A.    I don't recall. The first entry into my notes,  
17                   in my matter history, was two days before that,  
18                   January 17, 2007.

19           Q.    Okay.

20           A.    So, it probably was not long. I probably had  
21                   not been meeting with her long before sending  
22                   that letter.

23           Q.    Okay.

24           A.    You know, maybe a week or two is a guess. But,  
25                   you know, the only information I can tell you

1           for certain is that, you know, we had met by  
2           the 17th of January.

3           Q.   Do you know how many times you had met with her  
4           prior to sending out this letter?

5           A.   No, sir. It appears -- no, I really don't.  
6           Maybe once. Maybe twice.

7           Q.   Okay. Tell me what recollections you have of  
8           conversations with her in those initial  
9           meetings.

10          A.   I guess I'd have to object on privilege, on  
11          that ground, because my conversations would be  
12          attorney-client privilege with Ms. Powell.

13          Q.   Okay. I've given some thought to that, and my  
14          position would be that by bringing this legal  
15          malpractice action, that she's waived any  
16          attorney-client privilege. I'll be glad for  
17          Mr. Pendarvis to state his position.

18               MR. PENDARVIS: With that, technically,  
19               Cantzon's right. The waiver of privilege  
20               is against the attorney against who the  
21               claim is being made. But Ms. Powell and I  
22               have discussed it, and we're going to  
23               agree to allow you to speak about  
24               communications with Ms. Powell.

25               THE WITNESS: Okay.

1 MR. PENDARVIS: We're going to waive  
2 privilege.

3 MR. HILL: Okay.

4 MR. PENDARVIS: And also there would be  
5 an argument with the production of the  
6 file. We waived it anyway, so go ahead.

7 THE WITNESS: Okay. And I would say  
8 regarding the file that I've brought, I  
9 have already reviewed it. I do not  
10 believe there's anything privileged in  
11 this file. But to the extent that it's  
12 waived, that makes it easier. If I was  
13 going to produce anything, I was going to  
14 let you look at it first just to confirm.  
15 But I don't think there's anything that's  
16 privileged in there.

17 A. Regarding my meetings with Ms. Powell  
18 initially, initially she came to me to talk  
19 about her divorce action. And it's my  
20 recollection she was being represented by Mr.  
21 Taylor and Ms. Potterfield. Ms. Potterfield  
22 and I have had cases before, so I knew her  
23 well. I don't believe I've had any cases with  
24 Mr. Taylor before.

25 Any time that that type of situation

1 happens, I'm always very reluctant to get  
2 involved in the case. But in her situation,  
3 she indicated that the case had been going on  
4 for quite some time. She was frustrated that  
5 the case had not, you know, gone any further  
6 and that they still were no further along in  
7 the case than they were before.

8 I asked her about the facts of the case.  
9 We talked about the implications of adultery I  
10 recall. We talked about child support. We  
11 talked about the various causes of actions for  
12 divorce, the five causes of action for divorce  
13 in South Carolina - four fault base, one non-  
14 fault base. And she -- I do not recall  
15 anything specific that Ms. Powell told me, but  
16 I do recall specifically from the very first  
17 meeting letting her know that I had no interest  
18 in a malpractice action. That if I were to  
19 take over the case, I would take it over simply  
20 to help her go through the divorce litigation,  
21 that any actions against Ms. Potterfield and  
22 Mr. Taylor, I had no interest in.

23 Q. Did she raise the question of a malpractice  
24 action?

25 A. I don't recall. But I do recall saying that I



1 was not taking the case over for -- so it must  
2 have been discussed to some extent. I don't  
3 think -- I don't recall her phrasing it  
4 malpractice. I just recall making it very  
5 clear that if I were taking it -- it was clear  
6 that she was unhappy with her prior counsel. I  
7 think that was the main thing.

8 And I think at the very first meeting I  
9 made it very clear that I had no interest in  
10 reviewing the file for any wrongdoings of her  
11 prior counsel or anything of that nature.

12 Q. Do you recall what the basis for -- what she  
13 expressed with regard to the reason for her  
14 unhappiness?

15 A. The time it took. As I recall, several years  
16 had passed since the case had been first filed.  
17 That there really had not been any discovery  
18 done in the case. It seemed that nothing had  
19 actually progressed. They weren't much further  
20 along in the case than they were when they  
21 first began. And I believe it was the lack of  
22 advice about the consequences of adultery.

23 Q. Did she advise you that in addition to the  
24 Taylor/Potterfield firm, that another attorney  
25 was also representing her?

1 A. Representing her?

2 Q. Yes.

3 A. Who would that attorney have been?

4 Q. Reid Smith.

5 A. I knew Reid was involved somehow. Because we  
6 use Reid as an expert as I recall, so probably.

7 Q. Okay. When did, from your standpoint, did you  
8 enter into an attorney-client relationship with  
9 her?

10 A. From my standpoint, whenever I first met with  
11 her and talked about the case.

12 Q. Okay. And did you eventually agree to  
13 represent her?

14 A. I did.

15 Q. And did you enter into a fee contract with her?

16 A. I did.

17 Q. Did you bring a copy of the fee contract with  
18 you?

19 A. I did. I know I saw it in here. I don't  
20 recall if it's a signed copy or if it's just a  
21 digital copy in my file. Would you like me to  
22 look and see?

23 Q. I would, please. Thank you.

24 A. I have -- I'm sure somewhere I have the actual  
25 signed copy, but this is the digital copy that

1 we would have printed off the computer dated  
2 January 17, 2007. It's an unsigned copy.

3 Q. We'll mark a copy of the fee contract as  
4 Defendant's Exhibit No. 2 when we get some  
5 copies made.

6 (Whereupon, Defendant's Exhibit No. 2  
7 was marked for identification.)

8 Q. Tell me just generally, if you recall without  
9 having the document in front of you, what the  
10 terms of the fee contract was.

11 A. Without having the document in front of me, I  
12 believe it was a standard hourly fee agreement  
13 that we bill on an hourly basis and send her a  
14 bill, and she'd pay it on a monthly basis. And  
15 I think my recollection is, when I just briefly  
16 looked at that when we were printing, that we  
17 didn't charge a retainer, that we may have  
18 charged a retainer; I don't recall for sure.

19 Q. Do you recall what the hourly fee was?

20 A. It was a long time ago. My fee was probably  
21 lower than it -- my fee now is 225 an hour and  
22 it was lower when we first took her on as a  
23 client. I think it may have been 180, 185,  
24 150.

25 Q. It'll be on the contract?

1 A. Yes, sir.

2 Q. Okay.

3 A. And it may be the case that my fee actually  
4 changed, my hourly rate changed during the  
5 course of the litigation, but it may not have.  
6 I just would have to look back and see.

7 (Whereupon, Defendant's Exhibit No. 3  
8 was marked for identification.)

9 Q. I'm going to hand you a copy of what I'm  
10 marking as Defendant's Exhibit No. 3, which is  
11 a letter from you to Marne Sherman.

12 MR. HILL: And we'll get you copies of  
13 this as soon as Ginny comes back.

14 Q. Ms. Sherman was representing Conrad Powell; is  
15 that correct?

16 A. Yes, sir.

17 Q. Okay. And was this your first communication  
18 with her as far as you know?

19 A. No. Because the letter refers at least to one  
20 other prior conversation the day before, and I  
21 don't recall how many conversations I might  
22 have had with her. Some of them would have  
23 been documented in my billing, but there could  
24 have been some that I didn't even document.  
25 But it would be my belief that my conversations

1 started with her after January 17th --

2 Q. Okay.

3 A. -- of 2007.

4 Q. This letter says that, to follow up on a  
5 conversation, I guess it was a telephone  
6 conversation.

7 A. That would be my guess.

8 Q. You agreed to dismiss Ms. Powell's claims for  
9 alimony and she agreed to cancel the Bunni  
10 Crawford deposition. Do you recall anything  
11 about what that was all about?

12 A. No, sir. I'm sure -- I don't have a specific  
13 recollection. But, you know, I believe the  
14 cancelling -- and this is me reaching back, you  
15 know, many years back to the date, was the fact  
16 that Ms. Powell's having a relationship with  
17 somebody else, I believe a Mr. Young, would  
18 have prohibited her from obtaining alimony by  
19 statute. And I believe that that's why we  
20 agreed to dismiss the alimony claim, which  
21 probably made it unnecessary to take Ms.  
22 Crawford's deposition, because I think they  
23 were going to ask her questions related to her  
24 relationship to Mr. Young.

25 Q. Did you know Ms. Crawford, Bunni Crawford?

1 A. Yes, sir.

2 Q. I don't know whether this is an appropriate  
3 question or not; did you represent her?

4 A. I have represented her in matters before. Yes,  
5 sir.

6 Q. Okay.

7 (Off the record discussion.)

8 BY MR. HILL:

9 Q. Okay. We're now going back, we've marked the  
10 retainer agreement as Defendant's Exhibit No. 2  
11 to your deposition. And that states that your  
12 rate is \$180 out of court, \$200 in court. And  
13 are you aware of whether or not that rate ever  
14 changed during your representation of her?

15 A. I'd have to go back and look in my computer  
16 file, but it probably did. It probably did.

17 Q. All right.

18 A. You know what? I'm not so -- I think it did  
19 and I may not have changed it for Ms. Powell.  
20 I think we had a conversation about that one  
21 time that she thought that I was billing at too  
22 low of a rate, and she thought I should change  
23 it after I finished representing her. And I do  
24 recall that conversation at one point.

25 (Off the record discussion.)

1 BY MR. HILL:

2 Q. The second paragraph of this letter of January  
3 23 says that Ms. Sherman would agree to cancel  
4 Ms. Powell's deposition as well as the  
5 deposition of Mr. Young if you would provide  
6 her a settlement proposal by a definite date.  
7 Do you recall any of the details about that?

8 A. I recall early on in the litigation that Ms.  
9 Powell's deposition was actually taken. And I  
10 recall it being at Marne Sherman's office and  
11 Reid Smith was present as a co-counsel, so I  
12 guess that answered the question of did I know  
13 he was involved at an early date. So I'm not  
14 so sure that we didn't have this deposition.

15 I don't recall the settlement proposal  
16 early on in the litigation. I think we had to  
17 fuss and fight a little bit before we actually  
18 got to settlement terms.

19 Q. Was there any concern on your part,  
20 representing Ms. Powell, about Bunni Crawford  
21 being deposed?

22 A. No, sir. I knew Bunni Crawford was just  
23 generally -- had anxiety about being deposed  
24 and didn't think it was necessary. But I was  
25 not aware -- it didn't make a hill of beans to

1 me if Bunni testified or not. It would have  
2 been fine with me if she'd testified.

3 Q. What did you anticipate the nature of her  
4 testimony was going to be?

5 A. I think she would have just -- I anticipated I  
6 guess at this early date that the questions  
7 would have been related to Ms. Powell's  
8 relationship with Mr. Young.

9 Q. There's attached, I think the third page of  
10 this document, it appears to have a handwritten  
11 note by Ms. Sherman dated January 24. It says  
12 Cantzon, I'm not willing to delay the  
13 depositions.

14 A. Yes. I think we took Ms. Powell's deposition.  
15 And I think -- I'm certain we took Ms. Powell's  
16 deposition. I don't think Bunni Crawford's  
17 deposition was ever taken.

18 Q. Okay.

19 (Whereupon, Defendant's Exhibit No. 4  
20 was marked for identification.)

21 Q. The next document I'm going hand you I'm going  
22 to mark as Exhibit 4 is a copy of a consent  
23 order substituting counsel; can you identify  
24 that?

25 A. Yes, sir. I believe this was the consent order



1       whereby I became -- I was substituted as  
2       counsel for Ms. Powell.

3               (Whereupon, Defendant's Exhibit No. 5  
4       was marked for identification.)

5       Q.   Defendant's Exhibit No. 5 is a letter to you  
6       from -- actually a copy of a letter that Ms.  
7       Sherman's office wrote to the clerk of court in  
8       Richland County --

9       A.   That was on the back.

10      Q.   Okay. Thank you. -- apparently filing a  
11      request for a hearing signed by Cookie Atkerson  
12      as legal assistant to Ms. Sherman, a copy to  
13      you and to Reid Smith. Do you have any  
14      recollection of what this request for hearing  
15      was about?

16      A.   I think when we got involved in the case  
17      sometime during, I can't remember when, but  
18      there was -- sometime during '07, '05, '04 they  
19      issued a ruling that we had to file a request  
20      for final hearing within 365 days of opening a  
21      case or it would be dismissed, administratively  
22      dismissed. And I think that she was asking for  
23      that final hearing so that the case would not  
24      become administratively dismissed.

25      Q.   Okay.

1 (Whereupon, Defendant's Exhibit No. 6

2 was marked for identification.)

3 Q. Next document I'm handing you is marked as  
4 Defendant's Exhibit No. 6, a letter from Ms.  
5 Sherman's office to you and Reid Smith serving  
6 the amended notice of taking the deposition of  
7 Roe Young. Do you remember who Mr. Young was?

8 A. Yes, sir. He was Ms. Powell's boyfriend.

9 Q. Okay. Was Ms. Powell concerned about Mr. Young  
10 being deposed?

11 A. No, sir.

12 Q. Was his deposition ultimately taken?

13 A. I believe it was.

14 Q. Okay. And was it taken by Ms. Sherman?

15 A. It was.

16 Q. Okay.

17 A. And If I can clarify my answer regarding Mr.  
18 Young's deposition, Ms. Powell didn't express  
19 to me a concern for his deposition to be taken.  
20 Whether or not she was actually concerned, I  
21 really don't know. I don't recall that being  
22 something we talked about.

23 (Whereupon, Defendant's Exhibit No. 7

24 was marked for identification.)

25 (Whereupon, Defendant's Exhibit No. 8

1                   was marked for identification.)

2           Q.    I'm going to hand you two documents marked  
3               Exhibits 7 and 8. Number 7 is a letter that  
4               you wrote to Ms. Sherman regarding the  
5               settlement proposal. And Exhibit 8 is the same  
6               thing that was previously marked as Exhibit 25  
7               in Reid Smith's deposition, captioned draft for  
8               discussion. And I'll give you a minute to look  
9               at those.

10          A.    Okay.

11          Q.    We have taken Reid Smith's deposition and he  
12               identified this document, which we've marked as  
13               Exhibit 8 to your deposition, as a draft that  
14               he prepared for Michael Taylor's signature  
15               presenting a settlement proposal. And that's  
16               his handwriting that puts a date on the draft  
17               of January 6, 2007, which was prior to your  
18               retention.

19               Then, Exhibit 7 to your deposition is a  
20               letter of February 14 to Ms. Sherman with  
21               regard to a settlement proposal and these two  
22               letters appear to be substantially similar.  
23               What is your recollection of the relationship  
24               between those letters?

25          A.    Well, first of all, I'd say that I had even

1           forgotten that we would have sent this early on  
2           when I got involved in the case. I didn't  
3           recall sending early settlement letters, but  
4           it's been a long time. I know that -- my only  
5           recollection is that Reid was -- Reid Smith was  
6           involved with the drafting of this Exhibit 7  
7           settlement letter. And whether or not we used  
8           this draft from Michael Taylor or not, I don't  
9           recall.

10          Q.    Okay.

11          A.    But he was very much involved in the settlement  
12               offer for February 14th that is signed by me.  
13               I know that. I do recall that being the case.  
14               And whether or not I've seen this letter, I may  
15               have. I just don't remember if I've seen it or  
16               not, the Michael Taylor Exhibit 8 letter.

17          Q.    Okay. Did you send the letter that's marked as  
18               Exhibit 7?

19          A.    Yes, sir. It looks like I did. And I just say  
20               that based on the fax transmittal copy. It  
21               looks like I did send that offer.

22          Q.    Okay. Did you have discussions with Reid Smith  
23               prior to sending this letter?

24          A.    I don't specifically recall having discussions.  
25               It may reflect it in my matter report. I'm

1           sure I would have. Well, yeah, I would have  
2           had to get this information from Reid who had  
3           been doing a, I guess a forensic investigation  
4           of the assets up to that point.

5       Q.    Okay. What was your understanding of what Reid  
6           Smith's involvement in the case had been?

7       A.    My understanding of Reid Smith's involvement  
8           was that he was, in essence, more or less an  
9           expert on kind of doing a forensic  
10          investigation of the value of the marital  
11          estate, and that he happens to be an attorney  
12          as well. But he was basically crunching the  
13          numbers, you know, looking at the tax returns  
14          and, you know, assigning values to certain  
15          assets.

16       Q.    Have you associated him in the past on cases?

17       A.    Reid, I think -- not in the past. Prior to  
18           this, I knew who Reid Smith was, I think. Or I  
19           may have just met Reid Smith through this case.  
20           So, I don't think so. You know, I really don't  
21           think I have. If I have, I don't recall.

22       Q.    Okay.

23       A.    I think I didn't know who Reid Smith was until  
24           this case.

25       Q.    Have you used him subsequently?

1           A.   He has reviewed, for a personal business that  
2                I'm involved in, some finances, subsequently,  
3                some financial reports because we believed  
4                there might have been some wrongdoing on the  
5                other side. And he wrote an affidavit for me  
6                related to giving an opinion as to whether or  
7                not a bankruptcy petition was filed without a  
8                strong basis to file it. So, I've used him at  
9                least twice. I don't think I've used him other  
10              than that, though there may be another time.  
11              But very limited work. And I have referred  
12              clients to him in the past.

13          Q.   What is your understanding of his areas of  
14                expertise?

15          A.   I think his -- my understanding of his areas of  
16                expertise is bankruptcy and, you know, that  
17                he's a bankruptcy attorney and he has, you  
18                know, the ability to go in and kind of do  
19                forensic evaluations of that type of financial  
20                work. But, like I said, he was brought in the  
21                case before I got involved, and I just happened  
22                to work with him once I took over the case.

23          Q.   Okay. Did you draft this letter? Or did he  
24                draft it and you reviewed it? Or how did the  
25                letter come to be?

1           A.    I really don't recall. I mean, it's definitely  
2                my signature on the letter, and I don't recall  
3                if I cut and pasted the body of, you know,  
4                maybe this letter that he had already prepared.  
5                I don't recall. But it looks like it's a  
6                letter that ultimately I signed off on, so, you  
7                know, I was aware of it being produced.

8           Q.    Okay. Did you discuss with Reid, before the  
9                letter went out, the basis for the various  
10               calculations and numbers and evaluations that  
11               he has in this letter?

12          A.    I'm sure I did. I don't have a specific  
13                recollection of that conversation, but I'm sure  
14                I did.

15          Q.    Okay. Did you talk with Ms. Powell before  
16                sending this letter out?

17          A.    I'm sure I did.

18          Q.    And did you obtain her permission to make this  
19                offer?

20          A.    Yes, sir.

21          Q.    Is this letter ultimately a summary of the  
22                assets in the marital estate?

23          A.    I don't know. I was never comfortable that we  
24                had a full understanding of the assets in the  
25                marital estate. It's a summary of the assets

1           that we were aware of.

2           Q.    What was the reason for your discomfort?

3           A.    There was suspicion that assets were being  
4           hidden. We had -- and the only way to verify  
5           whether or not that was the case was, in my  
6           opinion, to take additional depositions. And I  
7           think we had even scheduled some depositions  
8           that were in Asheville. There was a concern  
9           that some of the assets may have been  
10          transferred over to Mr. Powell's brother.

11                 And so, you know, I felt like additional  
12          discovery needed to be done in order to get a  
13          full understanding of what the marital estate  
14          is. But this is -- it is fair to say that what  
15          we knew was there, this represents what we knew  
16          of.

17          Q.    Did Ms. Powell express the concern to you as to  
18          whether or not there was -- was she the source  
19          of your discomfort so to speak?

20          A.    Well, I think -- certainly one of them.  
21          Absolutely. I mean, she was concerned. That  
22          was a concern of hers. I do recall that being  
23          the case. It was a concern of hers that her  
24          husband was hiding money and hiding assets.  
25          And then the only other concern is is that I



1           felt like we needed to take the depositions of  
2           certain individuals to kind of do our due  
3           diligence on those items.

4           Q.   Was Ms. Powell ever able to furnish you any  
5           evidence of her husband's allegedly hiding  
6           assets?

7           A.   She had personal knowledge of how the business  
8           was run, and she had personal knowledge of his  
9           businesses. I don't recall there being any  
10          hard evidence, documentary -- any documents  
11          supporting that assets were transferred. We  
12          felt like -- I guess the answer is no. No hard  
13          evidence that there were additional assets to  
14          the estate.

15          Q.   Did you inquire of Reid or discuss with Reid  
16          what sort of investigation he had done into the  
17          issue of whether or not there was any  
18          concealment of assets?

19          A.   I don't specifically recall that conversation,  
20          though I do believe we had it. But I don't  
21          specifically recall the conversation.

22          Q.   Okay. Did you question Reid as to the basis  
23          for the evaluations and the numbers that he  
24          listed in this letter?

25          A.   I'm sure. I don't specifically recall

1           questioning him on that, but believe I did.

2           Q.    Okay. And you think he would have conveyed to  
3           you, during the course of that discussion,  
4           whatever investigation he had done?

5           A.    Yes, sir. It was my understanding that his  
6           main investigation was a forensic audit of tax  
7           and financial records.

8           Q.    The last paragraph of the letter says that the  
9           offer would expire on February the 21st. It  
10          was made February the 14th. Was there any  
11          particular urgency about the situation? Why  
12          was a deadline imposed?

13          A.    There was an urgency. I cannot recall what it  
14          was. You know, I think it was -- I really  
15          don't know, to be honest with you. Again, I  
16          didn't remember sending this settlement offer  
17          until you provided it to me, so I apologize  
18          that I don't have a good strong recollection.  
19          I typically, when I make a settlement offer, I  
20          put an expiration date on it so we get it done.  
21          And it may have just been the case that, you  
22          know, if they didn't accept it, then we were  
23          going to start filing depositions and going  
24          forward with more formal discovery.

25          Q.    You said that you felt like to do due diligence

1           that some depositions needed to be taken. Who  
2           specifically did you intend to depose?

3           A. Terry Powell was the main one in Asheville.  
4           He's Conrad Powell's brother and partner in  
5           some of the businesses. And it seems to me  
6           that there were like three or four people that  
7           we sent notices out in Asheville to take their  
8           depositions, and I felt like we needed to  
9           explore those, ask some questions of those  
10          folks to kind of get a better understanding of  
11          the deal and their involvement with Mr. Powell.

12          Q. There's also a person named Tim Tyler. Do you  
13          recall that name?

14          A. I recall the name. I do not recall why I  
15          wanted to take his deposition, but he may have  
16          been one of the partners. But I do remember  
17          him, and I do believe I did notice his  
18          deposition.

19          Q. Okay. We'll look into that a little bit later.

20                   (Whereupon, Defendant's Exhibit No. 9  
21                   was marked for identification.)

22          Q. Okay. I've handed you what's been marked as  
23          Exhibit 9, which is a letter from you to Marne  
24          Sherman saying that you want to amend the  
25          complaint to seek the divorce on the grounds of

1           one-year separation. Do you recall sending  
2           this letter?

3           A. No, sir.

4           Q. Okay.

5           A. I don't dispute that I sent it though.

6           Q. Right. Do you have any recollection of why the  
7           complaint needed to be amended?

8           A. I believe -- let's see. I'd have to go back  
9           and look at the pleadings to tell you for sure,  
10          but if what I think was the case is that we did  
11          not have a claim for adultery based on the fact  
12          that Ms. Powell's relationship with Mr. Young,  
13          and therefore we amended the complaint just to  
14          allege one-year separation.

15                 And just so you -- the full answer is if  
16          we were alleging adultery against Mr. Powell,  
17          he would have had a defense of recrimination  
18          based on Ms. Powell's relationship against --  
19          with Mr. Young, so we withdrew that.

20                         (Whereupon, Defendant's Exhibit No. 10  
21          was marked for identification.)

22          Q. Exhibit 10 is kind of a package of materials  
23          with a cover letter from you to the Richland  
24          County clerk filing a motion for emergency  
25          pendente lite relief, proposed order, summons,

1 verified complaint, and verification. And I'll  
2 give you a minute to look at that if you want  
3 to.

4 A. Okay.

5 Q. Do you recall what the reason was for  
6 requesting an emergency hearing?

7 A. My recollection is that the children were not  
8 going to be able to attend private school and  
9 she was not receiving sufficient support to  
10 care for the kids, and so we filed the  
11 petition.

12 Q. Okay. Was there any issue of custody of the  
13 children at that time?

14 A. I do not recall.

15 Q. With regard to the complaint that was filed,  
16 was this -- did you do a new original  
17 complaint, or did you go by the complaint that  
18 had already been filed? Or do you have a  
19 recollection of that?

20 A. I don't recall. I probably just went -- just  
21 filed a complaint. But I'm sure I looked at  
22 the original complaint.

23 Q. In that package that's marked as Exhibit 10,  
24 there was a proposed order that you apparently  
25 sent. And it looks like Judge Jones has.

1           written denied, said it's temporary. Do you  
2           see that?

3           A. Yes, sir.

4           Q. Can you explain that to us?

5           A. Well, the court's pretty jammed up with cases  
6           anyway, and so it's hard to get a case  
7           scheduled on an emergency basis. And I believe  
8           that the court looked at, you know, typically  
9           when a court does an emergency hearing, it's  
10          because there's something, you know, affecting  
11          the welfare of the child. And I think tuition  
12          and child support was not enough to, you know,  
13          get the court's attention.

14          And probably rightly so, they denied it on  
15          an emergency basis. I'm sure when I filed it I  
16          didn't expect it to get granted. But, you  
17          know, oftentimes they'll deny it on an  
18          emergency basis, but you'll actually get some  
19          expedited scheduling. So she just didn't --  
20          with an emergency hearing, they would have  
21          scheduled it in the, you know, next day or two,  
22          whereas on a regular temporary basis, they  
23          schedule within 30 days.

24          Q. And so, in fact, a hearing was scheduled for  
25          March 14; is that correct?

1 A. I don't dispute that. I just don't know. I  
2 assume it is. Mine doesn't have anything  
3 filled in I don't think. Oh, here it is. It's  
4 just not filled in on my order, so I'm not sure  
5 when it was scheduled.

6 Q. Well, I think that's the next document I'll  
7 mark as Exhibit 11.

8 (Whereupon, Defendant's Exhibit No. 11  
9 was marked for identification.)

10 A. Yes, sir. I see it was scheduled for March  
11 14th at 9:30, March 14th of 2007.

12 Q. And that was to be a hearing on what?

13 A. The temporary issues that we requested in our  
14 complaint, primarily child support and custody  
15 I think. Let's see. Child support was the  
16 main thing that we were fussing about and  
17 custody determination on a temporary basis.

18 Q. What did you understand from Ms. Powell as of  
19 this time as to what had been paid by way of  
20 support from Mr. Powell?

21 A. I'll be honest with you; I really don't recall.

22 Q. I'm going to mark as Exhibit 12 a letter that  
23 you wrote to attorney Fred Gertz and ask if you  
24 have any recollection of that. This says that  
25 you are temporarily cancelling the deposition

1 of Robert Collins.

2 (Whereupon, Defendant's Exhibit No. 12  
3 was marked for identification.)

4 A. Okay. Robert Collins would have been one of  
5 the people that I had scheduled the deposition.  
6 I think Fred showed up representing that  
7 gentlemen. I do not recall what information I  
8 thought Robert Collins had.

9 Q. Do you have any recollection of who Mr. Collins  
10 was or what his involvement in anything was?

11 A. No, sir. At that point though, I think I would  
12 have thought he had some involvement with Mr.  
13 Powell, some financial dealing with him and  
14 that would have been why I would have taken his  
15 deposition.

16 (Whereupon, Defendant's Exhibit No. 13  
17 was marked for identification.)

18 Q. I'm going hand you what I'm marking as Exhibit  
19 13, which is a package of materials, affidavits  
20 of process servers. And the reason that I'm  
21 handing you this is because it identifies  
22 several people who apparently were served with  
23 deposition notices, one being Tim Tyler,  
24 another being Nancy Sargent, and another being  
25 Cookie Atkerson. I'm going to ask if you have



1           any recollection as to -- first of all, is that  
2           correct? Are these people that you were  
3           seeking to depose?

4           A.   Hold on a second. Yes, sir. They were people  
5           I was trying to depose.

6           Q.   Okay. Do you recall if Mr. Tyler was Mr.  
7           Powell's accountant?

8           A.   That would make sense, but no, I didn't recall  
9           that.

10          Q.   Okay. All right. Do you have any idea of who  
11          Ms. Sargent was?

12          A.   No, sir.

13          Q.   How about Cookie Atkerson?

14          A.   I don't recall who these people were or why I  
15          wanted to take their deposition other than I  
16          believe it was important for our case.

17          Q.   Ms. Atkerson, I think her signature is on some  
18          of the documents that we have seen from Ms.  
19          Sherman's office. Let me look back through  
20          here.

21          A.   Cookie Atkerson was an employee of Ms. Sherman.

22          Q.   Okay.

23          A.   So, I probably would have been serving Marne  
24          Sherman with something.

25          Q.   For example, in Exhibit 6 she signed as legal

1           assistant for Ms. --

2           A.    Yes, sir.

3           Q.    -- Sherman.

4           A.    I recall her being one of Ms. Sherman's  
5                employees, so anything I was trying to serve on  
6                Marne Sherman, we would have probably had, if  
7                it was an important document that we served her  
8                that day, I would have sent a process server  
9                over probably with that emergency complaint and  
10              Cookie would have signed for it. And so we  
11              would have just filed that we served, you know,  
12              her employee at the front desk with those  
13              papers.

14          Q.    Okay. So, you weren't trying to take her  
15                deposition?

16          A.    No, sir. Yeah, the one that she signed that we  
17                served her was the notice of motion and motion  
18                for emergency temporary relief, summons and  
19                verified complaint, and subpoena for deposition  
20                notices. It was just all the notices that we  
21                had served and the new filing we served her  
22                with.

23          Q.    Why would you have a process server deliver  
24                those as opposed to just mailing them or faxing  
25                them to Ms. Sherman?

1           A.    I probably did. But as far as having a process  
2                server, because it was an emergency complaint,  
3                we probably served her, you know, we were  
4                expecting a hearing date the next day. I  
5                probably wanted to make sure that there was no  
6                claim that she had insufficient notice.

7           Q.    Okay.

8                        (Whereupon, Defendant's Exhibit No. 14

9                        was marked for identification.)

10          Q.    I'm going to hand you what's marked as Exhibit  
11                14 and this regards the notice of depositions  
12                of Ms. Zenda Whitten and Mr. Terry Powell. I  
13                think you've already identified Terry Powell as  
14                Conrad Powell's brother. Do you have any  
15                recollection of who Zenda Whitten was?

16          A.    No, sir. I do see that this location is in  
17                North Carolina. We had to go through another  
18                law firm to get these depositions, or these  
19                people properly subpoenaed for their  
20                deposition. I believe she was involved in one  
21                of the businesses out there or had knowledge of  
22                Mr. Powell's financial dealings in North  
23                Carolina, and so we were concerned that assets  
24                had been transferred over to North Carolina to  
25                Mr. Powell, Terry Powell's North Carolina

1 business, and she must have been involved with  
2 one of those business in some way. She could  
3 have been an accountant, she could have been a  
4 partner. I just don't recall what her capacity  
5 was.

6 Q. With regard to these various deposition notices  
7 that you're sending out, Mr. Collins, Ms.  
8 Sargent, Mr. Tyler, Ms. Whitten, Mr. Powell,  
9 did you get these names from Ms. Powell?

10 A. Most likely.

11 Q. Okay. And she would have told you what?

12 A. She would have told -- the caveat is I can't  
13 specifically remember these conversations. I  
14 can't even remember who these people are for  
15 the most part. But she would have told me --  
16 and I told you some of the information I got  
17 regarding my concern that assets or, you know,  
18 basically assets had been transferred to Terry  
19 Powell while the divorce was going on was from  
20 conversations with Ms. Powell. And she would  
21 have known what the other business were in  
22 Asheville, would have brought those to our  
23 attention, who the players were in those  
24 businesses, and so I would have gotten much of  
25 that information from her.

1 Q. Okay. Would you have been able to verify any  
2 of those allegations before you noticed these  
3 depositions? Or you were just going to take  
4 the depositions and see what you could find  
5 out?

6 A. I was taking those depositions to see what I  
7 could find out. I had already -- or at some  
8 point I did take Mr. Powell, Conrad Powell's  
9 deposition. And I was going on a fishing  
10 expedition. I did not have any specific  
11 information, but I wanted to, you know, have  
12 them tell me under oath how the business is set  
13 up; whether or not -- Mr. Powell, Conrad Powell  
14 was in the -- one of his businesses was the  
15 antique business. And I'm pretty sure we were  
16 concerned that antiques from his business on  
17 Huger Street had been transferred over to  
18 Asheville.

19 And so we wanted to, you know, ask  
20 questions related to those assets and just, you  
21 know, the total framework of how his  
22 partnership was set up, how Mr. Powell, Terry  
23 Powell's partnership was set up and whether or  
24 not Mr. Conrad Powell had any interest. I  
25 wanted to specifically ask those questions to

1           get them to verify under oath that nothing had  
2           been transferred. But I did not have, and to  
3           this day I don't know that anything was  
4           transferred over there. I never got anything  
5           that I could really hold my hands on.

6           Q. Did you talk with Reid Smith as to what  
7           investigation he had conducted along these  
8           lines?

9           A. Yes, sir.

10          Q. Do you have any recollection of what he was  
11          able to tell you?

12          A. My recollection is is that he went through all  
13          the financial data that was given to him, tax  
14          returns, you know, I think he got some  
15          accounting information, but anything that he  
16          was able to get his hands on, he reviewed.  
17          And, you know, to the best of his ability, he  
18          itemized what the marital estate was and what  
19          the interests were and what the values were.

20          Q. Did he discuss with you that he was not able to  
21          find any evidence of any transfer of assets,  
22          any depletion of assets, or anything of that  
23          nature?

24          A. I don't recall having that conversation with  
25          Reid. I recall having conversations where he

1 indicated that the information he provided us  
2 was all he was able to find, and that, you  
3 know, I mean, I think it was a collective  
4 decision -- it was always my position that we  
5 had to go take those depositions in order to  
6 truly understand what the full marital estate  
7 is. You know, that's often the case when  
8 you're in a case like this is that it's very  
9 costly to truly do the discovery necessary to  
10 determine that nothing's been concealed.

11 Q. And of course if you did these depositions,  
12 you'd be charging Ms. Powell at your hourly  
13 rate for conducting them?

14 A. It was going to be expensive, yes, sir.

15 Q. And did you discuss that expense with her?

16 A. We discussed that it was going to be expensive  
17 to do these depositions because, again, we had  
18 to incorporate a firm licensed in North  
19 Carolina to help us get the depositions  
20 properly noticed and served. We were going to  
21 do the depositions in North Carolina, which  
22 meant that I would have to travel to North  
23 Carolina. Court reporting, you know, we had  
24 already done several depositions up to that  
25 point, so Ms. Powell was aware of, you know,

1 the cost of depositions and the transcripts and  
2 stuff of that nature.

3 (Whereupon, Defendant's Exhibit No. 15

4 was marked for identification.)

5 Q. Exhibit 15 is a letter from you to the clerk of  
6 court filing copies of a request for final  
7 hearing. Now, I think by this point, this  
8 letter's dated February 26th, apparently you  
9 already had a date set for the temporary  
10 hearing on March 14. Explain to me what the  
11 request for final hearing would be about.

12 A. This is a letter, it's actually by an associate  
13 in my firm at the time, Bryan Caskey. I know  
14 when I got the case, the issue was had the case  
15 been -- had the original case that Mr. Taylor  
16 was involved in been administratively  
17 dismissed. And I believe you showed me a  
18 letter from Marne Sherman requesting a final  
19 hearing. My guess is we were doing exactly the  
20 same thing, trying to keep it from being  
21 administratively dismissed.

22 Certainly by that time, I guess, I think  
23 we showed that I took on the case in January of  
24 2007. The case was not ready to be tried. We  
25 weren't ready for a final hearing. I think we



1           were just trying to not -- we were trying to  
2           revive the case if it had been administratively  
3           dismissed. At one point I wasn't sure if it  
4           had been or not.

5                       (Whereupon, Defendant's Exhibit No. 16

6                       was marked for identification.)

7           Q.    I'll hand you Exhibit 16, which is  
8                correspondence from Ms. Sherman to you dated  
9                February 24 and she addresses that. She says  
10              the old action was stricken by administrative  
11              order, and she says she assumes that you're in  
12              agreement with her that the prior depositions  
13              could be used in the new action. Was there any  
14              -- there was no dispute between you and Ms.  
15              Sherman that the action should be restored if  
16              it was administratively stricken; is that  
17              correct? Or you can take a minute to take a  
18              look.

19           A.    Yeah, let me look at this for a second.

20           Q.    Sure.

21           A.    There was rarely a time when there was no  
22                dispute between Ms. Sherman and I. You may  
23                have a letter from me that would let me know  
24                whether or not there was a dispute or not over  
25                the filing date. I thought it could be a

1 material problem because, as you're probably  
2 aware, the date of filing date, or the date of  
3 valuing marital property is the date the action  
4 was filed. If the original case, which was  
5 filed, I don't recall when, but I think it was  
6 a couple years maybe before at this point,  
7 maybe more, that filing date would have been  
8 lost with the new filing when the case was  
9 administratively dismissed. And that may or  
10 may not have had an impact on the valuation of  
11 the marital estate.

12 I do -- so I don't know if I had a dispute  
13 over that or not. I don't know that I can tell  
14 you today whether or not that negatively or  
15 positively impacted Ms. Powell.

16 Q. Okay. Well, it appears from this letter that  
17 she has maintained that the old date, February  
18 21, 2007, should be the date for the valuation.

19 A. Well, I don't think that's the old date. I  
20 think that was the date I filed my stuff, my  
21 papers. The old date was probably 2005 or '04  
22 or something like that, and I don't recall what  
23 the old date was. But it was several years  
24 prior to this point, so I think she was taking  
25 the position that the case got dismissed.

1           administratively, and so we're going to go with  
2           a new filing, which I think for me was the only  
3           alternative I had. I don't think I could have  
4           gone back to the old date at this point. But I  
5           don't know the answer to whether or not that  
6           was a negative or positive impact on Ms.  
7           Powell.

8           Q.    Okay. I think we'll see some resolution to  
9           that as we go forward.

10          A.    I probably knew it at the time. I just don't  
11          recall it right now as I'm talking to you.

12          Q.    You mentioned Bryan Caskey a minute ago; who is  
13          he?

14          A.    He is a lawyer in my law firm. During this  
15          litigation, he was an associate. He is now a  
16          non-equity member of the firm.

17          Q.    What was his substantive involvement in Ms.  
18          Powell's representation, if any?

19          A.    He was helping me with the case. Substantively  
20          -- I think he actually showed up for a hearing  
21          on a motion to compel and did a good job with  
22          that, got some attorney's fees awarded. But he  
23          was kind of the second tier lawyer on the case.

24          Q.    Working under your supervision?

25          A.    Yes, sir.

1                   (Whereupon, Defendant's Exhibit No. 17  
2                   was marked for identification.)

3           Q:    I'm going to mark as Exhibit 17 a notice of  
4                motion and motion to restore action and  
5                consolidate actions.

6           A.    Okay.

7           Q.    Do you recall this one?

8           A.    Yeah, it looks like I filed this motion. I  
9                guess by the time I got into the case, the old  
10               action had actually been administratively  
11               dismissed. And we found that out, you know,  
12               basically just going back to the court records.  
13               I don't think Ms. Powell knew that when she  
14               first came to me. And so we filed the action  
15               seeking emergency relief and then filed this  
16               motion to consolidate the old case so that, it  
17               appears that in my opinion it had been  
18               advantageous to Ms. Powell to use that old date  
19               of filing date.

20          Q.    And so you're asking the court in this motion  
21                that it rule for purposes of valuing marital  
22                property that the original date of filing,  
23                August 27, 2004, be deemed the appropriate  
24                valuation date?

25          A.    Yes, sir.

1 Q. And do you have any recollection as to whether  
2 or not the court ultimately granted that  
3 motion?

4 A. I feel like an idiot, but I really cannot  
5 remember much of this case at all, and I just  
6 don't know what the result was.

7 Q. All right.

8 A. It may have been something we consented to.

9 (Whereupon, Defendant's Exhibit No. 18  
10 was marked for identification.)

11 Q. I'm handing you a document that I'm marking as  
12 Exhibit 18, and I'll give you a second to look  
13 at that.

14 A. Okay.

15 Q. This appears to be an email from somebody  
16 identified --- and the email address is  
17 jessicasalecola@aol.com. Do you know who that  
18 is?

19 A. I think I do, but I may be wrong. I think it's  
20 an assistant that worked for Bunni Crawford.  
21 That's who I think it is.

22 Q. Okay. Do you know what the source of this  
23 information is or what the purpose of this  
24 information being sent to you is?

25 A. No, sir. I mean, it looks like it's a

1 valuation of assets as of 1999.. But I don't  
2 recall her sending it to me. And I can't tell  
3 you for certainty that I've seen that document  
4 other than today. But if it came from my file  
5 of Ms. Mitchell, then maybe I have received it.  
6 I just don't recall.

7 Q. Is this anything that you would have relied  
8 upon insofar as your evaluation of the case,  
9 evaluation of settlement issues?

10 A. If it came from whom I think it came from, I  
11 would have taken that as information ultimately  
12 coming from my client, and I would have -- I  
13 wouldn't have relied on it solely. But I  
14 would've taken it as information and evaluated  
15 the case, yes, sir.

16 Q. Just looking at the numbers in that document,  
17 they don't seem to make a whole lot of sense.  
18 Because if you add up what appears to be a  
19 listing of assets in 1999, the total is  
20 29,735,000, and I don't think anybody has  
21 contended that the value of the estate was  
22 anything in that neighborhood.

23 A. No, sir.

24 Q. Did anybody verify this information to you?

25 A. I don't recall seeing this. Again, as far as

1           the accuracy of these numbers, I don't know. I  
2           was certainly relying on information I received  
3           from the client directly and from Reid Smith as  
4           far as the accuracy of the numbers. So the,  
5           yeah, I don't even recall talking about a \$14  
6           million number at any time. So, again, I can't  
7           swear to you that I received this document. I  
8           don't remember it, and I don't know whether or  
9           not we -- what we did to verify these numbers.  
10          I think it was just information that was  
11          provided to me at one point or another.

12                   (Whereupon, Defendant's Exhibit No. 19  
13                   was marked for identification.)

14          Q.   Exhibit 19 is a letter from Marne Sherman to  
15               Judge Jones, copy showing as going to you.

16               I'll give you a second to look at that.

17                   (Ms. Williams leaves the deposition.)

18                   (Off the record discussion.)

19   BY MR. HILL:

20          Q.   Can you authenticate this as being a document  
21               from your file?

22          A.   I'd say I don't dispute that it is. Yeah, I  
23               think I've seen this before. Yes, sir, it's a  
24               document from my file.

25          Q.   In the second paragraph of this letter, Ms.

1           Sherman says that she had a meeting with you  
2           the week before. This letter is dated March  
3           12. And she says that you told her that you  
4           didn't know if you were going forward with the  
5           scheduled hearing on March 14. You have any  
6           recollection of that?

7           A. No, sir.

8           Q. Any reason not to go forward on March 14?

9           A. Not that I can think of. No, sir.

10          Q. Okay. In the third paragraph, the last  
11          sentence continuing over into the next page,  
12          she says, "My client has been and continues to  
13          pay child support and other expenses for the  
14          parties' minor children without an order of the  
15          court, and he has been doing this for the last  
16          couple of years." Was there any dispute as to  
17          that insofar as Ms. Powell was concerned?

18          A. I think he was paying something. I can't  
19          remember what it was. I don't think she  
20          disputes that he had never paid a single dime  
21          of anything. As I recall, he was sometimes  
22          paying the support directly to the children.  
23          And obviously there was an issue about tuition  
24          that was coming up as well. But I don't -- I  
25          think she certainly disputes that he was paying



1 an adequate amount of child support and that  
2 the child support was paid directly to her and  
3 that there were ancillary expenses that were  
4 coming due like tuition that needed to be  
5 addressed.

6 Q. The last page in this package is a note from  
7 Judge Jones's assistant that says the hearing  
8 is going to be on March 14th at three o'clock.  
9 So apparently it was confirmed to go forward at  
10 that time.

11 A. Yes, sir.

12 (Whereupon, Defendant's Exhibit No. 20  
13 was marked for identification.)

14 Q. I'm going to mark as Exhibit 20, a letter from  
15 Mr. Caskey to the court attaching some amended  
16 notices of depositions. Family court may be a  
17 little bit different from circuit court, but do  
18 you file deposition notices in family court?

19 A. We did.

20 Q. Is that required or were you just doing that as  
21 a . . .

22 A. I don't recall. I don't think it's required,  
23 no, sir.

24 Q. Okay. These are amended notices of depositions  
25 of Nancy Sargent, Tim Tyler, Michelle Owens,

1 Linda Whitten, and Terry Powell. Did these --  
2 were these rescheduled for some reason?

3 A. My recollection is that these -- let me see  
4 something. My recollection is that these  
5 depositions were scheduled after some effort to  
6 get them scheduled and get the dates lined up.  
7 And then the case got settled, which was why we  
8 never took the depositions.

9 Q. Well, as of March 13th the case hadn't been  
10 settled.

11 A. No, sir.

12 Q. Do you recall who Michelle Owens was and why  
13 you wanted to take her deposition?

14 A. I do not recall who she was. I almost think  
15 she was -- I don't specifically recall who she  
16 was. I know somewhere in my file are answers  
17 to interrogatories, and it would probably list  
18 what her relationship to the case was or  
19 relevance to the case was.

20 (Whereupon, Defendant's Exhibit No. 21

21 was marked for identification.)

22 Q. Exhibit 21 is a letter from apparently your  
23 legal assistant to Carolyn Powell. There's a  
24 fax attached to it. And I just need for you to  
25 explain to me, if you can recall, what's going

1 on. So it's a copy of a fax that was dated  
2 February 22 with some handwritten notes on it.

3 A. I think she was -- I served her with a new  
4 action and she was accepting service of the new  
5 action. And I think I -- in family court you  
6 don't have automatic discovery. You have to  
7 either have a discovery order or the parties  
8 can consent to it. And so I was asking her to  
9 consent to pretrial discovery so we wouldn't  
10 have to go and file motion for the court to  
11 approve it.

12 And I think I asked her to sign that she  
13 consents to discovery according to the South  
14 Carolina Rules of Civil Procedure. And it  
15 looks like she said instead that she will agree  
16 to mutual PTD. And I wrote a note, what is  
17 PTD. I think it's pretrial discovery, which is  
18 exactly what I asked her to consent to. But I  
19 think that's what's happening there.

20 Q. Is that your handwriting, what is PTD?

21 A. Yes, sir.

22 Q. Okay. Now, getting into some documents that  
23 were filed in conjunction with the March 14th  
24 hearing. And the first of these I'm going to  
25 mark as Exhibit 22 is an affidavit of Conrad

1 Powell.

2 (Whereupon, Defendant's Exhibit No. 22  
3 was marked for identification.)

4 A. Okay.

5 Q. Do you recall seeing this at some point in  
6 time?

7 A. Yes, sir.

8 Q. This is dated March 13 which was the day before  
9 the hearing I think. Would you have received  
10 this at the hearing or prior to the hearing or  
11 do you have any recollection?

12 A. Typically, is the way I would receive it at the  
13 hearing and really not even review it until  
14 after the hearing. You know, as I recall with  
15 Marne, you know, typically you hand up the  
16 documents right when you are in the court  
17 sitting at the table getting ready to talk to  
18 the judge. So that would've been the case  
19 here.

20 Q. Okay. Did you have an opportunity to review  
21 this after the hearing?

22 A. I had an opportunity. Whether I did or not, I  
23 don't recall.

24 Q. Okay. Do you recall whether or not you  
25 discussed the information that Mr. Powell set

1           forth in this affidavit with your client?

2           A.   I do not recall. I guess the answer is I  
3           definitely had an opportunity to discuss the  
4           information in this with Ms. Powell. I do not  
5           recall if we did discuss it.

6           Q.   For example, on page two of the affidavit he  
7           said in 2005 he wrote checks to Ms. Powell or  
8           third parties for the children in the amount of  
9           \$26,565. In the year 2006, the expenditures on  
10          behalf of the children, including monthly child  
11          support, was \$121,143. Do you know whether Ms.  
12          Powell disputed those numbers?

13          A.   No, sir. I don't know.

14          Q.   Anything else in this affidavit that you can  
15          recall being discussed with Ms. Powell?

16          A.   I know I discussed with Ms. Powell what her  
17          husband was paying for child support before we  
18          filed that action asking for emergency relief.  
19          It is my vague recollection that we didn't  
20          dispute that Mr. Powell paid something.  
21          Whether or not we agreed that he paid what is  
22          set forth in his affidavit, I just don't  
23          recall. And I do recall that we talked about  
24          advances and whether or not -- I think advances  
25          may have been made during the course of the

1 litigation that would ultimately have been  
2 factored into the settlement. And we certainly  
3 talked about advances.

4 Q. One of the things addressed in this affidavit  
5 is child support arrearage. Did she claim that  
6 he was in arrears on child support?

7 A. We, as I recall looking at that motion for the  
8 temporary expedited relief, that was one of the  
9 things we were asking for is that he pay child  
10 support, you know, past child support. I don't  
11 recall that there was a child support order in  
12 place. I don't think there was prior to my  
13 filing my motion for child support, but I could  
14 be wrong about that.

15 (Whereupon, Defendant's Exhibit No. 23  
16 was marked for identification.)

17 Q. This document I'm going to hand you, which I'll  
18 mark as Exhibit 23, is the affidavit of Tracy  
19 Amos.

20 Q. Do you recall who Tracy Amos was or is?

21 A. Tracy Amos is an accountant who does a lot of  
22 forensic audits of marital estates in order to,  
23 you know, create an accurate marital asset  
24 addendum to be used for equitable division.

25 Q. This affidavit is dated March 13. Was this

1 prepared in anticipation and for use at the  
2 hearing on March 14?

3 A. I think so. I think we were asking the court  
4 to have him pay a certain amount of money to  
5 help us do a forensic audit of the case.

6 Q. How much prior to the execution of this  
7 affidavit on March 13 had you talked with Ms.  
8 Amos about getting involved with the case?

9 A. I don't recall. I don't see a specific note in  
10 my billing records, so it may be something I  
11 just didn't bill for. I don't recall how far  
12 in advance I had spoken with Ms. Amos.

13 Q. How did the issue of using her develop between  
14 you and Ms. Powell?

15 A. I don't recall other than I think that it was  
16 my opinion that we were going to need to bring  
17 in somebody like Tracy Amos in order to help us  
18 with a forensic investigation and really come  
19 up with true values for the case.

20 Q. What did you view her as being able to do, if  
21 anything, that Reid Smith had not already done?

22 A. I think she was capable of doing what Reid  
23 Smith has done. Reid was a counsel in the  
24 case. I think she was an expert, you know,  
25 would've been solely an expert. And that, you

1 know, I felt like she would be able to provide  
2 an opinion that I certainly wasn't able to  
3 provide on my own, which was needed in order to  
4 fully understand what the true status was. You  
5 know, we believed at the time that assets were  
6 being hidden, and she would've had to, you  
7 know, chase those rabbits down the hole to  
8 figure out whether or not that was, in fact,  
9 the case.

10 Q. So Mr. Smith had already appeared as counsel in  
11 the case; is that correct?

12 A. You know, I don't recall if he -- in the new  
13 case if he was listed as a party of record.  
14 I'm not positive about that.

15 Q. I think somewhere in these documents that he  
16 filed a notice of appearance.

17 A. Okay. I mean, this is what -- that's all Tracy  
18 does as far as I know, is that she, you know,  
19 does forensic audits of cases and does a  
20 substantial amount of work for domestic  
21 litigation. So I felt like we needed somebody  
22 like that in this case in order to answer, to  
23 my satisfaction and to our client's  
24 satisfaction, the question of whether or not  
25 assets were being hidden and also to value the



1 businesses. I think there were several  
2 businesses that were involved, and we would  
3 need her to give expert testimony in that  
4 regard.

5 Q. Did you talk with Reid Smith about retaining  
6 Ms. Amos?

7 A. I do not recall, but I probably did.

8 Q. Okay. Do you know whether or not he agreed  
9 that you needed to bring her on board?

10 A. I do not recall. And Reid was not, you know,  
11 when I got -- Reid was involved in this case  
12 when Michael Taylor and Ashlin Potterfield were  
13 handling the case. I got to know Reid, but he  
14 really was not running -- he was not the first  
15 counsel. I didn't go to Reid to ask questions  
16 about how to handle the case. I was handling  
17 the case. I went to Reid if I wanted a second  
18 opinion.

19 But really -- Reid showed up to Carolyn's  
20 deposition; I recall that. I think he reviewed  
21 -- Reid reviewed a bunch of information that  
22 was provided by Mr. Taylor. And that's where  
23 he came up with his information where he --  
24 that letter that you saw, now that I think  
25 about it, I can't remember what that

1 information was, whether it was financial  
2 records that were provided to them or if it was  
3 a transcript of something. But Reid had  
4 information that he reviewed in order to  
5 prepare that analysis.

6 It was my opinion that I needed somebody  
7 like Tracy Amos to do a 100 percent full fledge  
8 audit of all the financial records to get a  
9 true understanding of what the marital estate  
10 was worth, whether or not assets were being  
11 hidden. I don't recall asking Reid's opinion  
12 or seeking his permission to do it. I think,  
13 you know, by the time I got involved in the  
14 case, I wasn't thinking of Reid so much as my  
15 co-counsel as I was as somebody who was there  
16 if we needed help.

17 Q. Did you anticipate that it was going to be  
18 necessary for Ms. Amos to plow the same ground  
19 that Reid had already done?

20 A. Yes, sir. 100 percent.

21 Q. Why was it going to be necessary for her to  
22 redo what Reid had done?

23 A. Well, she would've at least had to review what  
24 Reid had done. You know, she would've had to  
25 look -- in order for her to have an opinion,

1 she would've had to have looked at the same  
2 documents he looked at to let us know whether  
3 or not we needed more documents, you know, and  
4 given even more guidance as to what needed to  
5 be done in order to fully prepare the case for  
6 trial.

7 Q. Do you know whether Reid's investigation and  
8 evaluation of the case included an evaluation  
9 of whether there had been any hidden assets or  
10 whether there had been any movement of assets  
11 among these corporations or any hiding of  
12 assets?

13 A. No. I think he tried to, at least what I think  
14 Reid did, and you'd have to ask Mr. Taylor what  
15 his instructions were to Reid when he was  
16 dealing with Reid. I didn't give Reid  
17 instruction to go back and do a forensic audit.  
18 He'd already done work before I got involved in  
19 the case. And information was provided to him  
20 to review to come up with an idea of what the  
21 marital estate was, and that's what he did.

22 I don't think he was asked to go and find  
23 money that had been hidden. You know, I think  
24 he was certainly going to look at that. If he  
25 saw any irregularities, he would've pointed it

1 out. But I can't tell you for certain what his  
2 -- what capacity he was working with when Mr.  
3 Taylor and Ms. Potterfield were dealing with  
4 him.

5 He provided information early on in the  
6 case to me that the client was comfortable with  
7 making a settlement offer, and so we did. And  
8 it was never my position that that was the -- I  
9 mean, it was always clear that there may be  
10 much more money on the table that we don't know  
11 about. In order to find out, we need to get  
12 Tracy Amos involved and do a full forensic  
13 evaluation and we need to take additional  
14 depositions to determine whether or not there's  
15 other assets out there.

16 So I can't tell you today exactly what  
17 Reid did and reviewed in order to come up with  
18 his opinion.

19 Q. Were you aware that Mr. Smith and Mr. Taylor  
20 went to Ms. Sherman's office and reviewed  
21 documents that had been produced by Mr. Powell?

22 A. Yeah. I think -- was I aware that they did  
23 that together? No, sir. I wasn't aware of  
24 that, or at least sitting here today I don't  
25 know that I was aware of that. I may have been

1 in the past. But I am aware that information  
2 was provided to Mr. Smith through Mr. Taylor  
3 and Ms. Potterfield that he based his opinion  
4 on.

5 Q. Are you aware of the extent to which Reid  
6 examined public records, transfers of -- or  
7 records pertaining to real estate matters,  
8 records in the Secretary of State's offices in  
9 North Carolina, South Carolina, those kinds of  
10 things?

11 A. No, sir. I'm not aware.

12 Q. Did Tracy Amos do any substantive work in the  
13 case?

14 A. I don't think she did.

15 (Whereupon, Defendant's Exhibit No. 24

16 was marked for identification.)

17 Q. The next document I'm going to hand you is  
18 Marne's Exhibit 24, and it's captioned child  
19 support calculation. It appears to have been  
20 prepared by Marne Sherman. Have you seen this?

21 A. I don't recall.

22 Q. Is this something that would've been furnished  
23 to you at the time of the hearing? It's dated  
24 March 14th.

25 A. Yeah. They would've provided it at the

1           hearing.

2           Q.   This document that she prepared comes to the  
3               conclusion apparently that Mr. Powell should  
4               pay child support of \$1,249 a month. Are there  
5               certain guidelines in family court that need to  
6               be followed with regard to establishing child  
7               support?

8           A.   Yes, sir.

9           Q.   Is this calculation that she has made  
10               consistent with those guidelines?

11          A.   Yeah. The only variables would be whether or  
12               not her numbers are accurate referring to the  
13               father's gross monthly income, children's  
14               health insurance, extraordinary medical  
15               expenses, and child care costs. But as far as  
16               the calculator, it's the same calculator I  
17               would use to calculate child support.

18                       (Whereupon, Defendant's Exhibit No. 25  
19                       was marked for identification.)

20                       (Off the record discussion.)

21   BY MR. HILL:

22          Q.   I'm going to hand you what's been marked as  
23               Exhibit 25, which is a financial declaration of  
24               Conrad Powell. This is dated March 14 as well.  
25               So is this something that would've been handed

1 to you at the time of the hearing?

2 A. Yes, sir.

3 Q. And I would assume you wouldn't have had any  
4 time to really review it and assimilate it in  
5 time for the hearing.

6 A. No, sir.

7 Q. Did you later go over this with Ms. Powell?

8 A. I don't recall. I don't recall if I sat down  
9 and went over it with her or if I made her a  
10 copy of everything that was produced. I just  
11 don't recall one way or another if we went over  
12 this document.

13 Q. Did you utilize the information in this  
14 document insofar as evaluating your client's  
15 position with regard to settlement position?

16 A. Yes, sir.

17 Q. Did you have any dispute as to the accuracy of  
18 the information here?

19 A. I did. You know, this is a tough case -- these  
20 are tough cases to prove when you have a guy  
21 who has the ability to, I guess what I'd have  
22 to say in not an articulate way but, hide  
23 income with the type of business he runs. A  
24 lot of self-employed people have the ability to  
25 show very low income when actually they have a

1 high income. So I always had concerns as to  
2 whether or not we were getting the full  
3 picture.

4 Q. This information is given under oath, is it  
5 not?

6 A. It is.

7 Q. And was Mr. Powell's deposition taken?

8 A. It was taken under oath.

9 Q. It was taken before your involvement in the  
10 case or during your involvement?

11 A. I took his deposition.

12 Q. At the time you took his deposition, did you  
13 have this financial statement, this  
14 declaration?

15 A. I do not recall.

16 (Whereupon, Defendant's Exhibit No. 26  
17 was marked for identification.)

18 Q. I'm going to hand you Exhibit 26, which is  
19 captioned pendente lite package. I'll give you  
20 a minute to look at that if you want to.

21 A. Okay.

22 Q. Are these materials that you prepared and  
23 presented to the court in connection with the  
24 hearing on March 14?

25 A. Yes, sir.



1 Q. The first one in the group is an affidavit of  
2 Carolyn Powell. Did you prepare the affidavit?

3 A. I would say -- I don't recall how this hearing  
4 ended up. If we had a ruling or if it was  
5 entered -- we consented to terms. I don't  
6 recall how this was resolved. So we may have  
7 settled this right before going into court, and  
8 I would not have filed this with the court at  
9 all or I would not have handed to the other  
10 side. I just don't recall how that is. But it  
11 is certainly materials that I prepared for  
12 court on the 14th.

13 Q. Okay. But with regard to her affidavit, is  
14 this something that you would have written,  
15 obviously, with input from her?

16 A. Yes, sir.

17 Q. On the first page of the affidavit, she is  
18 requesting child support in the amount of  
19 \$3,000 a month; is that correct?

20 A. I'm sorry. Which page are you referring to?

21 Q. The affidavit; it's paragraph 2b.

22 A. Child support in the amount of \$3,000 a month.  
23 Yes, sir.

24 Q. Is this something that you and she would've  
25 discussed insofar as what was the appropriate

1 amount to request?

2 A. Yes, sir.

3 Q. Did you recommend that that be what she  
4 requested?

5 A. I don't recall.

6 Q. The last page of the affidavit, page five,  
7 subparagraph C, she was requesting that Mr.  
8 Powell pay certain bills including the expenses  
9 associated with the stabling and upkeep of  
10 horses, approximately \$1,000 per horse. Do you  
11 recall anything about that?

12 A. Yes, sir.

13 Q. What do you remember?

14 A. They have -- they're equestrians; they do a lot  
15 of horse riding. And their children each have  
16 a horse. And so, you know, horses are really  
17 expensive. I think Mr. Powell had supported,  
18 you know, the girls' interest in riding horses  
19 and Ms. Powell's interest in riding horses. So  
20 at the time they got separated, they already  
21 had horses, and he knew there was an expense  
22 associated with that. And we wanted to at  
23 least make sure he paid a certain portion of  
24 that expense.

25 Q. The next page is exhibit A, and it's captioned

1           disbursements of marital property settlement  
2           funds, 400,000 plus 3,000 plus 10,000. Were  
3           you aware that under the representation of  
4           Taylor/Potterfield that those funds had been  
5           advanced?

6           A.    Yes, sir.

7           Q.    Okay. And apparently this is a recapitulation  
8           of how those funds were expended; is that  
9           correct?

10          A.    It appears to be so. Yes, sir.

11          Q.    And are these numbers that Ms. Powell gave you?

12          A.    When I first took over the case, I called and  
13          had a conversation with Mr. Taylor and let him  
14          know that I had been asked to get involved in  
15          the case. And he was very cordial and made the  
16          file available to me, and so I don't know if --  
17          I don't recall if Ms. Mitchell gave that  
18          information to me or if that was something I  
19          got from Mr. Taylor's file.

20          Q.    And there's some excerpts from a deposition and  
21          then next we come to the financial declaration  
22          of Carolyn Powell.

23          A.    To answer your question that you asked me  
24          previously, now that I see this, I obviously  
25          took Mr. Conrad Powell's deposition before this

1           hearing. So I would not have had that  
2           financial declaration at the time I did the  
3           hearing -- or I did the deposition.

4       Q. Did you prepare the financial declaration of  
5       Carolyn Powell?

6       A. I believe it was prepared at my office. Either  
7       I prepared it or one of my staff members  
8       prepared it with Ms. Powell.

9       Q. Now, when you do a financial declaration in a  
10      situation like this, obviously you've got to  
11      get the numbers from somewhere. Do you rely  
12      simply on the client's representation or do you  
13      review supporting documentation or what do you  
14      do to prepare a document including numbers like  
15      this?

16      A. Well, on the income I would look at -- if there  
17      is a pay stub, I would look at the pay stub to  
18      come up with the income and the taxes. In her  
19      case there was no pay stub, so I would've  
20      gotten that information directly from her. I'm  
21      sure I got that information directly from what  
22      she told me and probably the same with these  
23      expenses too. It depends on whose financial  
24      declaration we're preparing. But I'm sure I  
25      got this information directly from Ms. Powell.

1 Q. Okay. I guess my question is, did you require  
2 her to furnish any kind of documentation or  
3 back up of what she was claiming by way of  
4 expenses?

5 A. I did not ask her to.

6 Q. Also included in this package is a document  
7 called equitable apportion worksheet.

8 A. Yes, sir.

9 Q. Tell me what that is.

10 A. This is just an itemization of the marital  
11 assets that we were aware of at the time.

12 Q. What was your source of these numbers?

13 A. Probably the information Reid Smith provided us  
14 and the information provided by the client.

15 Q. And what's the purpose of preparing a document  
16 like this?

17 A. The court requires that a financial declaration  
18 be filled -- and that the -- I don't usually  
19 use this marital asset addendum. The forms  
20 have changed over time, but I think at this  
21 time with this particular form, at the time we  
22 did this, I thought it would be easier, rather  
23 than just plugging the information in the  
24 court's portion of the marital asset addendum,  
25 that I just attach one that I had already

1 prepared.

2 And it just -- the court wants to get an  
3 idea of what kind of estate they're looking at  
4 and what the marital, you know, assets are.

5 And it requires the parties under oath to  
6 furnish, you know, their knowledge of what the  
7 marital assets are. Oftentimes in the course  
8 of domestic litigation, the actual marital  
9 assets and their valuations change as you do  
10 discovery and learn more about the case.

11 Q. When you prepared and presented this  
12 information did you believe it was complete and  
13 accurate at the time?

14 A. No, sir. No, sir.

15 Q. Did you express to the court that you had some  
16 reservations about whether or not it was  
17 complete?

18 A. No, sir. At the time it was the only  
19 information I had. And so no, I did not. I  
20 don't think my client thought that this was  
21 everything. It's just what we knew. It was --  
22 she didn't know of anything else. She didn't  
23 leave anything off that she was aware of. But  
24 this is the information we had at the time.

25 Q. Is this not basically the same information that

1           was in the settlement demand letter that Reid  
2           Smith prepared and that you sent out earlier in  
3           the representation?

4       A.    I had not compared this to that, but I believe  
5           it would be the same.

6                       (Whereupon, Defendant's Exhibit No. 27  
7           was marked for identification.)

8       Q.    I'm going to hand you what's been marked as  
9           Exhibit 27, which is a letter from you to Reid  
10          Smith dated March 15, the day after the  
11          hearing, in which you are sending him a copy of  
12          what we just went over.

13      A.    Yes, sir.

14      Q.    Did you ask for any input from him on those  
15          materials?

16      A.    Probably.

17      Q.    Did he attend that hearing on March 14?

18      A.    No, sir. I don't believe he attended. I don't  
19          think he did.

20                       (Whereupon, Defendant's Exhibit No. 28  
21           was marked for identification.)

22      Q.    We're going to skip over this letter and go to  
23          the letter Mr. Foster sent to Ms. Sherman dated  
24          March 16, which I marked as Exhibit 28.

25      A.    Okay.

1 Q. This refers to a stipulation at the hearing  
2 that Mr. Powell would disperse \$250,000 to Ms.  
3 Powell as an early equitable distribution.

4 What do you remember about that?

5 A. Well, that's what I was saying. I thought we  
6 may have agreed on some stuff as opposed to  
7 just having the judge rule on all the issues.  
8 And I think we agreed that he was going to pay  
9 an early equitable distribution advance to Ms.  
10 Powell. You know, the -- it was -- I can't  
11 remember what it was from, but we agreed that  
12 he was going to go ahead and make an equitable  
13 distribution to her that would be calculated on  
14 her half of the property division upon a final  
15 resolution of the case. But he was just going  
16 to pay early.

17 Q. The last page of this exhibit is a photocopy of  
18 that letter, what appears to be a note from  
19 Marne Sherman at the bottom.

20 A. Yes, sir.

21 Q. She says, if I'm reading her handwriting  
22 correctly, I'll follow Judge Jacobs' ruling.  
23 Do you know what she meant by that?

24 A. He must've ruled, I don't know if he was our  
25 judge at that temporary hearing or not, on the



1 March 14th. He probably was, but I'd have to  
2 go back and look at the order. And -- I don't  
3 know what she's talking about though.

4 Q. Okay. Again, there seems to be some issue  
5 about the Bunni Crawford deposition. Do you  
6 remember anything about that?

7 A. I think she wanted to take Bunni's deposition,  
8 and Bunni didn't want to have her deposition  
9 taken. I have no idea why at this point in the  
10 litigation her deposition would've been  
11 important.

12 (Whereupon, Defendant's Exhibit No. 29  
13 was marked for identification.)

14 Q. Marked as Exhibit 29, a memorandum from, it  
15 appears to be from Judge Jacobs to you and Reid  
16 Smith and Ms. Sherman. I'll give you a minute  
17 to look at that.

18 A. Okay.

19 Q. Does this refresh your recollection about the  
20 hearing?

21 A. Yes, sir.

22 Q. So apparently there was a hearing.

23 A. There was a hearing. We agreed to some things,  
24 didn't agree to other things. And Judge Jacobs  
25 issued a ruling for us to -- for Ms. Sherman to

1 draft the order. And Reid is copied on this  
2 memorandum, so maybe he did show up to the  
3 hearing. You know, it could be the case that  
4 he showed up to the hearing and that letter  
5 where I was sending him the information was  
6 just because we only had one set of it, so I  
7 made a copy in my office and sent it to him.  
8 So I guess he probably was. I apologize for  
9 not remembering that.

10 Q. That's okay. So this is basically the judge's  
11 memorandum of rulings he made from the bench  
12 and is instructing how the order is to be  
13 drawn?

14 A. Yes, sir.

15 Q. And maybe I phrased that question incorrectly.  
16 Do you remember whether he made the rulings  
17 from the bench or did he take it under  
18 advisement and then send out this memo or do  
19 you have any recollection about that?

20 A. I don't remember. I don't remember. But, I  
21 mean, just the fact that he's put this in the  
22 order tells me -- makes me think that he ruled  
23 -- we may have stipulated about the 250,000,  
24 but it looks to me like he ruled by this fax.  
25 When they rule from the bench they don't send

1           you a follow-up letter, so he must've sent the  
2           letter to tell us what his ruling was.

3           Q.   He notes that the wife requested child support  
4           in the amount of 3,000 a month, which we looked  
5           at in your filing. But he says based on the  
6           guidelines, he's going to order support in the  
7           amount of \$1,249 a month.

8           A.   Yes, sir.

9           Q.   Do you recall that?

10          A.   I do now. Yes, sir.

11          Q.   Okay. And you don't know whether he made that  
12          ruling from the bench or whether this  
13          memorandum was your first notice or  
14          notification of what his ruling was going to  
15          be?

16          A.   I'm thinking this was my first notification,  
17          because if he had ruled from the bench, he  
18          wouldn't have sent this letter.

19          Q.   Okay. And then he noted that the child support  
20          is going to change once the oldest child  
21          reaches age 18.

22          A.   Yes, sir.

23          Q.   He apparently doesn't indicate anything in this  
24          memorandum about any finding of any arrearages;  
25          is that correct?

1 A. No, sir, he doesn't.

2 Q. And I think in the petition or in the motion,  
3 you'd also requested something in the nature of  
4 a restraining order. Do you remember something  
5 about that?

6 A. I don't know what it would've been for. I  
7 mean, typically we ask for a restraining order  
8 for disposing of marital assets or, you know,  
9 pledging them or mortgaging them or anything of  
10 that nature. I don't recall there being any  
11 concern about Mr. Powell acting -- harassing  
12 Ms. Powell, but maybe we could've asked for a  
13 restraining order in that regard, I just don't  
14 recall.

15 Q. In any event, he didn't include anything in the  
16 order about that.

17 A. No, sir.

18 Q. And he also did not include anything about  
19 funds to pay Ms. Amos.

20 A. No, sir.

21 Q. Did you take that to mean that those requests  
22 were denied or what?

23 A. I took it as they were not ruled upon.

24 MR. HILL: Thomas, I'm next going to  
25 look at a letter dated March 19.

1 MR. PENDARVIS: I was just getting  
2 ready to ask. Okay, March 19th.  
3 (Whereupon, Defendant's Exhibit No. 30  
4 was marked for identification.)

5 A. You know, and I would say that that may have  
6 been part of our thinking of the early  
7 equitable distribution, was that once that was  
8 made, we would have funds for attorneys' fees  
9 and Ms. Amos' fees, if we decided to use her.

10 Q. I'm going to hand you what's marked as Exhibit  
11 30, and it's a package of several documents.  
12 Notable to me in reviewing this is that there  
13 are three letters dated March 19 all addressing  
14 settlement issues. And they are all slightly  
15 different. So I ask you to take a minute to  
16 take a look at that.

17 A. Okay.

18 Q. Now, this is two days after the hearing after  
19 you had received the memorandum from Judge  
20 Jacobs as to what he was going to order with  
21 regards to child support; is that correct?

22 A. Let me see. It appears to be so, yes, sir.

23 Q. Did you discuss Judge Jacobs' rulings with Ms.  
24 Powell?

25 A. I'm sure I did. I don't have a specific

1           recollection, but I'm sure I did.

2           Q.    What was her reaction to the fact that you all  
3           had asked for \$3,000 for child support and the  
4           judge had awarded less than half that?

5           A.    I'm sure she was unhappy with it. And though I  
6           don't specifically recall the conversation, I  
7           have had conversations like that in the past.  
8           You know, at a temporary hearing a judge is  
9           working in 15 minutes based on the information  
10          that's presented to him. And the information  
11          that was presented to him were sworn financial  
12          statements.

13          So he did the calculations exactly based  
14          on the financial statements, which is what I  
15          would expect him to do, and that the burden  
16          would fall on us to prove in discovery that his  
17          income was greater than what he showed on that  
18          financial declaration. And so she, you know,  
19          I'm sure I would have prepared her before we  
20          even went into the hearing that that was a  
21          likely outcome of what would happen.

22          Q.    As I mentioned, there are three letters dated  
23          March 19 in this Exhibit 30. Do I have them in  
24          the correct chronological order, I guess, as  
25          when they were sent out?

1           A.    There's 10:54 a.m., 5:09 p.m. It looks to me  
2                like one of them may have gone first. The last  
3                one should've been the second one.

4           Q.    Okay.

5           A.    Well, I could be wrong about that. Hold on. I  
6                don't know. It looks like they all went out  
7                the same day, different times. That went out  
8                at 4:35, and the last one went out at 6:02.

9                All right. Let's see. The first one went  
10              out at 10:54 a.m., then the next one went out  
11              at 5:09 p.m., the next one went out at 4:35 p.m.  
12              So I think that third one went before the  
13              second one.

14          Q.    All right. I'll try to take them in that order  
15                then. It strikes me as unusual that three  
16                different settlement letters would go out on  
17                the same day. What recollection or explanation  
18                do you have about this?

19          A.    I didn't go back and look at all these, but I  
20                think we just kept changing the settlement  
21                offer. It just kind of changed. I don't  
22                recall if this is the dialogue that started --  
23                I tried to settle the case with Ms. Sherman  
24                based on the client's direction to get the case  
25                settled. I thought it was -- ultimately I came

1 to the opinion that it would've been impossible  
2 to settle this case with Ms. Sherman.

3 And I don't know if this was the time that  
4 I came to that opinion or if this is the  
5 dialogue for the final settlement; I'm not sure  
6 which. But the final settlement was primarily  
7 negotiated between the clients themselves and  
8 then, you know, the attorneys cleaned up some  
9 of the details.

10 Q. Were you in close contact with Ms. Powell when  
11 these letters went out?

12 A. Oh, yeah. Okay. I was just reading the first  
13 letter. This is when the clients settled the  
14 case themselves. And yes, I was in contact.  
15 Not while these negotiations were ongoing, but  
16 after the fact I was, you know, given the terms  
17 and tried to formalize them.

18 Q. I'm going to represent to you that this is not  
19 the time when the case was settled. It was  
20 another month before --

21 A. Oh. Okay.

22 Q. -- it got settled.

23 A. Well, at all times trying to settle the case I  
24 was in contact with my client.

25 Q. Okay. Was she in your office or communicating



1 by phone or do you have any recollection?

2 A. Both. She would've come to the office and we  
3 would've talked and we would've talked on the  
4 telephone.

5 Q. Okay. On this first one that went out, the  
6 last paragraph on the first page says lump sum  
7 payment to Carolyn Powell in the amount of  
8 \$500,000 within 30 days. And then the next  
9 page under child support says this offer  
10 contingent upon the court ordered distribution  
11 of \$250,000. So was she asking for another  
12 500,000 on top of the 250 or did that include  
13 the 250?

14 A. I don't recall. It appears that with that  
15 provision that we were asking for 500,000 on  
16 top of the 250,000.

17 Q. Okay.

18 A. But I'm not sure.

19 Q. Some of the changes in these drafts have to do  
20 -- or these letters have to do with the  
21 disposition of custody. The first letter says  
22 joint custody, and then the second letter and  
23 third letter say sole custody. Was that an  
24 issue or do you recall anything about that?

25 A. You know, I don't recall how it finally ended.

1 up. I think it probably was an issue, whether  
2 it be sole or joint.

3 Q. And the other thing that seems to change as  
4 these letters go out is how 3505 Devine Street  
5 was going to be handled. You remember anything  
6 about the details of that?

7 A. Yes, sir.

8 Q. Tell me about that.

9 A. 3505 Devine Street was the residence that Mr.  
10 Powell was living in. And it was going to be,  
11 as I understand it, Ms. Powell was going to get  
12 it outright, get the property outright. And  
13 then she decided to move to Wheat Street I  
14 believe.

15 And so we were, based on some change  
16 situations that she had where she didn't want  
17 to live at 3505 Devine Street or she thought  
18 that it needed a lot of work before she would  
19 be willing -- wanted to live there, you know,  
20 there were some changes related to Devine  
21 Street because she decided she wanted to live  
22 somewhere else. I think.

23 (Whereupon, Defendant's Exhibit No. 31  
24 was marked for identification.)

25 Q. The next Exhibit is 31, is a letter -- one of

1           these letters from you to Marne Sherman of  
2           March 19, but it has some handwritten notations  
3           on it. I'll ask you to take a look at this.

4           A.    Okay.

5           Q.    On that first part of the exhibit, whose notes  
6           are that, if you know, in the margins?

7           A.    That is -- they appear to be my notes. I'm not  
8           100 percent positive about that. Believe it or  
9           not, the handwriting looks a little too good  
10          for mine, but I think they are mine.

11          Q.    Okay. Then at the back part of this package is  
12          another copy of that letter, a photocopy, as  
13          the writing says my cell is 238-2389. Whose  
14          writing is that?

15          A.    That's mine.

16          Q.    Okay. The next page after that has a lot of  
17          marginal notes. Then there's another page  
18          after that. Can you tell me what's going on  
19          here?

20          A.    These notes on the -- where there's a lot of  
21          notes, those appear to be Marne Sherman's  
22          notes. And the messy handwriting where it says  
23          okay with this, that looks like my notes. I  
24          don't specifically recall how this was  
25          generated, if these were -- I did see a note on

1 the front of this that said new draft maybe.  
2 So I think these were -- we were working off  
3 one of the letters that I sent Marne Sherman.  
4 And she was, rather than retyping it, she was  
5 just putting her handwritten notes on the  
6 letter and sending it back to me so we knew  
7 where we had agreement or we didn't agree to  
8 something.

9 Q. Without going into all of these details, is it  
10 fair to say that these were just negotiations  
11 back and forth between you and Ms. Sherman as  
12 to settlement parameters?

13 A. Yes, sir.

14 (Whereupon, Defendant's Exhibit No. 32  
15 was marked for identification.)

16 Q. I'm going to hand you Exhibit 32, which is to  
17 you from Ms. Sherman dated March 21 attaching a  
18 memorandum of agreement. And there's attached  
19 a several page memorandum. Do you recall where  
20 the two of you were with regard to settlement  
21 at this point in time? Because I'll tell you  
22 ultimately the settlement agreement wasn't  
23 entered into until April 27.

24 A. It looks to me like we were still negotiating a  
25 settlement.

1 Q. There's a second copy of this memorandum  
2 agreement in this package with some marginal  
3 notes. Is that yours, with checkmarks and --

4 A. I will answer that question, but I would also  
5 say that you're right. This is -- we were  
6 going through settlement negotiations with  
7 Marne, and at some point during this I got --  
8 came to the opinion that I was never going to  
9 get this case settled. It was just, you know,  
10 no matter how hard we tried, we'd take one step  
11 forward and two steps backwards.

12 And I think that that's where we were is  
13 that this was the part where I was actively  
14 trying to negotiate a settlement, and it just  
15 wasn't going to happen. And I see this March  
16 21st letter that we talk about, you know,  
17 rescheduling the -- renoticing the Asheville  
18 depositions and going forward with trying to  
19 get this thing done. Or, you know, going  
20 forward with getting the case prepared for  
21 trial.

22 And these notes are not my notes on the  
23 next draft. I think they -- on page two, when  
24 it says when they are in her care, I think that  
25 might be my notes. But on these other notes,

1 I'm not sure whose handwriting that is.

2 Q. Why did you come to the conclusion that --

3 A. Some of these notes are mine, some of them  
4 aren't, on this draft.

5 Q. Why did you come to the conclusion that you  
6 weren't going to be able to settle the case  
7 with Ms. Sherman?

8 A. Just, it was an opinion I had based on my  
9 course of dealings with her. You know, we  
10 would -- the clients would come up with -- you  
11 know, in a lot of cases, I think the clients  
12 would start the dialogue to get it settled, and  
13 then it would go to the attorneys. And, you  
14 know, what I was told the terms were and we  
15 presented over, and it turned out they would  
16 send something back that was materially  
17 different and substantively different.

18 And it seemed like that was becoming the  
19 standard, is that we really weren't working  
20 towards a settlement. We were working towards  
21 running up bills, is what my opinion was at one  
22 time.

23 (Whereupon, Defendant's Exhibit No. 33  
24 was marked for identification.)

25 Q. I'm going to hand you Exhibit 33, which is a

1 letter of March 21. Is this just kind of more  
2 of the same with regard to negotiations?

3 A. Yes, sir. We're definitely still negotiating.

4 Q. Anything strike you as -- what was the sticking  
5 point here? What was it that they weren't able  
6 to agree on or that you all weren't able to  
7 agree on?

8 A. It looks like the delivery of the \$250,000 was  
9 material. Let me look at this offer.

10 I tell you, without spending an awful lot  
11 of time, I can't remember what -- where the  
12 sticking points are or were at the time, other  
13 than to know that we did have some material  
14 problems. And it's still not clear to me,  
15 quite frankly, whether or not this March 21st  
16 negotiations are really during the time that  
17 the clients had gotten together and come up  
18 with a settlement agreement that we were just  
19 trying to put in the final cleaned up version  
20 or not. I'm just not sure if that's the case.

21 It could be that the initial offer that I  
22 made was the time where I didn't think we could  
23 get the case settled, which was in February of  
24 '07 when I first got involved in the case.  
25 This may be, if we signed the agreement in

1 April, this may be the final negotiations where  
2 we were just trying to clean up the final terms  
3 in order to get the case settled. And the more  
4 I look at this, the more I think that is the  
5 case.

6 I really think these settlement  
7 negotiations are based on a -- in principle,  
8 upon the terms that Ms. Powell and her husband  
9 worked out on their own and basically gave  
10 these terms to the lawyers and said put it in  
11 final form.

12 Q. Okay. In the interest of time, I'm going to  
13 skip over several documents and come to a  
14 letter that you wrote to Judge Jacobs on April  
15 10 that I'm going to mark as Exhibit 34.

16 (Whereupon, Defendant's Exhibit No. 34  
17 was marked for identification.)

18 Q. This is a letter you wrote to Judge Jacobs. It  
19 says an issue has come up regarding your ruling  
20 in the matter, and you requested basically a  
21 telephone conference with him. Do you have any  
22 recollection as to what that issue was?

23 A. Not offhand. I'm going to look at my matter  
24 report and see if there's anything in there  
25 that triggers my memory.



1           It looks like it was probably an issue  
2           with that equitable distribution payment.

3           Q.    The \$250,000?

4           A.    Yes, sir. But I'm not sure exactly what the  
5           sticking point was.

6                       (Whereupon, Defendant's Exhibit No. 35  
7           was marked for identification.)

8           Q.    Ms. Sherman sent you a draft of a pendente lite  
9           order, and this is document number --- Exhibit  
10          35 that she sent to you on April 10. In this  
11          draft on the top of the third page, there's  
12          some language about, as well as those monies  
13          which have been previously advanced to her  
14          (\$400,000 in January 2005), which is lined  
15          through. Do you remember what this was about?

16          A.    No, sir.

17          Q.    Do you know whether that was your writing or  
18          somebody else's?

19          A.    No, sir.

20          Q.    And I'm not going to show you this document or  
21          introduce a document. There's a letter from  
22          Mr. Caskey to Ms. Sherman on April the 11th  
23          that says the deposition of Nancy Sargent has  
24          been rescheduled for May the 21st. So it  
25          suggests to me that an agreement had not been

1 reached and discovery was still being --

2 A. Yes, sir.

3 Q. -- contemplated; is that right?

4 A. Yes, sir.

5 (Whereupon, Defendant's Exhibit No. 36

6 was marked for identification.)

7 Q. Okay. I'm going to hand you a letter to you  
8 from Ms. Sherman marked as Exhibit 36. It's  
9 dated April 11, dictated April 9. And it has  
10 some handwriting on it. Is that your  
11 handwriting?

12 A. Yes, sir. It appears to be.

13 Q. Okay. She was asking about a settlement  
14 document which was being prepared, and you  
15 wrote on there -- and she's asking when may I  
16 expect to receive it, and you wrote on there  
17 when we receive the \$250,000.

18 A. Yes, sir.

19 Q. Okay.

20 (Whereupon, Defendant's Exhibit No. 37

21 was marked for identification.)

22 Q. Next document I'm going to hand you is Exhibit  
23 37. It's a letter from Ms. Sherman to you  
24 dated April 16, which appears to be a  
25 transmittal letter for the \$250,000. She sent

1           you 245 and references \$5,000 having been paid  
2           previously; is that correct?

3           A.    Yes, sir.

4           Q.    And do you recall receiving that?

5           A.    Not specifically, but I don't dispute it.

6           Q.    Okay.

7                         (Whereupon, Defendant's Exhibit No. 38  
8           was marked for identification.)

9           Q.    Exhibit 38 is a letter to Judge Jacobs from you  
10           dated April 16. And apparently you are taking  
11           issue with Ms. Sherman's draft of the order.

12           A.    Okay. Yes, sir. I more or less recall that.

13           Q.    I was going to say, do you have any  
14           recollection as to what this was all about?

15           A.    Yeah. I think she just was sitting on the  
16           \$250,000.

17                         (Whereupon, Defendant's Exhibit No. 39  
18           was marked for identification.)

19           Q.    I'm going to show you Exhibit 39, which is  
20           three pages. Looks like they are memos from  
21           your office with regard to disbursements from a  
22           trust account; is that correct?

23           A.    Yes, sir.

24           Q.    Okay. The first one is a memo with regard to a  
25           disbursement of \$188,000. Would this have been

1 to Ms. Powell?

2 A. Yes, sir.

3 Q. Then the second one is in the amount of  
4 \$40,000. Was this paid to Bunni Crawford?

5 A. It was paid to a company called Closings in  
6 South Carolina, Inc. I see Bunni Crawford's  
7 name there. I think, for whatever reason, that  
8 Bunni referred Carolyn Powell to my office.  
9 And so when the initial matter got set up, it  
10 may have been set up under Bunni Crawford's  
11 name mistakenly.

12 You know, so it -- if it was set up  
13 properly, it should have the matter number of  
14 7014, and under the client name it should say  
15 Carolyn Powell. But for whatever reason,  
16 whoever set up the original file set it up --  
17 and I think that's why Bunni Crawford's name's  
18 coming up in that area. And that's just a  
19 filing set up mistake.

20 Where it says payee below the date is who  
21 the check was actually written to. In this  
22 case, the first check was to Carolyn Powell,  
23 the second check was to Closings in South  
24 Carolina, Inc., and the third check was to  
25 Foster Law Offices.

1 Q. Who is Closings in South Carolina, Inc.?

2 A. I really don't know.

3 Q. Do you have any idea why they were getting  
4 \$40,000 of the 250?

5 A. No, sir. Other than that's how the client  
6 directed me to do that.

7 Q. And the final one is \$16,000 to your law firm,  
8 so that would be in payment of attorneys' fees  
9 accrued?

10 A. Yes, sir.

11 Q. From January through the date of the check or  
12 do you --

13 A. I don't know if that was the first payment I  
14 actually received or not. It may have been the  
15 first payment I've actually received, or I may  
16 have received prior payments towards the file.  
17 I'm not sure. But I do believe that those were  
18 for attorneys' fees.

19 (Whereupon, Defendant's Exhibit No. 40  
20 was marked for identification.)

21 Q. I'm going to hand you Exhibit 40, which is  
22 basically Ms. Sherman's letter to the court,  
23 again, inquiring about whether or not the two  
24 matters are going to be consolidated and again  
25 asking the court to consolidate the older

1           action with the present one. And I'm not going  
2           into anymore detail about that. I think we'll  
3           see eventually how that was resolved.

4           A.    Okay.

5                       (Whereupon, Defendant's Exhibit No. 41  
6           was marked for identification.)

7           Q.    Exhibit 41 is a letter from you to Judge Jacobs  
8           simply acknowledging that you've received the  
9           money and asking him to disregard prior letters  
10          I guess when you were concerned about the money  
11          not having been paid.

12          A.    Yes, sir. I would -- going through these  
13          letters, it's refreshing my recollection. I  
14          notice on all my letters that Reid Smith is  
15          copied on them, so he obviously was more  
16          involved than I probably referenced as far as  
17          what was going on in the case. I know that I  
18          was definitely acting as the lead counsel in  
19          the case, but I was obviously keeping him in  
20          the loop in everything that was going on in it.

21                       MR. HILL: I'm going to skip the answer  
22          and counterclaim.

23                       MR. PENDARVIS: Okay.

24                       (Whereupon, Defendant's Exhibit No. 42  
25          was marked for identification.)

1 Q. Exhibit 42 is a couple of pages that were in  
2 your file, one from the South Carolina  
3 Secretary of State and the other from North  
4 Carolina Secretary of State. The only date I  
5 can find on them is April 19. And I don't know  
6 whether this is something that you sent out or  
7 whether it's something that was just in your  
8 file. Do you have any recollection of these?

9 A. Probably I was trying to learn a little bit of  
10 who to serve to get information from these  
11 companies, and pulled them online, I would  
12 imagine, on the 19th. I don't recall if it's  
13 something that I pulled or Reid Smith pulled or  
14 the client pulled. But anytime I have to serve  
15 a company or trying to serve officers of a  
16 company, I would look at the Secretary of State  
17 filing just to make sure I served the proper  
18 registered agent.

19 Columbia Management, Inc. I know is a  
20 company that Conrad Powell owns. I'm not sure  
21 about these other businesses. I'm not sure who  
22 the other businesses on these other pages are.  
23 Oh, the Village Antiques and Interiors is the  
24 actual business that Terry Powell had that we  
25 were concerned that assets might have been

1 transferred over to.

2 (Whereupon, Defendant's Exhibit No. 43  
3 was marked for identification.)

4 Q. Exhibit 43 appears to be a memo to you from Ms.  
5 Powell; is that correct?

6 A. Yes, sir.

7 Q. It's dated April 20?

8 A. Yes, sir.

9 Q. And she's setting forth here some settlement  
10 terms that she would agree to or had agreed to?

11 A. Yes, sir.

12 Q. One thing she's asking for is support in the  
13 amount of \$10,000 a month for one to two years.

14 A. Yes, sir.

15 Q. And she has at the bottom of that first page,  
16 total cost to settle, \$1,120,000. Is that  
17 basically what she's asking for from Mr.  
18 Powell?

19 A. I believe so.

20 Q. The second page, second paragraph says as of  
21 this writing, Conrad has changed his mind. It  
22 seems we cannot get to a settlement except for  
23 matters concerning my children. I refuse to  
24 enter into any other talks with Conrad about  
25 settlement. Do you recall anything about that?



1 A. Not specifically, but I don't dispute that this  
2 is something that was provided to us by the --  
3 I assume this is from Ms. Powell, this second  
4 page. I don't specifically recall her giving  
5 this to me, but I don't dispute that -- if it  
6 came out of my file, then she definitely gave  
7 it to me.

8 But I do recall that it was, you know, one  
9 day we were settling, one day we were in full  
10 litigation mode, the next day we were settling.  
11 So there was a lot of ebb and flow on the  
12 settlement negotiations.

13 (Whereupon, Defendant's Exhibit No. 44  
14 was marked for identification.)

15 Q. Exhibit 44 is a -- looks like an email from Ms.  
16 Sherman to you. Do you recall this one?

17 A. Not specifically, but I don't dispute that she  
18 sent it to me.

19 Q. It's a -- at the bottom of the page apparently  
20 is an email that you sent to her on April 20,  
21 please find attached the settlement agreement  
22 that my client is willing to agree to.

23 A. Okay.

24 Q. And then the top of the page is her response,  
25 and apparently she's urging that the case get

1 settled without the expense of taking Terry  
2 Powell's deposition. Do you recall that by  
3 this time Tim Tyler's deposition was taken or  
4 somewhere around during this time?

5 A. I was thinking he was one of the ones that we  
6 cancelled, but yeah, we may have taken his  
7 deposition. I don't have any specific  
8 recollection of taking it though.

9 Q. I think we'll come to something about that in a  
10 little bit. It was actually, according to your  
11 billing statement, was taken on April the 19th.

12 A. Okay.

13 Q. Do you recall anything about Tim Tyler's  
14 deposition?

15 A. No, sir. Not right offhand. I'd have to  
16 review the deposition transcript.

17 Q. Well, we'll come to a court reporter's  
18 statement in this stack that says the  
19 transcript was cancelled because the case was  
20 settled.

21 A. Okay.

22 Q. So I don't think the transcript was ever  
23 prepared.

24 A. Okay.

25 Q. Did you take the deposition or did Reid Smith?

1 A. I don't recall. I can look. What date did you  
2 say?

3 Q. April 19 I think.

4 A. You know, I don't know, quite frankly. And I  
5 can't remember if Reid took any depositions or  
6 not. He may have taken Tim Tyler's deposition.  
7 I did write attended. Reid Smith may have  
8 taken that deposition. If he did, I would have  
9 been present during the deposition. And I  
10 think he might've been in a better position,  
11 having already done all the financial reviews  
12 of the documents and having a better financial  
13 background than I do. So he might've taken  
14 that deposition.

15 Q. Do you recall anything substantively that came  
16 out in Tim Tyler's deposition?

17 A. No, sir.

18 Q. Do you recall whether, as a result of that  
19 deposition, there was any change in your  
20 settlement posture?

21 A. No, there was not. I mean, my belief is that  
22 -- my only recollection, which is very vague,  
23 is that we didn't get anything that  
24 conclusively proves that there were other  
25 assets that we needed to go after, nor did we

1 get anything that conclusively proved that  
2 there weren't other assets that we needed to go  
3 after. You know, he basically testified to tax  
4 returns I believe.

5 (Whereupon, Defendant's Exhibit No. 45

6 was marked for identification.)

7 Q. Okay. 45 is a letter from you to Marne again  
8 with regard to changing some language in a  
9 draft settlement document.

10 A. Okay.

11 Q. And is that your signature? I'm not going to  
12 go into all these details.

13 A. Yes, sir.

14 MR. PENDARVIS: Excuse me. Is that  
15 April? What is the date of that?

16 MR. HILL: I'm sorry, April 24th.

17 (Whereupon, Defendant's Exhibit No. 46

18 was marked for identification.)

19 Q. Exhibit 46 is a letter from Mr. Caskey to Ms.  
20 Sherman and Mr. Gertz. And it's I guess with  
21 regard to a pending deposition of Michelle  
22 Owens, but Caskey says that Carolyn and Conrad  
23 met last night and are very close to working  
24 out a settlement. And they requested a  
25 postponement of the deposition that was

1           scheduled. Does this refresh your recollection  
2           any about what was going on?

3           A. Okay. Well, maybe that's when they kind of  
4           worked out the final terms. But yeah, it looks  
5           like -- I mean, I was in discovery mode and  
6           then realized that the case had been settled  
7           and we needed to put it in final terms. So it  
8           looks like we were cancelling depositions.

9                       (Whereupon, Defendant's Exhibit No. 47  
10           was marked for identification.)

11          Q. Exhibit 47 is a letter from you to Judge Jones  
12           advising the court that a settlement agreement  
13           has been reached and requesting an approval  
14           hearing.

15          A. Okay. That's my signature.

16          Q. And I'm not going to mark this, but this is the  
17           invoice from the court reporter with regard to  
18           the Tim Tyler deposition stating the day and  
19           that a transcript had not been ordered.

20          A. Okay.

21                       (Whereupon, Defendant's Exhibit No. 48  
22           was marked for identification.)

23          Q. 48 is a letter from Ms. Atkerson to you and  
24           Reid attaching a filed copy of the pendente  
25           lite order.

1 A. Okay.

2 MR. HILL: Thomas, I'm going to skip  
3 over to the final decree. I think it's  
4 the last document in the stack.

5 (Whereupon, Defendant's Exhibit No. 49  
6 was marked for identification.)

7 Q. I'm going to hand you Exhibit 49. There are  
8 several things in here. The top page is a Form  
9 4 order signed by Judge Jones on May the 2nd  
10 referencing the attached order. The second  
11 document is a final degree of divorce and order  
12 approving the agreement dated May the 2nd. And  
13 the third document is captioned complete  
14 property, support, and custody agreement. And  
15 that's the one that I want you to take a look  
16 at.

17 A. Okay.

18 Q. The last paragraph on the first page says that  
19 this is made and entered this 27th day of April  
20 2007; you see that?

21 A. Yes, sir.

22 Q. Because there is no date on the actual  
23 signature page. But do you have any reason to  
24 believe that that date is not accurate?

25 A. No, sir.

1 Q. Okay. This is a lengthy document, 21 pages  
2 long. Do you know who prepared it?

3 A. I think I did, but I could be wrong about that.  
4 I think I did.

5 Q. How would you go about preparing such a  
6 document? Do you start from scratch or do you  
7 use other orders that you've done in the past  
8 or other settlement agreements? It's a very  
9 detailed and lengthy document.

10 A. Yes, sir. The answer is I have form documents  
11 that I use, but then I incorporate material  
12 terms in and make changes where needed. But --  
13 so -- I didn't have any forms that specifically  
14 mirrored the terms of this particular  
15 settlement. This was, you know, a more unusual  
16 case.

17 Q. Did you spend a good bit of time drafting this  
18 order?

19 A. I'm sure I -- you know what? Actually, let me  
20 look at my notes. I'll tell you if I drafted  
21 it or not. Looks like, as a side note, that  
22 Bunni Crawford's deposition was taken. It  
23 wasn't cancelled.

24 Okay. Regarding the drafting of the  
25 document, it would've been drafted by Bryan

1 Caskey and myself. We would've worked on it  
2 together or at separate times. And just from  
3 an entry he had, there were multiple revisions  
4 to it. And I do recall there being multiple  
5 revisions to this document before we finalized  
6 it.

7 Q. Okay. Go back to your time slip and tell me  
8 when Bunni's deposition was taken.

9 A. April 19th.

10 Q. Do you recall anything about that?

11 A. No, I don't. I mean, I'm sure it was just a  
12 deposition and she didn't have a whole lot of  
13 information that was useful. But other than  
14 that, I don't specifically remember anything in  
15 particular.

16 Q. Did anything come out of that deposition that  
17 had any impact on the settlement negotiation?

18 A. No, sir. Not that I'm aware of.

19 Q. Look at page six of the agreement.

20 A. Okay.

21 Q. With regard to monthly child support, it  
22 provides 12 payments in the amount of \$5,000  
23 from May 1, 2007, with the last payment ending  
24 April 1, 2008. How does this comport with the  
25 prior negotiations? Was this what Ms. Powell



1 was asking for? Was this what Mr. Powell was  
2 offering? How did this one -- this element of  
3 the deal come up?

4 A. They just agreed on it. I mean, the child  
5 support calculator would not have spit out this  
6 number. They just -- that's something that she  
7 and her husband sat down and agreed on that  
8 number and those terms. And it's just  
9 basically, you know, my guess is is that Ms.  
10 Powell told Mr. Powell what she needed in order  
11 to support the children, and he wanted to make  
12 sure that the children were -- Ms. Powell had  
13 finances to support them in the lifestyle they  
14 were accustomed to while she the custodial  
15 parent. And that's just the number that they  
16 agreed on.

17 It wasn't -- I don't recall if that was  
18 something we were going with before or not, but  
19 ultimately that child support number is a  
20 product of her negotiations with her husband.

21 Q. Okay. So it's your recollection that Mr. and  
22 Ms. Powell sat down individually and worked out  
23 that term?

24 A. Yes, sir.

25 Q. Was Ms. Crawford involved in that at all?

1           A.    I do not know. I know she was involved with  
2                the settlement, but I don't know if that was  
3                just her talking with Ms. Powell or her being  
4                present. I just don't know.

5           Q.    The next page, page seven, there's a footnote  
6                regarding Mr. Powell's obligation for  
7                educational expenses, and basically he agreed  
8                to pay for the children's undergraduate  
9                schooling with a cap as to not anymore than the  
10              University of South Carolina tuition runs.

11          A.    Yes, sir.

12          Q.    Is that a provision you put in?

13          A.    That is provision -- my recollection of that  
14                footnote is one of the things that once they  
15                had reached a settlement, Marne and I went back  
16                and forth on kind of fixing that note. And so  
17                it was a -- it certainly wasn't my provision.  
18                It was something that they agreed on and then  
19                we, you know, kept changing it around so that,  
20                you know, couldn't become a real big windfall  
21                for the Powell children.

22          Q.    That's more than Mr. Powell would've been  
23                obligated to do by law, is it not?

24          A.    Yeah. By law he would have -- at the time I  
25                think Risinger was still in place. And so he

1           may have been on the hook for some child  
2           educational expenses, but hardly any. And now  
3           he wouldn't be obligated for them at all. So  
4           that was a good provision.

5           Q. On page nine is -- again going back to 3505  
6           Devine Street and dealing with the Clark Barn  
7           property and the Devine Street property. And  
8           basically what happened here was Mr. Powell  
9           paid off the mortgage on that barn that Ms.  
10          Powell had bought down in Aiken. Is that what  
11          happened?

12          A. I can't remember how that -- what that was  
13          about. There was a mortgage. Whether Mr.  
14          Powell paid it off or not, somehow he became  
15          associated with that property, and I can't  
16          remember.

17          Q. On page 17 is a paragraph captioned fairness of  
18          agreement. Each party acknowledges that the  
19          agreement is fair and reasonable. Each has  
20          adequate knowledge of the other's financial  
21          situation. Each party enters into this  
22          agreement freely and voluntarily. This  
23          agreement is not the result of any duress, undo  
24          influence. Each party acknowledges  
25          satisfaction of legal assistance. Is this a

1 provision that you went over with Ms. Powell  
2 prior to her executing this document?

3 A. I don't know if we went over it specifically or  
4 not. I mean, she read the document and signed  
5 it. We went over the document in general. I  
6 don't recall specifically going over any  
7 specific provision.

8 But I would say that this is a standard  
9 provision in our settlement agreements. It was  
10 not a provision, you know, when they came to us  
11 with a skeleton of what the terms were, this  
12 was not in the skeleton of the terms that they  
13 provided us. This was added to the formal  
14 document.

15 Q. But it is part and parcel of the document.

16 A. Yes, sir, it is.

17 Q. That she agreed to.

18 A. Yes, sir.

19 Q. Did she, when she read -- did you give her the  
20 document for her to review prior to her signing  
21 it?

22 A. Yes, sir.

23 Q. Did she raise any question about this language?

24 A. I don't recall that she did.

25 Q. On the bottom of page 18 under general.

1 provisions, there's a paragraph headed  
2 voluntary agreement. Each party agrees that he  
3 and she are fully informed, entered into the  
4 agreement after conferring with each of their  
5 respective attorneys, freely and voluntarily,  
6 intended to be bound, enforceable by  
7 proceedings in family court. Again, is that a  
8 document -- is that a provision that Ms. Powell  
9 agreed to?

10 A. Yes, sir. All the -- in that section, section  
11 13 under general provisions, none of these  
12 provisions would've been provisions that she  
13 brought to us under her settlement agreement,  
14 which is a rough outline of the substantive  
15 terms of the agreement. These are provisions  
16 that we put in the formal document in order to  
17 make it a complete agreement that was -- would,  
18 you know, not be reversed. That we wouldn't  
19 have any problems with this if anybody tried to  
20 contest it. We wanted to make sure that it was  
21 an uncontestable document. So these are  
22 standard provisions we put in the document.

23 I do not recall one way or another  
24 specifically going over each of those standard  
25 provisions in the document. I believe I gave

1           this document to Ms. Powell, went over the  
2           terms of the settlement with her, gave her the  
3           opportunity to review it, answered any  
4           questions that she might have. Though I don't  
5           specifically recall going over that question.

6           Q.   And I think you've anticipated my next  
7           question. I mean, what's the reason for  
8           including this kind of language in these  
9           documents?

10          A.   Well, it's my client's agreement that she wants  
11          to uphold, and so we put these provisions in to  
12          make sure that, after the fact, you know, my  
13          thinking is, is, after the fact, that Mr.  
14          Powell doesn't have a change of heart and come  
15          back and try to have this document modified on  
16          some technical, you know, some technical fact.  
17          So that's why we put those terms in.

18          Q.   Of course, it's a two-way street.

19          A.   It is.

20          Q.   And going backwards in this package is the  
21          order of Judge Jones and it reflects a hearing  
22          of May the 2nd, 2007, lists you as the  
23          plaintiff's attorney, Ms. Sherman as  
24          defendant's attorney, and gives the court  
25          reporter's name. Do you recall attending the

1 hearing?

2 A. The approval hearing?

3 Q. Yes.

4 A. Yes, sir. I -- yes, sir, I was there.

5 Q. Okay.

6 A. No, I don't recall being there, but I was  
7 there.

8 Q. Okay. Did you have an opportunity to confer  
9 with Ms. Powell prior to the hearing?

10 A. Yes, sir.

11 Q. Would you typically talk to your client before  
12 going to one of these approval hearings?

13 A. Yes, sir.

14 Q. And what would you tell them about what the  
15 hearing was going to involve?

16 A. In a case like this, I would -- this would've  
17 been a final degree of divorce. We were the  
18 plaintiff. I think Ms. Crawford would've been  
19 the corroborating witness. So I would've asked  
20 the client to bring a corroborating witness,  
21 and I would have gone through the likely  
22 approval questions that either the court or I  
23 would ask her related to the agreement and to  
24 the divorce.

25 And, you know, I would let her know that,

1           you know, she's going to have to testify under  
2           oath to these approval questions, so will your  
3           husband. And then I talk to the corroborating  
4           witness and let them know the questions I would  
5           ask the corroborating witness so that we could  
6           prove the divorce on one-year separation.

7           Q. On page four of the order in paragraph ten --  
8           let me back up one. Do you know who prepared  
9           this order, whether it was Judge Jones or  
10          somebody prepared it for her?

11          A. I probably prepared it.

12          Q. Okay.

13          A. It looks like one of my orders.

14          Q. Okay. Paragraph ten says the court questioned  
15          both parties under oath about their  
16          understanding, their desire to enter into the  
17          agreement, based on the testimony, conclude  
18          agreement was reached, procedurally fair,  
19          neither party was under the influence of  
20          anything, no undue influence.

21                 Paragraph 11, each party has had ample  
22                 opportunity to confer with counsel and  
23                 financial advisors. Terms of the agreement are  
24                 fair and equitable. Each party is sufficiently  
25                 knowledgeable of the financial circumstances of



1 the other. Do you -- and it also says the  
2 agreement is the product of arm's length  
3 negotiations. Did you go over these kinds of  
4 questions with Ms. Powell beforehand?

5 A. I don't recall if I did or not. I don't  
6 specifically recall going over it with her. I  
7 can tell you my standard practice with my  
8 clients is to go over those questions with the  
9 client. I don't specifically recall that  
10 conversation with her.

11 Q. Okay. Do you recall that those kinds of  
12 questions were asked by Judge Jones during the  
13 course of the hearing?

14 A. Again, I apologize for sounding like an idiot,  
15 but I don't specifically remember being at that  
16 hearing. I know I was there, because I can see  
17 on the final degree of divorce it says I was  
18 there. And I can tell you with absolute  
19 certainty that those questions are asked in  
20 every approval hearing. You know, they just  
21 are. I've never been to an approval hearing  
22 where those type of questions were not asked  
23 either by the counsel of record or the judge.

24 Q. Do you think Ms. Powell understood that those  
25 questions would be asked and that she would

1 have to answer them?

2 A. I would think so.

3 Q. Do you recall any reservation on her part about  
4 answering those questions?

5 A. No, sir.

6 Q. Did this -- did that hearing end your  
7 representation of Ms. Powell?

8 A. I don't think so. I think I helped her with  
9 some transactional work after this was over  
10 related to some of the property she purchased.

11 Q. There was a transaction regarding the, I  
12 believe it was the Devine Street property. Did  
13 you handle that for her?

14 A. My recollection is a lawyer for Haynesworth,  
15 Sinkler, and Boyd, I think his name was  
16 Williamson, purchased the property. And I  
17 believe Haynesworth, Sinkler, and Boyd  
18 represented him, and I represented her in the  
19 closing. I was involved in some aspect of that  
20 closing. I do recall that being the case.

21 Q. I'm trying to go quickly through these  
22 materials. In your file was something, a trust  
23 agreement dated July 16, 2007, creating the  
24 Carolyn Mitchell/Bunni O. Crawford Family  
25 Trust.

1 A. Okay.

2 Q. Do you have any recollection of that?

3 A. Yes, sir.

4 Q. Let me mark that and hand it to you. It's  
5 Exhibit 50.

6 (Whereupon, Defendant's Exhibit No. 50  
7 was marked for identification.)

8 A. Okay.

9 Q. Would you just explain that document for me or  
10 what's going on there?

11 A. I didn't prepare it, but I believe a family  
12 trust was created called the Carolyn Mitchell  
13 and Bunni O. Crawford Family Trust.

14 Q. You know what the purpose of that was?

15 A. No, sir.

16 Q. And in fairness, this is not a complete copy.  
17 It looks like after the third page that there  
18 was a problem with the transmission. Was this  
19 executed in your office or do you know?

20 A. I don't know if it was executed in my office.  
21 Sitting here today I don't know if it was ever  
22 executed at all. This may have just been a  
23 draft sent to me to look at. I think there was  
24 some -- yeah, I just -- I'm not sure if that's  
25 the final trust document or not.

1 Q. Do you do trusts and estates?

2 A. A little bit, not much. Very, very simple type  
3 estate planning work.

4 (Whereupon, Defendant's Exhibit No. 51  
5 was marked for identification.)

6 Q. And the last document I'm going to give you is  
7 Exhibit 51. It's a letter to Ms. Powell. It  
8 says Carolyn Mitchell, dated April 11, 2008.

9 A. Yes, sir.

10 Q. Did you send this document?

11 A. She would've signed this when she picked up her  
12 file.

13 Q. Okay. And is this basically a transmittal  
14 letter returning her file materials to her?

15 A. Yes, sir.

16 Q. The third paragraph says I am informed that you  
17 need this case file for a possible legal  
18 action. And you go on to advise her as to a  
19 three-year statute of limitations. What  
20 provoked that language?

21 A. Probably I didn't want to get sued for not  
22 advising of a statute of limitations is the  
23 only -- I don't think I was obligated to. I,  
24 quite honestly, was just -- it was what I would  
25 call a CYA letter just to make sure that I

1 didn't get involved in any subsequent  
2 litigation for not disclosing a statute of  
3 limitations.

4 Q. Did you discuss any further potential legal  
5 actions that Ms. Powell was contemplating?

6 A. No, sir. I would go so far as to say that we  
7 never discussed malpractice actions. The, you  
8 know, that was the understanding when the file  
9 first came to me that I was not reviewing the  
10 file for that, I was not giving any opinion of  
11 malpractice, and that, you know, I was just  
12 taking over the file to help her get it  
13 concluded. So as far as I can recall, I don't  
14 think she ever sought my counsel for anything  
15 in that regard.

16 MR. HILL: Off the record.

17 (Off the record discussion.)

18 BY MR. HILL:

19 Q. Let me show you the billing statement that was  
20 marked earlier as an exhibit, I don't know  
21 which one. But there's something that's  
22 redacted on the last page dated February 22,  
23 2008.

24 A. Yes, sir.

25 Q. Do you know what that is?

1 A. Yes, sir. That's -- typically my billing  
2 statements don't contain privileged  
3 communications, but in that particular one, the  
4 substance of my communication with my client  
5 was in there, and so I redacted it.

6 Q. Okay. And your client was . . .

7 A. Ms. Powell.

8 Q. Okay. Did that communication have anything to  
9 do with the divorce case?

10 A. Yes, sir.

11 Q. I'm going to ask Mr. Pendarvis if he waives any  
12 privilege there.

13 MR. PENDARVIS: It was waived earlier  
14 today.

15 A. Okay. I redacted it before I showed up today.

16 Q. All right.

17 A. And I haven't -- I've never spoken with Mr.  
18 Pendarvis before the deposition. That was a  
19 notation in there that -- consistent with that  
20 letter that she signed that referenced the  
21 statute of limitations in a malpractice case,  
22 that I advised her of the statute of  
23 limitations of a malpractice case is three  
24 years.

25 Q. Okay. Is that all that was redacted?

1           A.    I think it said something like meet with client  
2                   to discuss potential sale of Devine Street  
3                   property. I would be happy to reproduce that  
4                   for you, but that's, for your purposes, that  
5                   was what I was redacting is that portion of it.  
6                   There may have been something that was  
7                   nonsubstantive as well.

8           Q.    When you got the file from Michael Taylor, did  
9                   you review her answers to interrogatories that  
10                  had previously been served and filed?

11          A.    I'm sure I did. I don't recall what they said,  
12                  but I'm sure I looked at the whole file when I  
13                  got his file.

14          Q.    Do you recall that in those answers, and it may  
15                  have been an amended answer to interrogatories,  
16                  that she admitted an adulterous relationship?

17          A.    You know, actually, if you had those  
18                  interrogatories, I'd love to see them, it may  
19                  help refresh my recollection. But it was my  
20                  belief, I didn't think any discovery had really  
21                  been done. Or I don't recall seeing anything.  
22                  Maybe I didn't get that portion of the file.  
23                  Maybe I did, and I'm just forgetting about it.  
24                  But I don't recall that there was a lot of  
25                  transfer of formal discovery when I got the

1 file.

2 Q. You don't recall that there were  
3 interrogatories that were answered?

4 A. I do not recall that.

5 Q. You had mentioned at the outset that you wanted  
6 to do some due diligence with regard to Mr.  
7 Powell's finances. And we know that you took  
8 the -- that his deposition was taken and that  
9 the deposition of his accountant was taken.

10 A. Yes, sir.

11 Q. Did anything in those depositions change or  
12 affect your settlement posture in the case?

13 A. Only that I wanted to take more depositions. I  
14 always felt that there may be assets that were  
15 being hidden and that a forensic audit of the  
16 estate needed to be done and that we really  
17 needed to question the other individuals that  
18 Mr. Powell did business with to determine, you  
19 know, to hear under oath whether or not, you  
20 know, any assets were transferred.

21 I was very interested to know what  
22 inventory from Chic Antiques might have been  
23 sent up to North Carolina to be sold. I think  
24 that, for some reason, something about rugs  
25 sticks in my mind. There may have been some



1           rugs that were sent over there. And, you know,  
2           I wanted to ask some questions in regards to  
3           those assets.

4       Q:   Do you know whether or not Mr. Smith had done  
5           some investigation in that regard?

6       A.   I believe Mr. Smith had similar concerns.

7       Q.   Mr. Smith testified in his deposition in this  
8           case that he was never able to find anything  
9           that indicated there was any effort by Mr.  
10          Powell to hide assets. He said my research  
11          indicated that there had never been any  
12          attempts to dilute assets. I didn't see any  
13          evidence of wasting corporate assets. He said  
14          I didn't see anything to indicate that he was  
15          trying to hide assets or dissipate assets or do  
16          anything improper. Did you have discussions  
17          with Mr. Smith along those lines?

18               MR. PENDARVIS: Object to the form.

19               You can answer.

20       A.   What he testified in his deposition is  
21           consistent with what he told me. That he was  
22           not able to find any, you know, as I said there  
23           was never anything we were able to put our  
24           hands on. We felt like we needed to take the  
25           depositions of the folks in North Carolina and

1 the ones that we had scheduled to hear what  
2 they had to say. It would have been -- it may  
3 have been a fishing expedition, you know. I  
4 mean, I was trying to find information. There  
5 was not enough information that I had to make a  
6 final determination.

7 It could've been the case that assets were  
8 sent up to Asheville, and if they were not  
9 going to be truthful about that in their  
10 depositions, we may never have been able to  
11 figure it out. But I thought the question  
12 should've been asked of those folks. I thought  
13 it would be an additional expense in this  
14 litigation, but I thought it should be done.  
15 But I do agree that Reid Smith never told me  
16 that he found evidence that assets were being  
17 transferred.

18 Q. And lacking any evidence of anything of that  
19 nature, Ms. Powell agreed to go ahead and  
20 settle the case.

21 A. That's correct.

22 Q. The judge -- it was agreed at that temporary  
23 hearing that \$250,000 would be paid. And that  
24 ultimately was paid as we have seen. Did Ms.  
25 Powell elect to use that money to retain Tracy

1 Amos?

2 A. I don't think so. I don't think we ever  
3 formally retained Tracy Amos. I may be wrong  
4 about that. We may have given Tracy Amos some  
5 money towards a retainer, and -- but settled  
6 the case before she had a chance to do the  
7 work. And that may have happened.

8 I can't remember which the two scenarios  
9 are. I know Tracy Amos agreed to be retained.  
10 We may or may not have given her her initial  
11 retainer, which in my mind was \$2,500 just to  
12 get started. We may have sent her some  
13 information, but we settled the case before she  
14 was able to do anything substantive in the  
15 case.

16 The reason I'm having trouble remembering  
17 is I've had other cases that I've used her as  
18 well, and I can't remember which case we  
19 actually paid her the money and she did work  
20 and which case we didn't retain her. And I  
21 just cannot remember right now, but I don't  
22 think she ever -- I'm pretty sure she never  
23 gave us any work product.

24 Q. Certainly Ms. Powell had the option to retain  
25 Ms. Amos if she wanted to but ultimately

1 decided to go ahead and settle the case.

2 A. That's correct. That is correct that she may  
3 have -- she settled the case before Ms. Amos  
4 could do any substantive work, is what  
5 happened. I can't remember if she, in fact,  
6 retained her or not.

7 Q. Did you do anything during your representation  
8 of Ms. Powell with regard to filing lis pendens  
9 against any property or getting an order from  
10 the court prohibiting Mr. Powell from  
11 transferring assets?

12 A. I can't remember. I may have. I may have  
13 filed lis pendens. I can't remember if I did  
14 or not.

15 Q. I certainly am not seeing anything in your file  
16 or in the court file to indicate that that was  
17 done.

18 A. And I just don't remember. Oftentimes when I  
19 really think that an asset's going to be  
20 transferred, a house or something like that, I  
21 will file a lis pendens. I'm not so sure that  
22 I thought that Mr. Powell was going to mortgage  
23 his property or sell any of the property while  
24 the litigation was ongoing. I don't know that  
25 I was ever concerned that that was happening.

1 I was more concerned of the inventory of  
2 these antiques and stuff of that nature being  
3 disposed of or an interest in a business or a  
4 property not being disclosed that was actually  
5 out there. That was the kind of thing I was  
6 concerned. I don't recall filing a lis  
7 pendens, but I do that often in my cases. So  
8 that's why I said I might have. I just can't  
9 remember.

10 Q. Would it be fair to say that was an option  
11 available to you in this case that you decided  
12 not to use?

13 A. If I didn't use it, that is correct.

14 Q. When Mr. and Ms. Powell were getting together  
15 to work out these final deals, the parts of the  
16 settlement that were finally entered into, were  
17 you excluded from those discussions?

18 A. You mean when Ms. Powell and Mr. Powell were  
19 negotiating the settlement?

20 Q. Yes.

21 A. Yeah. I didn't know anything about it.

22 Q. Okay.

23 A. Or if I did, they just said we're going to, you  
24 know, we're meeting this weekend to work out  
25 details or something like that. I was not part

1 of those discussions at all.

2 Q. Where I'm trying to go is, did you have an  
3 opportunity to offer input into that? Did you  
4 say I think this is a good deal, I think this  
5 is a bad deal? Did you advise her to enter  
6 into the settlement?

7 MR. PENDARVIS: Object to the form.

8 A. I advised against entering into the settlement.

9 Q. You advised against it?

10 A. Yes, sir.

11 Q. You told her that?

12 A. Yes, sir.

13 Q. And what was the reason for telling her that?

14 A. We had not done the due diligence. I couldn't  
15 support it when I thought there might be other  
16 assets out there. I thought discovery needed  
17 to go forward.

18 Q. When did you have that conversation?

19 A. I would've had it when we submitted that first  
20 settlement offer, the early settlement offer.  
21 Though I don't specifically remember that  
22 conversation with the first settlement offer, I  
23 definitely specifically remember it with the  
24 final settlement.

25 Q. Around the time frame of April 24 or 27 --

1           A.    When we were just -- during the whole time that  
2                we were negotiating settlement and then when  
3                she and her husband brought -- or she brought  
4                back the terms of the settlement that they  
5                wanted to incorporate and make a final  
6                settlement. I advised against doing it because  
7                we had not completed discovery, and I thought  
8                we should do that before we settled the case.

9           Q.    And obviously she declined your advice in that  
10                regard?

11          A.    Yes, sir.

12          Q.    Did she state her reason for so doing?

13          A.    I think she'd been involved in litigation for  
14                years, was ready to be done and settle the  
15                case. There were certainly aspects of this  
16                settlement that I thought were very good, and  
17                I'm sure I would've communicated that. That  
18                the child support provisions were very good.  
19                The horse support provisions were unique and  
20                very good. The education provisions for the  
21                kids were great. Based on what I knew of the  
22                marital estate, I thought that the provisions  
23                regarding property division were fair.

24          Q.    So would it be fair to say that based on the  
25                information that you had with regard to the

1 extent of the estate, that you thought the  
2 settlement was a good one?

3 A. Based on the information I had and based on my  
4 knowledge of the facts of the case, I thought  
5 it was a good settlement.

6 Q. So your only reservation --

7 A. Well, based on what I knew. That's right. It  
8 could've been that we would've gone and done  
9 these depositions and not found any other  
10 additional assets, and I would have been much  
11 more comfortable recommending the settlement at  
12 that point. But I just didn't know enough to  
13 say this is a good settlement or this is a bad  
14 settlement. There could, you know, we could've  
15 settled this case, and I believe we had  
16 conversations about this, and then determined  
17 that Mr. Powell had, you know, a tremendous  
18 amount of assets. And that would've caused  
19 problems.

20 Q. So your only reservation with regard to the  
21 settlement was that your, what you regarded as  
22 your due diligence was incomplete.

23 A. Correct.

24 Q. If the information that you were relying upon,  
25 whether it had been provided to you by Mr.



1 Powell or had Mr. Smith uncovered and  
2 investigated, if that information was accurate,  
3 it would be your opinion that this was a  
4 favorable settlement for Ms. Powell.

5 A. Yes, sir.

6 Q. Did you ever become aware at any time, during  
7 the time that you were representing her or  
8 subsequently, of any assets that were hidden or  
9 transferred or anything improperly done by Mr.  
10 Powell in that regard?

11 A. No, sir.

12 Q. We're at about 1:30. Can I take about ten  
13 minutes to talk with my clients?

14 A. Sure.

15 (Short break was taken.)

16 BY MR. HILL:

17 Q. Okay. In all this stack of stuff, I want to go  
18 back to the order, which I think is Exhibit 49.

19 A. Okay.

20 Q. The second page in that package, this is Judge  
21 Jones' order of May the 2nd, and it -- the last  
22 paragraph at the bottom of the page says  
23 plaintiff filed a motion to restore the 2004  
24 action and consolidate it with the 2007 action.  
25 Without objection from defendant, the court

1 granted the plaintiff's motion to restore and  
2 consolidate the above-mentioned action at the  
3 commencement of the hearing.

4 A. Okay.

5 Q. Did that resolved that issue?

6 A. Yes, sir. It appears to have.

7 Q. You made a comment after we had gone through a  
8 lot of these documents and letters that copies  
9 were furnished to Reid Smith and it sort of  
10 refreshed your recollection that he was more  
11 involved than you had originally recalled; is  
12 that correct?

13 A. That is correct.

14 Q. Okay. Can you elaborate on that a little bit?

15 A. Yes, sir. And I don't know why I thought that.  
16 Reid was -- I was definitely first chair, and  
17 he was definitely involved in the case. He was  
18 involved in the settlement options. I do know  
19 that we presented those to him, you know, the  
20 settlement agreements and stuff like that to  
21 get his blessing.

22 You know, again, I think it was, based on  
23 the information we knew, we thought they were  
24 fair settlements. But I was against -- I also  
25 specifically recall being against making the

1 proposals because I thought we needed to do due  
2 diligence. But subject to that advice, you  
3 know, prepare the best agreement that we could  
4 based on the information we had.

5 But Reid, you know, it appeared to me on  
6 all the letters that we looked at, that he was  
7 being copied with correspondence. And I know  
8 that I was communicating with him about the  
9 settlement and sending settlement offers to him  
10 to review before we finally formalized them and  
11 put them into final version.

12 Q. Did he express an opinion about the  
13 advisability of the settlement?

14 A. I think Reid was always in support of the  
15 settlements. I don't recall him saying no, I  
16 don't think you should do the settlement. I  
17 think, based on the information that we had, I  
18 think he thought the settlements were fair. I  
19 think he was putting -- I think he was relying  
20 on me as well.

21 You know, again, I think that we were  
22 going to Reid's counsel as advice on  
23 determining whether or not the numbers were  
24 right. But ultimately it was the client's  
25 decision whether or not to settle or not. I

1 didn't have any information that, available at  
2 the time, that told me that the terms were  
3 unfair to our client. I thought it was a good  
4 settlement, but I thought we needed to do more  
5 work in order to verify the numbers and, you  
6 know, ultimately to find --

7 (Interruption.)

8 THE WITNESS: Excuse me for one moment.

9 MR. HILL: Sure.

10 (Short break was taken.)

11 BY MR. HILL:

12 A. Ultimately, I think I would've liked to have  
13 taken the depositions and done some more  
14 discovery. But, you know, I understand the  
15 client's position that she knew her estate  
16 better than anybody, that she thought the  
17 settlement terms were fair, and she was weary  
18 of being in litigation for as long as she had  
19 been in it as well. I'm sure that had -- that  
20 was a factor in wanting to go ahead and settle.

21 Q. Was it a factor as to the rulings that Judge  
22 Jacobs made in the pendente lite hearing? Did  
23 that factor into the evaluation of her  
24 settlement position?

25 A. I don't think so. You know, those, on a

1 temporary hearing, those rulings are basically  
2 just to keep us in -- something in place while  
3 the litigation's progressing. We were able to  
4 obtain a sizable early equitable distribution,  
5 and the child support, his child support  
6 determination was certainly factually sound  
7 based on the financial declaration presented.

8 I'm sure that that, you know, the client's  
9 realization that the court ultimately, you  
10 know, is going to put in the numbers we can  
11 prove for Mr. Powell's income and her income  
12 and do the calculations. I'm sure that she  
13 realized that she may not be getting a \$5,000 a  
14 month child support when it's all said and  
15 done, that she may be getting something less  
16 than that, so I'm sure it's something that she  
17 thought about. But I don't -- you know, other  
18 than us being able to prove a greater income to  
19 Mr. Powell, you know, she would've received a  
20 smaller child support payment.

21 Q. Okay. Did you feel strongly enough about your  
22 concerns about, you know, further investigation  
23 that you advised the court that you had  
24 reservations about the settlement?

25 A. I don't think so. I don't recall that I did

1           that, you know, and I don't know that -- I  
2           certainly was not questioned on that. And I  
3           don't, personally, I don't think that that's my  
4           job. You know, my role is to represent my  
5           client as efficiently as I possibly can through  
6           the legal system to get -- make sure that her  
7           rights are protected and to give her good,  
8           sound advice. Ultimately, the desire to settle  
9           and the terms of settlement are ultimately the  
10          client's.

11                 And in this case, I was -- I had been  
12           negotiating for some time with Ms. Sherman to  
13           reach a settlement. I didn't think we were  
14           going anywhere with that. And I actually  
15           believe that I told my client I don't think I  
16           can settle with this lawyer, you may want to  
17           get another lawyer. But, you know, she and I  
18           were having major personality conflicts during  
19           the whole litigation, and, you know, I felt  
20           like it was fruitless.

21                 And she took it upon herself, I don't know  
22           who initiated it, it could've been Conrad, it  
23           could've been Carolyn, but to go and take one  
24           stab at it themselves trying to get the case  
25           settled. They created the terms. I'm sure the

1 terms that they created were based on our prior  
2 negotiations that were going back and forth and  
3 you know, gave us a framework of how they  
4 wanted the case settled.

5 Q. I really appreciate you coming today and your  
6 time. Thank you for putting up with us and  
7 answering our questions.

8 A. You're welcome.

9 Q. Those are all that I have right now.

10 A. Okay.

11 CROSS-EXAMINATION

12 BY MR. PENDARVIS:

13 Q. Mr. Foster, we understand you've got other  
14 obligations, and as I said during the break, I  
15 want to make sure we maintain those. I've got  
16 a few questions. I doubt I'm going to really  
17 be able to finish the questions that I needed,  
18 so I'm going to take about ten minutes or so  
19 and give you time to get to your court  
20 appearance with the reservation that if it's  
21 needed at a later date, possibly depending on  
22 some items on our scheduling order, I may need  
23 to resume this deposition. Let me proceed as  
24 quickly as I can.

25 A. Okay.

1 Q. What was your analysis or your perception of  
2 Ms. Powell's emotional state when she first  
3 came to you to seek your representation?

4 A. She was frustrated.

5 Q. Did she -- what did she tell you about it?

6 A. She was frustrated that she had, and I can't  
7 remember the original filing date, but that the  
8 case had not gotten settled, gotten tried, that  
9 the case was still basically in, I paraphrase,  
10 but that the case was languishing. She was  
11 very frustrated about that. She wanted a  
12 resolution. She was upset about alimony. When  
13 we talked about alimony, she was very upset  
14 about, you know, kind of where she was in  
15 relation to being able to obtain alimony. And  
16 she wanted the case to be concluded.

17 Q. What prompted your discussion, if you had one,  
18 with Ms. Powell about legal malpractice or  
19 professional negligence issues?

20 A. Well, regarding that, I'm sure the initial  
21 contact that I learned about the case was from  
22 Bunni Crawford. And I think she just indicated  
23 that she had a friend who was very upset with  
24 how a case had been handled, that she wanted to  
25 see if I would take a look at it. She told me



1           who the attorneys were.

2           At the time I didn't know Michael Taylor,  
3           other than by reputation, but I have a good  
4           relationship with Ashlin Potterfield. And I  
5           had made clear, happy to help out your friend,  
6           Bunni, don't want to get involved in any kind  
7           of malpractice action. So, you know, and I  
8           think I made that clear from the get-go.

9           So that was not her saying I want to sue  
10          these people for malpractice. This was her  
11          saying I'm really frustrated with how this case  
12          is, and me saying, you know, just want to make  
13          something clear before I even look at the file,  
14          I'm not going to look at it for any other  
15          reason other than to help you through the  
16          process.

17         Q.   And that conversation was with Ms. Crawford or  
18               Ms. Powell?

19         A.   It would've been with both. Maybe at the same  
20               time or at different times.

21         Q.   And I'm bouncing around as quick as I can --

22         A.   Sure.

23         Q.   -- with questions all through here. We saw, I  
24               think it was not marked as an exhibit, but a  
25               cancellation of the deposition transcript from

1 the deposition taken of Mr. Tyler --

2 A. Uh-huh.

3 Q. -- remember that? I will represent to you, and  
4 you're welcome to look if you want to take a  
5 moment, but your time and billing records  
6 indicate that Ms. Crawford's deposition was  
7 taken on that same day.

8 A. Okay.

9 Q. Do you know if the same instructions for  
10 transcript ordering were made with regard to  
11 the Crawford deposition transcript?

12 A. Probably that one was obtained. That was Marne  
13 Sherman's deposition. I would've probably said  
14 I don't want a copy. You know, I was trying to  
15 keep expenses -- I often do that when people  
16 take depositions, I don't get a copy if I don't  
17 think it's really necessary. With Tyler's,  
18 that would've been my deposition. And I can't  
19 remember.

20 It was so -- there was so much animosity.  
21 I think we took one deposition at Marne's  
22 office and the other one at my office. And I  
23 think that was the case. I more and more think  
24 Reid Smith took that deposition of Tyler, but I  
25 don't have a copy of Bunni Crawford's.

1 deposition transcript. I don't think I ever  
2 obtained one. Marne Sherman may have one.

3 Q. During the -- thank you. During the late-  
4 April, early-May time period in 2007 when the  
5 settlement was reaching its final point, did  
6 you have any conversations with Ms. Powell  
7 about -- let me back up a second. You  
8 testified earlier that you were concerned about  
9 finishing discovery to better understand the  
10 assets and marital assets that may be available  
11 for allocation --

12 A. Uh-huh.

13 Q. -- remember that? During the late-April,  
14 early-May time period when the settlement  
15 negotiations were reaching their final point,  
16 did you have any conversations with Ms. Powell  
17 about what it would take to finish the  
18 discovery in terms of time, cost, things of  
19 that nature?

20 A. I don't specifically remember the day or the  
21 exact words, but I know that we talked about  
22 what would be needed in order to get an answer  
23 to the questions. And it would take time, and  
24 it would've taken an expense. And I was  
25 partially authorized or fully authorized to do

1 that, you know, to do the depositions.

2 I had, at some point, scheduled those  
3 depositions. We had gone to some effort to get  
4 the Asheville deposition scheduled. We were  
5 planning to do that. And I don't recall  
6 whether or not we retained Tracy Amos or not,  
7 but I knew that that was something we needed to  
8 do in order to fully evaluate whether or not  
9 there were any -- the value of the assets, what  
10 assets were out there, and for her to do a  
11 forensic audit of the businesses so that we  
12 could figure out whether or not money was  
13 hidden.

14 You know, I was -- it was my intention to  
15 provide the information we had already to Tracy  
16 Amos to start working on a marital asset  
17 addendum and for her to give me an indication  
18 of the other items that we needed to go out and  
19 look at in order to fully evaluate the estate.

20 Q. Did the time, costs, and other issues relating  
21 to completing the discovery have any bearing on  
22 Ms. Powell's assessment or agreement to enter  
23 into the settlement with Mr. Powell?

24 A. I don't know. I don't know the answer to that  
25 question. I think that she can only answer

1           that as far as why she wanted to do it and not  
2           go forward with the additional discovery.

3           Q.   Did she express any frustrations to you about  
4           the length of time it would take in relation to  
5           accepting terms of settlement?

6           A.   Yeah. And again, she was frustrated with the  
7           fact that, if somebody could tell me when the  
8           original action was filed, I don't know. But  
9           it had been I think two or three years from the  
10          time it was filed to the time she got to me.  
11          She was very frustrated that, you know, we were  
12          still at -- looking for -- you know, in order  
13          to fully get the case ready, I think we were  
14          probably talking about another six months of  
15          discovery. And I know that that was something  
16          that was very frustrating to her and that she  
17          very much wanted it over.

18          Q.   Were there any conversations in the last phases  
19          of the settlement negotiations that led to  
20          Exhibit 49, the settlement agreement, wherein  
21          you had a conversation with Ms. Powell  
22          concerning potential future action that she may  
23          take?

24          A.   You mean like malpractice action?

25          Q.   Yes, sir. That would be included in that.

1 A. I don't recall. If malpractice was ever  
2 mentioned -- I did see in my notes that I had  
3 advised her on a three-year statute of  
4 limitations, so to the extent it was ever  
5 mentioned, I know for a fact my conversation  
6 would've been, I give no advice; I never took  
7 this case to look at that; you need to go find  
8 another attorney if that's what you want to do;  
9 and the statute of limitations is three years.

10 So, you know, I think she may have known  
11 that that was -- I think I'd have to say yeah,  
12 that that would be an issue. You know, I mean,  
13 the -- she was very upset about the fact that  
14 she would be statutorily barred from alimony  
15 and that, according to Ms. Powell, had not been  
16 advised of the consequences of being in other  
17 relationships with alimony.

18 So she -- but it was neither here nor  
19 there when I got to the case. We settled the  
20 case without alimony because she knew, and I  
21 knew, that she could not get alimony. She was  
22 -- she had been in a relationship with another  
23 person that would've statutorily barred her  
24 from that.

25 Q. Did you ever say words to the effect, and I'm

1 not quoting here, but words to the effect that  
2 you don't need -- I can't advise you to count  
3 on some big recovery in a malpractice claim as  
4 part of accepting the terms of the settlement  
5 with Mr. Powell?

6 A. I don't recall saying that, but I would hope  
7 that I would have. That sounds like something  
8 I would say. You know, don't settle this case  
9 thinking that you're going to file a  
10 malpractice claim afterwards and recover the  
11 alimony portion of it. I probably could've  
12 said something like that.

13 I know I said something to the effect of,  
14 you know, if you settle this case and then we  
15 find out Mr. Powell has a ton more assets, you  
16 know, there's nothing you can do about that.  
17 You know, I made that real clear that -- and  
18 that that was my opposition. So, you know, if  
19 you're comfortable that you know what the  
20 estate is or if that an unlikely event happens  
21 and still want to go forward and settle this,  
22 then go forward.

23 Q. One last follow-up, and I'm going to get you  
24 out of here as close as I can to getting you on  
25 the way. When Mr. Hill was finishing up with

1 his last questions before he finished his  
2 questions today, he was asking you some  
3 questions about Mr. Smith, Reid Smith's support  
4 of the settlement agreement based on the  
5 information that was available --

6 A. Uh-huh.

7 Q. -- remember that? Did you have any  
8 conversation with Reid Smith about hiring Ms.  
9 Amos and proceeding with a full forensic  
10 analysis of the marital estate assets?

11 A. I don't specifically recall that just because I  
12 don't specifically recall a lot in this case.  
13 But I don't think that's something I would've  
14 done. Well, yeah, definitely, at the pendente  
15 lite hearing, I was looking at that package, we  
16 submitted an affidavit from Tracy Amos. Reid  
17 was one of the counsels of record. He was  
18 present at that hearing, so he would've known  
19 that we were trying to get her to do the  
20 forensic audit.

21 So he, whether I had a conversation or  
22 not, he was one of the counsel at that hearing  
23 where we were asking for it. I'm sure I  
24 actually had the conversation with him.

25 Q. I've got an outline, I'm not even going to pull



1 out.

2 A. Okay.

3 Q. Let's just take a break right now, and we'll --

4 I've got enough, I think, to conclude this

5 today and get you on your way out of here.

6 A. Okay.

7 MR. PENDARVIS: So with the reservation

8 I may need to come back and take it again,

9 I don't have any further questions today.

10 REDIRECT EXAMINATION

11 BY MR. HILL:

12 Q. With regard to Mr. Pendarvis' point about the

13 alimony and that she would be barred, the

14 support payment that she and her husband

15 eventually negotiated, the \$5,000 a month, that

16 would have included some element with regard to

17 support, because it was above and beyond child

18 support guidelines, was it not?

19 A. It was, based on the numbers we got.

20 Q. So, in fact, she, by virtue of the settlement

21 that was agreed to, she got something by way of

22 support over and above child support.

23 A. Well, I guess what I'd say about that is there

24 was a contention that he made more money than

25 he showed on his financial declaration, and he

1 knew that we were going to Asheville to try to  
2 prove that. And that it was absolutely certain  
3 that I thought he made more money than he was  
4 showing on that financial declaration. And I  
5 was going to go and interview, take depositions  
6 of his business partners. And, you know, I did  
7 not take that \$5,000 as a part of alimony, I  
8 took that as a concession that yeah, he  
9 actually made more money than he was showing on  
10 that financial declaration and we'll just agree  
11 to a flat \$5,000 fee.

12 And I know he made more money, I mean,  
13 because he not only agreed to a flat \$5,000  
14 fee, but he also agreed to pay \$1,000 per horse  
15 up to four horses. You know, I mean nobody can  
16 do that under the \$8,000 a month. But I don't  
17 think that extra \$5,000 was believed to be  
18 spousal support. I think that was believed to  
19 be more of the just child support that he  
20 should be paying.

21 Q. You say you believe that, but you have no  
22 evidence.

23 A. Other than it was a provision under child  
24 support not spousal support. We didn't call it  
25 spousal support.

1 Q. I'm sorry. You said you believed he was making  
2 more money.

3 A. Yes, sir.

4 Q. But you had no evidence.

5 A. At the time we settled the case, I was not able  
6 to prove that. That's correct.

7 Q. Okay. Thank you.

8 (Whereupon, at 1:50 p.m., the  
9 deposition in the above-entitled matter  
10 was adjourned.)  
11  
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1 STATE OF SOUTH CAROLINA )  
2 )  
3 ) CERTIFICATE OF REPORTER  
4 )  
5 COUNTY OF RICHLAND )

6 I, Meghan H. Schultz, Court Reporter and Notary  
7 Public, certify that I did have C. Cantzon Foster, II,  
8 to appear before me at 10:11 a.m. on Thursday, January  
9 26, 2012, at the law offices of Turner, Padgett, Graham &  
10 Laney, P.A., 1901 Main Street, 15th Floor, Columbia,  
11 South Carolina; that the witness was sworn and cautioned  
12 to tell the truth, the pages constitute a true and  
13 accurate transcript of the testimony given at that time  
14 and place.

15 I further certify that I am not of counsel or kin to  
16 any of the parties to this cause of action, nor am I  
17 interested in any manner in its outcome.

18 IN WITNESS WHEREOF, I have hereunto set my hand and  
19 seal this the 13th day of February, 2012.  
20  
21

22 \_\_\_\_\_  
23 Meghan H. Schultz

24 Notary Public for South Carolina

25 My Commission Expires: 06/29/2019

Foster, Cantzon

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[bit - child]

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[employee - felt]

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[felt - given]

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[outcome - powell]

|                                                                                                                                                                                                                              |                                                                                                                                         |                                                                               |                                                                                                                                                                                                                                                                                                                                          |
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[sole - taken]

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STATE OF SOUTH CAROLINA

IN THE FAMILY COURT

COUNTY OF RICHLAND

CAROLYN POWELL

-vs-

TRANSCRIPT OF RECORD

W. CONRAD POWELL

May 2, 2007

Columbia, South Carolina

B E F O R E:

HONORABLE ANNE GUE JONES, Judge.

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

CANTZON FOSTER,  
Attorney for the Plaintiff

MARNE SHERMAN,  
Attorney for the Defendant

FAITH L. THOMPSON  
Family Court Reporter

Ex 38

## I N D E X

## PAGE

## EXAMINATION OF THE WITNESS:

CAROLYN POWELL:

BY THE COURT

3

BY MR. FOSTER

DIRECT

11

## EXAMINATION OF THE WITNESS:

CONRAD POWELL:

BY THE COURT

7

## EXAMINATION OF THE WITNESS:

BONNIE CRAWFORD:

BY MR. FOSTER

DIRECT

14

## CERTIFICATE OF REPORTER

16

## E X H I B I T S

(There were no exhibits entered.)

## CAROLYN POWELL - EXAMINATION BY THE COURT

1 THE COURT: We're on the record in the matter of  
2 Carolyn Powell vs. Conrad Powell, Docket No. 04-DR-40-81 and  
3 07-DR-40-0570. The matter is before the court for a final  
4 divorce hearing. Present in the courtroom is Ms. Powell  
5 with her attorney Cantzon Foster. And Mr. Powell appears  
6 with his attorney Marne Sherman. The subsequent action was  
7 commenced on February 21st, 2007 answer and counter claim  
8 was filed on April 17th, 2007. The parties have entered  
9 into a complete property, support and custody agreement that  
10 is dated April 27th, 2007. And I'm assuming y'all are not  
11 updating financials y'all are standing by ones in the file?

12 MS. SHERMAN: That is correct, Your Honor.

13 MR. FOSTER: We are, Your Honor.

14 THE COURT: Ms. Powell, will you raise your right hand  
15 please ma'am.

16 CAROLYN POWELL, being first duly sworn,  
17 testified as follows:

18 EXAMINATION

19 THE COURT: Thank you, ma'am. Now this complete  
20 property, support and custody settlement agreement consists  
21 of 21 pages with several attachments and you signed the  
22 agreement on page 21. Did you read the agreement, ma'am  
23 before you signed it?

24 MS. POWELL: I did.

25 THE COURT: Did you have sufficient time to talk with

## CAROLYN POWELL - EXAMINATION BY THE COURT

1 Mr. Foster about the terms of the agreement before you  
2 signed it?

3 MS. POWELL: I did, Your Honor.

4 THE COURT: And did he specifically go over the terms  
5 of the agreement with you?

6 MS. POWELL: He did.

7 THE COURT: Do you understand the agreement?

8 MS. POWELL: I do.

9 THE COURT: Have any questions about it?

10 MS. POWELL: I don't, Your Honor.

11 THE COURT: Have you entered into the agreement freely  
12 and voluntarily?

13 MS. POWELL: Yes, I have.

14 THE COURT: Has anybody forced, threaten, or coerced  
15 you to cause you to enter into this agreement.

16 MS. POWELL: No, they have not.

17 THE COURT: Anybody promised you anything other than  
18 the terms of the agreement to cause you to agree to it?

19 MS. POWELL: No.

20 THE COURT: Are you under the influence of any alcohol,  
21 drugs, medication or stress today that would affect your  
22 ability to understand the terms of the agreement or the  
23 proceedings here in court?

24 MS. POWELL: I am not.

25 THE COURT: Have you provided a truthful and accurate



## CAROLYN POWELL - EXAMINATION BY THE COURT

1 financial disclosure in the financial declaration that you  
2 have previously filed with the court?

3 MS. POWELL: I have, Your Honor.

4 THE COURT: Do you believe you have sufficient  
5 knowledge of Mr. Powell's current financial condition to  
6 allow you to knowingly enter into this agreement?

7 MS. POWELL: I do.

8 THE COURT: You've been represented by Mr. Foster in  
9 this action are you satisfied with his services.

10 MS. POWELL: I am.

11 THE COURT: Has he done everything you've asked him to  
12 do or would expect him to do in representing you?

13 MS. POWELL: He certainly has.

14 THE COURT: Has he answered all your questions.

15 MS. POWELL: He has.

16 THE COURT: Do you have any complaints about him.

17 MS. POWELL: I do not.

18 THE COURT: Do you understand that the waiver of  
19 alimony included as a provision of this agreement is a  
20 permanent waiver and you cannot come into court in the  
21 future to seek alimony from Mr. Powell?

22 MS. POWELL: I do.

23 THE COURT: Do you understand that the provisions of  
24 the agreement relating to the division of martial assets and  
25 debts once I approve them will also become permanent and

## CAROLYN POWELL - EXAMINATION BY THE COURT

1 cannot be changed in the future?

2 MS. POWELL: I do.

3 THE COURT: You understand that issues surrounding the  
4 remaining minor child are subject to being modified until  
5 the child turns 18 based upon a showing of a substantial  
6 change in circumstances?

7 MS. POWELL: I do, Your Honor.

8 THE COURT: Do you understand if I approve the  
9 agreement it will be an order of the court enforceable  
10 against you and against Mr. Powell through the contempt  
11 powers of the court?

12 MS. POWELL: I do.

13 THE COURT: You understand if you violate a court order  
14 and found to be in contempt you maybe sanctioned up to one  
15 year in jail, \$1,500 fine and or 300 hours of community  
16 service?

17 MS. POWELL: I do.

18 THE COURT: Do you believe the agreement to be in the  
19 best interest of the minor child?

20 MS. POWELL: I do.

21 THE COURT: Do you believe it to be fair to you and to  
22 Mr. Powell?

23 MS. POWELL: I do.

24 THE COURT: Are you asking that I approve it and make  
25 it an order of the court?

## CONRAD POWELL - EXAMINATION BY THE COURT

1 MS. POWELL: I am, Your Honor.

2 THE COURT: Is there anything you believe the court can  
3 do to help you and your husband reconcile and save your  
4 marriage?

5 MS. POWELL: There is not, Your Honor.

6 THE COURT: Mr. Powell, will you raise your right hand  
7 please, sir.

8 CONRAD POWELL, being first duly sworn,  
9 testified as follows:

10 EXAMINATION

11 THE COURT: Thank you, sir. You can put your hand  
12 down. Now you've also signed this agreement, sir, it  
13 appears on page 21. Did you read the agreement before you  
14 signed it?

15 MR. POWELL: I did.

16 THE COURT: And did you have sufficient time to talk  
17 with Ms. Sherman about the terms of the agreement before you  
18 signed it?

19 MR. POWELL: I did.

20 THE COURT: Did she specifically go over the terms of  
21 the agreement with you?

22 MR. POWELL: She did.

23 THE COURT: Do you understand the agreement, sir?

24 MR. POWELL: I do.

25 THE COURT: Have any questions about it?

## CONRAD POWELL - EXAMINATION BY THE COURT

1 MR. POWELL: I do not.

2 THE COURT: Have you entered into the agreement freely  
3 and voluntarily?

4 MR. POWELL: I did.

5 THE COURT: Has anybody forced, threatened, or coerced  
6 you to cause you to enter into this agreement?

7 MR. POWELL: No.

8 THE COURT: Anybody promised you anything, sir, other  
9 than the terms of the agreement to cause you to agree to it?

10 MR. POWELL: No.

11 THE COURT: Are you under the influence of any alcohol,  
12 drugs, medication or stress today that would affect your  
13 ability to understand the agreement or the proceedings here  
14 in court?

15 MR. POWELL: I am not.

16 THE COURT: Have you provided a truthful and accurate  
17 financial disclosure in the financial declaration you have  
18 previously filed with the court?

19 MR. POWELL: I have.

20 THE COURT: Do you believe you have sufficient  
21 knowledge of Ms. Powell's current financial condition to  
22 allow you to knowingly enter into this agreement?

23 MR. POWELL: I do.

24 THE COURT: You been represented by Ms. Sherman are you  
25 satisfied with her services?

## CONRAD POWELL - EXAMINATION BY THE COURT

1 MR. POWELL: I am.

2 THE COURT: Has she done everything you've asked her to  
3 do or would expect her to do in representing you?

4 MR. POWELL: She has.

5 THE COURT: And do you have any complaints about her?

6 MR. POWELL: I do not.

7 THE COURT: Do you understand, sir, that the alimony  
8 waiver is a permanent waiver and you cannot come into court  
9 in the future to seek alimony from Ms. Powell?

10 MR. POWELL: I do.

11 THE COURT: Do you understand that issues that in the  
12 terms of the agreement that relate to the division of  
13 marital assets and debts will become permanent and cannot  
14 changed in the future?

15 MR. POWELL: I do.

16 THE COURT: You understand that issues surrounding the  
17 minor remaining minor child are subject to being modified  
18 until she turns 18 based upon a showing of a substantial  
19 change in circumstances?

20 MR. POWELL: I do.

21 THE COURT: You understand if I approve the agreement  
22 it will be an order of the court enforceable against you and  
23 against Ms. Powell through the contempt powers of the court?

24 MR. POWELL: I do.

25 THE COURT: You understand if you violate a court order

## CONRAD POWELL - EXAMINATION BY THE COURT

1 and found to be in contempt you maybe sanctioned up to one  
2 year in jail, \$1,500 fine and or 300 hours of community  
3 service?

4 MR. POWELL: I do.

5 THE COURT: Do you believe the agreement to be in the  
6 best interest of the minor child?

7 MR. POWELL: I do.

8 THE COURT: Do you believe the agreement to be fair to  
9 you and to Ms. Powell?

10 MR. POWELL: I do.

11 THE COURT: Are you asking that I approve it and make  
12 it an order of the court?

13 MR. POWELL: I am.

14 THE COURT: Is there anything you believe the court can  
15 do, sir, to help you and your wife reconcile and save your  
16 marriage?

17 MR. POWELL: I do not.

18 THE COURT: Thank you.

19 And, Mr. Foster, y'all going forward with the divorce?

20 MR. FOSTER: Yes, Your Honor, we are.

21 THE COURT: You can call your first witness, sir.

22 MR. FOSTER: And, Your Honor, before I call my first  
23 witness I just want to point out that we are going to hand  
24 up a proposed order if your court rules to grant the divorce  
25 and approve the agreement. In that order we had previously

## CAROLYN POWELL - DIRECT EXAMINATION BY MR. FOSTER

1 filed a motion to restore the two dockets and consolidate  
2 them and I would just I it's uncertain to either Ms. Sherman  
3 or myself whether or not that motion has already been  
4 granted. But we would ask the court to grant that motion.

5 THE COURT: Okay. That's fine. I'll grant that  
6 motion.

7 MR. FOSTER: My first witness is the plaintiff Ms.  
8 Carolyn Powell.

9 THE COURT: If you come right up here please, ma'am.

## 10 DIRECT EXAMINATION

11 BY MR. FOSTER:

12 Q Ms. Powell, you're still under oath. Would you please  
13 state your full name for the record?

14 A Carolyn W. Powell.

15 Q And when were you and your husband married?

16 A In September of 1988.

17 Q And please tell the court when you and your husband  
18 separated.

19 A In December of 2003.

20 Q Prior to your separation, y'all resided as husband and  
21 wife where?

22 A In Richland County.

23 Q And did y'all resides there for more than a year prior  
24 to your separation?

25 A We did.

## CAROLYN POWELL - DIRECT EXAMINATION BY MR. FOSTER

1 Q And since your separation have you been a resident of  
2 South Carolina during?

3 A I been.

4 Q And to your knowledge know where your husband has been  
5 a resident?

6 A In South Carolina, Richland.

7 Q Okay. And has he been a resident for more than one  
8 year prior to the commencement of this action?

9 A Yes, he has.

10 Q After y'all separated, did y'all ever at any time  
11 resume marital relations or cohabitation with one another?

12 A We did not.

13 Q Okay. You are also asking -- are you asking the court  
14 to grant you a divorce on the grounds of one year's  
15 separation?

16 A I am.

17 Q Okay. Now are you also asking the court to allow you  
18 to resume your former maiden name?

19 A I am.

20 Q And please tell the court what that name is.

21 A It's Carolyn Mitchell, M-I-T-C-H-E-L-L.

22 Q And are you requesting that for the purpose of evading  
23 prosecution or creditors?

24 A I am not.

25 Q Are you on any sexual offender list that would prevent



## CAROLYN POWELL - DIRECT EXAMINATION BY MR. FOSTER

1 you from changing your name?

2 A I am not.

3 Q How many children do you have of your marriage?

4 A Two.

5 Q And what are their names and ages?

6 A Mary Morgan Powell. She was born April 18th of 1989  
7 and Alexandra Caroline Powell, five -- May 5th of 1991.

8 Q And between you and Mr. Powell are there any other  
9 children expected of your marriage?

10 A No there none.

11 Q And you are asking the court to grant you a divorce  
12 because you in fact have been separated from your husband  
13 and is it true that you were not actually just making that  
14 up to get a divorce?

15 A That was a big sentence. I think the answer is yes.  
16 No wait a minute. Ask that question again.

17 Q You're not making up these grounds to get a divorce?

18 A No, I'm not making up these grounds. I'm sorry,  
19 Mr. Foster.

20 Q Thank you. Those are my questions.

21 A Sorry I got ADD on you.

22 THE COURT: Ms. Sherman.

23 MS. SHERMAN: None, Your Honor.

24 THE COURT: Thank you. You can step down, ma'am.

25 MR. FOSTER: Your Honor our next witness is Ms. Bonnie

## BONNIE CRAWFORD - DIRECT EXAMINATION BY MR. FOSTER

1 Crawford.

2 THE COURT: Will you raise your right hand please  
3 ma'am.

4 BONNIE CRAWFORD, being first duly sworn,  
5 testified as follows:

6 DIRECT EXAMINATION

7 THE COURT: Thank you, ma'am.

8 BY MR. FOSTER:

9 Q Ms. Crawford, please state your full name for the  
10 record.

11 A Bonnie Olivia Crawford.

12 Q Okay. And tell the court -- do you know the defendant  
13 Mr. Conrad Powell and Ms. Powell?

14 A I do.

15 Q Please tell the court how you know these parties?

16 A We met through a mutual cousin of Mr. Powell's  
17 Mr. James, Jr.

18 Q How long have you known the parties?

19 A Ten years.

20 Q Do you think that you know the parties sufficiently  
21 well enough to testify to the court whether or not they have  
22 lived separate and apart for over a year?

23 A I can.

24 Q Please tell the court what your knowledge is of their  
25 separation.

## BONNIE CRAWFORD - DIRECT EXAMINATION BY MR. FOSTER

1 A My knowledge is that Mr. Powell left the residence in  
2 Christmas time of 2003.

3 Q Okay. And since that time do you have any knowledge  
4 that would allow you to believe that Ms. Powell or  
5 Mr. Powell have ever resumed cohabitation or marital  
6 relations?

7 A I do not.

8 Q Okay. And those are all my questions. Thank you.

9 MS. SHERMAN: I have none, Your Honor.

10 THE COURT: Thank you. Anything further, Mr. Foster?

11 MR. FOSTER: None.

12 THE COURT: Ms. Sherman?

13 MS. SHERMAN: We just join in the request that the  
14 court be grand mutually, Your Honor.

15 THE COURT: I find that the parties have met their  
16 burden of proof and I will grant them a divorce on the  
17 grounds of one year's continuance separation. I will  
18 approve the complete property, support and custody agreement  
19 of the parties dated April 27th, 2007. I find that it has  
20 been entered into freely and voluntarily. It is fair and  
21 equitable to them and in the best interest of the minor  
22 child and I will make it an order of the court. And I will  
23 restore Ms. Powell with the use of her maiden name of  
24 Mitchell. Here's your decree, Mr. Foster.

25

## 1 CERTIFICATE OF REPORTER

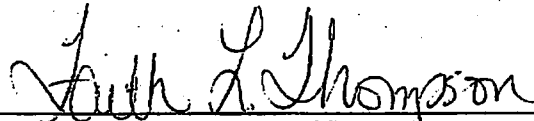
2 STATE OF SOUTH CAROLINA )

3 COUNTY OF RICHLAND )

4  
5 I, the undersigned, Faith L. Thompson,  
6 Official Court Reporter for the 1st Judicial Circuit  
7 of the State of South Carolina, hereby certify that  
8 I reported the trial of Carolyn Powell vs. W. Conrad  
9 Powell on May 2, 2007. The foregoing pages numbered  
10 3 through 16, inclusive, constitute a true and  
11 correct transcription of my stenographic report of  
12 the said trial and the proceedings held at the time  
13 and place aforesaid.

14 I further certify that I am neither  
15 attorney nor counsel for, nor related to or employed  
16 by any of the parties connected to the action, nor  
17 am I financially interested in the action.

18 Witness my hand at Columbia, South  
19 Carolina, this 5th day of February, 2010.

20  
21 

22 Faith L. Thompson, CR and Notary in and  
23 for the State of South Carolina.  
24 My commission expires 10-04-2015.  
25

**In The Matter Of:**  
*Carolyn Mitchell Powell v*  
*Ashlin Blanchard Potterfield, et al*

---

*Ashlin Blanchard Potterfield*  
*March 10, 2011*

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Min-U-Script® with Word Index

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS  
2 COUNTY OF RICHLAND C.A.NO: 2009-CP-40-8705

3  
4 CAROLYN MITCHELL POWELL,

5 Plaintiff,

6 vs.

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

11 Defendants.

12 DEPOSITION OF: ASHLIN BLANCHARD POTTERFIELD

13 DATE: March 10, 2011

14 TIME: 10:09 A.M.

15 LOCATION: Law Offices of  
16 Turner Padgett Graham & Laney, PA  
17 1901 Main Street, 17th Floor  
Columbia, SC

18 TAKEN BY: Counsel for the Plaintiff

19 REPORTED BY: WANDA K. CECIL  
20 Certified Court Reporter

21 A. WILLIAM ROBERTS, JR., & ASSOCIATES

22 Fast, Accurate & Friendly

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11 ASHLIN BLANCHARD POTTERFIELD; J.  
12 MICHAEL TAYLOR; TAYLOR/POTTERFIELD;  
13 GOLDEN, TAYLOR, POTTERFIELD AND BARRON:

14 TURNER PADGET GRAHAM & LANEY, P.A.

15 BY: CHARLES E. HILL  
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24 SMITH, P.A.:

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cwatson@sowellgray.com

ALSO PRESENT:

Carolyn Mitchell Powell  
J. Michael Taylor

(INDEX AT REAR OF TRANSCRIPT)

1 ASHLIN BLANCHARD POTTERFIELD,  
2 being first duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. PENDARVIS:

5 Q. Ms. Potterfield, we've been introduced  
6 before. Would you state your full name for the  
7 record, please?

8 A. It's Ashlin Blanchard Potterfield.

9 Q. Ms. Potterfield, you would agree with  
10 me, wouldn't you, that no professional should  
11 needlessly endanger their client?

12 MR. HILL: Object to the form.

13 THE WITNESS: Needlessly endanger?

14 BY MR. PENDARVIS:

15 Q. Yes.

16 A. I would agree with that.

17 Q. And you would agree then that no lawyer  
18 should needlessly endanger her client?

19 A. Needlessly? No. I'll agree with that,  
20 too.

21 Q. You would agree that there are certain  
22 rules, and I'm not specifically referring to things  
23 like the rules of conduct or other things, but there  
24 are just general rules of practice that are set up  
25 to ensure client protection? You agree?



1 A. There are rules set up for that. Yes.

2 Q. Could you gave me some examples of rules  
3 that are set up for client protection?

4 A. Well, I think most of them are probably  
5 set up to protect the clients, the process, the  
6 lawyers, the Court. I think that's probably the  
7 basis for all of the rules.

8 Q. You would agree a client has a right to  
9 expect good care in the handling of their case,  
10 wouldn't you?

11 MR. HILL: Object to the form.

12 THE WITNESS: Yeah, I would agree they  
13 would expect that.

14 BY MR. PENDARVIS:

15 Q. Would you agree that one of the rules  
16 that governs lawyers' conduct is that, when there is  
17 any risk of loss involved, the lawyer should always  
18 follow the rule it's better to be safe than sorry?

19 MR. HILL: Object to the form.

20 THE WITNESS: I don't think that's  
21 always necessarily the case, no.

22 BY MR. PENDARVIS:

23 Q. Would you agree then when there is any  
24 risk of loss to the client involved that could be  
25 avoided by -- let me restate this question.

1           Would you agree that one of the rules is  
2           that if there's any risk of loss -- excuse me, that  
3           any risk of loss is unacceptable if reasonable means  
4           are available to minimize or eliminate the risk?

5           MR. HILL: Object to the form.

6           THE WITNESS: I'm sorry?

7           BY MR. PENDARVIS:

8           Q. Let me restate that.

9           A. Yeah. Are you saying --

10          Q. Let me restate it.

11          A. Yeah.

12          Q. Would you agree that ones of the rules  
13          of the road is that any risk of loss is unacceptable  
14          if reasonable means could have been used to minimize  
15          or eliminate the risk?

16          MR. HILL: Same objection.

17          THE WITNESS: No.

18          BY MR. PENDARVIS:

19          Q. Would you explain?

20          A. Yeah. I mean, I think there's always  
21          risks and minimizing the risks is what you want to  
22          do; but I mean, there's always risks. I don't think  
23          you can eliminate the risks.

24          Q. Well, of course there's always risks;  
25          but when I say risks of harm that could be easily

1 avoided, I mean things like suppose a client's claim  
2 was about to expire based on the statute of  
3 limitations and that reasonable means to avoid the  
4 risks would be filing a complaint. You would agree  
5 that allowing that risk to continue without filing a  
6 complaint would be unreasonable?

7 A. Under that scenario with the statute of  
8 limitations, perhaps. I don't practice that kind of  
9 law, so I don't really have to put that in  
10 consideration of the risks.

11 Q. So are you saying that, if there's a  
12 risk of loss that your client might be exposed to  
13 and that if there are reasonable means to avoid that  
14 risk, that it's acceptable to continue without  
15 exercising those reasonable means to eliminate the  
16 risks?

17 A. What I said was that, if -- you always  
18 want to do whatever you can to minimize the risks,  
19 but there's no way to 100 percent eliminate risks.

20 Q. You would agree that the first priority  
21 for a lawyer should be to protect the client's case;  
22 right?

23 MR. HILL: Object to the form.

24 THE WITNESS: I think that you have to  
25 protect more than just their case.

1 BY MR. PENDARVIS:

2 Q. Would you explain?

3 A. I mean, I think you have to -- you know,  
4 with the cases that we do, you have to consider  
5 everything, not just their case. You have to  
6 consider the children, the impact that it's going to  
7 have on them in the future. All those things you  
8 have to consider.

9 Q. Would you agree that one of the rules of  
10 the road is that the greater the risk of injury, the  
11 greater the duty to provide good care?

12 MR. HILL: Object to the form.

13 THE WITNESS: No.

14 BY MR. PENDARVIS:

15 Q. Okay. Would you agree that one of the  
16 rules of the road is that, when a lawyer accepts a  
17 client and accepts the case for the client, the  
18 lawyer is representing to the client that he or she  
19 has the knowledge, time and resources to represent  
20 the client adequately?

21 A. Say it again.

22 Q. One of the rules -- would you agree that  
23 one of the rules of the road is that, when a lawyer  
24 accepts a client's case, the lawyer is representing  
25 to the client that she's trained, qualified and has

1 the time available to adequately represent and  
2 handle the client's case?

3 A. I wouldn't say that is true for  
4 everybody, no.

5 Q. When would there be an exemption from  
6 that understanding a client would have?

7 A. I mean, I'm sure there are plenty of  
8 lawyers who take cases who -- of things they don't  
9 really know how to do very well.

10 Q. How about when a lawyer -- well, you  
11 think it would be appropriate and within the rules  
12 of the road for the lawyer to take a case when she  
13 doesn't have time to handle the case?

14 A. I think that would be hard to determine.

15 Q. Okay. Would you agree that one of the  
16 rules of the road is that all case handling  
17 decisions have to be made with the client's best  
18 interests in mind?

19 MR. HILL: Object to the form.

20 THE WITNESS: Say that again.

21 BY MR. PENDARVIS:

22 Q. Would you agree that one of the rules of  
23 road is that all case handling decisions are made  
24 with the client's best interests in mind?

25 A. Yes..

1 Q. Would you agree that one of the rules of  
2 the road is that, as the financial risks to a client  
3 increases, a lawyer should act more carefully?

4 MR. HILL: Object to the form.

5 THE WITNESS: Not necessarily, no.

6 BY MR. PENDARVIS:

7 Q. Why not?

8 A. I don't know that, as the case changes,  
9 that your duty changes.

10 Q. Would you agree that, if a lawyer is  
11 careless and that careless act causes injury to the  
12 client, that the lawyer's responsible for all the  
13 damages caused by her acts or omissions?

14 A. Not necessarily.

15 Q. Why not?

16 A. Well, it would depend on whether it was  
17 intentional or not.

18 Q. So are you saying that the only time --  
19 when would a lawyer be responsible for the damages  
20 caused by the lawyer's neglect?

21 A. I don't know.

22 Q. Are you making a distinction between  
23 intentional conduct that harms a client and  
24 negligent conduct that harms a client?

25 A. No. I just don't know, I mean, exactly

1 what you're talking about. I mean, could be all  
2 kinds of scenarios for that. I think it would  
3 depend on the scenario.

4 Q. Okay. When would be an example of a  
5 time when a lawyer was careless and the careless  
6 conduct caused harm to a client when the lawyer  
7 would not be responsible for those damages?

8 A. I don't know.

9 Q. Well, you've told me that you think  
10 there are -- it would depend on the circumstances.  
11 I'm asking you for an example of what circumstances  
12 can you imagine where a lawyer would not be  
13 responsible for harm caused to a client by their  
14 negligent acts.

15 A. I can't think of a specific example.

16 Q. But the general rule is that, if a  
17 lawyer -- you would agree then that the general rule  
18 is if a lawyer's negligent acts cause harm to a  
19 client, the lawyer's responsible for the damages in  
20 general?

21 A. No, I wouldn't agree with that.

22 Q. Would you agree that an attorney/client  
23 relationship is a fiduciary relationship?

24 A. No.

25 Q. You don't agree with that?

1 A. No.

2 Q. You disagree with -- did you read your  
3 answers to the complaint?

4 A. Yes.

5 Q. Do you disagree with the statement in  
6 the answer to the complaint in this case, your  
7 answer, where it states in -- Paragraph 85 alleges,  
8 as attorneys for the plaintiff, the defendant stood  
9 in a fiduciary relationship with the plaintiff.  
10 Your answer was these defendants admit that they  
11 were in a fiduciary relationship with the plaintiff  
12 only to the extent as such relationship may be  
13 imposed by law as a result of the attorney/client  
14 relationship. Did you read that?

15 MR. HILL: Can I give her a copy of the  
16 original?

17 MR. PENDARVIS: Certainly. Certainly.

18 Q. And this is on Page 6 of your answer --

19 A. Right. I see it.

20 Q. -- and your Paragraph 51.

21 A. What I take that to mean is if I were  
22 holding funds for a client. There are points in a  
23 relationship with a client that you may have  
24 fiduciary duty; but in general, I don't know that it  
25 is automatically a fiduciary duty.



1 Q. And your understanding of your fiduciary

2 relationship relates to situations where you're

3 holding property of a client in trust?

4 A. That would be one example.

5 Q. Can you give me another?

6 A. Not off the top of my head, no.

7 Q. What is your understanding of fiduciary

8 duty?

9 A. That, you know, if you're holding funds,

10 you'd be responsible for that and as well as the

11 rules of the -- you know, the law of holding funds

12 for the client.

13 Q. Do you believe your fiduciary duty

14 includes a duty of loyalty?

15 A. No.

16 Q. Do you believe your fiduciary duty

17 includes a duty of confidence?

18 A. No.

19 Q. Do you believe a fiduciary duty includes

20 a duty of diligence in handling the client's matter?

21 A. Funds perhaps, yes.

22 Q. That wasn't the question.

23 A. Well, then no.

24 Q. Do you believe a client should be able

25 to trust a lawyer that the client engages for their

1 representation?

2 A. I would hope they would. I don't know  
3 that that's absolutely necessary.

4 Q. Do you believe that a lawyer's fiduciary  
5 duties to the lawyer's client requires the lawyer to  
6 adequately handle and protect the client's interests  
7 in the matter in which the lawyer has been engaged  
8 to handle?

9 A. I don't think that that has anything to  
10 do with the fiduciary duty, no.

11 Q. Okay. Do you believe that a lawyer's  
12 duties to a client requires the lawyer to act at all  
13 times with extreme fidelity for the sole benefit for  
14 the interests of the client?

15 MR. HILL: Object to the form.

16 THE WITNESS: Say that again.

17 BY MR. PENDARVIS:

18 Q. Do you believe that a lawyer's duty to  
19 the lawyer's client requires the lawyer to act at  
20 all times with extreme fidelity for the sole benefit  
21 and interests of the client?

22 MR. HILL: Same objection.

23 THE WITNESS: I'm not sure what you mean  
24 by fidelity.

25 BY MR. PENDARVIS:

1 Q. Loyalty. I'm trying to mean really the  
2 part where the lawyer is loyal to the client.

3 Fidel. Closest in relationship with the client.

4 A. One would hope that that would be  
5 important. Yes.

6 Q. Would you agree that a lawyer's duties  
7 to the client requires the lawyer to disclose any  
8 material matters that interfere with the lawyer's  
9 duties to the client?

10 A. Yes.

11 Q. You would agree, wouldn't you, that a  
12 lawyer's duties to the lawyer's client requires the  
13 lawyer to always place the interests of the client  
14 ahead of the lawyer's own interests?

15 MR. HILL: Object to the form.

16 THE WITNESS: No.

17 BY MR. PENDARVIS:

18 Q. When would be a time when a lawyer would  
19 be able to place their interests ahead of their  
20 client's interests?

21 A. An example might be that if you were  
22 scheduled for a hearing and you had a family  
23 emergency, that you might have to place your  
24 family's emergency before that client's hearing.

25 Q. Okay. You would agree, wouldn't you,

1 that when there's a fiduciary duty -- well, I'll ask  
2 this two ways. First, you would agree, wouldn't  
3 you, when there's a fiduciary duty running from a  
4 lawyer to a client, the client's justified in  
5 relying on the lawyer to act in the client's best  
6 interests?

7 MR. HILL: Object to the form.

8 THE WITNESS: A fiduciary duty, the  
9 client can rely -- say that again.

10 BY MR. PENDARVIS:

11 Q. My question is, you would agree,  
12 wouldn't you, that when there's a fiduciary duty  
13 running between a lawyer and a client, the client is  
14 justified in relying upon the lawyer to act in the  
15 client's best interests?

16 MR. HILL: Same objection.

17 THE WITNESS: Yes.

18 BY MR. PENDARVIS:

19 Q. And based on your distinctions earlier,  
20 that fiduciary duties may not always apply to  
21 lawyers, the companion question is, when there's a  
22 lawyer/client relationship, you would agree,  
23 wouldn't you, that the client is justified in  
24 relying on the lawyer to act in the client's best  
25 interests?

1 A. Yes.

2 Q. You would agree with me, wouldn't you,  
3 that once a lawyer agrees to represent a client,  
4 there's an implied obligation for the lawyer to  
5 devote the time necessary to adequately protect the  
6 client's interests?

7 A. Yes.

8 Q. Could you give me a little background of  
9 your law practice, when you started?

10 A. I graduated from law school in May of  
11 '91, took the bar. Went directly from taking the  
12 bar the end of July to August working in Aiken at  
13 the public defender's office on a grant from the  
14 governor's office doing juveniles, juvenile criminal  
15 defense. Was there for less than a year. Moved to  
16 the Richland County Public Defender's Office, where  
17 I did the same job, just not on a grant.

18 Q. Primarily juvenile work in Richland?

19 A. That's all I did.

20 Q. Okay. After that?

21 A. Then I went to work for Harvey Golden,  
22 February of '93.

23 Q. And did you come on board there as an  
24 associate?

25 A. Right.

1 Q. What was the name of the firm when you  
2 began practicing with Mr. Golden?

3 A. I believe, at that time, it was just Law  
4 Offices of Harvey L. Golden, PA.

5 Q. And I know from the information in this  
6 case that you basically stayed with that firm in  
7 various forms until present?

8 A. Right. Until Michael and I took the  
9 staff and left when Mr. Golden became ill.

10 Q. Okay. Could you just briefly give me a  
11 chronology of when you became partner and the  
12 different firm derivations?

13 A. I believe it was '97, but I'm not 100  
14 percent sure about that date that we became Golden,  
15 Taylor and Potterfield. And then it would have been  
16 maybe three or four years later that we added Almand  
17 Barron as a partner.

18 Q. At the time the law firm became Golden,  
19 Taylor and Potterfield, was it a general  
20 partnership, PA, PC, LLC?

21 A. It was me and Michael partners with Mr.  
22 Golden's PA.

23 Q. Okay. And can you tell us when that  
24 changed? You mentioned that earlier, that at some  
25 point he became ill and you and Mr. Taylor set up a

1 separate practice.

2 A. We did. I'm trying to think when that  
3 was. Been like March -- no, no. I'm sorry. May of  
4 '05, we moved out. May 1st of 2005.

5 Q. And your new firm, it was  
6 Taylor/Potterfield?

7 A. That's right.

8 Q. And what type of organization is that?

9 A. We're just a general partnership.

10 Q. General partnership? Let's talk a  
11 little bit about your practice in the Family Courts  
12 in South Carolina. And I understand from your  
13 earlier testimony that, at least until February of  
14 '93, most of your practice dealt with public  
15 defender office work for juveniles?

16 A. That's right.

17 Q. Which is in Family Court; correct?

18 A. Right.

19 Q. And what type of work did you begin  
20 doing when you joined Mr. Golden's firm in February  
21 of 1993?

22 A. It was almost exclusively still Family  
23 Court.

24 Q. And what type of work in Family Court?

25 A. Everything. From DSS appointments to

1 child support to divorce, custody. We never did  
2 adoptions. I mean, I have been a guardian for an  
3 adoption; but I've never actually been a lawyer for  
4 an adoption. But pretty much done -- we did  
5 everything else.

6 Q. But my understanding, around February of  
7 '93 is when you first began representing husbands  
8 and wives in their divorce proceedings?

9 A. Right. On the civil side of Family  
10 Court. Yes.

11 Q. Okay. And that's been exclusively the  
12 type of work you've been doing since that point in  
13 time, Family Court work, since 1993?

14 A. Pretty much. Here and there, there have  
15 been other things I have done; but not -- I mean,  
16 less than a handful.

17 Q. Things in?

18 A. Other courts.

19 Q. Litigation? Like Civil Court, Common  
20 Pleas?

21 A. Or Magistrates Court. Right.

22 Q. Are you admitted in any other courts  
23 besides South Carolina State Courts?

24 A. No.

25 Q. You ever been in Federal Court?



1 A. No.

2 Q. Tell me a little about why you wanted to  
3 join with Mr. Harvey Golden.

4 A. I always wanted to do this kind of work.  
5 At the time, obviously, he had been in the practice  
6 of law for a very long time and was, in my opinion,  
7 the best Family Court lawyer in the State at that  
8 time. Ken Lester was in the office as well, as well  
9 as Michael Taylor. And it was a great opportunity  
10 to work for him.

11 Q. What was your understanding of the  
12 general reputation in the -- among the bar members  
13 of Mr. Golden and his firm?

14 A. At that time?

15 Q. Yes, ma'am.

16 A. Mr. Golden was very aggressive. Some  
17 people found him to be too aggressive and he was  
18 certainly quite a bulldog.

19 Q. And am I correct in understanding the  
20 reputation was, if you wanted a tough domestic  
21 lawyer, you came to Mr. Golden and his firm; is that  
22 correct?

23 A. I think that would probably more apply  
24 to Mr. Golden than Mr. Lester. Yeah.

25 Q. Did you learn a good bit from Mr.

1 Golden?

2 A. I did.

3 Q. Good teacher?

4 A. He was.

5 Q. What was your goal and your objective as  
6 far as your -- the type of lawyer you wanted to be  
7 considered among the bar members?

8 A. His approach didn't really suit my  
9 personality. He didn't have a problem with that. I  
10 mean, he understood that and he wanted me to make it  
11 my own. I've always been more the approach of how  
12 to resolve a case so that everybody -- nobody is  
13 going to be happy, but can we minimize how unhappy  
14 everybody is going to be.

15 Q. If you get -- and this is a general  
16 question: We're obviously going to get into some  
17 specifics that relate to Ms. Powell's case; but I'm  
18 asking just in general practice, course of conduct  
19 type questions. When you're unable to reach a  
20 resolution on a disputed issue with opposing counsel  
21 in a matter, what's your general tendency, find some  
22 way to compromise or seek court relief?

23 A. Well, it depends of the situation. I  
24 never give up hope that there's a way to resolve it,  
25 because the client's making the decision for

1 themselves is always better than a Family Court  
2 Judge, who has 15 minutes to give them, to make a  
3 decision. So I never give up hope for that. But  
4 sometimes there's just no way to resolve it and you  
5 have to let the judge make the decision. So it  
6 depends on the scenario.

7 Q. Could you give me an estimate, just some  
8 general percentages on how -- you know, 10 percent  
9 of the time, you need Court help? 50 percent? I  
10 mean, can you give me an estimate in general?

11 A. Well, I think it's changed over the  
12 years. We have mandatory mediation now. So I think  
13 that has definitely changed the percentage.

14 Q. In which way? Making it less?

15 A. Less.

16 Q. For the Court involvement?

17 A. There are less times that you have to go  
18 to Court.

19 Q. When did that mandatory mediation become  
20 the rule in Richland County?

21 A. I'm not sure when it started, but it's  
22 been in place for a while. But for a long time,  
23 everybody tried to ignore it.

24 Q. So are you suggesting that Family  
25 Court -- Family Court started enforcing that rule.

1 lately?

2 A. They did.

3 Q. Okay.

4 A. They did. More so in other counties.

5 Q. And is your practice with  
6 Taylor/Potterfield essentially the same as it was  
7 prior?

8 A. It is.

9 Q. I'm not going to ask you any questions  
10 today at all about your conversations with your  
11 attorney. So if anything I say during the course of  
12 the day today makes you think I'm asking that kind  
13 of question, ask me to rephrase it, because I want  
14 to make sure we're clear; but I'm going to be asking  
15 some things during the course of the day and none of  
16 it's going to include a request for that type of  
17 disclosure.

18 Outside of your conversations with your  
19 counsel, did you do anything to prepare for your  
20 deposition today?

21 A. I did.

22 Q. What did you do?

23 A. I reviewed the file.

24 Q. The evidence part of the file, the  
25 underlying Powell versus Powell material?

1 A. Right.

2 Q. Did you review any of the pleadings or  
3 discovery requests that are outstanding in this  
4 litigation?

5 A. In this current litigation?

6 Q. Yes.

7 A. Yes.

8 Q. Okay. How much time did you spend  
9 reviewing for or preparing for the deposition?

10 A. Some time on Sunday, couple of hours,  
11 and then some time yesterday, about two and a half  
12 hours.

13 Q. When did you begin representing Mrs.  
14 Carolyn Powell?

15 A. I believe our initial consultation was  
16 in the Summer of 2003.

17 Q. Were you aware -- were you involved in  
18 any respect to any involvement with Mrs. Powell's  
19 relationship with Mr. Golden in the late '90s?

20 A. We did discuss that.

21 Q. Okay. Tell me about that first. Let's  
22 go to that before we start into 2003.

23 A. When a client comes in, we do a  
24 conflicts check. So her name came up that she had  
25 previously been in. And then I don't remember the

1 details of the conversation. I know that she had  
2 been in to see him, maybe it was in '97. I don't  
3 remember exactly when she had been in before.

4 Q. Late '90s? Is that fair enough?

5 A. I guess so. Yeah.

6 Q. And what did you discuss about the prior  
7 meetings?

8 A. I don't remember what we discussed. I  
9 mean, I know that I knew about it because we pulled  
10 her prior pending sheet and that she had been in to  
11 see Mr. Golden.

12 Q. And no conflicts were apparent to make  
13 it where you would not be able to represent her in  
14 2003? Everything was green light?

15 A. Right.

16 MR. PENDARVIS: Okay. You might want to  
17 mark a bunch.

18 THE COURT REPORTER: Okay.

19 (Off-the-record conference.)

20 (PLF. EXH. 1, Document Dated June 27,  
21 1997, Bates Stamped Original Client 255  
22 and 256, was marked for identification.)

23 BY MR. PENDARVIS:

24 Q. Ms. Potterfield, I'm passing you a copy  
25 of, it looks like, some type of intake sheet from

1 June of 1997. It was produced in this case. Is  
2 this the intake sheet you were talking about a  
3 moment ago?

4 A. I don't remember seeing this; but it  
5 does appear to be, yes.

6 Q. It's a typical form sheet that Mr.  
7 Golden's firm used?

8 A. Right.

9 (PLF EXH. 2, Document Bates Stamped  
10 Original Client 253 and 254, was marked  
11 for identification.)

12 BY MR. PENDARVIS:

13 Q. Now, I'm passing to you a second similar  
14 sheet marked as Exhibit 2 to your deposition.  
15 There's no date on this one that I could see; but I  
16 did notice that Ms. Powell's age has got a different  
17 date -- a different age, so I presume this is from  
18 the June 2003 meeting?

19 A. I believe it is. Also, it looks like  
20 our receptionist at the time entered it into pending  
21 on June 23, 2003.

22 Q. And tell me -- help me on what's the  
23 purpose of this form.

24 A. There are several. It's for us to do a  
25 conflicts check. It's to get the information that

1 will eventually be required on a DHEC form for  
2 divorce and to give you, you know, some information  
3 about the client.

4 Q. And I'm asking, this isn't intended to  
5 really understand what the client's objectives are?  
6 It's just more of data sheet to make sure there are  
7 no conflicts?

8 A. That's right.

9 Q. Okay. And are these -- you know, I said  
10 this thing didn't have a date, but I believe it  
11 does. There's a stamp down on the bottom right-hand  
12 corner. Is that the stamp you're referring to from  
13 your --

14 A. Right.

15 Q. Pending? What does that symbol mean,  
16 pending, the handwritten?

17 A. That's pending and it says VT, which  
18 would have been Vanessa Turner, who was our  
19 receptionist, who put that into our pending list,  
20 which is how we check our conflicts.

21 Q. And is a person -- once they've signed  
22 the intake sheet, does the firm consider that person  
23 a client?

24 A. No.

25 Q. What is it that -- what does it take for



1 the firm to consider there to be an attorney/client  
2 relationship?

3 A. They would pay a retainer, sign a fee  
4 agreement.

5 (PLF. EXH. 3, Fee Agreement and  
6 Acknowledgements, Bates Stamped Original  
7 Client 263 through 268, was marked for  
8 identification.)

9 BY MR. PENDARVIS:

10 Q. Ms. Potterfield, I'm passing you another  
11 document. This one is marked Exhibit 3 to your  
12 deposition. This appears to be a fee agreement and  
13 acknowledgment form. Was this the form that Ms.  
14 Powell signed? And I'll tell you, there's one page  
15 out of order; but we'll talk about that in a moment.  
16 I think her signature is on the last page.

17 A. Yes.

18 Q. And did you meet with Ms. Powell on June  
19 23, 2003?

20 A. Yes.

21 Q. Is this the fee agreement that -- you  
22 undertook the representation through this agreement  
23 of Ms. Powell?

24 A. No.

25 Q. Tell me about that.

1. A. This is really more informative and to  
2 let them know what their -- I'm sorry. This is what  
3 the fee agreement looks like, but I believe there is  
4 another one that actually has the exact fee in it.

5 Q. And I will tell you that it appears that  
6 the one, two, three, four, fifth page of this  
7 document, I believe, should have been the last page.  
8 I copied it in the order it was delivered to me.

9 A. Yeah. I mean, I think it may have  
10 gotten out of order. I mean, there is a packet  
11 that's given with this initial -- a whole packet of  
12 a bunch -- some other stuff, including this contents  
13 for novel, as well as a financial declaration form  
14 that she was given at that first meeting.

15 Q. Okay. It appears on the first page that  
16 the client circled in the -- I guess the third  
17 paragraph that begins with Ms. Potterfield?

18 A. Uh-huh.

19 Q. It appears that Ms. Powell circled her  
20 desire for a divorce --

21 A. Right.

22 Q. -- in this initial meeting?

23 A. Right.

24 Q. While we're on this page, there's a  
25 reference to Ms. Bunni Crawford?

1 A. Right.

2 Q. Do you know Ms. Crawford?

3 A. I do.

4 Q. Prior to June 23, 2003, did you speak  
5 with Ms. Crawford about Ms. Powell?

6 A. I don't remember doing that. No.

7 Q. At the bottom of the page -- well, let  
8 me ask you this. Who filled out what you see on  
9 this page, all the handwriting?

10 A. This would be Ms. Powell's.

11 Q. And so Ms. Powell circled -- in the very  
12 last paragraph on Page 1, she circled that she'd  
13 experienced difficulties in her marriage concerning  
14 her spouse since she circled adultery?

15 A. Right.

16 Q. Second page, she contends that her  
17 spouse was more responsible for the difficulties  
18 than she?

19 A. Right.

20 Q. Did you develop the contents of this  
21 form document?

22 A. I did not.

23 Q. Did you review it once you were in  
24 practice with Mr. Golden?

25 A. Yes.

1 Q. Who did prepare the contents?

2 A. Initially, Mr. Golden did. I don't know  
3 which -- if there -- when revisions were exactly  
4 made on it. I've made some. Michael had made some.  
5 Almand had made some. There were revisions along  
6 and along, but the basis of it was Mr. Golden.

7 Q. Was there anything in this form,  
8 attorney -- excuse me, this form fee agreement and  
9 acknowledgement that you did not agree with?

10 A. There probably are.

11 Q. Could you tell me what it is in this  
12 document that you did not agree with?

13 A. Can't put my finger on it right now, but  
14 there -- at one point, there was some stuff in here  
15 that Mr. Golden put in about his health and putting  
16 mine aside that -- oh, here it is. I don't know  
17 what page.

18 Q. What's the bottom right-hand corner  
19 number?

20 A. 266.

21 Q. Okay. And what paragraph are you  
22 referring to?

23 A. I don't know that I ever agreed with the  
24 terminology of ruin her health for me. That was  
25 kind of a Mr. Golden thing.

1 Q. But are there any other provisions in  
2 this form agreement that you did not agree with?

3 A. I don't think so.

4 Q. On the second page, of 264 on the  
5 right-hand corner, there's a final paragraph. Talks  
6 about reasons for higher than usual fees that Ms.  
7 Potterfield charges for domestic cases.

8 A. Yeah. I think that more or less applied  
9 to Mr. Golden because I think, at the time, my  
10 hourly rate, as well as Ms. Barron's hourly rate,  
11 were certainly not high.

12 Q. Did you talk about that with Ms. Powell  
13 when you all were discussing this agreement?

14 A. No, not that I remember.

15 Q. And this document says that -- that same  
16 paragraph says that one of the reasons for the  
17 higher than usual fees and it goes on. I'm not  
18 going to read all of it for the record; but at the  
19 very end, that last phrase of it says to be  
20 aggressive and an attorney who recognizes a complete  
21 commitment to the client. See that part?

22 A. Uh-huh. I do.

23 Q. Did you say anything to Ms. Powell in  
24 June of 2003 that would lead her to believe that  
25 your representation was going to be anything other

1 than what it says there in this bottom paragraph of  
2 Page 2 of this agreement marked as Exhibit 3 to your  
3 deposition?

4 A. No, I don't remember saying anything  
5 like that.

6 Q. Did you all discuss the language in the  
7 foregoing para -- the paragraph right before that,  
8 last sentence that says: Delay in starting this  
9 action -- excuse me. Delay in starting the action  
10 may considerably prejudice a client?

11 A. No. We didn't discuss that.

12 (PLF. EXH. 4, Document Bates Stamped  
13 Original Client 257 through 262, was  
14 marked for identification.)

15 BY MR. PENDARVIS:

16 Q. Ms. Potterfield, I'm passing you now a  
17 document marked as Exhibit 4 to your deposition.  
18 I'm going to describe it by the title. It says, To  
19 prospective clients: Please read this first. Is  
20 this part of the package that you described earlier  
21 that was delivered to the clients as part of the  
22 opening part of the representation?

23 A. Right. This would have been given to  
24 her at the initial consultation.

25 Q. Did you go through this document with

1 Ms. Powell?

2 A. I don't remember going through this  
3 specific document with her.

4 Q. Did you tell her she needed to read it  
5 and understand better about her case or anything  
6 like that?

7 A. I don't know that -- I don't remember  
8 having that conversation with her, no.

9 Q. Tell us about the meeting. Did you meet  
10 with Ms. Powell on June 23, 2003?

11 A. I believe I did.

12 Q. Tell us about that meeting.

13 A. Don't really have a lot of recollection  
14 about that initial meeting.

15 Q. Where was the meeting? Where did it  
16 take place?

17 A. Like I say, I really don't remember the  
18 initial consultation. I mean, I know it happened  
19 that day because based on this. (Indicating.)

20 Q. Do you meet in your office with clients  
21 for the first time?

22 A. We usually meet in a conference room.

23 Q. So more likely it took place at the  
24 Golden, Potterfield, Taylor offices?

25 A. Right.

1 Q. Okay. Do you remember morning or  
2 afternoon, midday?

3 A. I do not.

4 Q. Do you remember anything of the  
5 substance of the conversation during the meeting?

6 A. I remember talking about what she had  
7 been through before when they had gone through it  
8 earlier, four or five years before that.

9 Q. The 1997 time period?

10 A. Right.

11 Q. Okay.

12 A. And how she felt about that process and  
13 that she did not want to endure that again.

14 Q. How did she describe that '97 process?

15 A. That it was very difficult, lots of  
16 allegations from both sides, two very aggressive  
17 lawyers, and the litigation process was very  
18 stressful.

19 Q. Mr. McDougall and --

20 A. Mr. McLaren.

21 Q. -- McLaren, Jim McLaren?

22 A. (Nodding head.)

23 Q. Okay.

24 A. And I recall her saying it was very  
25 expensive.



1 Q. What were the results of the 1997 thing?

2 A. They reconciled.

3 Q. So is that the beginning of the  
4 conversation that she started telling about the  
5 earlier events and did that conversation lead  
6 further, any other substantive things in that  
7 meeting?

8 A. I remember talking about the set up of  
9 Mr. Powell's businesses with his brother and Tim  
10 Tyler. I remember that all -- it seemed to me that  
11 every piece of property they had was for sale.  
12 Beach house, houses.

13 Q. Did she tell you why everything was for  
14 sale?

15 A. I don't remember if she told me why.

16 Q. Did that concern you?

17 A. No.

18 Q. Why not?

19 A. It's hard to hide a property  
20 transaction.

21 Q. Okay. What else did you discuss?

22 A. I have some memory of that she wasn't  
23 exactly sure if she was ready to proceed. She  
24 thought she was. She and Mr. Powell were going to  
25 talk about an agreement and that's the way that she

1 wanted to proceed was to work on a settlement, a  
2 property agreement rather than do the litigation  
3 like they had tried before.

4 Q. What was your understanding of what had  
5 happened before in the litigation?

6 A. Like I said, there was lots of false  
7 allegations on each side. I think, from what she  
8 told me, that he was very mean to her.

9 Q. You're talking about her husband?

10 A. Right. That Mr. Powell was mean to her  
11 during that process. That's pretty much -- that it  
12 was very stressful, you know, going through that  
13 process. That he was, at that point, out to make  
14 sure that she would have nothing.

15 Q. Were any pendente lite orders issued in  
16 the earlier case?

17 A. Not that I'm aware of. I think perhaps  
18 they reconciled right before that happened, but I'm  
19 not 100 percent sure about that.

20 Q. I'm just a little confused because we've  
21 looked at Document 3, where she signed off, says she  
22 wants a divorce based -- and contends that her  
23 husband has committed adultery and I'm just not sure  
24 what you were -- I mean, did you ask her what did  
25 she want you to do?

1           A.    I don't know if I asked her that  
2           question. I mean, just because this is circled  
3           doesn't mean that somebody's absolutely ready to do  
4           that that day or that it should be done that day. I  
5           mean, I have notes of conversations with her, you  
6           know, after that, into August where she wasn't sure  
7           if she was ready to go forward with that. So I  
8           mean, just because that's circled doesn't -- I mean,  
9           that doesn't mean that that was an absolute, had to  
10          be done that day.

11          Q.    Did you record any notes from your first  
12          meeting in June of 2003 with Ms. Powell?

13          A.    I don't usually take notes during  
14          consultations because, frankly, I think it's rude.  
15          You know, that's your first impression and time to  
16          talk to somebody. And so I don't think I did and I  
17          don't -- haven't been able to find them if they are.

18          Q.    Did you talk to Ms. Powell during that  
19          first June 2003 -- let me rephrase that. I've got a  
20          better question.

21                   After you gave this document marked as  
22          Exhibit 4, this to prospective clients, please read  
23          first document, did you later go through the  
24          contents with Ms. Powell in detail and explain  
25          things that were general concepts that apply to

1 divorce cases and explain details related to those  
2 concepts to her?

3 A. At that first meeting?

4 Q. Well, after. Well, let's break it down.  
5 First, at the first meeting. I think you said  
6 earlier you didn't recall?

7 A. Yeah. I don't remember going through  
8 this document with her.

9 Q. And now my question is, after that June  
10 23rd meeting, do you recall going through the topics  
11 in this document with Ms. Powell?

12 A. There are probably topics in here that  
13 we did go over at some point in time. I don't  
14 remember taking this document and taking each piece  
15 and going over it with her at any point.

16 Q. There's some language on the third page,  
17 259 in the right-hand corner of Exhibit 4, Paragraph  
18 Numeral 4, that talks about adultery issues that may  
19 come into play in a divorce. I'm just summarily  
20 describing that.

21 A. (Nodding head.)

22 Q. Did you discuss that topic with Ms.  
23 Powell in June of 2003?

24 A. I don't recall specifically discussing  
25 this with her. I know we talked about her husband's

1 adultery, but I don't recall specifically discussing  
2 that. I know we talked about fault issues that she  
3 was aware of from her previous litigation, which  
4 would have included the adultery, because there were  
5 some adultery claims on both sides in that previous  
6 litigation. But I don't know that I went through  
7 this specific paragraph with her that day.

8 Q. And then my question really is a follow  
9 up. After that point, did you have this  
10 conversation with Ms. Powell about her conduct  
11 during the pending divorce proceeding or at any  
12 time?

13 A. I believe I did. Particularly after Ms.  
14 Sherman brought to my attention that they had some  
15 suspicions.

16 Q. In the June 2003 meeting with Ms.  
17 Powell, did you discuss temporary relief, pendente  
18 lite hearing, anything of that nature?

19 A. I don't recall that specifically. Since  
20 she wanted to reach a permanent settlement and they  
21 were still living together at the time, I just  
22 remember us focusing on what she -- how she wanted  
23 to approach the case.

24 Q. Was there anything inconsistent with  
25 getting some temporary relief that would prohibit a

1 permanent resolution? Just an in general question,  
2 not really specific to Ms. Powell.

3 A. There could be, yes.

4 Q. Explain.

5 A. Well -- and there are many scenarios  
6 that a temporary hearing could affect a permanent  
7 hearing. If you were to lose your position on a  
8 specific item, then the other party will probably  
9 not be willing to work with you on that because they  
10 feel like the Court's already made a decision or  
11 somewhat of a decision on that and it sets a  
12 precedence. If you get a judge that doesn't what to  
13 give you alimony, then it's going to be hard to get  
14 it in a permanent agreement. If you get a judge  
15 that gives you bad visitation, that's hard to undo  
16 on a permanent basis. And there are lots of  
17 scenarios where a temporary hearing could definitely  
18 impact the final agreement or settlement or trial.

19 Q. And when you have strong evidence in  
20 support of your client on some material points that  
21 would favor or you would believe would tend to favor  
22 a client at a temporary hearing, isn't it your  
23 course to proceed with the temporary hearing if  
24 you've got the evidence that's going to establish  
25 these points?

1 A. Not necessarily. I mean, you have to  
2 take all of the points into consideration.

3 Q. And we're going to look at some of this  
4 information, but didn't Ms. Powell give you a PI  
5 report that had strong evidence that the husband had  
6 committed adultery --

7 A. Yes.

8 Q. -- prior to -- I mean, early in the  
9 representation?

10 A. We did have a PI report.

11 Q. And wouldn't that have allowed you to go  
12 into a pendente lite hearing and get alimony  
13 immediately?

14 A. Not necessarily, no.

15 Q. What would be -- why would that not  
16 necessarily happen?

17 A. Because the adultery doesn't necessarily  
18 have anything to do with the amount of alimony that  
19 you get. The alimony is based on a lot of different  
20 factors.

21 Q. Was there any factor on Ms. Powell's  
22 alimony claim that gave you concern she might not  
23 recover it if you went to the Court on a pendente  
24 lite basis?

25 A. Yes.

1 Q. What was that?

2 A. Well, there were several.

3 Q. Please explain.

4 A. He was paying, on a voluntary basis, a  
5 great deal of money that could not be substantiated  
6 by his flow of income and that was a concern  
7 throughout the entire case.

8 Q. That Mr. Powell just didn't have a  
9 regular income source?

10 A. That is one of the primary -- that was a  
11 primary problem. Yes.

12 Q. Did you explain that to Ms. Powell?

13 A. We discussed that many times. Yes.

14 Q. Your document you gave her, Exhibit 4,  
15 Page 260, Paragraph Number 6, would suggest to the  
16 reader that Ms. Powell, as a mother, is the favored  
17 suitor in a pendente lite circumstance, does it not?

18 MR. HILL: Object to the form.

19 THE WITNESS: I don't know that it  
20 necessarily does that. I think that this explains  
21 all the things that can go into a temporary hearing.

22 BY MR. PENDARVIS:

23 Q. Did you discuss these issues outlined in  
24 Paragraph Number 6 on Page 260 of Exhibit 4 with Ms.  
25 Powell that day of June 2003?



1           A.    I do not recall discussing this specific  
2 paragraph with her that day.

3           Q.    Did you discuss a temporary hearing with  
4 her?

5           A.    We may have. I don't have specific  
6 memory of talking about temporary relief, because  
7 they were still living together at the time and she  
8 was not sure how she wanted to proceed that day.

9           Q.    Is there anything else from the June  
10 2003 meeting we haven't talked about that y'all  
11 discussed?

12          A.    I'm sure there is. I just don't really  
13 remember all the details of that meeting.

14          Q.    So what was your general understanding  
15 of what Ms. Powell was asking you to do when she --  
16 when the meeting concluded in June of 2003?

17          A.    From what I remember, she was just  
18 beginning the process again of deciding to separate  
19 and wanted to take a different path than they had  
20 done before. She was going to gather some  
21 information, get me some more information together.  
22 You know, I gave her this packet to do her novel.  
23 You know, basically, it's kind of an informative  
24 meeting, you know, to start the process, get  
25 yourself -- what do you want to do and how do you

1 want to proceed? And my impression from that day  
2 was that she wanted to do it in the most amicable  
3 way, fashion with her husband.

4 Q. And I'm understanding this is after  
5 she's reached the point to come see a lawyer; right?

6 A. Right.

7 Q. So in her mind -- I mean, as the lawyer,  
8 you've got someone coming in the door that's at  
9 least gotten to the point where they think they need  
10 to get a lawyer involved to start helping with  
11 things?

12 A. Right.

13 Q. Okay. And my understanding, based on  
14 the package that you delivered to the client with  
15 the blank financial declaration, this information  
16 package we've marked as Exhibit 4, that she was --  
17 and the request for the novel, that she was then to  
18 go gather this information, complete the forms  
19 you've given her, and bring that back to you to get  
20 things started. Is that fair paraphrasing?

21 A. Yes.

22 Q. Okay.

23 (PLF. EXH. 5, Rough Draft Bates Stamped  
24 Original Client 385 through 389, was  
25 marked for identification.)

1 BY MR. PENDARVIS:

2 Q. Ms. Potterfield, I'm passing you another  
3 group of information marked as Exhibit 5 to your  
4 deposition. And it's a rough draft of some things  
5 and it looks like it's her response to your request  
6 to do the novel and it's got a received date stamp  
7 of July 1, 2003. First off, have you seen this  
8 document before?

9 A. I have.

10 Q. This was produced from your files?

11 A. Yes.

12 Q. Do you know who made that stamp?

13 A. It would have been whoever opened the  
14 mail that day at our office.

15 Q. Someone in your office?

16 A. (Nodding head.)

17 Q. So by this time, Ms. Powell has put  
18 something together for you about her objective or  
19 her novel?

20 A. That's right.

21 Q. And she's telling you, really the first  
22 sentence, she wants to proceed with filing  
23 immediately; right?

24 A. That's what it says.

25 Q. Did you get this in your office once it

1 came in?

2 A. Yes, I'm sure I did.

3 Q. And what happened? What did you do next  
4 after you got this?

5 A. I don't know.

6 Q. Are any of the handwritings on the first  
7 page of Exhibit 5 your handwriting?

8 A. Yes.

9 Q. Tell me which.

10 A. All of this is my handwriting.

11 Q. Can we start on the left-hand corner --  
12 left side, excuse me, and could you read it and  
13 explain what we're looking at?

14 A. Yes. The TL 7/14/03 would have been a  
15 telephone conference with the private investigator,  
16 which was Brenda Cooke.

17 Q. Okay. And tell me about that  
18 conversation.

19 A. I don't have any specific memory of that  
20 conversation. I know from the other notes and stuff  
21 that she was working on the case. She brought in  
22 the report to me later, but I don't remember -- I  
23 don't remember what Cookie and I would have talked  
24 about in that conversation. I assume she probably  
25 said this is what I've got so far.

1 Q. She goes by Cookie?

2 A. She does. It's Brenda Cooke, but she  
3 goes by Cookie, which is somewhat confusing because  
4 we also had a secretary at the time named Cookie  
5 Ackerson.

6 Q. That helps. I've seen that a couple of  
7 times. Do you use Ms. Cookie Cooke as a private  
8 investigator for you in other matters?

9 A. I have and still do.

10 Q. Still do? All right. So that's the  
11 first note, telephone conversation July 14, '03 with  
12 private investigator?

13 A. Uh-huh.

14 Q. What's below that?

15 A. Then that would have been a telephone  
16 conference with Ms. Powell on the 15th of July,  
17 where she is still deciding what to do about filing  
18 is what that note says.

19 Q. Well, did you ask her? I mean, you had  
20 the main document that this is written on and the  
21 first sentence says she wants to file immediately.  
22 And what did she say in the phone conversation  
23 different than what she wrote to you?

24 A. Obviously something different because we  
25 did not do that and she was still deciding what she

1 wanted to do. In general, you have to be careful,  
2 you know, about what you ask for. Sometimes you  
3 might get it. If you file for divorce on adultery,  
4 the you're shooting the first arrow over the bow and  
5 perhaps that's not how you want to start it if  
6 you're trying to reach an agreement. And she  
7 consistently, despite this, wanted to reach an  
8 agreement with him. Because in our next  
9 conversation, which is the other note, on August  
10 8th, she wanted me to put an agreement together.  
11 She wants to put an agreement together.

12 Q. This is August 8, '03, TC about putting  
13 an agreement together. Am I reading that right?

14 A. That's right.

15 Q. And the .05 is the amount of time on  
16 your call?

17 A. Right.

18 Q. So you've got notes from two  
19 conversations in the Summer of 2003, the July 15th  
20 conversation with Ms. Powell and then another one on  
21 August 8th of 2003?

22 A. Those are the notes on here, yes.

23 Q. Were there any other telephone  
24 conversations with Ms. Powell in the meantime?

25 A. There probably were. It would make

1 sense to me that there was probably a conversation  
2 prior to this July 14th, to tell me that Cookie was  
3 going to be calling about the PI report or that I  
4 needed -- that I would have told Ms. Powell to have  
5 the PI call me, because she would have to give the  
6 PI permission to talk to me in the first place. So  
7 there was probably a conversation in between there,  
8 after receiving this and talking to the PI.

9 Q. In any of those conversations, and I'm  
10 just really trying to get an understanding of what  
11 the plan was, did you discuss with her the points  
12 Ms. Powell put together in her novel? I'm calling  
13 it that because that's what the top phrase says on  
14 Page 2 of Exhibit 5.

15 A. We probably did discuss that in both the  
16 July 15th and the August 8th conversations.

17 Q. Do you have any notes about any of the  
18 comments or conversations about the topics set forth  
19 in the novel?

20 A. Other than these, I don't. I don't  
21 know. I'd have to -- I mean, you have all those  
22 notes. So if there are other notes, they're in the  
23 file. I'd have to have them in front of me to  
24 remember from Summer of 2003.

25 Q. Okay.

1 (PLF. EXH. 6, Phone Call Bates Stamped  
2 Original Client 182, was marked for  
3 identification.)

4 BY MR. PENDARVIS:

5 Q. And I'm passing to you a phone note, it  
6 looks like, that I've marked as the next exhibit,  
7 Number 6, to your deposition. Is this another one  
8 of the phone calls that you just a moment ago talked  
9 about possibly happening?

10 A. Yeah. That would make sense. That if  
11 she dropped off the novel on the 1st, then we would  
12 have talked after that, but prior to the telephone  
13 conference with the PI.

14 Q. Okay.

15 (PLF. EXH. 7, Letter to J. Michael  
16 Taylor from James C. Copeland, Dated  
17 February 23, 2006, Bates Stamped  
18 Original Client 19, was marked for  
19 identification.)

20 BY MR. PENDARVIS:

21 Q. This next one is going to seem way out  
22 of order. I'm passing to you now a document marked  
23 as Exhibit Number 7 to your deposition. And it  
24 appears to be a letter much, much later; but there's  
25 a reference in the handwritten note. Is that your



1 handwriting on the bottom left-hand corner of  
2 Exhibit 7?

3 A. It appears to be. Yes.

4 Q. And is this when Ms. Powell told you  
5 she'd made her mind up, she's ready to file suite  
6 against Mr. Powell for divorce?

7 A. I don't take it that way. I take it  
8 that she was -- in July 2003, she's still talking to  
9 him and trying to work it out. And then now has  
10 decided to file rather than talk would have come at  
11 some other portion, although I don't know why it  
12 would have been on this document in 2006, unless it  
13 was on a note that was on the original of this  
14 document. Like a sticky note that perhaps had  
15 gotten -- I don't know.

16 Q. This is a discovery deposition. I'm  
17 trying to find out, too. But do you believe it's  
18 possibly a sticky note from a conversation you had  
19 on July 7, 2003 with Ms. Powell?

20 A. Perhaps. Because, I mean, that doesn't  
21 make any sense that it would be on this letter in  
22 '06.

23 Q. What happened in this July 7, 2003  
24 telephone conference?

25 A. We must have talked; but then we

1 subsequently talked on the 15th on July and on  
2 August 8th, where she obviously changed her mind  
3 about that.

4 Q. Did you tell her anything about this  
5 decision, about her request for filing?

6 A. I'm sure we discussed the pros and cons  
7 of going ahead and filing. You know, the goal was  
8 to reach an agreement at that point and, you know,  
9 if you could pick the best way to do something in  
10 any case, we'd reach an agreement that you can live  
11 with and then file for divorce, because then you  
12 only have one hearing, one set of pleadings. But my  
13 note subsequent to this note, she was obviously not  
14 completely decided on that.

15 Q. What is the effect of a filing of a  
16 divorce in terms of the parties -- the property  
17 owned by the parties to the marriage?

18 A. Well, it depends on the properties.

19 Q. Okay. Let me restate the question then.  
20 What affect does the filing of divorce have on the  
21 properties owned by the parties that are considered  
22 marital property?

23 A. Again, it just depends on the  
24 properties. You know, filing date can set  
25 evaluation date; but that's never set in stone all

1 of the time either because accounts fluctuate,  
2 property values fluctuate, so it just depends.

3 Q. In a hypothetical case, if a complaint  
4 is filed on Month 1, Day 1, Year 1, do properties  
5 disposed of by one of the parties to the divorce  
6 prior to the filing date, is that considered still  
7 marital property?

8 A. It depends on the property.

9 Q. Okay. What properties? If we have a  
10 filing date and we find out that one of the spouses  
11 disposed of property prior to the filing date, are  
12 there times when that property can be considered  
13 marital?

14 A. There are probably times, yeah.

15 Q. When would be an example that would be  
16 considered marital property?

17 A. Well, it would depend on the property.  
18 If you sell something, if you sell a house, for  
19 example, it doesn't just disappear. The money still  
20 has to be accounted for, stuff to say where it went,  
21 could still send subpoenas about it. It just  
22 doesn't disappear. But I mean, you're saying  
23 marital property. The Court has to determine if  
24 it's marital or not, unless you stipulate that it's  
25 marital. To me, that's kind of a question that's

1 hard to answer specifically because, I mean, you --  
2 unless you take a specific piece of property.

3 Q. Well, I guess what I'm saying is, in  
4 general, doesn't the filing date define the scope of  
5 the marital estate?

6 A. In general it's supposed to, yes.

7 Q. And generally speaking, things that  
8 happen with parties' property prior to the filing of  
9 a divorce don't really impact what determines  
10 marital property in the marital estate generally  
11 speaking?

12 A. Now say that again.

13 Q. That may have been a poor question. Let  
14 me see if I can state it better. Generally  
15 speaking, a husband or spouse's activities with  
16 regard to their property prior to the filing of a  
17 divorce -- restate it again.

18 The filing of a divorce defines what is  
19 the marital property typically; correct?

20 A. No.

21 Q. Okay. What defines what is marital  
22 property?

23 A. I mean, that's a -- there is so much  
24 that goes into that. I mean, there's a lot that can  
25 go into that. It just depends on the property.

1 Q. Are there circumstances where parties  
2 dispose of property three or four years before a  
3 divorce and it becomes marital property four years  
4 later when their divorce is final?

5 A. That would depend on if the property  
6 disposed of was or could have been considered  
7 marital. It could. I mean, there's so many  
8 different scenarios that could impact that.

9 Q. Well, let's limit it to what would be  
10 considered marital property. Ms. Potterfield, what  
11 I'm trying to get to is I understood your testimony  
12 earlier that the proceeds from the sale are still  
13 in -- you would consider to be in the ownership of  
14 one of the spouses and, at the date of filing, the  
15 proceeds from the prior sale, some form of that  
16 would still be in the marital estate. Is that a  
17 fair characterization of what you were trying --

18 A. That is an example. There are hundreds  
19 of other examples of disposing of property prior to  
20 a filing date.

21 Q. Okay.

22 (PLF. EXH. 8, BJR International's Report  
23 Dated July 21, 2003, Bates Stamped 00185  
24 through 00194, was marked for  
25 identification.)

1 BY MR. PENDARVIS:

2 Q. Ms. Potterfield, I'm passing to you a  
3 document marked Exhibit 8 to your deposition and I'm  
4 going to represent to you that this might be Cookie  
5 Cooke's PI report. Have you seen this before today?

6 A. Yes.

7 Q. And did you discuss this report with  
8 Ms. -- Cookie in that conversation on --

9 A. My notes reflect that I did on July 14,  
10 2003. I don't have any specific recollection of  
11 that conversation.

12 Q. From what it appears, Ms. -- I keep  
13 calling her Cookie. Ms. Cooke, I'll call her, had  
14 been conducting some surveillances the early part of  
15 June, June 8, 2003; correct?

16 A. That's what her report says, yes.

17 Q. Did she give you an opinion about  
18 whether she thought Mr. Conrad Powell had committed  
19 adultery?

20 A. I don't remember if she did or not.

21 Q. As you were gathering this information,  
22 what was your opinion of being able to establish  
23 adultery based on this report?

24 A. My memory is that this report, and I'm  
25 not having read it all thoroughly again, puts them

1 in a hotel room, puts them together a lot. If I'm  
2 remembering correctly, Ms. Powell had some other  
3 information as well that would have gone along with  
4 this. He did deny it later. I don't know that -- I  
5 don't remember really getting into the details of  
6 what we were going to need to prove that this  
7 relationship was in fact ongoing.

8 Q. But am I correct in understanding you  
9 had information to support incentive and opportunity  
10 for adultery by Mr. Conrad Powell based on this  
11 report and the other evidence Ms. Powell had  
12 delivered to you?

13 A. Yes. I believe that this would have  
14 been enough -- a prima facie case for adultery.

15 Q. Did you tell Ms. Powell that?

16 A. I believe that we did discuss that.  
17 After I had talked to Cookie, we probably talked  
18 about that on that July 15, 2003. I'm sure we  
19 probably talked about it again when he decided to  
20 deny it.

21 Q. And what did you say?

22 A. I don't remember specifically; but I  
23 mean, we did have the PI report, which is normally  
24 the best evidence for a Court.

25 Q. I understand. And did you tell Ms.

1 Powell that, that you had the best evidence for the  
2 Court using this PI report?

3 A. I don't remember specifically saying  
4 that.

5 Q. More likely than not?

6 A. I'm sure we discussed this at some  
7 point.

8 Q. I understand. I'm just trying to find  
9 out what you told her.

10 A. Well, I wish I could remember it that  
11 far back. I don't remember specifically what I told  
12 her about that.

13 Q. Do you remember telling her that you had  
14 sufficient evidence to establish that her husband  
15 had committed adultery?

16 A. I don't know if I said those exact  
17 words.

18 Q. Would you say words to that effect?

19 A. Probably, yeah.

20 Q. Did you discuss the pros and cons of  
21 proceeding with filing a complaint, seeking pendente  
22 lite in the Summer of 2003?

23 A. Yeah. We would have discussed that. We  
24 discussed that from the beginning. Yes.

25 (PLF. EXH. 9, Letter to Ashlin from



1 Carolyn Powell, Dated September 2, 2003,  
2 Bates Stamped 00196 through 00199, was  
3 marked for identification.)

4 MR. WATSON: Can we take a couple of  
5 minutes?

6 MR. PENDARVIS: Sure.

7 (A recess transpired.)

8 BY MR. PENDARVIS:

9 Q. Ms. Potterfield, I'm passing to you a  
10 marked Exhibit 9 and it's a document -- appears to  
11 be a letter written to you by Ms. Powell dated  
12 September 2, 2003. Have you seen this document  
13 before?

14 A. Yes.

15 Q. Now, before we get into some questions  
16 on that, after the August phone call referenced in  
17 your note, what was the general plan for your  
18 representation of Ms. Powell?

19 A. After -- talking about the note from  
20 August 8th?

21 Q. August 8th.

22 A. Is that we are going to get an agreement  
23 together.

24 Q. Okay. And did you start working on an  
25 agreement, separation agreement?

1 A. After -- some point after this, yes.

2 Q. Let me back up. I just presumed  
3 separation agreement. What type of agreement was  
4 contemplated in the August 8th conversation?

5 A. That would have been termed a separation  
6 agreement.

7 Q. That would have been part of --  
8 ultimately, if it had proceeded as considered or  
9 what was planned in August, that would have resulted  
10 in a divorce and an accompanying agreement to divide  
11 property and deal with the custody issues, all of  
12 that?

13 A. Well, the hope was that we would be in a  
14 complete agreement.

15 Q. Okay. But we're looking at -- let's  
16 turn our attention to Exhibit 9. In the first  
17 sentence, Ms. Powell is talking about a legal  
18 separation. Am I correct in understanding that the  
19 parties could separate, but not divorce, and divide  
20 property and deal with custody issues and still  
21 remain married?

22 A. That can happen.

23 Q. Was that ever part of the discussion  
24 with Ms. Powell about her situation with Conrad  
25 Powell?

1           A.    I think they discussed it.  You know, I  
2   don't remember what we discussed about that.  I  
3   mean, there's certainly several options..  You can  
4   reach an agreement before you separate.  You can  
5   reach an agreement and get it approved and get a  
6   decree of separate maintenance, stay married.  You  
7   can get an agreement and get divorced.

8           Q.    What do you believe Ms.. Powell was  
9   contemplating by this reference in this first  
10  sentence on paragraph -- I mean, the first page of  
11  Exhibit 9?

12          A.    I'm sorry.  Say that again.

13          Q.    What do you believe Mrs. Powell was  
14  considering and contemplating with reference to the  
15  filing a legal separation agreement as referenced on  
16  the first sentence of Exhibit 9?

17          A.    I took that that the two of them had  
18  been discussing reaching a complete agreement.

19          Q.    That included a divorce and property and  
20  custody and the other issues?

21          A.    Not necessarily a divorce.

22          Q.    Okay.

23          A.    Because you can't include the divorce in  
24  the agreement.  So I took this as if they were  
25  trying to reach an agreement as to the issues

1 between them.

2 Q. And then that would be accompanied,  
3 after a year living separate and apart, with a  
4 divorce or what?

5 A. Well, I mean, there could have been  
6 several options of what you do after they reach the  
7 agreement, depending on what they wanted to do.

8 Q. Did you discuss that with Ms. Powell?

9 A. I don't know if we discussed that  
10 because we were kind of putting -- you got to do  
11 first things first, but just get the agreement.

12 Q. Did you discuss the statements and the  
13 contents of Exhibit 9 with Ms. Powell?

14 A. I'm sure we did.

15 Q. Because it appears midway through the  
16 first page that she's telling you that she told Mr.  
17 Conrad Powell, quote, that the idea was totally  
18 unacceptable and offensive to me and we needed to  
19 talk about and agree on how to move forward with a  
20 legal agreement dividing our assets and agreeing to  
21 custody issues?

22 A. What I thought she was talking about is  
23 that he was willing to discuss some money division,  
24 but that -- do some things for her; but he wanted  
25 them to stay intact as a family until the girls

1 graduated from high school and she did not want to  
2 do that.

3 Q. In part because of the adultery issues  
4 and other things? Is that what she was telling you?

5 A. I don't know if that was the only reason  
6 that she felt like that was not what she wanted to  
7 do.

8 Q. Okay. Was that one of the reasons that  
9 she didn't want to have the marriage remain intact?

10 A. I don't know specifically if that was  
11 about the marriage remaining intact. It might have  
12 just been that she didn't want to live with him if  
13 that -- if he was going to continue his behavior.

14 Q. Did you all discuss the third full  
15 paragraph, where it says, please let's move quickly  
16 with this? Did you discuss the timing of what you  
17 were to be doing in the September time frame?

18 A. I don't know if we discussed the timing  
19 of that, no.

20 Q. You read this part where she's asking  
21 you to have this tentative agreement drawn up by  
22 that Friday?

23 A. I see that, where it says that. Yes.

24 Q. And did you discuss the timing and her  
25 desire to have this agreement drawn up fairly

1 quickly?

2 A. I don't remember a specific conversation  
3 about that.

4 Q. In general, what do you believe you told  
5 her about the timing of preparing an agreement?

6 A. I am sure we talked about putting an  
7 agreement together to get to him.

8 Q. Did you tell her how long it might take  
9 you to put that together?

10 A. I could have.

11 Q. How long does it take to type up an  
12 agreement, a separation agreement?

13 A. Depends on the agreement. Depends on  
14 how much information you have. Depends on if you're  
15 in the middle of trial. It depends -- I mean, it  
16 depends on a lot of things. It depends on whether  
17 or not, you know, this was Thursday and she wanted  
18 it on Friday. I mean, it just depends on a lot of  
19 things.

20 Q. Well, knowing what you know about what  
21 information you had in the Summer of 2003, how long  
22 would it have taken? And I'm not asking about other  
23 things that might have interfered with your  
24 opportunity, but just how much time would it have  
25 taken to put together an agreement based on what you

1 had in September 2003?

2 A. It's hard to say because this -- the  
3 details I had in this were probably not enough to  
4 put a full draft together.

5 Q. For the partial draft, does it take more  
6 than three or four lawyer hours to put together a  
7 partial draft settlement agreement, -- excuse me,  
8 separation agreement?

9 A. It can.

10 Q. What's the most amount of time it would  
11 have likely taken to put together a partial draft  
12 agreement in --

13 A. Just depends on the case.

14 Q. In this case in September 2003.

15 A. Yeah. It probably would have taken  
16 between two and three hours.

17 Q. Okay. Was there anything in this letter  
18 that you -- explaining her desires, that you told  
19 Ms. Powell that likely couldn't happen or wouldn't  
20 happen?

21 A. I know we had many conversations about  
22 the child support per month amount. I don't -- I  
23 can't tell you that we had a specific conversation  
24 September 2nd about it; but I know we've talked  
25 about that, her requested amount from him.

1 Q. I'm sorry.

2 A. The other thing we would have discussed  
3 is that -- her request that she get all the holidays  
4 was going to be highly unlikely.

5 Q. But the other property evaluation,  
6 proposed split percentages looked fairly reasonable  
7 to you?

8 A. Well, no. I mean, like I said, this  
9 wouldn't have given me enough to even put a very  
10 good draft together. You can't -- I mean, you  
11 can -- we would have discussed that the estate  
12 would -- not the estate, would have to be perhaps  
13 some life insurance.

14 Q. Okay. Did you --

15 A. And another thing is --

16 Q. Sorry.

17 A. -- she didn't -- the purchase of a  
18 separate home for her was an ongoing, lengthy  
19 process of where she wanted to live. That took a  
20 considerable amount of time to happen and work out  
21 because there was lots of decisions of where to go,  
22 when to go.

23 Q. Take a minute and look at this last  
24 page -- the next to the last page. I've got some  
25 questions about that.



1 A. (Complying.) Okay.

2 Q. Did you not get the sense of urgency  
3 from Ms. Powell after you read this final part of  
4 Exhibit 9?

5 A. No.

6 Q. Well, did you discuss her request that  
7 we should -- next to the last sentence -- the last  
8 sentence that says: Therefore I think we should be  
9 prepared to act quickly in case the validity of my  
10 attempt to peacefully and jointly agree on the  
11 parameters of a legal separation backfire?

12 A. Yes. That's not an urgent thing.  
13 That's just, you know, let's be ready. And we had  
14 the proof of the adultery, so we were ready. The  
15 interesting thing is he couldn't file papers at that  
16 point because they were still living together.

17 Q. Ms. Potterfield, did you seek to be  
18 appointed as a Family Court Judge?

19 A. I did apply and go through the screening  
20 process.

21 Q. When did you apply for a Family Court  
22 Judge position?

23 A. I don't remember when those applications  
24 were actually due. It was probably in May of '04.  
25 Maybe not. Maybe it was later in the Fall. I know

1 that the public hearing for that was the beginning  
2 of December.

3 Q. Of 2004?

4 A. Of 2004.

5 Q. What's involved in the process to apply  
6 for a Family Court Judge position?

7 A. There's a lengthy application that you  
8 have to fill out. You have to take a written test,  
9 do an interview with a citizens committee, interview  
10 with the bar committee. There is some contact with  
11 legislators, but that is really not as intense as it  
12 is after they nominate the three people to come out  
13 of screening.

14 Q. So what you've describe so far is what's  
15 called the screening process?

16 A. Right.

17 Q. How much time do you think it took to --  
18 and you did this process in the Summer/Fall of 2004?

19 A. Yeah. It was more the Fall, if I'm  
20 recalling, because they do -- most of those  
21 interviews kind of go right up until the hearing in  
22 front of the commission, the final hearing, the  
23 public hearing.

24 Q. So the citizens committee, the bar  
25 committee, those are private sessions with those

1 committees?

2 A. I guess you could go if you're a public  
3 member. You could probably. I don't know. There  
4 were no other people there. I don't know that  
5 they're necessarily private.

6 Q. But there's a hearing that's announced  
7 for all public to attend, it's the public one you're  
8 discussing, the last hearing?

9 A. Right.

10 Q. Right. And there's an announcement to  
11 the public that there's this process; correct?

12 A. Right.

13 Q. How much time do you think you put into  
14 the application? From beginning with the  
15 application through the public hearing?

16 A. Not a great deal of time. I know I did  
17 the application over one weekend at home. Those  
18 interviews are scheduled. You know, so it's not  
19 like they make you sit around and wait for everybody  
20 to do theirs. None of them are very lengthy.

21 Q. How much time did you study for the  
22 written test?

23 A. Not terribly long because, I mean, it's  
24 really just keeping up with the advance sheets,  
25 which we do. So it's kind of a general knowledge

1 test.

2 Q. Did you spend any time preparing for the  
3 written test?

4 A. I did.

5 Q. How much?

6 A. Two hours.

7 Q. Okay. And the written test, how long  
8 does it take?

9 A. They give you 30 minutes.

10 Q. What happened? Did you attend the  
11 public hearing?

12 A. I did. I had to testify.

13 Q. When was the public hearing?

14 A. Sometime in the beginning of December,  
15 within the first ten days; but I don't remember  
16 exactly.

17 Q. What was the results of the public  
18 hearing?

19 A. They nominated three people to be  
20 considered by the legislature for that Family Court  
21 seat.

22 Q. Were you one of the three people?

23 A. No.

24 Q. And is that the end of the process for  
25 you?

1 A. That is the end of it.

2 Q. Have you applied again?

3 A. No.

4 Q. Did you spend any time contacting  
5 legislators?

6 A. I met with a couple. That would have  
7 been more like in the Spring when we found out the  
8 seat was going to open. That would have been more  
9 like April, May.

10 Q. Of 2004?

11 A. Right.

12 Q. Did the application for judgeship  
13 process take time out of your law practice?

14 A. No. I did that on the weekend.

15 (PLF. EXH. 10, Copies of Three Checks,  
16 Bates Stamped Original Client 228 and  
17 229, was marked for identification.)

18 BY MR. PENDARVIS:

19 Q. Ms. Potterfield, I'm passing you an  
20 exhibit marked as Number 10 to this deposition.  
21 This appears to be the two checks referenced in  
22 Exhibit 9; is that correct?

23 A. (Nodding head.)

24 Q. You see the reference in the first page  
25 of Exhibit 9?

1 A. Right.

2 Q. Did Ms. Potterfield (sic) pay you any  
3 funds prior to September 5, September 2, 2003?

4 A. Yes. It would have been the  
5 consultation fee for the meeting in June.

6 Q. How much was that?

7 A. My hourly rate was 200, I believe, at  
8 that time; so it would have been \$200.

9 Q. You believe it was about an hour, that  
10 June meeting?

11 A. Yes.

12 Q. And if I'm understanding the process  
13 right, then this check would have been, the bottom  
14 check, the \$415 check was put in your escrow and  
15 then, a month or so later, you wrote a check to BJR?

16 A. Right. That would have been the PI.

17 Q. Cookie?

18 A. Right.

19 Q. Okay. Why didn't Ms. Powell just pay  
20 her directly?

21 A. I don't know. Well, I think -- I'll  
22 tell you what I think. I think that Cookie was  
23 going to bring the PI report to me and that just  
24 made it easier for each of them to -- when she  
25 delivered the report, she would get paid.

1 Q. Okay.

2 (PLF. EXH. 11, Fee Contract, Bates  
3 Stamped Original Client 274 and 275, was  
4 marked for identification.)

5 BY MR. PENDARVIS:

6 Q. Ms. Potterfield, I'm passing you a  
7 document marked Exhibit 11 to your deposition and is  
8 this a second fee agreement, fee contract with the  
9 client?

10 A. I don't really consider it the second  
11 one. I realize that that other document has it on  
12 the top, but this is really the retaining  
13 agreement -- retainer agreement.

14 Q. Did you tell Ms. Powell that you really  
15 weren't -- when did you consider an attorney/client  
16 relationship formed with Mrs. Powell?

17 A. When she signed this and paid us the  
18 consultation -- I mean, the retainer.

19 Q. And you don't consider the June meeting  
20 an attorney/client meeting?

21 A. I mean, I think it's an attorney/client  
22 meeting in the fact that it's confidential and that  
23 Conrad Powell would be conflicted out from seeing  
24 anybody in our office; but I don't think she had  
25 retained my services as a lawyer at that point.

1 Q. Okay. Did you give her advice in the  
2 June 2003 meeting?

3 A. I don't know if you would say it was  
4 advice or, you know, more of get this stuff together  
5 for me.

6 Q. Okay.

7 A. You know, this is what will happen if we  
8 do an agreement, you know, those kind of things.

9 Q. Why the two forms?

10 A. That's just the way we did it back then.

11 Q. Was there a reason why? And we're  
12 talking really about Exhibit 3 now. Was there a  
13 reason why there's a document called fee agreement  
14 and acknowledgements and another one called fee  
15 contract?

16 A. I don't know why that one is named fee  
17 agreement, when it's more of an acknowledgement, and  
18 then this is the fee agreement or the contract,  
19 this. Number 11.

20 Q. Okay. Did you meet with Ms. Powell in  
21 September 17th or on September 17th?

22 A. I don't know.

23 Q. On the second page of Exhibit 11, is  
24 that your signature?

25 A. It is. So I must have at least seen her



1 to sign that that day.

2 Q. Is that your handwriting on the date as  
3 well?

4 A. It is or it looks to be.

5 Q. Do you know when -- turning back to  
6 Exhibit 10. Do you know when Ms. Powell delivered  
7 the check, the top check, the \$3,000 check to you?

8 A. I believe it came with the September 2nd  
9 letter.

10 Q. Okay.

11 A. Because it's date the 5th and she'd  
12 asked me to hold it to deposit. So I think that  
13 also explains why that 415 check is dated 9/2/03 and  
14 the check to me is dated 9/5/03.

15 Q. Was Ms. Powell having difficulties with  
16 her finances?

17 A. I don't know why she needed me to hold  
18 that. I don't remember her telling me a specific  
19 reason.

20 (PLF. EXH. 12, Letter to Carolyn Powell  
21 from Ashlin Potterfield, Dated September  
22 17, 2003, Bates Stamped Original Client  
23 276 through 281, was marked for  
24 identification.)

25 BY MR. PENDARVIS:

1 Q. Ms. Potterfield, I've passed you a  
2 letter that apparently you wrote to Ms. Powell on  
3 September 17, 2003. It's been marked Exhibit 12.  
4 Have you seen this document before?

5 A. Yes.

6 Q. And it sounds like it -- it seems as  
7 though it's got some other explanations in it,  
8 almost in the nature of a fee agreement. Can you  
9 tell me why there's -- we have the June document,  
10 the earlier fee contract document, Exhibit 11, and  
11 then kind of another one in Number 12?

12 A. Again, it's just how we were doing it at  
13 the time.

14 Q. Did you discuss the contents of Exhibits  
15 11 or 12 with Ms. Powell when they were being signed  
16 or before they were being signed?

17 A. I don't have any specific recollection  
18 of discussing those with her, no.

19 Q. In particular, the fourth page of  
20 Exhibit 12, it says Original Client 279 on the  
21 bottom corner, the middle paragraph, under the  
22 heading attorney's fees and awards, did you talk  
23 about and discuss with Ms. Powell efforts you would  
24 make to have Mr. Powell pay attorney's fees?

25 A. I'm sure we did at some point. I don't

1 know if we did it right then or not. I know it was  
2 pled for in the compliant, so I'm sure we talked  
3 about it at some point.

4 Q. What did you tell her?

5 A. That we usually ask for fees from the  
6 other party, but that is no guarantee that you get  
7 it back.

8 Q. Did you explain the times and  
9 opportunities that you could make a request to the  
10 Court for the husband to pay attorney's fees?

11 A. I sure we did at some point. I don't  
12 have any specific recollection of that conversation.

13 Q. Did you discuss with her that y'all  
14 could file a complaint and have a motion for  
15 pendente lite relief and ask for attorney's fee from  
16 the very beginning?

17 A. We didn't really talk about much  
18 temporary relief in the beginning because they were  
19 still living together and she wanted to reach an  
20 agreement. I know that we discussed fees after  
21 that, in December '04, January '05, when we were  
22 negotiating with Ms. Sherman about the advancement  
23 of money to include some fees. So I know we talked  
24 about it around that time period.

25 Q. Did you tell her that, with the evidence

1 from Cookie, that you all could likely get some  
2 temporary relief immediately? And I'm talking in  
3 September, October of 2003.

4 A. See, we didn't really talk much about  
5 having a temporary hearing because that's not what  
6 she wanted to do. I mean, that's not the route she  
7 wanted to take. She wanted to reach an agreement on  
8 a permanent basis.

9 Q. And I've heard your testimony on that.  
10 My question to you though is, did you tell her all  
11 the options and the different options she had on how  
12 to proceed in order to allow her to make an informed  
13 decision on what she really wanted to do?

14 A. Yes. We discussed filing for divorce at  
15 that point. I think my notes indicate that, about  
16 talking about -- still deciding to do what about  
17 filing in July of '03. I'm sure we went through  
18 what would happen if we did that. You know, was  
19 that really what she wanted to do? And she did not.

20 Q. I'm trying to really focus in on did you  
21 say to Mrs. Powell, you have an option? If we file  
22 a complaint based on adultery, that we could  
23 immediately seek temporary relief and, based on this  
24 report, we have a pretty good chance of establishing  
25 the right to pendente lite relief, including

1 attorney's fees, maintenance and things like that.

2 A. The right to the relief really has  
3 not -- is not directly connected to the adultery.  
4 You also have to have the necessity for it. And  
5 there are lots of things that go into that decision  
6 making, which we discussed. Still living together,  
7 still getting along. You know, if we file for  
8 adultery and go to a temporary hearing, probably the  
9 odds of having a permanent agreement would disappear  
10 at that point and she did not want that.

11 I mean, I think that's reflected in my  
12 note about still deciding what to do about filing.  
13 We discussed those parameters. I mean, do this, do  
14 this, do this. I mean, we were in a good position  
15 in that there were lots of option for her. And the  
16 one she wanted to pursue at that point was an  
17 agreement. And that she and Conrad were discussing  
18 that directly.

19 (PLF. EXH. 13, Fax to Ashlin B.  
20 Potterfield, Dated September 19, 2003,  
21 Bates Stamped Original Client 393  
22 through 396, was marked for  
23 identification.)

24 BY MR. PENDARVIS:

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

1 document almost marked as Exhibit 13. I didn't push  
2 it down all the way. That appears to be a fax from  
3 Ms. Powell to you on September 19th. Did you  
4 receive this fax?

5 A. Yes.

6 Q. What did you discuss about it?

7 A. This would have been in September '03  
8 when they were still trying to discuss an agreement  
9 with each other. The notes that she found with  
10 financial information are attached.

11 Q. Did you discuss those notes with Ms.  
12 Powell?

13 A. We did.

14 Q. Tell me what you discussed with her.

15 A. We were both happy that we found  
16 these -- that she found these because it gave us a  
17 lot of information into what he was thinking.

18 Q. Such as?

19 A. I mean, basically it lays out what he  
20 thinks are the issues.

21 Q. What was favorable in this for Mrs.  
22 Powell?

23 A. Well, it gave us an insight as to what  
24 he thought the values were, debt, assets, what he  
25 was thinking as, you know, what he might want to do,

1 and that he was contemplating an agreement with her.  
2 I mean, you know, this is a positive thing that he  
3 was working on the numbers and that he was working  
4 toward an agreement, which is what we wanted.

5 Q. And this is a fax dated September 19th.  
6 When did you discuss this with Ms. Powell?

7 A. I'm not sure.

8 Q. Did you use any of this information  
9 later in the representation?

10 A. I'm sure we did.

11 Q. Do you know which parts or if any that  
12 you used?

13 A. No.

14 (PLF. EXH. 14, Letter to Ashlin from  
15 Carolyn, Bates Stamped Original Client  
16 399, was marked for identification.)

17 MR. PENDARVIS: Charlie, this is Exhibit  
18 14.

19 MR. HILL: Okay.

20 BY MR. PENDARVIS:

21 Q. Ms. Powell (sic), I'm passing you  
22 another document. This one is marked Exhibit 14.  
23 You seen this letter before, from Ms. Powell to you?

24 A. Yeah, I believe so.

25 Q. Is this a -- says there's a message, the

1 first sentence, Friday, September 26th.

2 A. Uh-huh.

3 Q. And there's no other date on this  
4 document. Is this contemporaneous with the  
5 preceding exhibit, 13? Sounds like it's all about  
6 the same. I'm just asking, is this September of  
7 2004?

8 MR. HILL: Object to the form.

9 THE WITNESS: You mean September 2003?

10 BY MR. PENDARVIS:

11 Q. Yes. I'm sorry. Thank you. 2003.

12 A. No. I think this goes with some  
13 additional notes from Tim to Terry, because there  
14 are some other -- there is a multiple handwritten  
15 page from Tim Tyler about his drug problem, which  
16 she has in quotes. I think this actually goes --  
17 does not go with this.

18 Q. So this might have been 2004?

19 A. I think that is probably -- I don't  
20 know. No. Because it says when Cookie delivered  
21 the report. There are other notes that went with  
22 this.

23 Q. Okay.

24 A. Not this note.

25 Q. But in terms of context, this is '03,



1 2003, September 2003 that's being referenced?

2 A. Yes. Because he had not moved out yet.

3 Q. Okay. This doesn't have the attached  
4 letter? Okay. What was the import of Mr. Tim  
5 Tyler's letter -- excuse me, Terry Powell's letter  
6 to Tim Tyler?

7 A. The one they're referring to in this?

8 Q. Yes.

9 A. Again, I think it was just some -- you  
10 know, giving us insight to what was going on with  
11 them. I don't think any of us -- I don't think Ms.  
12 Powell nor I had a great opinion of Mr. Tyler. I  
13 mean, I think that's why she used the word amusement  
14 because he was -- his behavior was always  
15 interesting. I don't know that that had any direct  
16 impact at the time. I think we were monitoring it  
17 because of them trying to buy out Tim Tyler or get  
18 him out of the business.

19 Q. And that that somehow might affect  
20 Conrad Powell's ownership interest in Mais Oui?

21 A. Not Mais Oui, I don't think. I think it  
22 was the other.

23 Q. Columbia Management?

24 A. Yes. And perhaps something else.

25 Q. Okay. Did you ever become concerned

1 that Mr. Conrad Powell might be moving assets,  
2 moving marital property around or transferring it?

3 A. Not completely because we had a lot of  
4 information and I -- if I'm remembering correctly, I  
5 think that he owned that prior to marriage. You  
6 know, with most of his -- well, the majority of the  
7 assets being property, it's hard to secret those.  
8 It's hard to move those without documentation that's  
9 not easily found. You know, we kind of had our  
10 fingers on where we thought everything was at the  
11 time.

12 (PLF. EXH. 15, Fax on Village Antiques  
13 Letterhead, Bates Stamped Original  
14 Client 400 through 404, was marked for  
15 identification.)

16 BY MR. PENDARVIS:

17 Q. Ms. Powell, I'm passing -- Ms.  
18 Potterfield, I'm passing you a document marked as  
19 Exhibit 15. Is this the Tim to Terry -- excuse me,  
20 Terry to Tim letter we were talking about?

21 A. I believe it is the one that she's  
22 referring to.

23 Q. Okay. And, again, this is another  
24 exhibit that's got -- it's a funny format.  
25 Producing it as I got it. It looks like the second

1 page of the exhibit is a partial copy of the first  
2 page.

3 A. I mean, I don't -- I just think it's  
4 illegible anyway.

5 Q. Definitely difficult to read. Did you  
6 attempt to read this?

7 A. I believe that Carolyn and I both did  
8 and tried to glean what we could from it. Just kind  
9 of a bunch of ranting from Terry to Tim.

10 Q. And, for the jury's benefit, tell who  
11 Terry and Tim are.

12 A. Terry would be Conrad Powell's brother  
13 and Tim Tyler worked with them.

14 Q. Is Mr. Tim Tyler also a CPA?

15 A. I believe he was.

16 Q. Was he also doing some financial tax  
17 reporting work for Mr. Conrad Powell and his  
18 businesses?

19 A. I think he was, yeah.

20 Q. So by September 2003, what were the  
21 plans for the representation?

22 A. We were working on an agreement.

23 Q. What was the timetable for the  
24 agreement?

25 A. No specific timetable. I think that Ms.

1 Powell was trying decide where she wanted to live.  
2 I think you can see from the notes that she found in  
3 the safe, you know, their discussions were that she  
4 didn't want to live in either of the homes that they  
5 had owned at the time. She didn't want Kenilworth  
6 and she didn't want Devine Street. She wanted  
7 another home. So we kind of couldn't put a complete  
8 agreement together until that determination had been  
9 made, where she wanted to live.

10 Q. Okay. So in essence, the ball was in  
11 Ms. Powell's court to get some focus on where she  
12 wanted to live and then things would happen on the  
13 agreement?

14 A. That was part of it.

15 Q. Well, were there any other parts?

16 A. You know, trying to decide what to do  
17 with the children and visitation and, you know, what  
18 she would need on a monthly basis, which was a  
19 little hard to determine because she didn't know  
20 where she was going to live.

21 Q. But she'd given you part of that with  
22 the preliminary draft settlement agreement that she  
23 sent to you in September; correct?

24 A. I mean, that was an idea that she had at  
25 that time.

1 Q. Okay.  
2 (PLF. EXH. 16, Letter to Ashlin from  
3 Carolyn Powell, Dated December 8, 2003,  
4 Bates Stamped Original Client 397 and  
5 398, were marked for identification.)

6 BY MR. PENDARVIS:

7 Q. Passing to you now another letter. This  
8 one has been marked Exhibit 16 to your deposition.  
9 This appear to be a letter from Ms. Powell to you  
10 dated December 8, 2003. Did you receive this  
11 letter?

12 A. I believe I did.

13 Q. Fax or e-mail?

14 A. She probably dropped it off.

15 Q. Were you communicating via e-mail in  
16 2003?

17 A. No.

18 Q. Did you begin using e-mails later?

19 A. Not during our representation of Ms.  
20 Powell.

21 Q. Okay. After you received this letter --  
22 well, let me stop there. Did you have a  
23 conversation with Ms. Powell on December 8, 2003?

24 A. I don't know.

25 Q. After you reviewed this -- and you

1 reviewed this letter sometime around December 8,  
2 2003?

3 A. Sometime around there, yeah.

4 Q. What did you discuss with her?

5 A. I'm sure we discussed him moving out and  
6 to Devine Street. She was still trying to work on  
7 an agreement, the terms with him. And that she  
8 didn't want to do that before Christmas.

9 Q. And she's basically saying, on this  
10 carryover page, that they're going to give it  
11 basically one more try and that, if we can't get a  
12 resolution, she's asking you to move forward with  
13 legal proceedings in the coming year; correct?

14 A. That's what this letter says, yeah.

15 Q. Well, did you respond to that? What did  
16 you say to Ms. Powell?

17 A. I don't remember a specific conversation  
18 about that. I'm sure I said, okay, if that's what  
19 you want to do, we'll do it. I mean, she changed  
20 her mind about that later; but I'm sure we discussed  
21 the pros and cons of going ahead and doing that.

22 Q. Did you discuss her mental condition?  
23 She's telling you she's feeling very depressed.

24 A. Probably not.

25 Q. Why not?

1           A.    I don't remember talking about that.  We  
2   probably did talk about she would feel better once  
3   he moved out and she didn't have to deal with him on  
4   a daily basis.

5                   (PLF. EXH. 17, 2003 DayMinder - Ashlin  
6                   B. Potterfield, Bates Stamped 02971  
7                   through 02976, was marked for  
8                   identification.)

9   BY MR. PENDARVIS:

10           Q.    Passing to you now a document marked  
11   Exhibit 17.  Appears to be a copy of portions of a  
12   DayTimer -- DayMinder.  First question, before I ask  
13   you about this exhibit, did you record your time  
14   entries or your appointments in a DayMinder?

15           A.    We did.

16           Q.    We did?  Is this a copy of the pages  
17   from your 2003 DayMinder that relate to your  
18   representation of Ms. Powell?

19           A.    It appears to be, yes.

20           Q.    Let's look through this.  So there's  
21   a -- second page, an entry on June 23rd, meeting?

22           A.    Right.

23           Q.    Three in the afternoon.  The next one is  
24   August 8th, reference to a telephone call?

25           A.    Right.

1 Q. I think we've talked about that. The  
2 next one is a reference to a September 15th  
3 telephone call or is that a meeting?

4 A. On here, it looks like a meeting; but on  
5 my notes, I think it -- yeah, must have been a --  
6 no. I don't know. It does look like it would have  
7 been a meeting because it would usually say  
8 telephone call beside it.

9 Q. And then there's one the next day,  
10 September 16th?

11 A. (Complying.)

12 Q. And what does the scratch out mean?

13 A. That perhaps it had rescheduled.

14 Q. And then the next page -- the last page  
15 of Exhibit 19 is the 17th of September?

16 A. Right.

17 Q. And is that a conference or a meeting,  
18 an in-person meeting or a telephone call?

19 A. That would have been in office.

20 Q. Are the entries on Exhibit 19 things  
21 that were scheduled? Like there would be --

22 A. Right.

23 Q. -- secretary called for a meeting and  
24 that kind of thing?

25 A. Right.



1 Q. Are those all your -- is that your  
2 handwriting on --

3 A. No.

4 Q. Staff would put this in?

5 A. Right. I mean, on these. I mean, I do  
6 it sometimes; but these are not mine.

7 Q. How about back to the second page? Is  
8 that your handwriting?

9 A. No, no. I don't think any of these are  
10 mine.

11 Q. Okay. These look different. Okay.

12 A. You know, like these appear to be Brenda  
13 Jeffcoat and Cookie Ackerson's handwriting.

14 Q. Our other Cookie. Okay. How many  
15 in-person meetings do you recall from 2003 with Ms.  
16 Powell?

17 A. I don't know. I hadn't counted them.

18 (PLF. EXH. 18, Invoice Number 10112,  
19 Dated July 1, 2005, Bates Stamped  
20 Original Client 233 through 235, was  
21 marked for identification.)

22 BY MR. PENDARVIS:

23 Q. I'm passing to you now another document  
24 that's been marked Exhibit 18. Is this a time and  
25 billing report from your firm's systems?

1 A. It appears to be.

2 Q. I've got the exhibit numbers out of  
3 order by the way. I just gave you -- skipped over  
4 19. But anyway that's Number 18.

5 And does this reference your time  
6 activities on the Powell matter?

7 A. Some of it, yeah.

8 Q. But there'd be some activities that  
9 would not be -- that you did and I'm really looking  
10 at the 2003 entries right now. Would those entries  
11 be the time you did on this file?

12 A. There would be more.

13 THE COURT REPORTER: That's me beeping.

14 MR. WATSON: Okay.

15 BY MR. PENDARVIS:

16 Q. Who does the time entries at your firm?

17 A. It would depend on. . .

18 Q. Well, do you?

19 A. Most of the time, I put my own time in.  
20 Staff would put their own time in. Wasn't always  
21 the case. There would be some times that I'd have  
22 somebody else put the time in.

23 Q. Okay. And the description of the  
24 activity, how is that? I mean, is that a set form  
25 or do you -- can you type in different things or how

1 does that happen?

2 A. You can do either way.

3 Q. Okay. Are there any entries on here  
4 that stand out as not being accurate?

5 A. No. I mean, I know there's time that  
6 was spent on it during '03 that's not on there.

7 Q. When would be time spent in '03 that's  
8 not on here?

9 A. I mean, because I know that I -- just  
10 from looking, you know, at this, I know there's more  
11 that was done than --

12 Q. Okay.

13 A. -- was on here.

14 MR. PENDARVIS: Is that me?

15 THE COURT REPORTER: No. That's me.  
16 I'm having a problem with the disk right now.

17 MR. PENDARVIS: Want to take a break?

18 THE COURT REPORTER: Please.

19 (A recess transpired.)

20 (A luncheon recess transpired.)

21 (PLF. EXH. 19, Handwritten Notes Dated  
22 January 13, 2004, Bates Stamped Original  
23 Client 282, was marked for  
24 identification.)

25 BY MR. PENDARVIS:

1 Q. Ms. Potterfield, we're back from the  
2 break. Let's proceed with our next exhibit. This  
3 is an exhibit marked as Number 19 to your  
4 deposition. This appears to be some handwritten  
5 notes, looks like consistent with your handwriting.  
6 Are these your notes?

7 A. It appears to be, yes.

8 Q. Was there a meeting -- they appear to be  
9 dated January 13, 2004?

10 A. Right.

11 Q. What generated the notes that are  
12 recorded here?

13 A. I am thinking it was probably a  
14 face-to-face conference because I would normally  
15 have put like telephone conference or TC. It could  
16 have been a telephone conference, but it was some  
17 conversation with Ms. Powell.

18 Q. We know from the prior exhibit that  
19 there were some discussions that Ms. Powell was  
20 going to have with her husband over the holiday  
21 period and try to see if there would be an agreement  
22 on residence; correct?

23 A. They were going to -- he was going to  
24 move to Devine Street, but they were going to wait  
25 until the holidays were over. Yeah.

1 Q. And then if we review Exhibit 17, I  
2 believe or 16, we were talking about the -- Exhibit  
3 Number 16, her letter to you of December 8th. They  
4 were looking at trying to reach an agreement and, if  
5 not, proceed with court in 2004 if she was  
6 unsuccessful in reaching an agreement; correct?

7 A. Right. That's what the last -- the  
8 December 8th correspondence said.

9 Q. Can you tell me more about what the  
10 conversation involved besides what we see here? Let  
11 me withdraw that question.

12 Would you please just read this so we'll  
13 make sure I've got a good understanding of what's  
14 written here?

15 A. The first sentence is he is moving to  
16 Devine Street. This says both Devine Street and  
17 Kenilworth on market. Personal property they have  
18 divided. Just a note of other assets, his building,  
19 other building. Gallery issue, ownership or percent  
20 of lease. Then outside it says 25 percent.  
21 Ownership of business itself. And then beach house.

22 Q. Okay. Can you tell us what --  
23 apparently you guys are looking at -- you two are  
24 looking at asset issues and residence issues. Were  
25 there any other topics that were discussed that day?

1           A.    There could have been. Yeah. We could  
2   have discussed, once he moves out, what was his  
3   visitation going to be.

4           Q.    Had Carolyn Powell and Conrad Powell  
5   reached an agreement at this juncture, January 13,  
6   2004?

7           A.    Not a permanent agreement, no.

8           Q.    Okay.

9           A.    They might have had some agreements  
10   between them of what they were going to do about  
11   when he would see the girls. And then, obviously,  
12   they had some agreement that he was -- they agreed  
13   he'd move to Devine Street and she'd stay in  
14   Kenilworth. And they agreed that both of these  
15   would be put on the market.

16          Q.    When did Mr. Conrad Powell engage  
17   counsel for this case to your knowledge?

18          A.    I don't know.

19          Q.    As part of this conference with client,  
20   what was the operating plan? What were you to do  
21   next?

22          A.    I gather from these notes -- I don't  
23   remember specifically what the plan was. We were  
24   still working on an agreement. The home she was in  
25   was for sale and she did not want to stay in that

1 house. She was looking for where she and the girls  
2 would move.

3 Q. Where was she living in January of 2004?

4 A. At Kenilworth.

5 Q. Was there a plan for you to prepare a  
6 separation agreement?

7 A. I don't remember from this meeting what  
8 the next specific step we were going to take was.

9 Q. Why didn't you begin preparing a  
10 settlement agreement -- excuse me, a separation  
11 agreement?

12 A. At that point, I'm not sure.

13 Q. Because we've seen prior correspondence  
14 where that was the next step and I'm trying to find  
15 out why that wasn't still in play.

16 A. Well, we were still making some  
17 decisions about what should go in that agreement.  
18 This was certainly a big step and the process would  
19 be the physical separation.

20 Q. Do you know when they actually  
21 separated?

22 A. I know the date is in the -- probably in  
23 the complaint or somewhere else. I just don't  
24 remember exactly what the date was.

25 Q. Okay.

1 (PLF. EXH. 20, Letter to Marne Sherman  
2 from Ashlin B. Potterfield, Dated April  
3 22, 2004, Bates Stamped Original Client  
4 180, was marked for identification.)

5 BY MR. PENDARVIS:

6 Q. Ms. Potterfield, I'm passing you a  
7 letter -- appears to be your letter to Ms. Marne  
8 Sherman. This has been marked Exhibit 20 to your  
9 deposition. Is that your signature?

10 A. It is.

11 Q. This is your letter? Prior to April  
12 2004, did you know Marne Sherman?

13 A. Yes.

14 Q. Describe the nature of your relationship  
15 with Ms. Sherman in Winter, Spring of 2004.

16 A. Not sure what you mean.

17 Q. Well, I mean, had you had other cases  
18 against her?

19 A. Yes.

20 Q. Was she a friend of yours?

21 A. I mean, we were -- I don't know if you'd  
22 say friends. We were friendly with each other.  
23 I've never to her home. She's never been to my  
24 home. I don't know that we've even had like lunch  
25 together; but we do have a very cordial professional



1 relationship.

2 Q. See each other at bar functions and  
3 things of that nature?

4 A. I'm not sure that Marne participated in  
5 bar functions. I'm not sure that I've ever seen her  
6 at one of those. Perhaps at a CLE maybe.

7 Q. Had you had many cases with her prior to  
8 April of 2004?

9 A. I don't know what you mean by many, but  
10 several.

11 Q. Let me rephrase. I'm sorry. How many  
12 would you expect would have --

13 A. I don't know. It's been so long ago.  
14 It's hard to tell at that point how many there had  
15 been then, but there had been more than one.

16 Q. Can you tell me what prompted this  
17 letter?

18 A. I do not know. It was obviously some  
19 communication from me to Marne about getting an  
20 agreement together and that she was going to give me  
21 some stuff to do that with.

22 Q. How did you find out Ms. Marne Sherman  
23 was going to be representing Mr. Conrad Powell?

24 A. I don't remember exactly how I found  
25 that out.

1 Q. Does the first sentence of this letter  
2 reference a request to you from Ms. Sherman for some  
3 financial information or vice versa?

4 A. I seem to remember that she was getting  
5 some stuff together and I was getting some stuff  
6 together and we were going to try to put an  
7 agreement together. And part of that would have  
8 been about this sale of Kenilworth.

9 Q. And where was Ms. Carolyn Powell living  
10 at the time this letter was written?

11 A. Kenilworth.

12 Q. Doesn't this letter say that Mrs. Powell  
13 has an interest in the financial -- I take that  
14 back.

15 Can you explain me the second sentence?

16 A. Yes. It was on the market for sale.

17 Q. Okay.

18 A. Which it is in my notes from January  
19 '04. Ms. Powell did not wish to stay in that house  
20 and she didn't want to live in Devine Street, so she  
21 was living in Kenilworth. It was for sale. That  
22 sentence means that she had somebody or more than  
23 one body seriously interested in buying the  
24 Kenilworth home.

25 Q. Okay. I mean, it reads like she has an

1 interest -- she herself has some serious interest.  
2 My client tells me that she has had some serious  
3 interest in the house she's living in. Okay.

4 A. That was referring to people who wanted  
5 to buy it. Because Ms. Powell never wanted to stay  
6 in Kenilworth and she did not want to move to Devine  
7 Street.

8 Q. Did you get a response to this letter  
9 from Ms. Sherman?

10 A. I don't know.

11 Q. So the marital home is up for sale; is  
12 that correct?

13 A. The home that they lived in last  
14 together was for sale. The home they lived in prior  
15 to that was also for sale.

16 Q. Okay. Did you have any conversations  
17 with Ms. Carolyn Powell about whether she needed to  
18 stay in the marital home for strategic purposes in  
19 the litigation?

20 A. We discussed that. Yes.

21 Q. What did you tell her?

22 A. We discussed whether she wanted to stay  
23 in it or not. She did not. There had been  
24 conversations and communication prior to this in '03  
25 where she was looking for another home for her and

1 her girls. That had been going on for some time.

2 So she did not want to stay in Kenilworth.

3 Q. I understand that, but my question was  
4 what did you tell Ms. Powell about the aspect of the  
5 marital home in terms of strategic things for the  
6 litigation?

7 A. Well, she could have stayed in that  
8 house. I mean, Conrad was paying everything; but  
9 she did not want to.

10 Q. Did you tell her it might be important  
11 for her to stay there as part of this?

12 A. We did discuss that, you know, she could  
13 certainly stay there. She wouldn't have to move.  
14 There'd be no moving expenses. The status quo is  
15 already set. That she could stay there, but that  
16 was never her intention. That was one of her goals  
17 was to move somewhere else with the girls. And so,  
18 you know, those were my marching orders is that --  
19 that's what she wanted.

20 Q. Okay.

21 A. And she and Conrad had multiple  
22 conversations before this and after and around this  
23 time period of what kind of price range she could  
24 buy a house. And there's prior correspondence to  
25 this letter where she said she found a house, but he

1 wouldn't buy it. I mean, that had been an ongoing  
2 thing. That's what she wanted.

3 Q. Okay.

4 (PLF. EXH. 21, Contract of Sale, Bates  
5 Stamped Original Client 1998 through  
6 2004, was marked for identification.)

7 BY MR. PENDARVIS:

8 Q. Ms. Potterfield, I'm passing you a copy  
9 of a contract of sale marked as Exhibit 21 to your  
10 deposition. Did you ever get a copy of this  
11 contract during the course of your representation?

12 A. I believe I did.

13 Q. And this was the sale contract on the  
14 Kenilworth property?

15 A. It seems to be, yeah.

16 Q. Did you have any conversations with your  
17 client about this contract and sale?

18 A. About the contract? I didn't believe I  
19 did have a conversation with her about this  
20 contract.

21 Q. Okay. Did you have any conversations  
22 about the reference to a portrait on the sale --  
23 sale of the portrait in the one that says Original  
24 Client 2003 page?

25 A. I'm sorry?

1 Q. See the 2003, the addendum page, before  
2 the check.

3 A. Okay.

4 Q. Did y'all talk about the portrait  
5 purchased from the seller? I'm just curious if you  
6 talked about that with your client.

7 A. I do not recall discussing that, no.

8 Q. What did you tell your client about the  
9 impact this may have on the litigation?

10 A. We discussed that this -- because she  
11 wanted to purchase another home, that this would be  
12 one less impediment to that. Because one of the  
13 reasons Conrad didn't want to buy her another home  
14 while he's supporting two homes was to have one of  
15 them sell. Either one would have helped the  
16 situation. This one sold first and then that would  
17 give her money to buy another home.

18 Q. Was there any discussion about  
19 protecting the proceeds from the sale?

20 A. Yes. That was not going to be a  
21 problem. With dealing with Marne, that would not  
22 have been a problem.

23 Q. Did it turn out to be a problem?

24 A. Not that I remember.

25 Q. Okay. So what happened to the sale

1 proceeds? Let me back up. Did the contract close?

2 A. Yes.

3 Q. And what happened to the sale proceeds?

4 A. I'm not exactly sure where they were  
5 deposited.

6 Q. Is that of any concern to you, that the  
7 assets might get away?

8 A. No.

9 Q. There had been no litigation filed  
10 yet --

11 A. No.

12 Q. -- correct?

13 A. That's correct.

14 (PLF. EXH. 22, Handwritten Notes Dated  
15 July 19, 2004, Bates Stamped Original  
16 Client 283, was marked for  
17 identification.)

18 BY MR. PENDARVIS:

19 Q. Pass to you what appears to be some  
20 notes. It's marked as Exhibit 22 to your  
21 deposition. This your handwriting?

22 A. It is.

23 Q. These your notes? What prompted this  
24 note? Is this a conference?

25 A. A telephone conference.

1 Q. Okay. So that I make sure that I don't  
2 have any misreadings here, would you mind reading  
3 this for us?

4 A. Telephone conference. What that means  
5 to me is a telephone conference with the client,  
6 even though it's only a T and a C. She sold  
7 Kenilworth. Needs to get on the money now. School  
8 starting is making this imperative. She'll get me  
9 financial issue today.

10 Q. What did she tell you about the sale of  
11 Kenilworth?

12 A. That it had been sold and she was  
13 preparing to move out.

14 Q. What did she tell you that prompted the  
15 note, need to get on the dollar sign now?

16 A. Getting the money from Conrad for a down  
17 payment on the house is what would be the next step.  
18 And that school starting is the part where she had  
19 to decide where she was going to live before the  
20 girls would start school, which was very short  
21 obviously. If this was July 19th, school would have  
22 been starting in the next short period of time.  
23 Although I don't think they moved out until after  
24 school had started.

25 Q. And we're now 13 months after your first



1 meeting?

2 A. Yeah. Almost exactly.

3 Q. What's being referenced in the last  
4 little bullet point there?

5 A. I'm not sure what that is.

6 Q. She'll get me the financial issue today.

7 A. Yeah, I'm not -- it's probably info to  
8 issue -- I don't know.

9 (PLF. EXH. 23, Handwritten Notes Dated  
10 August 10, 2004, Bates Stamped Original  
11 Client 284, was marked for  
12 identification.)

13 BY MR. PENDARVIS:

14 Q. Ms. Potterfield, I'm passing you another  
15 set of notes. This one is marked Exhibit 23 to your  
16 deposition. Are these your notes?

17 A. Yes.

18 MR. HILL: That should be 24?

19 BY MR. PENDARVIS:

20 Q. What's the number?

21 A. No. That's 23. That's 22.

22 MR. HILL: Okay.

23 BY MR. PENDARVIS:

24 Q. Ms. Potterfield, what -- first, let me  
25 let you read this for us again. I want to make sure

1 that I'm not misreading something.

2 A. This would have been a telephone  
3 conference with Bunni, who would be Bunni Crawford.  
4 Real property under estimated. 2.5 million  
5 house/farm she wants. Keep beach house. One  
6 million cash. Income only on investments. 5,000  
7 per month child support. Bunni's numbers. Health  
8 insurance coverage for Carolyn. She needs 6, 7,000  
9 per month. Life insurance. Gallery, doesn't care  
10 anymore. Still needs show in December.

11 Q. Okay. Was this a telephone call?

12 A. Yes.

13 Q. And did you call her or --

14 A. No.

15 Q. -- Ms. Crawford called you?

16 A. She called me.

17 Q. Is there anything -- what was being  
18 discussed in the first part, real property under  
19 estimated?

20 A. That was Bunni's opinion.

21 Q. About whose values was she opining?

22 A. I don't -- I don't know. I assumed  
23 she'd talked to Carolyn about or I don't know if  
24 she -- she also talked to Conrad some, too. I don't  
25 remember whose numbers she was referring to.

1 Q. And are the next entries Ms. Crawford's  
2 comments about what she thinks Ms. Carolyn Powell  
3 wants to happen in terms of getting money for a  
4 house and a farm and keeping the beach house?

5 A. I think these -- these were comments of  
6 things that Bunni thought should happen.

7 Q. Okay.

8 A. I don't know that those were the same as  
9 what Ms. Powell thought should happen.

10 Q. What did you tell Ms. Crawford?

11 A. I don't tell her anything. I just  
12 listened.

13 Q. Okay. Was there anything that happened  
14 as a result of the conversation with Ms. Bunni  
15 Crawford?

16 A. I don't think so.

17 Q. Did you tell Ms. Powell that Ms.  
18 Crawford had called?

19 A. I had her permission to discuss it with  
20 Bunni.

21 Q. Well, I understand. But I mean, did you  
22 tell her after the call that Ms. Crawford had called  
23 and said whatever she said?

24 A. I probably did.

25 Q. So what were the plans as far as your

1 representation of Ms. Powell during the Summer of  
2 2004?

3 A. Well, actually, this kind of puts us  
4 into the Fall. Like I said, I think they moved out  
5 mid August of '04. The next step was for her to  
6 find somewhere she wanted to live. I know that  
7 Bunni had been helping her look and that, you know,  
8 the 2.5 million house/farm she wants. I mean,  
9 that -- I mean, these are Bunni's numbers; but  
10 that's when from the -- all of the discussions had  
11 been previous, we had been talking about a 400 to  
12 500,000 property, not 2.5 mill. And, you know, that  
13 would have to -- that's what had been being  
14 discussed is that that's what she would be looking  
15 for.

16 Q. Okay. How were the settlement  
17 negotiations going on in -- by this time, August  
18 2004?

19 A. It mostly centered around finding  
20 another home and that would then kind of dictate  
21 other things.

22 Q. So if the parties, Carolyn Powell and  
23 Conrad Powell, had agreed on a residence for Ms.  
24 Powell, then there would have been a settlement  
25 agreement or a separation agreement, excuse me?

1 A. Not necessarily, no.

2 Q. Well, I'm just asking. I'm getting  
3 ready to show you copies of the summons and  
4 complaint that were filed August 26, days after  
5 that, and I wanted to understand why litigation was  
6 filed in August of 2004.

7 A. Well, we were -- she was ready to do it.  
8 It was time to do it and they were moving closer to  
9 a permanent agreement because she had sold  
10 Kenilworth, he was going to give her the cash for  
11 her house. We were getting kind of closer to that  
12 point.

13 (PLF. EXH. 24, Summons, Bates Stamped  
14 00753, was marked for identification.)

15 (PLF. EXH. 25, Complaint, Bates Stamped  
16 00754 through 00757, was marked for  
17 identification.)

18 MR. PENDARVIS: Charlie, 24 and 26.

19 MR. HILL: Okay.

20 BY MR. PENDARVIS:

21 Q. Ms. Potterfield, I'm passing you copies  
22 of the summons and complaint that were filed in this  
23 action marked as Exhibits 24 and 25 respectively.  
24 Take a moment and look them over if you need to.  
25 Are these your signatures on these pleadings?

1 A. Yes.

2 Q. Did you discuss the contents of the  
3 complaint with Ms. Powell before you filed it?

4 A. Yes.

5 Q. Tell me about the discussion.

6 A. I guess, you know, we discussed the  
7 timing of going ahead and doing it and what we put  
8 in there and what we'd asked for and. . .

9 Q. Why -- okay. I'm sorry. Didn't mean to  
10 interrupt.

11 A. That she wanted -- there had been back  
12 and forth between them, discussing whether we'd do  
13 joint or sole custody of the children. What we  
14 asked, for sole custody, asked for alimony,  
15 discovery, attorney's fees.

16 Q. Why didn't you prepare a separation  
17 agreement and submit that to Mr. Powell's counsel  
18 for consideration?

19 A. Because we didn't have all the details  
20 we needed to do that.

21 Q. Then why didn't you file a complaint  
22 earlier?

23 A. Because we didn't need to that either.

24 Q. Why?

25 A. Because we were working on a settlement

1 agreement. It's what she wanted to do.

2 Q. But I'm misunderstanding. Because if  
3 you tell me you couldn't do a settlement or a  
4 separation agreement because you didn't have the  
5 details, why not file the complaint 14 months  
6 earlier?

7 A. Because we were working under --  
8 everybody was working under the impression that  
9 they're working on a settlement agreement.

10 Q. What changed for August 26th that made  
11 you believe that a settlement agreement was no  
12 longer an option?

13 A. I didn't think it was no longer an  
14 option. We were getting closer to being able to  
15 accomplish it. And so if we went ahead and filed  
16 it, then we'd have a docket number and we could get  
17 it approved and move forward. I don't remember  
18 there -- I mean, there are probably several reasons  
19 we did it at that time period. You know, I know we  
20 talked about doing just some kind of -- these are,  
21 you know, there's nothing mean or nasty in these.  
22 You know, we weren't trying to undo any possibility  
23 of settlement at all.

24 Q. And that really prompts my question on  
25 why didn't you file this earlier than August of

1 2004?

2 A. Well, generally -- I mean, there's no  
3 reason to do it.

4 Q. Okay.

5 A. And I believe there's a letter that I  
6 wrote Marne Sherman at some point. I can't remember  
7 exactly. You know, their year is up in December, so  
8 between, you know, having this done, you know, end  
9 of August, first of September, that would have given  
10 us enough days to get the agreement finished so that  
11 then we could go forward on their one year.

12 Q. Why didn't you plead for a divorce on  
13 the grounds of adultery?

14 A. At that point, we were trying to be  
15 cooperative and wanting a settlement agreement. It  
16 wasn't certainly giving up the right to use that if  
17 we needed to.

18 Q. That's 24 and 25?

19 A. Right.

20 Q. Thank you.

21 (PLF. EXH. 26, Letter to Carolyn Powell  
22 from Ashlin B. Potterfield, Dated August  
23 31, 2004, Bates Stamped 00221, was  
24 marked for identification.)

25 BY MR. PENDARVIS:



1 Q. Ms. Potterfield, I just passed you a  
2 letter. Appears to be from you to Ms. Powell,  
3 marked as Exhibit 26 to your deposition, dated  
4 August 31, 2004. Can you tell me about your  
5 conversation with Ms. Sherman that's mentioned in  
6 the first letter -- first sentence, excuse me?

7 A. I don't -- I don't know what I talked to  
8 Marne about. Perhaps, you know, like accepting  
9 service of the pleadings probably and that I had  
10 filed them.

11 Q. And the reference in the last sentence  
12 to calling Cookie. That's the Cookie that's in your  
13 office?

14 A. Right. My secretary at the time.

15 Q. Okay. Did you have a conference with  
16 Ms. Sherman about this lawsuit and the situation?

17 A. I may have. I mean, it says I talked to  
18 her.

19 Q. Well, I know; but the last sentence  
20 discusses calling for an appointment. Do you recall  
21 meeting with Ms. Sherman to --

22 A. No, no. That was to Carolyn to set up a  
23 time --

24 Q. I'm sorry. I apologize.

25 A. -- for Carolyn and I to get together to

1 put more details on the proposal, which would have  
2 been the settlement proposal.

3 Q. What are you referring to in the second  
4 sentence that says, I have not hit her yet -- hit  
5 her with our requests for property because she's out  
6 town the week you and I last talked?

7 A. Of trying to get more than just a down  
8 payment on a 4 or \$500,000 house. You know, started  
9 moving toward the discussions of the large advance.  
10 And I believe, you know -- I mean, at that point,  
11 she really was considering moving to finding a  
12 property where she could take care of the horses and  
13 that may have been about in Aiken..

14 Q. Why weren't you asking her about support  
15 and maintenance?

16 A. Because he's paying a lot of money at  
17 the time. So I mean, he was doing that.

18 Q. What did you understand Mr. Conrad  
19 Powell was paying in August 2004?

20 A. Was averaging about \$5500 in cash  
21 directly to her, in addition to paying all the  
22 household bills.

23 Q. Those are monthly payments?

24 A. Right. And I mean, he was paying  
25 household bills. He was paying other -- you know,

1 things for the girls and for her.

2 Q. What was your understanding of the  
3 nature of the payments? Were they voluntary or was  
4 Ms. Powell having to really struggle to get the  
5 money?

6 A. They were voluntary. I mean, he was not  
7 under a court order to do so. And had been doing  
8 that since he moved out.

9 Q. When did they physical separate?

10 A. You know, it's a -- I'll have to look  
11 back and see what date we put. I know we put  
12 December '03 because I don't know if we had an exact  
13 date of when he moved out because he was -- they had  
14 some holiday and family time. So we didn't pin that  
15 down to an exact date.

16 Q. But sometime by January?

17 A. Right. Because if you'll recall, her  
18 letter to me was want to get through these holidays  
19 and then he's going to move to Devine Street.

20 Q. So from December until July, August, Ms.  
21 Powell stayed in the Kenilworth house and Mr. Conrad  
22 Powell stayed in the Devine Street house?

23 A. As far as I know.

24 Q. Okay.

25 (PLF. EXH. 27, Letter to Marne Sherman

1 from Ashlin B. Potterfield, Dated August  
2 31, 2004, Bates Stamped 00758, was  
3 marked for identification.)

4 BY MR. PENDARVIS:

5 Q. Passing to you now a letter marked as  
6 Exhibit 27 to your deposition and it appears to be a  
7 letter from you to Ms. Sherman, providing her with a  
8 copy of the complaint and, I'm presuming, a form  
9 acceptance of service. Did Ms. Sherman respond to  
10 the information in the second and third sentence  
11 that -- the asset addendum and property division?

12 A. I don't know.

13 Q. This references a phone conversation.  
14 Was that a phone conversation with Ms. Sherman?

15 A. Right. Which is the same as on 26, when  
16 I said I had talked to Marne. It's the same day.

17 Q. Yes. What was discussed in that?

18 A. I'm not -- I don't remember exactly, but  
19 I obviously asked her for some information and to  
20 see if she'd accept service of the pleadings.

21 Q. Was there any follow up from Ms. Sherman  
22 about proceeding with assets addendum and property  
23 division?

24 A. There may have been.

25 Q. What was it?

1 A. I mean, I don't remember exactly because  
2 I mean. . .

3 (PLF. EXH. 28, Letter to Ashlin  
4 Potterfield from Marne Sherman, Dated  
5 September 3, 2004, Bates Stamped 00222,  
6 was marked for identification.)

7 BY MR. PENDARVIS:

8 Q. I'm passing to you now, Ms. Potterfield,  
9 a copy of a letter from Ms. Sherman to you marked as  
10 Exhibit 28 to your deposition. Did you receive this  
11 letter?

12 A. Yes.

13 Q. Was there any other communications about  
14 this other than the request for an extension?

15 A. I don't believe so.

16 Q. Fairly perfunctory, but no substantive  
17 conversations about the plan?

18 A. I don't remember having any other  
19 conversation about that.

20 Q. And Ms. Sherman accepted service for the  
21 pleadings?

22 A. She did.

23 (PLF. EXH. 29, Handwritten Notes Dated  
24 October 5, 2004, Bates Stamped Original  
25 Client 285 and 286, was marked for

1 identification.)

2 MR. PENDARVIS: This is 29.

3 Q. Ms. Potterfield, I've passed you now  
4 some more notes it appears, marked Exhibit 29 to  
5 your deposition. Are these your notes?

6 A. This is my handwriting, yes.

7 Q. Both pages?

8 A. Yes.

9 Q. I'm pretty sure I can read every one of  
10 these, so I'm not going to ask you to read this one.  
11 Is this memorializing a conversation you had with  
12 Ms. Powell or what generated this?

13 A. Must be.

14 Q. Can you describe the topics we're  
15 looking at here, starting with gallery underlined on  
16 the first page?

17 A. Yeah. That would be information about  
18 the gallery. Again, this is kind of the second  
19 reference to -- no. I'm sorry. Paul Sloan had  
20 something to do with the gallery, something about  
21 his deal until December. Huger/Blossom would be a  
22 building. Wheels Racing Business had been a prior  
23 business. Columbia Management.

24 Q. Is that three parts?

25 A. Another business.

1 Q. Does that say three parts?

2 A. Yeah.

3 Q. Okay.

4 A. I think that's really like three  
5 partners. Kenilworth and the money from the sale.  
6 Then Chic Antique.

7 Q. Is that building a separate --

8 A. Separate warehouse.

9 Q. -- warehouse? The reference under  
10 Kenilworth, money from -- is that dollar sign, money  
11 from Kenilworth?

12 A. Right.

13 Q. Kenilworth sale, where is it?

14 A. Right.

15 Q. What prompted that note?

16 A. I don't know. I mean, I guess we're  
17 just talking about, you know, making sure where the  
18 money was.

19 Q. Did you find out?

20 A. Yeah, I'm sure -- I know we did. I  
21 can't tell you exactly when or how.

22 Q. Was there any plan of what was to happen  
23 after this conversation with Ms. Powell?

24 A. We were still working on, you know,  
25 putting together the settlement proposal, asking for

1 some information from Marne and gathering what we  
2 needed from our end about where she was going to  
3 live and what that cost was going to be.

4 Q. Was Ms. Powell complaining about funding  
5 from her husband, maintenance money?

6 A. In October of '04?

7 Q. Yes, ma'am.

8 A. Probably.

9 Q. What was she telling you?

10 A. Well, I mean, there was -- during that  
11 time period, there was a lot of correspondence from  
12 her about that he wasn't paying anything.

13 Q. Did y'all discuss going to court and  
14 getting a pendente lite order for support and  
15 maintenance?

16 A. We did.

17 Q. What was the -- tell me about that  
18 conversation.

19 A. During this time period, you know, from  
20 actually November backwards, for the nine-month time  
21 period, she'd received over \$50,000 in cash from  
22 him, in addition to him paying household expenses.  
23 After this and around this, you know, time period,  
24 too, there were some other funds that were used by  
25 Ms. Powell as well. That's a lot of money. We



1 discussed the risks of going into a temporary  
2 hearing with Conrad not having a stream of income  
3 other than investments, properties. He didn't have  
4 a W-2 income. It'd be very difficult for the Court  
5 to set her alimony or child support and certainly  
6 we'd risk not receiving what she was receiving at  
7 that level.

8 Q. But you had copies of some personal  
9 financial statements that showed significant assets  
10 being held by Mr. Powell, didn't you?

11 A. He did have assets. Those are not  
12 liquid. I mean, the Family Court Judge, you know,  
13 can't give her a brick off a building as a payment.  
14 I mean, that's the problem when somebody's, you  
15 know, got -- their assets are tied up in property.

16 Q. How many conversations did you have with  
17 Ms. Powell explaining the risks of the temporary  
18 proceeding that you just testified about?

19 A. Several. I mean, because it wasn't just  
20 the money. I mean, you know, she really wanted to  
21 move to Aiken. That was going to impact the custody  
22 and visitation. You know, we certainly wanted to  
23 maintain the status quo that she was the primary  
24 caregiver. So that was up in the air that we had to  
25 be careful with. But we discussed that multiple

1 times.

2 Q. And your advice was the risk was too  
3 great and that she shouldn't proceed with the  
4 temporary hearing?

5 A. If she wanted to keep the money at the  
6 level that she was getting it, then it was a big  
7 risk.

8 Q. I'm asking you what you told Ms. Powell.

9 A. I told her it was a big risk.

10 Q. You told her that? Okay. And her  
11 response was what?

12 A. Well, I mean, we agreed. We didn't have  
13 a temporary hearing.

14 Q. Were there any decisions or, excuse me,  
15 discussions with Mrs. Powell about engaging a  
16 forensic accountant person to start beginning to  
17 develop martial estate value?

18 A. No. We had discussions about that she  
19 did not want to go that path. She didn't want to do  
20 extensive discovery. You know, she would rather try  
21 to work with what we had for expediency to get an  
22 agreement done. That she didn't want to go down  
23 that path at this time. When I was dealing with  
24 her, she did not want to do that.

25 Q. Okay.

1 (PLF. EXH. 30, Letter to Ashlin B.  
2 Potterfield from Marne Sherman, Dated  
3 October 14, 2004, Bates Stamped Original  
4 Client 167 through 174, was marked for  
5 identification.)

6 BY MR. PENDARVIS:

7 Q. I'm passing to you now a letter from Ms.  
8 Sherman to you dated October 2004 and it's got some  
9 attachments to it. Did you receive this letter?

10 A. Yes.

11 Q. This is marked Exhibit 30. Did you talk  
12 about some of the issues in this letter with Mrs.  
13 Powell?

14 A. Yes.

15 Q. What did you tell her?

16 A. Well, mostly, we discussed how I could  
17 smooth it over, so that she wouldn't be in trouble,  
18 and to try to get, you know, our version of how and  
19 why this happened to them and hopefully convince  
20 them not to prosecute her.

21 Q. What did she tell you about her conduct?  
22 What did Mrs. Powell, excuse me, tell you about her  
23 conduct?

24 A. Well, the position that we took and what  
25 was her position was that this was ordinary in the

1 course of their business, as husband and wife. That  
2 she had previously endorsed his name, signed his  
3 check, you know, signed his name or endorsed a check  
4 to her. That she had previously altered amounts on  
5 checks.

6 Q. Is that unusual in your practice? Have  
7 you heard other clients saying similar kinds of  
8 things to you?

9 A. The James Smith check is not quite as  
10 unusual as the other, as the changing of so many  
11 checks, the changing of the amounts. It's usually  
12 not so far after separation that people would still  
13 endorse these kind of checks to each other or for  
14 each other; but they were still working out all  
15 their money and he was giving her money. They were  
16 discussing money each month or multiple times each  
17 month. I don't -- I didn't find the James Smith  
18 check as problematic as the other checks. One  
19 check, I might -- I could explain, but the other  
20 checks were very problematic.

21 Q. I understand what you just said; but my  
22 questions was, have you had other clients tell you  
23 similar things?

24 A. I thought I answered that. I -- the  
25 James situation, yes.

1 Q. Okay.

2 A. I have not had another client do what  
3 she did with these checks.

4 Q. Did you have any communications with Ms.  
5 Sherman about the -- I mean, it says in here, I  
6 mean, this is threatening criminal -- you know,  
7 turning her in?

8 A. Right.

9 Q. Did you have any conversations with Ms.  
10 Sherman on the impropriety of making that threat?

11 A. No.

12 Q. You're aware of our rules of  
13 professional conduct that you can't threaten  
14 criminal proceedings to gain advantage in a civil  
15 matter? Rule 4.5, I know; correct?

16 A. Right.

17 Q. And you didn't say anything about that  
18 to Ms. Sherman?

19 A. I don't recall saying that to her. I  
20 mean, I --

21 Q. Did you make any comment to Mrs. Powell  
22 about the impropriety of doing that as an attorney?

23 A. I don't know that I did, because I was  
24 mostly concerned about getting her out of this  
25 situation. I think that Marne was very careful in

1 how she worded this letter so that it did not come  
2 across like she was threatening criminal  
3 prosecution. I think she did, you know, did term it  
4 as criminal manner, her behavior.

5 Q. Well, I'm going to read the sentence on  
6 the last paragraph of the second page where it says:  
7 I cannot assure you that Mr. Powell is not going to  
8 have Ms. Powell prosecuted for her past conduct; but  
9 I can assure you that he will have her prosecuted  
10 for any future conduct as described herein.

11 Pretty direct to me. I mean, do you  
12 agree?

13 MR. HILL: Object to the form.

14 THE WITNESS: Yes and no. I mean, I  
15 didn't really think she'd do it because there's also  
16 the other part where it says that he wants -- she  
17 wants to settle the case and that, you know, these  
18 things keep making it harder to do. And, like I  
19 said, I was really more focused on smoothing this  
20 over for Carolyn, so that it didn't impact the money  
21 he was giving her and didn't impact what we were  
22 trying to do with him advancing her funds for a  
23 house and that was my main concern at this time was  
24 to try to smooth this over somehow. The other  
25 problem is that this is -- you know, it threw

1 another monkey wrench in the -- you know, some  
2 visitation issues, too.

3 (PLF. EXH. 31, Letter to Carolyn Powell  
4 from Ashlin B. Potterfield, Dated  
5 October 19, 2004, Bates Stamped Original  
6 Client 166, was marked for  
7 identification.)

8 BY MR. PENDARVIS:

9 Q. Ms. Potterfield, I'm passing you now a  
10 letter to Ms. Powell marked Exhibit 31 to your  
11 deposition. Did Ms. Powell -- and I'm presuming  
12 this transmitted the preceding exhibit to Mrs.  
13 Powell?

14 A. I think that's probably correct.

15 Q. And did Ms. Powell call you back? Did  
16 y'all talk about these issues?

17 A. We did and she gave me -- I believe  
18 there's some correspondence, you know, with her  
19 directly addressing Ms. Sherman's letter.

20 Q. And I'm not going to spend time on the  
21 deposition, but I've got copies of the answer to the  
22 summons and complaint -- excuse me. And the answer  
23 and counterclaim was filed in October?

24 A. I assume so. I don't remember when it  
25 was filed. I mean, I know there was one filed.

1 Q. Okay.

2 (PLF. EXH. 32, Letter to Richland County  
3 Family Court Clerk of Court from Melissa  
4 Jones, Dated October 21, 2004, Bates  
5 Stamped 00766 through 00772, was marked  
6 for identification.)

7 BY MR. PENDARVIS:

8 Q. Passing you a copy of a document marked  
9 Exhibit 32. It appears to be a copy of letter from  
10 Ms. Sherman's office to the clerk of court and you  
11 were copied on this filing of the answer and  
12 counterclaim. Does that refresh your recollection?

13 A. It is a copy of that.

14 Q. Is there anything unusual in the  
15 counterclaim that concerns you?

16 A. No.

17 (PLF. EXH. 33, Letter to Ashlin B.  
18 Potterfield from Carolyn, Dated October  
19 24, 2004, Bates Stamped Original Client  
20 415 through 418, was marked for  
21 identification.)

22 BY MR. PENDARVIS:

23 Q. Passing to you now what appears to be a  
24 letter from Ms. Powell to you dated October 24,  
25 2004. Did you receive this letter?



1 A. Yes.

2 Q. And this was her --

3 A. Response to --

4 Q. -- explanation of what had happened?

5 A. That's right.

6 Q. And I'm not going to go through the  
7 details. The letter will say what it says for  
8 itself; but I do want to ask you about some things  
9 that were on the last two pages, beginning with the  
10 third full paragraph that says finally. Did you  
11 have any follow up with Ms. Powell about her  
12 requests on the money from the sale of Kenilworth  
13 and monthly maintenance issues that are talked about  
14 on these last two pages?

15 A. I'm sure we did. I mean, because it  
16 says, as we have discussed over the past months.  
17 And I've said that before. You know, she would give  
18 him a needed funds request a month, several times a  
19 month sometimes.

20 Q. And when you're getting some information  
21 from your client, as referenced on the last page of  
22 this exhibit, where she's telling you in this letter  
23 that she was not getting funds that were promised,  
24 did you all have any discussions about maybe  
25 revisiting the issue of getting temporary support

1 and get a maintenance -- support and maintenance  
2 schedule in place?

3 A. We did.

4 Q. Tell me about that conversation.

5 A. It was the same conversation. Start  
6 piecing together the actual money that she received,  
7 which she says here, you know, she asked for money  
8 and he usually gave her what she wanted and she had  
9 taken some of these additional funds. We were not  
10 in a fabulous position to go in and ask for more  
11 because she had been -- when she was receiving a  
12 great deal of money each month, when you take what  
13 she had received from this point over the past, you  
14 know, nine months.

15 Q. Well, she's indicating she hasn't  
16 received -- this is an October 24 letter and she's  
17 indicating she hasn't received any support since  
18 September.

19 A. Well, that wasn't accurate.

20 Q. Why did you believe that wasn't  
21 accurate?

22 A. Because we -- I mean, I had, you know,  
23 the documentation of what she had received. I mean,  
24 we talked about this and I was like, well then, we  
25 need to piece together what he has been giving you.

1 And when she did that, shortly after this, you know,  
2 she comes up with, oh, yeah. I've gotten \$50,000  
3 directly from him during the past nine months, in  
4 addition to him paying other things. And in  
5 addition to these funds that she took from escrow  
6 and the rental company. So it ended up being a lot  
7 of money.

8 Q. Okay.

9 A. That I didn't think -- and she and I  
10 talked about it, you know, that that kind of monthly  
11 funds from him couldn't be supported by a financial  
12 declaration that would be filed in a temporary  
13 hearing. We didn't believe that she'd be awarded  
14 that level of support if we were to go forward with  
15 a temporary hearing.

16 Q. The very last part of the last page of  
17 this letter talks about -- and I'm going to read it  
18 to you. Now I really need for you to expedite  
19 things and give my case top priority. I have been  
20 more than patient. My house has been sold since  
21 last June -- excuse me, has been sold since June and  
22 it's now almost November.

23 Did you all talk about what the plans  
24 were on the request to expedite things?

25 A. Well, like I just said, you know, the

1 temporary hearing issue, we couldn't have really  
2 gotten -- I don't believe the Family Court Judge  
3 would have given us the level of support she was  
4 receiving. So we didn't want to risk that. The  
5 next step was to find a place for her to purchase.  
6 These instances of the forgeries and the problems  
7 were not helping us in dealing with Conrad about him  
8 advancing her funds to purchase a home. So that  
9 didn't really help us a whole bunch. Plus she would  
10 -- she didn't find something that she wanted. And  
11 the things that she would discuss with him would be  
12 certainly substantially over the value that he had  
13 agreed to do. There's also some problems in that he  
14 was not happy that she was going to move or  
15 potentially move the girls to Aiken.

16 Q. When did Ms. Powell first mention moving  
17 to Aiken to you?

18 A. It was before this because she -- I  
19 can't remember where it is in her notes to me, that  
20 she and the girls did want to find somewhere where  
21 they could keep their horses with them, you know, on  
22 their property, rather than paying the fairly  
23 substantial barn fees that they were paying. And,  
24 you know, this note right here shows you that she  
25 was -- says she was looking for suitable property.

1 Q. Well, I understand that; but I just  
2 haven't seen a reference to Aiken yet.

3 A. I know that's where she was looking at  
4 that time. If it's not in here, then we just  
5 discussed it; but I know that her other comments  
6 about finding property that would have a barn with  
7 it, you know, initially had been Aiken or Camden or  
8 somewhere like that. But then she started more  
9 looking in the Aiken area.

10 (PLF. EXH. 34, Letter to Ashlin from  
11 Carolyn Powell, Dated October 29, 2004,  
12 Bates Stamped Original Client 419  
13 through 421, was marked for  
14 identification.)

15 BY MR. PENDARVIS:

16 Q. Passing to you now a document marked  
17 Exhibit 34 to your deposition. This apparently is a  
18 letter a few days later, dated October 29 from Ms.  
19 Powell to you. And since we have been talking about  
20 Aiken and such, I'll just -- I've got a lot of  
21 questions about this, but I'll direct you toward the  
22 middle of the first page, second full paragraph,  
23 when it says: If we have to sue, I may be forced to  
24 move to Atlanta where I have financial and emotional  
25 support from my family and friends there. And I

1 still see no reference to Aiken.

2 A. Like I said, that must have been in a  
3 telephone conversation, you know, between us; but  
4 that was -- she was certainly considering lots of  
5 options at that point.

6 Q. This apparently included an attachment  
7 settlement offer outlining, similar to the one we'd  
8 seen earlier, her thoughts on the proposal?

9 A. Uh-huh. I just remembered there was --  
10 I know I talked to Bunni about the million, two  
11 million barn she was looking at. That's when we  
12 talked -- I mean, we had been talking about Aiken,  
13 if it's not in here. And then there are later --  
14 not too far around here, kind of off -- notes from  
15 her about the cottage they had rented in Aiken.

16 Q. Okay.

17 A. I'm sorry.

18 Q. No. That's fine. We were talking about  
19 this settlement proposal. When you got this letter,  
20 what did you do?

21 A. I believe that I then put this in form  
22 letter to Marne.

23 Q. Maybe --

24 A. We might have had some discussion of it  
25 and then made some other changes before that

1 happened. I don't remember exactly.

2 Q. Did you have any concerns for your  
3 client when she's making comments to you that she --  
4 I have no current means of support, no home for my  
5 children, and I can no longer have a conversation  
6 with my husband that is amicable and, therefore, I  
7 need to avoid any discussions with him except about  
8 the children?

9 A. We had multiple discussions about that.  
10 She did have money and that, if we went to have a  
11 temporary hearing, she probably would not get that  
12 level of money and that we needed to make some  
13 decisions about where she was going to live so that  
14 we could specifically ask for an amount from Conrad.

15 Q. Did you call Ms. Powell after you got  
16 this letter to discuss the contents?

17 A. Maybe. We might have discussed it. The  
18 other thing is that she did have somewhere to live  
19 for free.

20 Q. And that was?

21 A. Where they were residing.

22 Q. The Devine Street property?

23 A. No. They were on Gervais Street.

24 Q. Gervais Street? Did you all discuss her  
25 concerns about evaluating the marital estate based

1 on comments like Conrad keeps our assets so  
2 entangled with his brother Terry, there will be a  
3 battle with both to uncover everything.

4 A. We had talked about that, you know, for  
5 some time. I mean, that's one of the reasons we  
6 were happy to find the secret notes that they had  
7 written each other. We weren't going to delve into  
8 it at that time because, as you can see, that's not  
9 what she wanted to do. She didn't want to take that  
10 path. She wanted to avoid the time and money to  
11 discover all that. So we didn't get into any  
12 in-depth finding of that because that's not what she  
13 wanted to do at that time.

14 Q. Did you ever discuss proceeding with the  
15 alimony claim or anything like that?

16 A. Again, that was the support that she was  
17 getting. You know, at that point, not only was it a  
18 nice amount of money, it was also non-taxable to  
19 her. So I mean, she was getting dollar for dollar  
20 that money. If it had separated between child  
21 support and alimony, I think it would have been a  
22 lesser amount, plus it would have been taxable. A  
23 portion of it could have been taxable.

24 Q. Okay.

25 (PLF. EXH. 35, Letter to Ashlin B.



1                   Potterfield from Marne Sherman, Dated  
2                   October 31, 2004, Bates Stamped 00244  
3                   and 00245, was marked for  
4                   identification.)

5 BY MR. PENDARVIS:

6           Q.    Ms. Potterfield, I've passed you a  
7           document, letter from Ms. Sherman to you, marked as  
8           Exhibit 35. Did you receive this letter from Ms.  
9           Sherman?

10          A.    Yes.

11          Q.    And I see the reference here to Aiken.  
12           Did you have any conversations with Ms. Powell about  
13           responding to some of the concerns raised in this  
14           letter?

15          A.    I probably did. I mean, I gave it to  
16           her. I mean, I know we responded to these comments.  
17           You know, you brought up that she hadn't had any  
18           money since September 15th. And so then I tell  
19           Marne that and then this is what I get back. You  
20           know, no, she has. She's had, you know, \$31,000.

21          Q.    What did Ms. Powell tell you? Did you  
22           ask her about these issues raised in this letter?

23          A.    Yes, we did. And then we responded to  
24           them.

25                   (PLF. EXH. 36, Letter to Ashlin from

1 Carolyn Powell, Dated November 4, 2004,  
2 Bates Stated 00246 through 00249, was  
3 marked for identification.)

4 BY MR. PENDARVIS:

5 Q. Passing you now what appears to be a  
6 letter from you -- excuse me, from Ms. Powell to  
7 you, marked Exhibit 36 to your deposition. Did you  
8 receive this letter from Ms. Powell?

9 A. Yes. This is in response to a previous  
10 exhibit.

11 Q. Was there anything Ms. Powell was asking  
12 for or stating in response that you thought was out  
13 of line?

14 A. Well, it made it difficult, you know,  
15 when she said she didn't have any money or he  
16 wouldn't give her any money, then she asked for  
17 \$5,000 and he gave her 4,000. You know, that makes  
18 it kind of difficult for me to respond, tell Ms.  
19 Sherman that we don't have any money when we do have  
20 money. So that was kind of something we had to deal  
21 with.

22 You know, this had been consistent that  
23 he wanted her to purchase a home in this range in  
24 Columbia. And, you know, she was looking at  
25 properties in Aiken that were certainly

1 substantially over that. So that made this a little  
2 more difficult as well. You know, I responded to  
3 Ms. Sherman's letter with what Ms. Powell had told  
4 me about what happened with the furnishings when  
5 they divided them up at Kenilworth.

6 And the issue of Alice in Aiken caused  
7 us some problems at that point, too, because they  
8 thought that she was hiding things with Alice. And  
9 that even, frankly, that they alluded to that she  
10 was having a lesbian relationship with Alice. So  
11 all of these were causing us headaches at that  
12 point.

13 Q. Where is that allusion to.--

14 A. I had that in a telephone conference  
15 with Ms. Sherman.

16 Q. Because I'll represent to you it's in  
17 some paperwork we're going to see.

18 A. It is.

19 Q. When you heard that, what did you do in  
20 terms of communicating with Ms. Powell?

21 A. We talked about it and we talked about  
22 all the things, that she wasn't hiding stuff with  
23 Alice. And that Alice had only driven the truck  
24 when she was doing something for Ms. Powell, like  
25 moving feed or doing something for the horses.

1 Q. No, no. I'm asking about the alleged  
2 lesbian relationship. What did you tell Ms. Powell  
3 about --

4 A. We talked about that. I told her what  
5 Marne insinuated and it wasn't just about that. We  
6 had to talk all about Alice. We had to talk about  
7 what Alice's role was, why they thought she was  
8 hiding stuff for Carolyn, you know, why she was  
9 driving her truck. I mean, that was all kind of  
10 part of explaining who Alice was.

11 Q. Did you tell Ms. Powell anything about  
12 the concerns that, if she entered into a sexual  
13 relationship with anyone, that it may jeopardize her  
14 right to recover things in her divorce?

15 A. I remember discussing that even -- that  
16 a homosexual relationship would have the same affect  
17 as if it were heterosexual. You know, that she  
18 needed to be careful about how the appearance of her  
19 relationship with Alice might look. Yeah.

20 Q. And did --

21 A. That the impact of that would be -- that  
22 could also be adultery.

23 Q. And you told her?

24 A. Yes. We discussed that.

25 Q. And about when was that conversation?